



## Economic and Social Council

Distr.  
GENERAL

E/CN.4/Sub.2/1990/NGO/16  
8 August 1990

ENGLISH  
Original: SPANISH

COMMISSION ON HUMAN RIGHTS  
Sub-Commission on Prevention  
of Discrimination and  
Protection of Minorities  
Forty-second session  
Agenda item 8

### THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by the American Association of  
Jurists, a non-governmental organization in consultative  
status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[8 August 1990]

1. Economic, social and cultural rights and, in general, the right to development are enshrined in a large number of international standards that are binding upon all States, as well as upon other bodies subject to public and private law and upon individuals, either by virtue of their status as conventions or because they are included in solemn declarations that constitute part of the fundamental and sacrosanct principles recognized and accepted by the international community.
2. These principles are stated, inter alia, in the Charter of the United Nations (Arts. 55 and 56); in the Universal Declaration of Human Rights (arts. 22, 26 (2), 28 and 29); in article 1 (1) of the two International Covenants on Human Rights; in the International Covenant on Economic, Social and Cultural Rights; in the Proclamation of Teheran; in the Declaration on the Establishment of a New International Economic Order (General Assembly resolution 3201 (S-VI)); in the Programme of Action on the Establishment of a

New International Economic Order (General Assembly resolution 3202 (S-VI)); in the Declaration on Social Progress and Development (General Assembly resolution 2542 (XXIV)); in the Charter of Economic Rights and Duties of States (General Assembly resolution 3281 (XXIX)); in the resolution adopted concerning development and international economic co-operation (General Assembly resolution 3362 (S-VII)); in the Declaration of Philadelphia, incorporated into the Constitution of ILO; in the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of ILO in 1977; and in the Declaration on the Right to Development (General Assembly resolution 41/128).

3. The above norms are binding upon the following:

(a) The international community (Charter of the United Nations, Arts. 1 and 56 and a number of General Assembly declarations and resolutions cited above);

(b) International organizations, including the United Nations and its specialized agencies, such as, for example, the International Monetary Fund and the World Bank (Charter of the United Nations, Arts. 55, 56, 57, 58, 63 and 64). The International Court of Justice has ruled that the rights and duties of an entity such as the United Nations or one of its specialized agencies must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice (p. 180 of the 1949 ICJ Reports, cited in the report by the Secretary-General (E/CN.4/1334) of 2 January 1979). Accordingly, the American Association of Jurists considers that the Special Rapporteur on agenda item 8 should carefully examine whether the policies of the International Monetary Fund and of the World Bank are not contrary to the Charter and other normative instruments of the United Nations and even to the aims proclaimed in the constituent documents of those specialized agencies;

(c) International standards in respect of economic, social and cultural rights and the right to development are also binding upon States and in particular upon the industrialized countries and the former colonial powers by virtue of the principle of "remedying of injustices which have been brought about by force and which deprive a nation of the natural means necessary for its normal development" - chapter I, principle (i) of General Assembly resolution 3281 (XXIX);

(d) Lastly, the above standards are binding upon individuals and upon corporate bodies subject to private law, in accordance with articles 29 (1) and 30 of the Universal Declaration of Human Rights and with the preambles to the two International Covenants on Human Rights.

4. The above binding standards need to be complemented by (a) monitoring and control mechanisms; (b) evaluation procedures; and (c) sanctions should they be breached or not complied with.

5. Economic and Social Council resolutions 8 (XXIII), 728 F (XXVIII), 1235 (XLII) and 1503 (XLVIII) established monitoring and control mechanisms to ensure the observance of human rights as a whole: in practice, the mechanisms are employed in respect of civil and political rights, although they should also be employed for economic, social and cultural rights.

6. Special Rapporteurs could also constitute an effective means of monitoring and control over economic, social and cultural rights, as they already do in the case of civil and political rights.

7. The Committee is the specific monitoring and control mechanism for countries that are parties to the International Covenant on Economic, Social and Cultural Rights. It would undoubtedly be more effective if the Committee's general comment No. 1 were put into practice (Committee on Economic, Social and Cultural Rights, report on the third session (E/1989/22-E/C.12/1989/5)), together with the relevant sections of Economic and Social Council resolution 1988/4.

8. Non-governmental organizations can make an effective contribution to monitoring and control by making use of the mechanisms of Economic and Social Council resolutions 8 (XXIII), 728 F (XXVIII), 1235 (XLII) and 1503 (XLVIII) and by responding to the invitation made by the Economic and Social Council in paragraph 16 of its resolution 1988/4, to "submit to the Committee written statements that might contribute to full and universal recognition and realization of the rights set forth in the Covenant ...".

9. Evaluation procedures are characterized by a technical and statistical aspect that covers a variety of development concepts.

10. The American Association of Jurists shares the position of the South Commission that evaluation mechanisms should be established, implemented and modified with the participation of the persons concerned and on the basis of the objectives pursued. Such an approach would help to overcome the delays, shortcomings and distortions that affect the statistics habitually used, to surmount the inability of many countries to set up elaborate and costly evaluation machinery and rapidly to identify the prevailing trends so as to be able to effect in good time the necessary adjustments to the policies being implemented.

11. Social welfare indicators should be defined as a means of measuring genuine progress, i.e. an assessment of living conditions in non-monetary terms (e.g. conditions of health rather than expenditure on public health), at the local level, and measurements should be made on the basis of small geographical units (commune, village, etc.), by population categories. Social welfare indicators should comprise several categories of indicators such as, for example, the following: (a) income distribution by population sector; (b) childhood (mortality, morbidity, children at work, etc.); (c) education; (d) employment; (e) nutrition; (f) housing; (g) health; (h) means of communication; (i) social security; (j) environment; (k) grass-roots participation; (l) human rights and fundamental freedoms. This latter indicator was suggested by the experts who prepared the "Report on international definition and measurement of standards and levels of living" (United Nations, 1954, E/CN.3/179, E/CN.5/299).

12. The American Association of Jurists suggests that the Sub-Commission should adopt the above basic criteria for evaluation procedures, bearing in mind the studies already carried out within the United Nations, for example within UNRISD, and the document by the South Commission: "Towards a new way of measuring development" (August 1989).

13. Sanctions: the above international standards establish the right and the duty of States, of the international community, of other bodies subject to public and private law and of individuals to contribute to ensuring that all human beings are able to enjoy their fundamental collective and individual rights. In other words, there is both a right and a duty to promote progress towards the enjoyment of human rights and a duty to refrain from committing acts that prevent or hinder the enjoyment of such rights (Universal Declaration of Human Rights, art. 30).

14. Should any of those rights be violated or the corresponding obligations not complied with, it is appropriate to resort to the existing United Nations machinery in order that the States, bodies or individuals responsible may be condemned or punished. Such machinery should be enhanced and supplemented by the following:

(a) An optional protocol to the International Covenant on Economic, Social and Cultural Rights;

(b) A declaration condemning as offences against international law those policies and practices of States, institutions and individuals that constitute an obstacle to the fulfilment of economic, social and cultural rights - for example, usury, illegal currency trafficking, the deregulation of the international monetary system, serious environmental damage inflicted deliberately or caused by blatant errors or omissions, and, in general, the abuse of economic power to obtain by coercion disproportionate concessions, advantages or profits to the serious prejudice of third parties. The Sub-Commission should encourage States strictly to apply national legislation to punish, for example, embezzlement of public funds, negotiations incompatible with the exercise of public office, illicit gains by public officials, infringements of exchange regulations, etc., or to promulgate laws for that purpose should there be a legal vacuum.

15. The Sub-Commission should also encourage States to scrutinize the lawfulness of the contracts that gave rise to the external debt, as many of them are characterized by vices of consent or possess unlawful clauses (usurious rates of interest, waiver of the debtor's national jurisdiction in respect of the settlement of disputes, etc.).

16. The obligation of the State to punish those responsible for economic crimes, to declare null and void contracts made for unlawful purposes or characterized by vices of consent and to attempt to obtain redress for the damage derives from national law and is decided within domestic jurisdiction. However, if the economic damage arising out of such unlawful circumstances is of such a scale that it has serious repercussions on the population's standard of living, international standards regarding the right to development should come into play.

17. Accordingly, if domestic remedies have been exhausted or do not exist, or if the State has waived its power to punish or to afford redress, the matter should come within the competence of the relevant United Nations bodies to deal with what might be described as a "consistent pattern of gross and reliably attested violations of human rights".

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