Promoting Economic, Social and Cultural Rights

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**Please elaborate on the relationship between economic, social and cultural rights and civil and political rights, and given your experience as a member of the Human Rights Committee, to what extent has the Committee addressed economic, social and cultural rights in its reporting and communications procedures?**

Despite the formal classification and separation of human rights as civil/political on the one hand and economic/social/cultural on the other, the interdependence between the two categories has long been recognised and applied in the work of treaty bodies. There are the textual overlaps in the respective treaties, heralded in their preambles and reflected in substantive provisions on issues as varied as association rights, protection of the family and children and perhaps most famously in the myriad dimensions of the right to life. This overlap has also been repeatedly acknowledged by States themselves – most forcefully for example in **resolution 32/130** adopted in December 1977, where the GA declared that it was “*profoundly convinced* that all HR and fundamental freedoms are interrelated and indivisible”, and decided that “equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights”. Examples of this interconnectedness abound in the work of the HRC, the treaty body tasked with monitoring States parties’ implementation of the ICCPR.

A highly contested issue in the Committee concerned the scope of the non-discrimination right in **article 26**.[[1]](#footnote-1) Early on it was definitively established that art 26 does not merely duplicate the guarantee in article 2(1)[[2]](#footnote-2) but rather prohibits discrimination in law and in fact in *any* field regulated by public authorities. In a remarkable series of cases emanating from the Netherlands, the HRC found that distinguishing between married women and married men in the provision of unemployment benefits constituted impermissible discrimination contrary to art 26, in the process dismissing an objection that the claim was inadmissible because its subject-matter was covered by the covenant on ESC rights.[[3]](#footnote-3) Thus, by binding public authorities in any field, article 26 has tremendous promise for securing substantive equality across the board, including in socio-economic matters.

In its monitoring function, the HRC has made a range of recommendations designed to promote equality in a variety of areas, such as in labour and employment practices[[4]](#footnote-4) and the treatment of disabled persons.[[5]](#footnote-5) In promoting gender equality, the Committee consistently addresses areas such as parenting and child care, the participation of women in economic activities, gender pay gaps, and the persistence of patriarchal stereotypes regarding the role of women in the family and society.[[6]](#footnote-6)

In interpreting **Articles 1** (self-determination), **25** (participation) and **27** (minority rights), the HRC has exhorted SP to enact and/or implement legislation to recognise historic rights to land and territories[[7]](#footnote-7) and has repeatedly expressed concern at the activities of extractive industries and other uses of traditional lands which impact adversely on their use and enjoyment;[[8]](#footnote-8) frequently calling on SP to take steps to ensure that IP enjoy greater influence in decision-making affecting their natural environment and their means of subsistence and culture.[[9]](#footnote-9) In other words, the substantive and procedural obligations derived from these rights operate in and have a significant role to play in the economic sphere of indigenous and minority communities, touching upon their very survival and material well-being and enabling their culture and spiritual practices to flourish.

**Article 17** of the ICCPR, which guarantees protection against arbitrary and unlawful attacks on the family and home, has been invoked to require SP to take measures protecting persons from the negative impacts of climate change and natural disasters, such as by sustainably using natural resources[[10]](#footnote-10) and developing and implementing environmental standards and conducting EIAs,[[11]](#footnote-11) and importantly to require that policies are adopted only after meaningful and informed participation of the population.[[12]](#footnote-12)

Beyond these programmatic recommendations, in its communication procedures the HRC has found violations of this right by reason of the failure to prevent illegal activities such as fumigation of crops, which result in contamination of land and waterways, destruction of crops and livestock and health problems in persons living nearby.[[13]](#footnote-13)

In a recent historic case, *Billy v Australia*, the HRC found that by not taking positive steps such as constructing or upgrading seawalls, which led to flooding, salinification of groundwater and destruction of gardens and other food sources, Australia violated the authors’ rights to private life and family under article 17.[[14]](#footnote-14)

But perhaps the most dramatic illustration of interdependence lies in the interpretation and application of **article 6**, the right to life. In its first General Comment on the subject, adopted in 1994, the Committee noted that the right to life cannot properly be understood in a restrictive manner, but rather requires positive measures, such as reducing infant mortality, increasing life expectancy, and eliminating malnutrition and epidemics.

In the latest General Comment 36, adopted in 2018, the Committee echoed and expanded upon this interpretation, stipulating that the right to life “concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity.” (para 3) GC 36 elaborates that the duty to protect life “implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity”, these being conditions such as degradation of the environment, deprivation of IP’s lands, territories and resources, life-threatening diseases, hunger, poverty and homelessness. (para 26) Required measures include those to secure access to food, water, shelter, health care and social housing programmes.

These standards have been applied repeatedly by the Committee in its monitoring function, reflected in a variety of COBs requesting SP to address matters such as HIV/AIDS mortality rates,[[15]](#footnote-15) infant mortality, malnutrition,[[16]](#footnote-16) as well as access to food, health, electricity, water and sanitation in blockaded areas.[[17]](#footnote-17) One of the most emblematic applications of this right was in the Committee’s views in *Toussaint v Canada*, where it found that the denial of health coverage to an undocumented immigrant constituted a breach of her right to life.[[18]](#footnote-18) In *Toussaint* the Committee noted that article 6 entitles individuals to be free from acts/omissions intended or expected to cause their unnatural or premature death, as well as to enjoy a life with dignity, giving rise to the obligation to provide access to existing health care services that are reasonably available when lack of access could foreseeably result in loss of life.[[19]](#footnote-19)

**Conclusion**

Thus, despite the formal separation of economic, social and cultural rights on the one hand and civil and political rights on the other, the interpretation and application of the latter by the Human Rights Committee demonstrates graphically that these rights do not exist in splendid isolation. Overlaps across treaties are both direct and indirect, and an interpretation that recognises their mutually reinforcing nature is the only way to achieve the ultimate goal their protection aims at in the first place – namely, as stated in the preamble to both covenants, that the “inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”.

1. Article **26** provides: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” [↑](#footnote-ref-1)
2. Article **2(1)** provides: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” [↑](#footnote-ref-2)
3. *Broeks v. The Netherlands* CCPR 172/1984; *Zwaan-de Vries v. The Netherlands* CCPR 182/1984. [↑](#footnote-ref-3)
4. CCPR/C/GTM/4 (2018), paras. 10 & 11. [↑](#footnote-ref-4)
5. CCPR/C/GTM/4 (2018), paras. 26 & 27. [↑](#footnote-ref-5)
6. CCPR/C/JAM/4 (2016), paras. 21 & 22; CCPR/C/SLV/7 (2018), para. 13. [↑](#footnote-ref-6)
7. CCPR/C/HND/2 (2017), paras. 46 & 47; CCPR/C/SLV/7 (2018), paras. 41 & 42; CCPR/C/BRA/2004/2 (2005), para. 6. [↑](#footnote-ref-7)
8. CCPR/C/BLZ/1 (2018), paras. 45 & 46; CCPR/C/CAN/2004/5 (2005), para. 9. [↑](#footnote-ref-8)
9. CCPR/C/CAN/6 (2015), paras. 16 & 17; CCPR/C/USA/3 (2006), para. 37. [↑](#footnote-ref-9)
10. CCPR/ C/DEU/CO/7 (2021), paras. 24 & 25. [↑](#footnote-ref-10)
11. CCPR/C/CPV/1 (2019), paras. 17 & 18. [↑](#footnote-ref-11)
12. CCPR/C/KEN/4 (2021), paras. 26 & 27. [↑](#footnote-ref-12)
13. *Cáceres v Paraguay* CCPR 2751/2016, (25 July 2019); *Pereira v Paraguay* CCPR 2552/2015, (14 July 2021). [↑](#footnote-ref-13)
14. *Billy v Australia* CCPR 3624/2019, adopted 21 July 2022. [↑](#footnote-ref-14)
15. CCPR/C/KEN/3 (2012), para. 9. [↑](#footnote-ref-15)
16. CCPR/C/PRK/2000/2 (2001), para. 12. [↑](#footnote-ref-16)
17. CCPR/C/ISR/4 (2014), para. 12. [↑](#footnote-ref-17)
18. *Toussaint v Canada* CCPR 2348/2014 (24 July 2018). [↑](#footnote-ref-18)
19. Ibid., at para. 11.3. [↑](#footnote-ref-19)