

# **The Role of the Committee on Economic, Social and Cultural Rights in Developing Normative Contents of the Economic and Social Rights Contained in the ICESCR**

**Md. Khurshid Alam\***  
**Dr Muhammad Ekramul Haque\*\***

## **I. Introduction**

The Universal Declaration of human rights adopted in 1948 is the first comprehensive document of human rights. It contained all human rights, including civil and political (CP) rights and economic, social and cultural (ESC) rights. Traditionally, human rights are classified into different groups. Among them, civil and political rights and economic social and cultural rights constitute two major groups. However, the UDHR did not make any distinction between these two types of human rights. It recognized both of them as of the same status. But, there was grave dispute on the issue of enacting covenant to include enforcement mechanism for the human rights. Ultimately, two different covenants were enacted in 1966: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR). The ICCPR, in contrast to the ICESCR, contained an enforcement mechanism. The enactment of the two different Covenants in fact was the outcome of the traditional classification of human rights according to which ESC rights were treated as significantly different from CP rights. One of the main distinguishing features between the two was: in contrast to CP rights, ESC rights were not capable of judicial enforcement. Again, one of the main barriers identified in the way of enforcement of the ESC rights was: the contents of ESC rights were vague and not clear enough to be judicially applied, unlike CP rights. The objective of this article is to analyse the ESC rights recognized in the ICESCR and to examine whether their contents are vague or clear. I will argue in this article that the contents of the ESC rights recognized by the ICESCR have been sufficiently developed by the Committee on Economic, Social and Cultural Rights (CESCR) through its General Comments. It is beyond the scope of my article to show the entire developments of the contents of the ESC rights incorporated in the ICESCR. I will examine only the General Comments of the CESCR in this regard.

The Committee on Economic, Social and Cultural Rights (CESCR) was formed under the Economic and Social Council (ECOSOC) of the United Nations (UN) in 1985. The CESCR though was not a treaty monitoring

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\* Associate Professor, Department of Law, University of Dhaka.

\*\* Associate Professor, Department of Law, University of Dhaka.

body for the ICESCR, yet it has been performing the role of a treaty monitoring body in practice. The CESCR made several General Comments on different ESC rights in order to clarify and elaborate the normative contents of those rights. Section II of this article will contain an overview of the ESC rights contained in the ICESCR by classifying them into different groups, section III will show how the normative contents have been developed through the General Comments of the CESCR and section IV of my article will contain the conclusion where I will argue that the eventual impact of the developments of the normative contents of the ESC rights made through the General Comments of the CESCR is that the contention that the ESC rights are not judicially enforceable due to their less developed contents is no more tenable.

## II. ESC rights under the ICESCR

Part III of the ICESCR is the core part, which contains substantive provisions regarding ESC rights. The ICESCR, in its Part III, incorporated a range of ESC rights, which can be classified under the following five groups:

1. Recognition as rights
2. Recognition as fundamental right
3. State obligation: general declaration
4. Undertaking to respect
5. Undertaking to ensure right

### 1. *Recognition as rights*

The Covenant mentioned the following ESC rights directly as 'rights' to be recognized by the States Parties to it:

- a) The right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.<sup>1</sup> Article 6(1) also adds that the state also recognizes to take appropriate steps to safeguard this right. Article 6 (2) explains the state obligation regarding this right, which says that—

[t]he steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

- b) The right of everyone to the enjoyment of just and favourable conditions of work.<sup>2</sup>
- c) The right of everyone to social security, including social insurance.<sup>3</sup>

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<sup>1</sup> Article 6(1) of the ICESCR.

<sup>2</sup> Article 7 of the ICESCR.

- d) The right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.<sup>4</sup> Article 11(1) also adds that the States Parties will take appropriate steps to ensure the realization of this right.
- e) The right of everyone to the enjoyment of the highest attainable standard of physical and mental health.<sup>5</sup>
- f) The right of everyone to education.<sup>6</sup>
- g) The right of everyone to take part in cultural life, to enjoy the benefits of scientific progress and its applications and to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.<sup>7</sup>

## 2. *Recognition as fundamental right*

Right to be free from hunger is the only right that has been recognized by the Covenant as the 'fundamental right'. The phrase 'fundamental right' is not used anywhere in this Covenant except in connection this right. Article 11(2) of the Covenant says:

The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

- (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
- (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

This right to be free from hunger seems to have better footing in the Covenant for two reasons. Firstly, it has been recognized as a 'fundamental right', and secondly, unlike other rights where the states have been directed to recognize them, the right to be free from hunger has been mentioned as an already recognized right where States Parties have been given direction to take further actions on the basis of the fact of this recognized right.

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<sup>3</sup> Article 9 of the ICESCR

<sup>4</sup> Article 11 of the ICESCR.

<sup>5</sup> Article 12(1) of the ICESCR.

<sup>6</sup> Article 13 of the ICESCR

<sup>7</sup> Article 15(1) of the ICESCR

### 3. *State obligation: general declaration*

There are a number of provisions in the Covenant, which contain some guidelines for the state in order to take steps regarding certain matters. The provisions are listed below.

- a) Article 10 of the Covenant lays down the following provisions regarding family matters:

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
  2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
  3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.
- b) Regarding the right to education, Article 13(2) contains declaration of the following state obligations by which that right can be implemented:

The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

Regarding the same right, article 14 directs states to take a realistic plan, which says:

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

It appears that the above provisions of the Covenant are, in fact, certain principles of rights and directions of administrative nature, which impose obligation on state to move forward accordingly. However, it is possible to deduce the corresponding rights of the above state obligations.

#### *4. Undertaking to respect*

There are two provisions in the Covenant, which contain undertaking of the States Parties to respect certain freedom or liberty. They are—

- a) Provision regarding parents' liberty to choose school has been enumerated in article 13(3). It says:

parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

- b) Provision regarding freedom of scientific research has been laid down in article 15(3) that says that '[t]he States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.'

#### *5. Undertaking to ensure right*

The Covenant incorporates certain trade union rights in a different form that declares that the States Parties have undertaken 'to ensure' these rights. Article 8(1) says:

The States Parties to the present Covenant undertake to ensure:

- (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

- (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
- (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

It appears that such an undertaking to ensure a right has not been provided elsewhere in the Covenant. It seems that the ICESCR recognized these rights in stronger form. It is worth mentioning here that trade union rights also have been mentioned in the article 22 of the ICCPR. Apart from all Part III rights, the ICESCR in article 1 of its Part I recognized a group right: people's right to self-determination.

### **III. ICESCR rights: an examination of their contents**

In this section of the article, I will examine the normative contents of different ESC rights recognized in the ICESCR. The ICESCR incorporated most of the rights in general terms. However, the normative contents of the ICESCR rights have been further clarified by the CESCR through its General Comments made on different rights. I will describe in this section, how the CESCR played a significant role in clarifying contents of the ESC rights contained in the ICESCR.

**1. Right to work and other related rights:** Article 6 of the ICESCR deals with the right to work, while article 7 describes certain rights in the work. Article 6 includes the following aspects of the right to work:

- i. General recognition of the right to work: article 6(1), in its first phase, recognized work as a right: 'The States Parties to the present Covenant recognize the right to work.'
- ii. Freedom of choice of work: article 6(1), in its second phase, gives an explanation of the right to work. This explanation is inclusive, not exhaustive, as it started using the terms 'which includes'. It says that the right to work includes the freedom of choice that everyone can choose or accept the work of his or her own choice for earning his or her living expenses. It appears that this part of article 6(1) not only recognized the freedom of choice; it also indicated that the nature of work should be such that it will be sufficient for maintaining one's living expenses.
- iii. General obligation of the States Parties: article 6(1), in its third phase, laid down the general obligation of the States Parties regarding the right to work, without specifying any specific obligation—that the States Parties 'will take appropriate steps to safeguard this right.'

iv. Specific obligation of the States Parties: article 6(2) provided an inclusive explanation of the appropriate steps to be taken by the states. It added that appropriate steps as stated above include the following:

The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7 of the ICESCR recognized 'the right of everyone to the enjoyment of just and favourable conditions of work.' It then mentioned the following four particular aspects of just and favourable conditions of work:

i. Principles regarding remuneration: Article 7(a)(i) said that that the remuneration must be 'fair wages'. Article 7(a)(ii) further added that the remuneration should be sufficient for living a decent life for the workers and their families maintaining the expected standard set by the provisions of the ICESCR. Article 7(a)(i) also added the principle non-discrimination between man and woman regarding the payment of remuneration: 'equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.'

ii. Principles regarding working conditions: Article 7(b) said that that the States Parties to the ICESCR must ensure '[s]afe and healthy working conditions' for everyone.

ii. Principles regarding promotion: Article 7(c) recognized the equal opportunity for everyone to get promotion based only on the considerations of seniority and competence: 'Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.'

ii. Principles regarding rest and working hours: Article 7(d) said that the States Parties will ensure '[r]est, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.'

### **Contents added by the general Comment of the CERSCR**

The CERSCR elaborated the normative contents of the right to work in its General Comment 18. Everyone will have the freedom to choose his own work. Thus, any forceful imposition of any work will constitute the violation of the ICESCR. A person cannot be deprived of any employment unfairly. The work available must be 'decent' and sufficient to mitigate the expenditure for livelihood. The Committee reaffirmed that the States parties to the ICESCR have the obligation to 'abolish' and 'counter' any type of forced labour. Thus, if state party fails to prevent forced labour in any way would be held liable for breaching the right to work ensured by the ICESCR. The Committee has categorically emphasized on the need to

'reduce to the fullest extent possible the number of workers outside the formal economy, workers who as a result of that situation have no protection.' The Committee added that 'domestic and agricultural work must be properly regulated by national legislation so that domestic and agricultural workers enjoy the same level of protection as other workers.' Both 'availability' and 'accessibility' are equally important for the right to work. In elucidating the obligations regarding quality of the work, the Committee noted that the '[p]rotection of the right to work has several components, notably the right of the worker to just and favourable conditions of work, in particular to safe working conditions, the right to form trade unions and the right freely to choose and accept work.' The state must also ensure enforcement mechanism to redress work related wrong doings.

The right to work includes a state obligation that all people are enjoying the right without any discrimination on any ground like sex, colour, race, religion, etc. For giving the protection to children every state party requires 'to protect children from all forms of work that are likely to interfere with their development or physical or mental health.' Regarding the persons with disabilities, the Committee said that the '[s]tates parties must take measures enabling persons with disabilities to secure and retain appropriate employment and to progress in their occupational field, thus facilitating their integration or reintegration into society.'

**2. Rights relating to trade unions:** Article 8 of the ICESCR contains different rights regarding trade unions. They are—

i. Right to form and join trade union: Article 8(1)(a) recognized that everyone has the right 'to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests.' It further added that this right can be restricted only by law, provided the restrictions are deemed to be 'necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.' Article 8(1)(b) recognized the 'right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations.'

ii. Principles regarding functions of trade unions: Article 8(1)(c) recognized '[t]he right of trade unions to function freely.' It further added that this right can be restricted only by law, provided the restrictions are deemed to be 'necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.'

iii. Right to strike: Article 8(1)(d) categorically recognized the right to strike. However, it added that this right has to be 'exercised in conformity with the laws of the particular country.'

iv: Exclusions: Article 8(2) approved more restrictions of this right for certain sectors: 'This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces



or of the police or of the administration of the State.’ Article 8(3) added that ‘[n]othing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.’

**3. Right to social security:** Article 9 of the ICESCR plainly recognized ‘the right of everyone to social security, including social insurance.’ This article does not contain any more elaboration or explanation of this right.

### **Contents added by the General Comment of the CESCR**

The CESCR adopted its General Comment 19 on the right to social security incorporated in article 9 of the ICESCR. The first content is that no one will be arbitrarily deprived of the social security benefits. Every domestic law should provide a comprehensive system for social security for which the government shall entirely be responsible. The system should cover healthcare, sickness, old age, unemployment, employment injury, family and child support, maternity, disability, survivors and orphans. The benefits provided by the state must be adequate to live a decent life. Thus, a person’s claim that the benefits obtained are not sufficient is actionable.

**4. Family rights:** Article 10 of the ICESCR contains a number of family related rights. They are—

i. Protection of the family: Article 10(1) imposed a duty on the States Parties to the ICESCR to accord the ‘widest possible protection and assistance’ to the family. This article termed the family as ‘the natural and fundamental group unit of society.’ It added that the above mentioned ‘protection and assistance’ should be accorded particularly for the establishment of the family and the care and education of dependent children.

ii. Principle regarding marriage: The later part of article 10(1) categorically mentioned that ‘[m]arriage must be entered into with the free consent of the intending spouses.’

iii. Principles regarding protection of mother: Article 10(2) laid down the provisions regarding two specific protections for the mothers. Firstly, ‘[s]pecial protection should be accorded to mothers during a reasonable period before and after childbirth.’ Secondly, the article said about the maternity benefits: ‘During such period working mothers should be accorded paid leave or leave with adequate social security benefits.’

iv. Principles regarding protection of children and young persons: Article 10(3) provided four specific protective protections for the children and young persons. Firstly, it adopted the principle of non-discrimination in awarding protection to them: ‘Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions.’

Secondly, in order to protect them from exploitation, the article added: 'Children and young persons should be protected from economic and social exploitation.' Thirdly, the article prohibited their employment which is injurious for them: 'Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law.' Fourthly, the article instructed the States Parties to enact legislation regarding prohibition of 'child labour': 'States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.'

**5. Right to adequate standard of living:** Article 11(1) of the ICESCR recognized 'the right of everyone to an adequate standard of living for himself and his family.' It added that this right includes 'adequate food, clothing and housing, and to the continuous improvement of living conditions.' Regarding the duty of the States Parties in implementing this right, the article said: 'The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.'

#### **Contents added by the General Comment of the CESCR:**

The CESCR adopted its General Comment 4 on the right to adequate housing, a right included in article 11(1) of the ICESCR. Referring to the article 11(1) where the right to adequate housing has been included as a component of the right to adequate standard of living, the CESCR said: 'The human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.'<sup>8</sup> The CESCR termed the provision relating to the adequate housing contained in article 11(1) of the ICESCR as 'the most comprehensive' one. It said: 'Although a wide variety of international instruments address the different dimensions of the right to adequate housing article 11 (1) of the Covenant is the most comprehensive and perhaps the most important of the relevant provisions.'<sup>9</sup>

The normative contents added by the CESCR by its General Comment 4 are summarized below:

i. 'Housing' for whom: Is this right available to each individual? Or in case of a family, it belongs to only one person and the housing arrangements for other family members are included within the individual person who is the head of the family. A plain reading of article 11(1) seems to give an idea that in case of a family, the right belongs to head of the family, which appears from the wording used in article 11(1): 'the right of everyone to an adequate standard of living for himself and his family.' However, the CESCR clarified that the right is always individual, and in case of a family,

<sup>8</sup> General Comment No. 4 of the CESCR, at para 1, contained in document E/1992/23.

<sup>9</sup> Para 3 of General Comment No. 4 of the CESCR.

each individual member of a family is entitled to this right individually. The CESCR commented:

The right to adequate housing applies to everyone. While the reference to "himself and his family" reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitations upon the applicability of the right to individuals or to female-headed households or other such groups. Thus, the concept of "family" must be understood in a wide sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2 (2) of the Covenant, not be subject to any form of discrimination.<sup>10</sup>

ii. Meaning of adequate housing: What sort of housing will be treated as appropriate, has been described by the CESCR in the following words:

In the Committee's view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.

iii. Criteria of adequate housing: The CESCR further enumerated some criteria for determining which housing is to be treated as 'adequate' within the meaning of the ICESCR. It said that "the concept of adequacy is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute "adequate housing" for the purposes of the Covenant."<sup>11</sup> It added that "[w]hile adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context."<sup>12</sup> The CESCR then enumerated the following criteria of adequate housing:<sup>13</sup> legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.

iv. State obligation to abstain and the right to housing: The CESCR particularly mentioned that 'many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices and a commitment to facilitating "self-help" by

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<sup>10</sup> Para 6 of General Comment No. 4 of the CESCR.

<sup>11</sup> Para 8 of General Comment No. 4 of the CESCR.

<sup>12</sup> Para 8 of General Comment No. 4 of the CESCR.

<sup>13</sup> Para 8 of General Comment No. 4 of the CESCR.

affected groups.<sup>14</sup> The CESCR termed such obligations as ‘immediate’, irrespective of the economic condition of a state.<sup>15</sup>

v. Resource constraints and international assistance: The CESCR said that if a state fails to implement the right to adequate housing due to resource constraints, then the state should ask for international cooperation in this regard.<sup>16</sup>

vi. State obligation to give priority: The CESCR stated that [t]he States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration.<sup>17</sup>

vii. Violation of state obligation under article 11(1): The CESCR termed a particular situation as a violation of state obligation:

It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant.<sup>18</sup>

viii. Immediate obligation: The CESCR said that the ‘[e]ffective monitoring of the situation with respect to housing’ is an obligation that is to be performed by all states immediately, not progressively.

viii. Forced eviction: The CESCR particularly said that the ‘instances of forced eviction are prima facie incompatible with the requirements of the Covenant.’<sup>19</sup> It added that the forced eviction ‘can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.’<sup>20</sup>

Thus, it appears that the CESCR enumerated detailed normative contents of the right to adequate housing contained in article 11(1) of the ICESCR. It also clarified different state obligations regarding the right. Forced eviction has been treated as a prima facie violation of the ICESCR provision regarding the right to housing. It is worth mentioning here that the CESCR made another General Comment only on different aspects of the forced eviction. The CESCR in its General Comment 7 clarified the state obligations regarding the forced eviction. In introducing the General Comment 7, the CESCR said:

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<sup>14</sup> Para 10 of General Comment No. 4 of the CESCR.

<sup>15</sup> Para 10 of General Comment No. 4 of the CESCR.

<sup>16</sup> Para 10 of General Comment No. 4 of the CESCR.

<sup>17</sup> Para 11 of General Comment No. 4 of the CESCR.

<sup>18</sup> Para 11 of General Comment No. 4 of the CESCR.

<sup>19</sup> Para 18 of General Comment No. 4 of the CESCR.

<sup>20</sup> Para 18 of General Comment No. 4 of the CESCR.

In its General Comment No. 4 (1991), the Committee observed that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. It concluded that forced evictions are prima facie incompatible with the requirements of the Covenant. Having considered a significant number of reports of forced evictions in recent years, including instances in which it has determined that the obligations of States parties were being violated, the Committee is now in a position to seek to provide further clarification as to the implications of such practices in terms of the obligations contained in the Covenant.

The CESCR said that the '[f]orced eviction and house demolition as a punitive measure are also inconsistent with the norms of the Covenant.'<sup>21</sup> The CESCR added that '[i]n cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality.'<sup>22</sup> It further added that '[e]victions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights.'<sup>23</sup>

**6. Fundamental right to be free from hunger:** Article 11(2) of the ICESCR recognized 'the fundamental right of everyone to be free from hunger.' It has already been noted that the ICESCR used the term 'fundamental right' only in connection to the right to be free from hunger. Article 11(2) further guided the States Parties to take the necessary measures and specific programmes, individually and through international co-operation, in order to achieve the following two things:

'(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.'

### ***Contents added by the General Comment of the CESCR***

The CESCR adopted the General Comment 12 specifically for the right to adequate food. The right to food has been directly recognized as a right in article 11(1) of the ICESCR, as stated above. However, the right to adequate food is directly linked to article 11(2) which deals with the right to be free from hunger. Thus, the discussion on the right to adequate food,

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<sup>21</sup> General Comment No. 7 of the CESCR, at para 12, contained in document E/1998/22.

<sup>22</sup> General Comment No. 7 of the CESCR, at para 14, contained in document E/1998/22.

<sup>23</sup> General Comment No. 7 of the CESCR, at para 16, contained in document E/1998/22.

which has been elaborated in the general Comment 12, have clarified the rights contained in both articles 11(1) and (2) above. In linking the right to adequate food to article 11 rights, the CESCR said in the introductory paragraph:

Pursuant to article 11.1 of the Covenant, States parties recognize "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions", while pursuant to article 11.2 they recognize that more immediate and urgent steps may be needed to ensure "the fundamental right to freedom from hunger and malnutrition".<sup>24</sup>

The CESCR commented that "[t]he human right to adequate food is of crucial importance for the enjoyment of all rights."<sup>25</sup> The CESCR clarified that the right to adequate food is an individual right which belongs to every individual individually: "It applies to everyone; thus the reference in Article 11.1 to "himself and his family" does not imply any limitation upon the applicability of this right to individuals or to female-headed households."<sup>26</sup>

The CESCR elaborated the normative contents of article 11, paragraphs 1 and 2, in the following words: "The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement."

The CESCR also elaborated different state obligations and identified certain violations of the right. For example, the CESCR stated that "[e]very State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger."<sup>27</sup> In identifying violation of the right to food contained in article 11, the CESCR commented that "[v]iolations of the Covenant occur when a State fails to ensure the satisfaction of, at the very least, the minimum essential level required to be free from hunger."<sup>28</sup>

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<sup>24</sup> General Comment No. 12 of the CESCR, at para 1, contained in document E/C.12/1999/5.

<sup>25</sup> General Comment No. 12 of the CESCR, at para 1, contained in document E/C.12/1999/5.

<sup>26</sup> General Comment No. 12 of the CESCR, at para 1, contained in document E/C.12/1999/5.

<sup>27</sup> General Comment No. 12 of the CESCR, at para 14, contained in document E/C.12/1999/5.

<sup>28</sup> General Comment No. 12 of the CESCR, at para 17, contained in document E/C.12/1999/5.

**7. Right to physical and mental health:** Article 12(1) of the ICESCR recognized 'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.' Article 12(2) provided a non-exhaustive list of steps to be taken in order to fully realize the right. It said:

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
  - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
  - (b) The improvement of all aspects of environmental and industrial hygiene;
  - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
  - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

In elaborating the right to the highest attainable standard of physical and mental health, the CESCR adopted its General Comment 14 which clarified the normative contents of this right in the following words:

The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

The public health system must be very effective which will provide all possible health-care facilities. The system should be accessible and should provide appropriate good services. The CESCR has mentioned some specific obligations regarding women's right to health:

To eliminate discrimination against women, there is a need to develop and implement a comprehensive national strategy for promoting women's right to health throughout their life span. Such a strategy should include interventions aimed at the prevention and treatment of diseases affecting women, as well as policies to provide access to a full range of high quality and affordable health care, including sexual and reproductive services. A major goal should be reducing women's health risks, particularly lowering rates of maternal mortality and protecting women from domestic violence. The realization of women's right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health. It is also important to undertake preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights.

The General Comment also elaborated States Parties' obligations and identified some violations.

Again, the right to water has been deduced from articles 11 and 12 of the ICESCR, and the CESCR adopted its General Comment 15 on the right to water:

11. The elements of the right to water must be adequate for human dignity, life and health, in accordance with articles 11, paragraph 1, and 12. The adequacy of water should not be interpreted narrowly, by mere reference to volumetric quantities and technologies. Water should be treated as a social and cultural good, and not primarily as an economic good. The manner of the realization of the right to water must also be sustainable, ensuring that the right can be realized for present and future generations.

**8. Right to education:** Articles 13 and 14 of the ICESCR contain principles relating to the right to education in different forms. They are—

i. General recognition of the right to education: 13(1) of the ICESCR recognized 'the right of everyone to education.' It added that 'education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.' It further added that 'education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.'

ii. Steps to be taken relating to the right to education: Article 13(2) categorically mentioned that the States Parties to the ICESCR will take the following actions in order to fully realize the right to education:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.



iii. Liberty of parents to choose education: Article 13(3) says:

The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

iv. Exclusions: Article 13(4) says:

No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

v. Specific provision for compulsory primary education: Apart from making the primary education compulsory for all under article 13(2), as stated above, article 14 enumerated further state obligations regarding then implementation of free compulsory education for all. It said:

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

### **Contents added by the General Comment of the CESCR**

The CESCR adopted the General Comment 13 on the right to education contained in article 13 of the ICESCR. In elaborating the normative contents of the right to education, the CESCR has provided different conditions:

4. States parties agree that all education, whether public or private, formal or non-formal, shall be directed towards the aims and objectives identified in article 13 (1). The Committee notes that these educational objectives reflect the fundamental purposes and principles of the United Nations as enshrined in Articles 1 and 2 of the Charter. For the most part, they are also found in article 26 (2) of the Universal Declaration of Human Rights, although article 13 (1) adds to the Declaration in three respects: education shall be directed to the human personality's "sense of dignity," it shall "enable all persons to participate effectively in a free society," and it shall promote understanding among all "ethnic" groups, as well as nations and racial and religious groups. Of those educational objectives which are common to article 26 (2) of the Universal Declaration of Human Rights and article 13 (1) of the Covenant, perhaps the most fundamental is that "education shall be directed to the full development of the human personality."

The CESCR added that the education must be accessible, affordable and adaptable. The education provided by the state should 'enable students to

acquire knowledge and skills which contribute to their personal development, self-reliance and employability and enhances the productivity of their families and communities, including the State party's economic and social development;’ The Committee’s comment regarding academic freedom is noteworthy:

In the light of its examination of numerous States parties’ reports, the Committee has formed the view that the right to education can only be enjoyed if accompanied by the academic freedom of staff and students. Accordingly, even though the issue is not explicitly mentioned in article 13, it is appropriate and necessary for the Committee to make some observations about academic freedom. The following remarks give particular attention to institutions of higher education because, in the Committee’s experience, staff and students in higher education are especially vulnerable to political and other pressures which undermine academic freedom. The Committee wishes to emphasize, however, that staff and students throughout the education sector are entitled to academic freedom.

Thus, if an academic is harassed for expressing any academic opinion, then the state party concerned will be held responsible for violation of the right to education under the ICESCR. The general Comment 13 elaborated in detail the normative contents of the right to education contained in article 13 of the ICESCR. The General Comment also elaborated the obligations of the States Parties and identified some specific instances of violations of the right.

#### **IV. Conclusion**

The above discussion reveals that the Committee on Economic, Social and Cultural Rights (CESCR) played a significant role in elaborating the contents of different ESC rights contained in the ICESCR. In the light of this development of the contents of ESC rights made by the CESCR through the General Comments, it can be reasonably commented that many ESC rights contained in the ICESCR can no more be identified as vague; rather their contents have really become clear enough through the General Comments made by the CESCR.