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4. Social and Economic Rights

In addition to civil and political rights, the UDHR contains a list of social and economic rights. These are set out in Articles 22 to 26, which include provisions relating to social security, conditions of work, rest and leisure, standard of living, and education.

The inclusion of these rights occasioned some concern in the decades following the adoption of the UDHR and their inclusion continues to be controversial for some who resist the idea that these rights are as central as civil and political rights. Others argue that they are *more* central. And some think of them as social and economic aspirations but doubt whether the language of rights makes sense.

Much of the success of the human rights movement over nearly seven decades is attributable to the creation of a set of standards that can be upheld without changing the structures of international affairs and the international economy. While social and economic rights were included in the UDHR, they differ from this paradigm in that their realization might be thought to require some restructuring of the international order. This challenges us to consider the extent to which social and economic objectives should be pursued through a human rights framework.

4.1 The importance of social and economic rights

The Commission believes that social and economic rights are vital. They reflect genuine human needs that every state has an obligation to attend to, within existing resources, in the interest of all those committed to their care.

Social and economic rights are conceptually linked to civil and political rights because respect for human dignity requires that both be upheld. There is also a causal connection in that civil and political rights can be used to secure social and economic rights, and social and economic rights make possible the meaningful exercise of civil and political rights. Indeed, the failure of social and economic rights makes individuals more vulnerable to other human rights abuses, such as forced labor. Dire poverty and the other ills and vulnerabilities that come with it are a standard threat to rights of all kinds. So we think it is fitting and valuable to have social and economic rights enshrined in the same declaration as civil and political rights, and thus to perceive human rights as a whole in the context of a single declaration.

It is right for the world to indicate to governments that attention to matters of social security, conditions of work, rest and leisure, standard of living, health, and education are now regarded as elementary and fundamental tasks of government, laid down as compelling priorities in relation to whatever resources are available. The rights here are not optional and they are not just wistful longings. A lack of resources does not turn such rights into a mere wish list. Countries have a categorical obligation to do all that they reasonably can to fulfil these rights. Moreover, other states and all international organizations have an obligation to assist particular countries in this regard.

We add two further points. First, the social and economic part of the UDHR is not intended as a comprehensive theory of good government, nor is it intended as a theory of social justice. It is supposed to capture no more than the essence of certain elementary obligations that societies owe to their members in the social and economic sphere. Second, the Declaration does not commit societies to economic equality, but requires that specified areas of concern be attended to. In wealthier nations, much more generous provisions can and should be made for health, education, and social security than in developing nations. Nevertheless, the mandate is that every society, within its resources, should pay due attention to the health, education, and social security of its members.

The value and relevance of Articles 22 to 26 are not just in the immediate requirements they impose. Like other articles of the UDHR, these provisions lay down a foundation for a subsequent and wider comprehension of human rights. In the case of social and economic

rights, the articles of the UDHR prefigured and prepared the way for the ICESCR; the development of international agencies devoted to securing these rights, directly and indirectly; the inclusion of social and economic rights in modern national constitutions (and their elaboration by courts in the context of national constitutional law); and the evolution of doctrines for benchmarks and core provision of these rights.

4.2 Relation to availability of resources

Social and economic rights are dependent on the availability and distribution of resources in a way that civil and political rights are not. It is true that civil and political rights do have their costs and, in some circumstances, social and economic rights require forbearance rather than costly action. But in general, the level of provision needed for social and economic rights is high. So paying attention to the capacity of the actors responsible for delivering these rights is both natural and unavoidable. It is a matter of debate – among all commentators on the UDHR – whether Articles 22 to 26 should be read as stipulating a common core of minimum provision or whether the provision that is expected should vary with the social and economic circumstances and expectations of each society.

One view is that it would be dangerous to attempt to stipulate a common core of provision at some fixed level. First, the standards might be so minimal that while some countries would deem it an achievement to meet them, a number of other countries would lose ground. Second, if certain developing countries knew that they were unable to meet the minimum standards, they would be less likely to ratify human rights instruments.

However, the more persuasive view is that we should be uncompromising on social and economic rights as they are formulated, but recognize some degree of relativity in capacities and context. Specifically, we should keep faith with the Declaration's explicit universality, both as to actual provision and as to the expectations that people are entitled to. The social and economic provisions of the UDHR should be interpreted to mean that everyone is entitled to certain minimum standards of health, education, and social security. The

concept of dignity – while abstract – provides a yardstick against which to set minimum measures. The extent of available resources is one determinative factor, though the UDHR also imposes constraints on the allocation of such resources as there are: the UDHR mandates that the actors responsible for social and economic rights give priority to health, education, and social security based on resources that can reasonably be made available given economic and fiscal circumstances, rather than on the resources that actually are made available. It is possible that these rights may permit a reasonable level of cultural relativity: to take Article 23, what counts as “an existence worthy of human dignity” may vary from one set of social and cultural circumstances to another. However, the Commission does not accept the idea that there are cultural differences that can affect who should benefit from social and economic rights or can justify maldistribution in this regard. So, for example, we do not believe that people should ever be denied equal social and economic rights because they are women or ethnic minorities.

While we must face up to the task of setting reasonably clear common standards for minimum provision, it is equally imperative to acknowledge the phenomenon of extreme poverty, where there is no question that people are living well below the most minimum levels that human dignity would demand. In short, we will often be in a position to conclude that there has been a violation of social and economic rights, without having to specify a standard at the upper level.

The Commission believes that the UDHR (and the ICESCR) should be read as endorsing an ongoing global conversation about what the minimum provision should be and a rule of progress to the effect that the human rights framework calls for steps to improve the position of everyone, including the least advantaged in society.

4.3 Responsibilities for social and economic rights

To a certain extent, a poor state can act on the internal distribution of its resources but it cannot directly act to secure an equitable global distribution of resources that would enable it to end the poverty of its citizens. Social and economic rights therefore raise questions about the

allocation of responsibilities, and particularly whether and to what extent wealthy states have an obligation to help citizens of poor states.

It is arguable that we should be sensitive to the relationship between the responsibilities that certain rights impose and the capacities that the responsible actors have to fulfill them, a balance which is particularly relevant in the context of social and economic rights. Certainly, it might be thought that any adequate approach to human rights needs to take a realistic view of the capacities of the responsible actors, and of the resources they can control and dispense. A realistic view of the actual powers and resources of state and non-state agents must take proper account of the effects of globalization and the ways in which power has been reconfigured. At the same time, lack of resources does not entitle any government to ignore its own obligations. The social and economic rights set out in the UDHR require governments to do everything reasonable within their power to implement these provisions, including redressing priorities in the allocation of resources.

This raises a broader point: is it true that you can only articulate rights after you have identified the responsible authority – a duty-bearer – and determined that their violation is actionable? The Commission's conclusion is that we are often in a position to identify a right before we are in a position to identify the duty-bearers charged with fulfilling that right. Each right gives us a reason to seek duty-bearers, but where we look will depend on the circumstances. And there may be many duties and many duty-bearers corresponding to a given right. Thus we should think of duty-bearers of social and economic rights – and indeed rights generally – as standing not in a static but in a dynamic relation to a given right. This accords with the way philosophers analyze the relation between rights and duties.

We have to recognize that we are not always dealing with straightforward, concrete rights violations, but instead with a plethora of ways in which there can be failures of responsibility. There are those who are able to act to bring about progress on social and economic rights, but who may not have full agency with regard to a violation *per se*. Responsibilities will therefore be both direct and indirect. More broadly, systems that sustain long-term global poverty are matters of deep concern, and the international community must question arrangements that do not further the attainment of social and economic

rights. This puts the issue of poverty onto the agenda for citizens, states, corporations, and international institutions – which is one of the most powerful ways in which social and economic rights operate.

The Commission believes that states have front-line responsibility for the social and economic well-being of their citizens. Fair economic growth has a critical role to play in this, and the Commission believes it is crucial to see a stronger connection between economic policy and the instruments of human rights. The support of the international community should to some extent be conditioned on whether the governments of particular countries are discharging their own responsibilities. The UDHR leaves open the question of placing social and economic rights in a constitution and the question of their justiciability in the courts. We judge that the most likely vehicle for implementation of these rights is social legislation rather than the constitution of each country. And another issue – an open one – is whether it is wise to allocate enforcement here to courts.

It is evident, however, that the challenges faced by many states cannot be resolved entirely by actions in those states alone. The Commission believes that there is an overwhelming moral case for interpreting the social and economic rights provisions of the Declaration as placing obligations on the international community to alleviate world poverty. International aid and transfers, aimed at strengthening the capacity of recipient states to secure the social and economic rights of their citizens, thus have an indispensable role to play.

Three more specific points are worth mentioning. First, it is clear that many low-income and middle-income countries cannot afford to tackle the poverty of their citizens entirely by themselves. Analysis by the World Bank shows that even if those countries were to tax their middle class to the limit, it would not generate enough resources to eradicate their endemic poverty.¹ Second, there are approximately 700 million people in the world who currently live on less than 1.90 USD a day. However, the amount of money needed to bring these people out of such extreme poverty is small in relation to the world's resources. Third, in 1970, the UN General Assembly agreed that all "economically advanced countries" should dedicate 0.7 percent of their gross national

1 <http://blogs.worldbank.org/developmenttalk/should-we-care-equally-about-poor-people-wherever-they-may-live>

income to official development assistance. Nonetheless, in 2013 only Denmark, Luxembourg, Norway, Sweden, the United Arab Emirates, and the United Kingdom spent more than 0.7 percent on aid. Social and economic rights are an international and not just a national responsibility.

Responsibilities among the international community to uphold social and economic rights are in the Commission's view held not only by states, but also above the level of states by international organizations and below the level of states by corporations and individuals. Issues of world poverty cannot be dealt with exclusively by nations or by a transfer of resources between nations. Global businesses have a substantial and at times decisive impact on the social and economic rights of millions of people worldwide. Their role can be positive or negative. Over the last third of a century, the expansion of the global economy, led by the private sector, has been the driving force in lifting almost two billion people out of extreme poverty. But in too many instances businesses have also frustrated government efforts to protect the social and economic welfare of their people, and have been implicated in violations of social and economic rights. Redefining the legal obligations of corporations is of course a difficult and complicated matter. There is, however, an emerging demand for companies to recognize and act on responsibilities arising out of human rights in their global operations, including the right to just conditions of work. Drawing on the inspiration of the UDHR, companies and other stakeholders are beginning to shape industry-specific human rights standards and metrics.

4.4 Poverty reduction and other human rights

It is sometimes said that, although the rights in the Declaration are presented as an interconnected body of principles, complementary and mutually supportive, there are in fact serious conflicts among them. It is sometimes argued, for example, that the right to freedom of speech or assembly may conflict with the right of people not to live in poverty, that the only way to lift large numbers of people out of poverty may involve authoritarian rule. Or, to take another example, it is sometimes argued that the right to life and security may conflict with the right to privacy, that ensuring that innocent civilians are not subject to violent attacks may involve curbing their rights not to be surveilled.

It is important to appreciate that, to the extent to which there is a “trade-off” among various rights, it is not a conflict among the rights *themselves*. The principles of the UDHR are entirely consistent with one another and may all derive from a single foundation.

What *is* true is that, in certain very specific real-world settings, our ability to *fully implement* one right may conflict with our ability to *fully implement* another, at least temporarily. This is not a logical conflict among the rights themselves, but rather a reflection of the way in which real-world conditions can put pressure on the simultaneous implementation of several rights.

However, no claim that there exists, in a specific real-world setting, a tension between the implementation of one right and that of another is ever self-evident. Any such claim would be very hard to establish and must always be subjected to the most rigorous scrutiny.

Furthermore, it is always a serious question whether any particular proposed trade-off is morally justifiable. Even if it were true that, under the pressure of certain sorts of threat, a greater emphasis on preserving the right to life might require curbing the right to privacy, it is not obvious what this should entail. We must be able to choose whether we prefer to live in a surveillance society or whether we prefer to live in a freer society that runs a somewhat greater risk of unpredictable attacks on its citizens.

The implementation of human rights is a historical process, in which fulfillment is often and in varying degrees incomplete and uneven. It is a complex process too, involving not just the avoidance of violations but the setting up and maintaining of social, political, and legal systems and institutions. This is necessarily a protracted and asymmetrical process. So, in all of this, progress, not perfection, should be the measure.