

INTERVENTION

THE MEETING ON INTERNATIONAL DEVELOPMENT ASSISTANCE

CESCR PERSPECTIVE

As requested by the organizers, I should dedicate my intervention to the relationship between international assistance and economic, social, and cultural rights. For several years, I was a member of the Committee on ESCR. So, let me refer to the experience of this body and focus on the following two points:

1. The legal anchor of international cooperation and assistance in the ICESCR
2. The principles of international cooperation and assistance to ensure implementation of ESCR as interpreted by the Committee

THE FIRST POINT:

Let me begin by recalling that the imperative of international assistance for implementing ESCR is articulated in the Covenant as a legally binding treaty. The International Convention on the Rights of Persons with Disabilities follows a similar approach.

Under the Covenant, to progressively realize its rights, States Parties should use the maximum available resources – their own and those available in the framework of international cooperation, including technical assistance. The Committee, as the Covenant's monitoring body, may submit to UN actors providing such assistance any questions arising from the analysis of relevant state reports.

In addition, the Optional Protocol to the Covenant requires that a trust fund shall be established to provide expert and technical assistance to States Parties, thus contributing to building national capacities in the area of ESCR in the context of this Protocol. Unfortunately, the ratification level of this instrument is far from satisfactory (only 26 ratifications so far), and the trust fund still needs to be established. Regrettably, this is the situation 14 years after the adoption of the Protocol and 9 years after it entered into force.

The respective Covenant's and Protocol's provisions should be read in the context of the Universal Declaration of Human Rights, which stipulates that "Everyone is entitled to a social and international order in which the rights and freedoms [...] can be fully realized." They also need to be linked with provisions of the UN Charter that locate international cooperation in promoting human rights among the purposes of the United Nations and establish the Member States' obligations in this respect.

So, this is the overall Covenant's legal framework of international assistance for implementing ESCR. The Committee has extensively interpreted it, particularly in its general comments and statements.

Since 1990, it has continuously qualified international development cooperation, which is critical to implementing ESCR, as an obligation for all states.

Economically developed States parties have a special responsibility for assisting other states and, depending on the availability of resources, should respond to the requests for providing economic and technical assistance and technology transfer[...]"'. The Committee points out that in the absence of such cooperation "the full realization of economic, social and cultural rights will remain an unfulfilled aspiration in many countries."

On the other hand, in light of Article 2 of the Covenant, a State party **suffering** from a scarcity of resources necessary to implement ESCR **has an obligation to seek international assistance**.

For example, in the General Comment on the right to food, the Committee stated that a State claiming that it is unable to carry out its obligations because of a shortage of resources has, nevertheless, the burden of proving that despite its determined efforts, international support remained unavailable. A failure to undertake such efforts may constitute a breach of the obligations under the Covenant.

The more recent Committee's documents, such as General Comment No 25 on Science, the draft General Comment No 26 on land, and statements on the COVID-19 pandemic, again illustrate this approach. For example, the Statement on universal affordable vaccination against coronavirus disease criticized the unhealthy race among States for COVID-19 vaccines. The Committee reiterated its call for ensuring fair distribution of vaccines based on assistance to those in need and reiterated its position that instead of health isolationism, States must

honour their obligations to contribute to the enjoyment of all human rights, globally. Vaccine nationalism breaches the extraterritorial obligations of States, in particular regarding the right to health.

The interim conclusion - international cooperation and assistance in light of the Covenant is not only a matter of moral and political commitments but also has clear legal connotations.

THE SECOND POINT – let me now focus on selected principles of international cooperation and assistance interpreted by the Committee from the Covenant on the basis of its dialogues with States Parties and other stakeholders

- On several occasions, the Committee has underlined that international assistance for implementing ESCR, be it bilateral or multilateral, should meet specific criteria, such as consistency with the Covenant and other human rights standards, sustainability, and cultural appropriateness.
- States and other actors offering cooperation and assistance should refrain from discriminatory practices and take steps to ensure that all actors under their jurisdiction, including, e.g., business companies, do likewise.
- The Committee pays special attention to the international organizations as assistance providers. In this context, the Committee distinguishes the responsibilities of states parties as members of such organizations and as beneficiaries of assistance.

In the first case, state parties should adopt whatever measures they can to ensure that the policies and decisions of those organizations conform with the Covenant. And so, states parties that are members of international financial or development institutions should undertake that the Covenant standards inform their lending policies, credit agreements, and other cooperation measures.

In the second case, the Committee emphasizes that a recipient state should ensure that financial assistance conditions do not unjustifiably reduce its ability to respect, protect and fulfill the ESCR. The Committee points out that while sometimes fiscal consolidation programs are needed, if they do not take into account the obligations of states under the Covenant, they may adversely affect the enjoyment of these rights. Consequently, loan conditions or an obligation to implement retrogressive measures in terms of ESCR, which are not excusable, will be treated as a violation of the Covenant. The Committee emphasizes in this context that such measures often

disproportionately affect low-income families, workers with the lowest skills, women, and children.

So much about the general framework of the relationship between international assistance and ESCR in light of the Covenant. Yet, I am afraid that my time is out. So, I will stop here, hoping that I will still have the opportunity to say something about how the Committee applies this approach in its recommendations during the discussion.

NOTES FOR THE DISCUSSION

ADDITIONAL POINT - Committee's recommendations concerning international assistance for ESCR

In addition to interpreting the Covenant in general comments and statements, the Committee has engaged in a continuing dialogue with the state parties on international assistance and cooperation in the framework of its monitoring functions. Only in the years 2017 – 2022, the Committee addressed the official development assistance in 12 concluding observations, from among which 9 concerned European countries.

The main concern of these recommendations was the failure of States parties to meet the official development assistance target of 0.7 % of gross national income. If I am not mistaken, only in two cases in recent years could the Committee commend a state party for having attained this benchmark. In some cases, the Committee noted a decrease in the ODA, even from the once achieved 0.7% level. In general, the Committee called on States parties to speed up their effort to achieve the standard of the Monterey consensus.

Another problem that came to the surface of the reporting system was the competition between the contribution to the ODA and to other relevant goals. For example, some reporting states indicated that although they have not reached the 0.7% benchmark, they also contributed, e.g., to Green Climate Fund or the Least Developed Countries Fund and the Adaptation Fund. The Committee's overall position is that the contributions to specific projects, while generally welcomed, should not be made to the detriment of the official development assistance.

In the past, the Committee recommended some States parties take duly into account their obligations under the Covenant while taking steps in the framework of international cooperation to improve the economic situation, including by introducing austerity measures. These obligations should also guide the negotiations concerning assistance offered by financial institutions, such as the International Monetary Fund. (Greece, Ukraine)

Several Committee's recommendations speak about technical assistance in building national capacities needed to implement ESCR. The Committee is,

however, alerted that some foreign technical assistance projects reportedly may adversely impact the enjoyment of these rights.

These are just examples. One can expect that following the adoption of the planned General Comment on sustainable development and ESCR the Committee will address the discussed matters more systematically. The Committee's Issues Paper indicates that the Comment will focus *inter alia* on:

- Climate change, sustainable development, and economic, social and cultural rights,
- The principle: Leave no one behind,
- International cooperation, extraterritorial obligations, and transboundary impacts.