

Report

Economic, Social and Cultural Rights and Sustaining Peace: An introduction

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Project: Economic, Social and Cultural Rights and Sustaining Peace – Developing New Insights into Peacebuilding



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Foreword

This publication is informed by consultations that took place as part of a wider impact and knowledge exchange project **Economic, Social and Cultural Rights and Sustaining Peace: Developing New Insights into Peacebuilding**. The project is a collaboration between Lancaster University Law School, Quaker United Nations Office, Geneva and the Geneva Office of the Friedrich-Ebert-Stiftung. The project aims to enhance knowledge and understanding of the role of economic, social and cultural rights in sustaining peace. The idea is to exchange knowledge and share practices and experiences of the use of such rights within the peacebuilding and human rights communities and across disciplines to influence policy at international and national level and to develop innovative practice.

In the course of this project to date, it became increasingly apparent that there was a need for an introductory publication on the connection between economic, social and cultural rights and sustaining peace, in light of a lack of information, knowledge and understanding of the topic. As such, this report seeks to contribute to the emerging discussion on how economic, social and cultural rights can contribute to sustaining peace. It is primarily aimed at policy and practice communities engaged in peacebuilding and human rights but in addition will be of use to academics working in relevant disciplines and is informed by shared experiences - both academic research and policy and practitioner perspectives.

By providing space for dialogue across different institutions and sectors about realising rights, resolving conflict and sustaining peace this report, and the wider project is intended to support and strengthen the relationship between academia, human rights actors and peacebuilding actors and create the impetus for mutually reinforcing efforts towards peace and justice.

Finally, this report is a starting point which we hope will stimulate discussions and contribute to a robust debate. It should be noted that there are several important issues that intersect with the issue of economic, social and cultural rights and sustaining peace that could not be addressed in any significant depth within this report but are highlighted here as key issues for further scrutiny. These include the connections between economic, social and cultural rights, environmental rights, natural resources and land; gender issues and the Women, Peace and Security Agenda and resilience approaches to peacebuilding. These issues require more research and knowledge exchange is key to advancing effective policy and practice.

For further details of the project see <http://wp.lancs.ac.uk/escr-peacebuilding/>

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Executive Summary

In this report we demonstrate how economic, social and cultural rights can contribute to a sustaining peace approach to peacebuilding. This report is intended to stress the importance of such rights to effective conflict prevention, peace-making, transition and post-conflict peacebuilding. Further it seeks to highlight challenges encountered in utilising such rights as part of a sustaining peace approach but also to illustrate developing and good practice through concrete examples. It concludes by offering some recommendations as to how relevant actors can take steps to ensure that economic, social and cultural rights are integrated into prevention strategies, protected and promoted in conflict affected settings, thus contributing to sustaining peace. Indeed, it is argued that without such consideration of economic, social and cultural rights sustaining peace within a society will not be possible.

With the advent of the new Sustaining Peace approach outlined by the UN Secretary General and the 'Transforming Our World 2030 Agenda for Sustainable Development' it would seem an opportune time to examine the role of human rights as essential to both sustainable development and sustainable peace. In light of these contemporary developments both within the United Nations and more widely, the peacebuilding agenda has been under scrutiny. As such there has been a growing discussion as to how human rights can meaningfully contribute to peacebuilding and one significant gap that has been identified is the position and function of economic, social and cultural rights within the sustaining peace approach.

The main objective of this report is to enhance knowledge and develop understanding of how economic, social and cultural rights can contribute to a sustaining peace approach to peacebuilding. It also makes concrete recommendations to States and other stakeholders, such as human rights and peacebuilding bodies, as well as NGOs and other civil society organisations, as to what they can do to highlight the nexus between economic, social and cultural rights and sustaining peace and to incorporate such rights into their peacebuilding actions. With this objective in mind, the report provides an overview of the topic and offers analysis of the benefits and challenges to better understand how addressing economic, social and cultural rights can contribute to all peacebuilding processes – from conflict prevention to post-conflict peacebuilding.

In developing this knowledge and understanding, the report focuses on the following questions:

- Why are economic, social and cultural rights important for sustaining peace?
- How can economic, social and cultural rights contribute to peacebuilding?
- What can stakeholders do to operationalise the use of economic, social and cultural rights in their peacebuilding policy and practice?

The report begins by introducing readers in Chapter 1 to the concept of sustaining peace and details essential concepts and developments in understanding what effective peacebuilding entails. Chapter 2 provides an overview of economic, social and cultural rights as legal rights and examines the legal basis for such rights as well as key challenges to their realisation. Chapter 3 explores the intersection of economic, social and cultural rights and peacebuilding and outlines the importance of economic, social and cultural rights for sustaining peace at all stages of the peacebuilding process. In Chapter 4 the report provides concrete examples and case studies to illustrate connections between socio-economic rights and sustaining peace including positive developments and good practice by both international organisations and civil society. In Chapter 5, the report details next steps that can be taken by various stakeholders to operationalise the use of economic, social and cultural rights in their actions to sustain peace.

The report concludes that to achieve sustainable peace within societies, peacebuilding measures must address the protection and promotion of economic, social and cultural rights at all stages of peacebuilding processes – from prevention of destructive conflict, including early warning through to post-conflict peacebuilding actions. Consequently, there is a need for stakeholders to consider concrete steps that can be taken and to continue to further develop and advance thinking, policy and practice on this crucial topic. Such steps include:

- The mainstreaming of economic, social and cultural rights within all pillars of the UN system and more widely within other international organisations and civil society.
- Utilising existing International Human Rights Law to provide a coordinated framework for using economic, social and cultural rights (as well as civil and political rights) to enable peacebuilding. The existing framework provides a legal basis, clear obligations, measurable objectives and guidelines for the management and prioritisation of resources to meet basic rights.

- Operationalising human rights especially ESCRs for peacebuilding on the ground through a rights-based approach to development, conflict prevention strategies and conflict risk assessment that includes economic, social and cultural rights. This could be achieved by using an economic, social and cultural rights framework to assist with prioritising resources for post-conflict peacebuilding and capacity building through participation, training and institutional reform.

Chapter I

Sustaining Peace

This chapter will explore the origins, significance and key characteristics of the concept of sustaining peace as well as some of the challenges associated with the use of this term.

The term ‘sustaining peace’ is becoming increasingly familiar not only in the UN settings where it originated but also in civil society usage. The term serves to harmonise the understanding of peacebuilding and prevention held by the majority of academic and civil society peace workers for many years with the policy and practice in the United Nations. Since UN Secretary General Boutros Boutros-Ghali produced his 1992 report “An Agenda for Peace”, peacebuilding has been understood within the UN as a set of exclusively post-conflict activities. Prevention of destructive conflict has struggled to find a home within the UN system despite periodic calls for a change of emphasis, away from reactive policies and actions, acknowledged as far more costly in terms of human suffering as well as finance, towards preventive approaches.

The coining of this new term represents an opportunity, within and beyond the UN, for those engaged in the work of peace to reflect, reconsider and reform their modes of analysis, strategy development, partnerships, operations, (as well as monitoring and evaluation), to be more appropriate, responsive and, hopefully thereby, effective in their peace work.

A Background

The concept of sustaining peace emerged against a background of peace reviews and key international agreements in 2015. In the year of the Paris Agreement on climate change action and the agreement on the Sustainable Development Goals, there were also key elements of the work of the United Nations relating to peace and conflict under review: the Global Study on the Implementation of Security Council Resolution 1325 on women, peace and security, the UN Review of Peace Operations and the Report of the Expert Group on the Peacebuilding Architecture, **The Challenge of Sustaining Peace**.

The Peacebuilding Architecture of the UN – the Peacebuilding Commission, the Peacebuilding Fund and the Peacebuilding Support Office – were the focus of this latter review, in particular its “functioning, resources, and modes of engagement” and, importantly, “its links with the United Nations system entities that engage with it.”¹ Gert Rosenthal, the Chairperson

¹ Reflections on the Meaning of “Sustaining Peace”, Gert Rosenthal, IPI Global Observatory, July 17, 2017 (<https://theglobalobservatory.org/2017/07/sustaining-peace-peacebuilding-architecture-united-nations>)

of the Expert Group, has commented that the Group understood its task as responding to “the **“unrealized hopes”** that many delegations held regarding the peacebuilding architecture [which had]originated in “a generalized misunderstanding of the nature of peacebuilding and, even more, from the fragmentation of the UN into separate ‘silos.’”²

B Key Aspects of Sustaining Peace

All-encompassing

The report underlined that peacebuilding occurs in all stages of a potential or real violent conflict – before, during, and after. It also recommends that the UN needs to implement the (oft-called for) major shift in focus, from managing violent conflict to preventing them from occurring in the first place.

The political negotiation process that followed the report resulted in dual resolutions, in the General Assembly and the Security Council. The preamble of Security Council Resolution 2282³ defines sustaining peace as including “activities aimed at preventing the outbreak, escalation, continuation and recurrence of conflict, addressing root causes, assisting parties to conflict to end hostilities, ensuring national reconciliation, and moving towards recovery, reconstruction and development”. According to the resolutions, sustaining peace is “a goal and a process to build a common vision of society”.

Universality

The fact that these resolutions were passed against the backdrop of the Sustainable Development Goals and the Paris Agreement, contributed to the articulation of a universal vision for peace to complement that for development and climate. The fact that the task of sustaining peace is described in the resolutions as inherent to all UN pillars-peace, development and human rights underscores the theme of universality.

All states – perhaps not over the entire territory, perhaps not all the time – can be seen as facing unpeaceful situations. As Gert Rosenthal puts it “no society is immune from the risks of localized grievances or disputes spilling over into violent conflict, although clearly those societies with strong and inclusive institutions are much better equipped to avoid such eventualities.”⁴ Hence sustaining peace needs to be part of the political programme of all states in the same way as human rights and the achievement of the SDGs.

² Ibid

³ Security Council Resolution 2282, 27 April 2016, [http://undocs.org/S/RES/2282\(2016\)](http://undocs.org/S/RES/2282(2016))

⁴ Gert Rosenthal, op. cit.

Inclusivity

National governments are primarily responsible for sustaining peace, but it is equally recognised that inclusivity is essential to both meet the needs of all segments of society and to effectively engage in peacebuilding processes. It is “a shared task and responsibility that needs to be fulfilled by the Government and all other national stakeholders”⁵. Civil society, especially women and youth but also the private sector, are understood to have an important role in prevention, resolution and long-term sustainability of peace. The need to increase women’s role in decision-making with regard to conflict prevention and resolution and peacebuilding to give them an equal role is reiterated in the resolutions.

This affirmation is important in a time when we are witnessing a global phenomenon of shrinking civic space that curtails the activities of civil society. Stigmatisation, threats, disappearances and assassinations restrict the work of peacebuilders and human rights defenders alike. Thus, for inclusivity, so essential to effective peacebuilding, to be realised, national governments need to ensure that processes are open and accessible, including available and safe channels for input from civil society. Peacebuilding is an inherently political process, as recognized in above-mentioned resolutions, and this is true particularly of enabling locally-led prevention and peacebuilding processes.

Comprehensiveness

A further key element of sustaining peace is that it is comprehensive⁶. Not only in terms of being relevant to all stages and aspects of conflict but in being part of a complex system of development, peace and security and human rights interactions. Each approach is linked to the other and they are inevitably mutually influencing and potentially mutually reinforcing.

C Root Causes and Prevention

Sustaining peace is not just about mitigating destructive conflict when it occurs and seeking peaceful solutions or rebuilding relationships, livelihoods and institutions after a peace deal. It is also about working to create conditions in which destructive conflict will not arise. Therefore, it must include changes in the political, economic and social structures, at international as well as national level, to address root causes.

⁵ Security Council Resolution 2282

⁶ The comprehensiveness of sustaining peace is illustrated by the references in SCR 2282 to the rule of law, poverty eradication, social development, sustainable development, national reconciliation, access to justice, accountability, good governance, gender equality and respect for, and protection of, human rights and fundamental freedoms among others

The term root causes, however, lacks the dynamical aspect, which is why some speak rather of “drivers” of violent conflict. There are complex interactions between many factors and processes that lead to destructive developments in society such as exclusion and discrimination, skewed economic development, ideological polarisation, breakdown of communication, and specific factors that trigger the outbreak of violence. Identifying underlying causes, or drivers, and how they interact with other factors in a specific context requires multiple perspectives within analysis, strategy development and complementary and mutually reinforcing implementation paths.

Mahmoud and Makoond give a sense of the “sustaining” element of this work: “sustaining peace is underpinned by an infrastructure composed of institutions, norms, attitudes, and capacities spanning different sectors and levels of social organization. This infrastructure needs to be constantly nurtured and updated to adapt to changing contexts and circumstances”⁷ and this is relevant to all societies.

D Challenges and Opportunities

Since the passing of the UN resolutions, as well as increasing acceptance of the term ‘sustaining peace’ by civil society and increased reference to it in UN discussions and publications, there has been some confusion and suspicion about intentions. Such concerns are not new. They have emerged in previous debates in inter-state forums around the nature of “prevention” related to issues of sovereignty. There are also fears of the “securitization of development”, including the danger of re-allocating development finance for security purpose, concerns that also beset the negotiations on SDG 16 on Peaceful and Inclusive Societies⁸.

Within the UN, questions of jurisdiction and control are raised that problematize the linking of inter-governmental organs such as the Security Council, the General Assembly and the Economic and Social Council. These are valid concerns and only confidence and trust, built through collaborative, transparent and effective implementation, can allay them. However, at this stage, what is required is a suspension of judgement and faith in the goal in order to combine efforts to make this a fruitful opportunity. The Secretary General has taken a leading role in this, making it a priority to improve the organisation of the Secretariat to support the common vision of sustaining peace and sustainable development. In this there is a strong focus on prevention, not only of conflict but of natural disasters and their consequences for humanity and the environment. His report to the General Assembly on sustaining peace in

⁷ Youssef Mahmoud and Anupah Makoond , IPI Issue Brief, Sustaining Peace: What does it mean in practice?, 8 April 2017, p.1, <https://www.ipinst.org/2017/04/sustaining-peace-in-practice>

⁸ Goal 16, UN DESA Sustainable Development Knowledge Platform, <https://sustainabledevelopment.un.org/sdg16>

April 2018, and the discussions this stimulates among member states and civil society, will provide a first opportunity for reflection and hopefully clarify specific directions and actions that will support the anchoring of this concept in the mind sets and ways of working across the pillars and the partners.

A sustaining peace perspective also signals a change in focus from negative peace, i.e. the absence of physical violence, to positive peace, which implies just social and economic structures and political participation as well as the development of skills, attitudes and institutions to constructively and creatively handle societal tensions and conflict. Furthermore, peacebuilders have been arguing for some time for a shift in attention from what hinders to what works. This would mean building on peace capacities and pathways that already exist, engaging in peace analysis rather than conflict analysis, and making the starting point of peacebuilding programmes the leveraging of positive capacities. As Youssef Mahmoud comments: “All societies possess attributes that contribute to sustaining peace, whether their institutions, their culture, their policies, or the less tangible, quotidian, and tacit norms of interaction between individuals and groups. However, where manifest conflict is absent, these attributes remain undocumented and are rarely nurtured.”⁹ This positive, enabling and empowering approach fits well with the universal, comprehensive and inclusive orientation of sustaining peace.

E Human Rights and Sustaining Peace

The interlinked nature of peace, development and human rights is widely acknowledged if seldom realised. The relationship between development and peace took an important step forward with the inclusion of Goal 16 on Just and Inclusive Societies in the Sustainable Development Goals. Where human rights and peace are concerned, the progress has not been so marked and there are barriers to communication and collaboration, including language and culture, reinforced by the physical divide between UN institutions and process in New York and Geneva, that compound the political sensitivities referred to above. However, the often parallel tracks of human rights and peace work is not a phenomenon associated only with the UN. Civil society has laboured under the same handicap for many years.

In addition, a tendency to focus on civil and political rights to the neglect of economic, social and cultural rights means that, particularly in the area of root causes, the needs of people are not being met and useful tools of analysis and action are not being utilised. The next section will highlight the value of addressing economic, social and cultural rights in order to sustain peace.

⁹ Youssef Mahmoud and Anupah Makoond, op.cit, p.2

Chapter II

An Introduction to Economic, Social and Cultural Rights

This chapter introduces the origins of Economic, Social and Cultural Rights (ESCRs) and the UN processes and mechanisms designed to support their implementation. It concludes by highlighting some of the challenges faced in realising such rights.

A Defining Economic, Social and Cultural Rights

Economic, social and cultural rights (ESCRs) are rights deemed to be of an economic, social or cultural nature. These rights relate to the realisation of basic human needs and include subsistence rights or basic rights. International law includes a variety of rights, such as: the right to an adequate standard of living, which encompasses the right to food, clothing, housing, water and sanitation; the right to work and to just and favourable conditions of work and the right to collective action; the right to the highest attainable standard of health; the right to education; the right to social security and the right to participate in cultural life and enjoy the benefits of scientific progress.¹⁰

B Sources of Economic, Social and Cultural Rights

The Universal Declaration of Human Rights (UDHR) 1948¹¹, that established a universal foundation for an international human rights system and brought together the international community in recognition of a set of universal human rights, provides the first international codification of economic, social and cultural rights, notably under arts 22-27. Although the UDHR itself is not a binding treaty, many provisions of the Declaration are considered customary international law, 'through their recognition in other treaties and declarations as well as through national laws and jurisprudence.'¹² States have since repeatedly committed themselves to the realisation of human rights including the progressive realisation of economic, social and cultural rights, of everyone¹³ through the ratification of several international human rights treaties that codify socio-economic rights. These include general treaties such as the Charter of the United Nations;¹⁴ specific treaties such as the International Covenant on Economic, Social and Cultural Rights¹⁵ and treaties pertaining to specific groups, inter alia,

¹⁰ International Covenant on Economic, Social and Cultural Rights (ICESCR), UNTS 993, p.3, entered into force 3 January 1976.

¹¹ Universal Declaration of Human Rights 1948 (UDHR) adopted 10 December 1948.

¹² Bantekas.I and Oette.L, *International Human Rights Law and Practice* (2nd edition), Cambridge: CUP, 2016, p.18.

¹³ Ssenyonjo.M, *Economic, Social and Cultural Rights in International Law* (2nd edition), Oxford: Hart, 2016, p.3.

¹⁴ See art 55 (a) and (b), adopted 26 June 1945, entry into force 24 Oct 1945.

¹⁵ See n.10.

the Convention on the Rights of the Child,¹⁶ the Convention on the Elimination Of All Types of Discrimination against Women¹⁷ and the Convention on the Rights of Persons with Disabilities.¹⁸

Economic, social and cultural rights are also codified in regional instruments, including the European Social Charter 1961¹⁹ and the European Social Charter (Revised) 1996²⁰; the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) 1988; and the African Charter on Human and Peoples Rights 1981. It is also the case that socio-economic rights are codified within the constitutional law of many states²¹. This may be as directive principles or indeed as directly enforceable substantive rights²².

The International Covenant on Economic, Social, Cultural Rights

As the specific treaty pertaining to economic, social and cultural rights, the ICESCR is the main international legal instrument protecting and promoting socio-economic rights. The ICESCR was adopted on 16th December 1966, and entered into force in early 1976.²³ The ICESCR contains a number of substantive socio-economic rights including inter alia, the right to an adequate standard of living, which encompasses rights to food, water and sanitation and housing (art 11); the right to the highest attainable standard of health (art 12); right to Education (art 13 and 14); right to social security (art 9) and the right to work and rights in work (arts. 7, 8).

The treaty also provides for state obligations in their implementation of economic, social and cultural rights, specifically under art 2(1) of the treaty:

¹⁶ UN Convention on the Rights of the Child 1989, UNTS 1577, p.3. Entry into force 2 September 1990.

¹⁷ Convention on the Elimination of All Forms of Discrimination against Women 1979, UNTS 1249, p.13. Entry into force 3 September 1981.

¹⁸ Convention on the Rights of Persons with Disabilities 2006, UNTS 2515, p.3. Entry into force 3 May 2008.

¹⁹ European Social Charter 1961, Council of Europe, Turin, 18 October 1961. ETS 35, Entry into force: 26 February 1965.

²⁰ European Social Charter (Revised) 1996, Council of Europe, Strasbourg, 3 May 1996. ETS 163, Entry into force: 1 July 1999.

²¹ For examples of the domestic protection of economic, social and cultural rights see Ssenyonjo.M, Economic, Social and Cultural Rights in International Law (2nd edition), Oxford: Hart, 2016, pp.251-322.

²² For examples, see Langford. M, Social Rights Jurisprudence - Emerging Trends in International and Comparative Law, Cambridge: CUP, 2008.

²³ As of 21/11/2017, ICESCR has 71 Signatories and 166 Parties.

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Art 2(1) provides that economic, social and cultural rights provided for within the Covenant should be realised in a progressive manner, contingent on the maximum available resources of a given state. Consequently, the obligation is not of an immediate nature, rather it is to 'take deliberate, concrete and targeted steps'²⁴ and to move forward progressively. However, the treaty does require states to undertake certain immediate obligations, including to ensure the 'minimum essential levels'²⁵ of each economic, social and cultural right and that 'the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.²⁶

Art 2 also imposes obligations of both conduct and result that can be further classified into three sets of obligations upon states: The obligation to respect (refrain from interference), the obligation to protect (from third party interference) and the obligation to fulfil (to facilitate and provide)²⁷.

Other key features of ICESCR include the provision of a duty to seek international assistance, contained within art 2(1)²⁸ and the lack of jurisdiction clause limiting the obligations to within national borders,²⁹ and the lack of permitted derogations, even in times of emergency.

²⁴ UN Committee on Economic and Social Rights, General Comment No. 3, 'The nature of States parties' obligations (Art. 2, par. 1)' 01 Jan 1991.para.2.

²⁵ UN Committee on Economic and Social Rights, General Comment No. 3, 'The nature of States parties' obligations' para. 10.

²⁶ ICESCR, art 2(2).

²⁷ Devised by Henry Shue and developed by Asbjorn Eide. See H.Shue, *Basic Rights, Subsistence, Affluence and US Foreign Policy*, Princeton University Press, 1980; Eide. A, 'The Right to Adequate Food as A Human Right', UN.Doc E/CN.4/Sub.2/1987/23.

²⁸ See also art. 11.

²⁹ Coomans, F. "The Extraterritorial Scope of the International Covenant on Economic, Social and Cultural Rights in the Work of the United Nations Committee on Economic, Social and Cultural Rights" *Human Rights Law Review*, vol. 11(1), 2011, pp. 1-35, pp.5.

C Monitoring Economic, Social and Cultural Rights

The UN Committee on Economic, Social and Cultural Rights (UN CESCR) was established in 1985 under ECOSOC Resolution 1985/17 to carry out the monitoring functions assigned to the United Nations Economic and Social Council (ECOSOC) in Part IV of the Covenant.³⁰ It also seeks to protect and promote economic, social and cultural rights more widely, through working with states parties and other interested third parties such as Non-State Actors such as NGOs; Businesses; IGOs, etc. This treaty monitoring body The Committee seeks to clarify the normative content and obligations of rights contained within ICESCR as well as interpreting the principles and concepts contained within the Covenant, for example on the nature of states parties' obligations³¹ or state obligations in the context of business activities.³² Further, the Committee holds sessions twice a year to consider states parties periodic reports on their compliance with their obligations, submitted every 5 years. The CESCR holds a 'constructive dialogue' with states and issues Concluding Observations noting positive aspects of state implementation, concerns and recommendations to the State party.

In addition to the periodic reporting mechanisms, the UN CESCR oversees the ICESCR Optional Protocol 2008.³³ States parties to the Protocol recognise the competence of the Committee to receive and consider individual or group communications, inter-state communications and to undertake inquiry procedures. It remains to be seen how effective the Protocol will be in providing remedy for violations, as these new procedures are in their infancy and the number of state who have ratified the Protocol to date is limited.³⁴ However, the entry into force and operation of such a complaints mechanism has helped to dispel the myth that economic, social and cultural rights are non-justiciable and of a lesser status than civil and political rights.

Aside from the treaty body mechanisms economic, social and cultural rights are also protected and promoted under the UN Charter-based system, central to which are the Special Procedures under the Human Rights Council and the Universal Periodic Review (UPR). Under

³⁰ UN Office of the High Commissioner for Human Rights (OHCHR), Committee On Economic, Social And Cultural Rights, Monitoring the economic, social and cultural rights, <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIntro.aspx> (last accessed 13/03/18).

³¹ General comment No. 3: The nature of States parties obligations (Art. 2, par. 1) General Comment/recommendation CESCR, 01 Jan 1991.

³² General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities General Comment/recommendation CESCR E/C.12/GC/24 10 Aug 2017.

³³ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, New York, 10 December 2008. Entry into force 5 May 2013. Signatories: 45. Parties: 22 (correct as of 21/11/17).

³⁴ 22 parties have ratified the Optional Protocol (21/11/17).

Special Procedures, there are both thematic and country based Special Rapporteurs whose remit includes specific socio-economic or cultural rights such as inter alia the Special Rapporteur in the field of cultural rights,³⁵ Special Rapporteur on the right to education³⁶ and the Special Rapporteur on the right to food.³⁷ The Universal Periodic Review was established in 2006 as a unique mechanism to review the human rights compliance of all member states of the United Nations.³⁸ It is worth noting that such rights 'receive much less attention throughout entire UPR process. This results in comparatively fewer ESCR-focused recommendations, on a limited range of topics that lack specificity and detail'³⁹. As the Human Rights Council embark on the 3rd UPR cycle (2017-2021) much more work is required on ensuring adequate attention is given to considering the actions and omissions of state in realising such rights.⁴⁰

D Challenges to Economic, Social and Cultural Rights

Despite extensive legal sources and mechanisms for the protection and promotion of economic, social and cultural rights challenges remain regarding their realisation. Previously, many states have chosen to give a higher status to civil and political rights. This was partially due to the historical development of international human rights treaty law, with liberal states objecting to the accommodation of socio-economic rights on an equal footing with civil and political rights,⁴¹ and the resulting lack of a complaints mechanism for the ICESCR due to this opposition. Further the misconceived idea that implementation of economic, social and cultural rights encompasses purely positive obligations and a significant burden on states resources, whereas civil and political rights can be realised with purely negative obligations and little or no financial cost also led to a neglect in addressing such rights. Moreover, historically it had been claimed that economic, social and cultural rights are non-justiciable. It was argued that such rights constituted policy directives or aims (rather than legal entitlements) or that

³⁵ UN Human Rights Council, Tenth Session, Resolution 10/23. Independent expert in the field of cultural rights 2009 A/HRC/RES/10/23; UN Human Rights Council, Resolution 28/9. Mandate of the Special Rapporteur in the field of cultural rights, 10 April 2015 A/HRC/RES/28/9.

³⁶ UN Commission on Human Rights resolution, Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights, 17 April 1998, E/CN.4/RES/1998/33; UN Human Rights Council, Resolution The right to education: follow-up to Human Rights Council resolution 8/4 , 10 July 2017, A/HRC/RES/35/2.

³⁷ UN Commission on Human Rights Resolution 2000/10, The Right to Food, E/CN.4/RES/2000/10; UN Human Rights Council, Resolution 32/8. Mandate of the Special Rapporteur on the right to food, 30 June 2016, A/HRC/RES/32/8. There are also Special Rapporteurs on the right to water, health, housing, poverty and foreign debt.

³⁸ UN General Assembly resolution 60/251.

³⁹ Center for Economic and Social Rights, 'The Universal Periodic Review: A Skewed Agenda? Trends analysis of the UPR's coverage of economic, social and cultural rights', June 2016, CESR: New York, p. 11.

⁴⁰ See Center for Economic and Social Rights, 2016 for recommendations.

⁴¹ A.Kirkup and T. Evans, 'The Myth of Western Opposition to Economic, Social and Cultural Rights? A Reply to Whelan and Donnelly', Human Rights Quarterly, 31, 2009, 221, 228-229.

‘their progressive realisation rendered them unsusceptible to judicial determination’⁴² or that the courts could not determine questions of resource priorities as this was a concern of the government not the judiciary. However, evidence of the justiciability of socio-economic rights is found in a developing body of jurisprudence at both constitutional and regional level.⁴³ Further, quasi-judicial remedies can be sought at international level as noted above.

With the increased recognition of the indivisibility and interdependence of all human rights⁴⁴ and the growing body of both normative standards and jurisprudence, it is now evident that economic, social and cultural rights ‘are discrete and justiciable legal entitlements with a legally defined scope, normative content and correlative obligations.’⁴⁵

⁴² Bantekas.I and Oette.L, *International Human Rights Law and Practice* (2nd edition), Cambridge: CUP, 2016, p.415.

⁴³ For a database of case law concerning economic, social and cultural rights see ESCR-Net - International Network for Economic, Social and Cultural Rights, Caselaw Database, <https://www.eschr-net.org/caselaw>

⁴⁴ Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993, para.5: All human rights are universal, indivisible, interdependent, and inter-related. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis..

⁴⁵ Cahill-Ripley. A, ‘Foregrounding Socio-Economic Rights in Transitional Justice: Realising Justice For Violations Of Economic And Social Rights’, *Netherlands Quarterly of Human Rights*, Vol. 32/2 (2014), Vol. 32/2, 2014, 183–213, 194.

Chapter III

Why are Economic, Social and Cultural Rights important for Sustaining Peace?

This chapter explores the essential role that ESCR play in sustaining peace and illustrates their relevance to all stages of sustaining peace – from the prevention of destructive conflict through to post-conflict peacebuilding.

A The Importance of Economic, Social and Cultural Rights for Sustaining Peace

As previously mentioned, the need for linking human rights, peace and development has been reiterated across several forums in the UN especially since the publication of the UN peace reviews in 2015 and in the context of the SDGs. Why then focus particularly on economic, social and cultural rights? Two of the key points in the concept of sustaining peace are the need to focus on root causes and to become more effective in prevention of destructive conflicts. In these two areas particularly, economic, social and cultural rights are important as they encompass the foundations for security as desired by millions of people – food, water, health, housing, work, education.

Sustaining peace and development are here closely entwined but it is the rights-based approach that provides the legal framework within which these human security requirements can and, at a minimum level, must be met. A sustainable peace is a peace imbued with social and economic justice. Where these areas are weak or under threat, whether from insufficient provision, or active discrimination, the seeds of destructive conflict are sown.

Poverty and gross inequalities can be observed in even the most prosperous countries resulting in limitation of access to public life and justice. Though high rates of growth are generated within some economies the benefits are not enjoyed equally whether within or across societies. This trend was noted in 2005 when considering the optional protocol to the International covenant of ESCR and continues unchecked today.⁴⁶

The Indivisibility and Interdependence of Civil and Political and Economic, Social and Cultural Rights

Although ESCR are sometimes referred to, or treated, as a separate set of rights, they

⁴⁶ Louise Arbour, High Commissioner for Human Rights, Statement to the Open-Ended Working Group established by the Commission on Human Rights to consider options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights, Geneva, 14 January 2005

are inextricably linked with civil and political rights and in the case of sustaining peace their mutually reinforcing character is evident. Nevertheless, when discussing the link between human rights and peace, there is a tendency to focus on civil and political rights with economic social and cultural rights being relegated to a contingent role if mentioned at all.⁴⁷ In a 2007 Report of the UN Secretary General it was noted that ‘an exclusive preoccupation with civil and political rights violations and the failure to recognize the role of economic, social and cultural rights violations in triggering or fuelling conflict may make conflicts more pervasive than they would otherwise be.’⁴⁸

In fact, it is very difficult to disentwine civil and political rights and economic, social and cultural rights as they are mutually influencing in complex contexts. OHCHR cite the example that, for those who are unable to read and write, it is often harder to find work, be politically active or effectively make use of freedom of expression⁴⁹. The World Organisation Against Torture goes further in highlighting a number of ways in which violations of economic, social and cultural rights can lead to torture and cruel, inhuman and degrading treatment or punishment and other forms of violence.⁵⁰ Where people are affected by poverty and exclusion, there is a consequent restriction on resources with which to defend or demand rights, which in turn increases the possibility of becoming victims of violence and torture, inhuman and degrading treatment. Those who are courageous enough to demand respect for economic, social or cultural rights whether trade unionists, workers, human rights defenders or private citizens may be subject to violent attacks by state and private security forces.

While these categories of rights are closely linked, there are often differences in motivation within groups engaged in violent civil conflicts as highlighted in Frances Stewart’s work on horizontal inequalities. She noted that it was often political inequalities that led leaders to seek to emphasize and utilise exclusive group identities to mobilise supporters for rebellion. However, it was more often economic and social inequalities that moved group members to follow.⁵¹

⁴⁷ Cahill-Ripley. A, ‘Foregrounding Socio-Economic Rights in Transitional Justice: Realising Justice For Violations Of Economic And Social Rights’, *Netherlands Quarterly of Human Rights*, Vol. 32/2 (2014), 183–213.

⁴⁸ Report of the Secretary-General on the question of the realization in all countries of economic, social and cultural rights (A/HRC/4/62), 2007.

⁴⁹ OHCHR, Key concepts on ESCRs - Are economic, social and cultural rights fundamentally different from civil and political rights? <http://www.ohchr.org/EN/Issues/ESCR/Pages/AreESCRfundamentallydifferentfromcivilandpoliticalrights.aspx>

⁵⁰ World Organization Against Torture, How disrespect for economic, social and cultural rights can lead to torture and other forms of violence, 2010, <http://www.omct.org/escr/about/disrespect-lead-to-violence/>

⁵¹ F. Stewart. Presentation at the U.S. Institute of Peace, “Will Addressing Horizontal Inequalities Decrease the Likelihood of Political Violence?” February 22, 2010, quoted in Michelle Swearingen, *Group Inequality and Conflict: Some Insights for Peacebuilding*, USIP Peace Brief 28, May 2010

A striking example in recent years of the intertwined nature of civil and political and ECSR has been the increase in threats, intimidation, persecution and assassination of environmental human rights defenders. During 2017, 197 defenders were killed while protecting their community's land or natural resources around the world.⁵² These examples again show that sustaining peace is also a task for societies that do not find themselves in what is traditionally considered a conflict zone.

A renewed focus on ESCRs and the interdependence and indivisibility of all human rights is required to effectively sustain peace.

B Economic, Social and Cultural Rights in All Stages of Sustaining Peace

ESCRs come into play throughout the cycle of violent conflict: Firstly, the denial of economic and social rights can be a causal factor of conflict – a root cause and a driver of continuing unrest. Secondly, violent conflict itself can cause violations of ESCR or threaten the enjoyment of ESCRs. Finally, ESCRs can be a part of conflict transformation – an integral element of conflict prevention; conflict resolution, transitional justice and post-conflict peace-building. A sustaining peace approach requires attention to the before, during and after of destructive conflict and economic, social and cultural rights are of crucial importance in each of these phases.

Prevention and Early Warning – Economic, Social and Cultural Rights violations as Root Causes

The causes of destructive conflict and violence often lie in a complex of interacting factors, which may be political, economic, social and/or environmental. Systematic discrimination and inequalities whether in access to health care or housing, or in the context of competition over scarce or dwindling resources, may lead to, or exacerbate, social or political tensions leading to destructive conflict or violent confrontation, which in turn perpetuates cycles of deprivation and exclusion.⁵³ Furthermore, where the water and food security of local communities is significantly affected there is increased vulnerability to insurgent recruitment.⁵⁴ Significantly, when coupled with civil and political rights repression violations of ESCR can act as a trig-

⁵² Data compiled by Global Witness, quoted in The Defenders, The Guardian, <https://www.theguardian.com/environment/ng-interactive/2017/jul/13/the-defenders-tracker>

⁵³ Report of the Secretary-General on the question of the realization in all countries of economic, social and cultural rights (A/HRC/4/62), 2007 p. 8

⁵⁴ Florian Krampe, Climate change, food security and sustaining peace, SIPRI Commentary, 18 October 2017, <https://www.sipri.org/commentary/essay/2017/climate-change-food-security-and-sustaining-peace>

ger tipping low-level unrest into high-intensity violence,⁵⁵ as seen in the uprising in Egypt between 2011 and 2014. However, violations of ESCRs are often presented as ‘background’ information and overlooked as a contributing factor to social disorder and conflict.

Risk factors that can act as indicators of the potential for conflict are highlighted by OHCHR in their report ‘Early Warning and Economic, Social and Cultural Rights’. Risk factors include severe inequality, lack of access to effective grievance mechanisms, lack of meaningful consultation, lack of democratic space for an active civil society, lack of independence of the media, unequal access to natural resources, in particular land, degradation in social services and rising unemployment.⁵⁶ Moreover, social, political and economic inequalities in access to food and control of natural resources required for food production, such as land, water and seeds, can heighten existing grievances and build momentum towards destructive conflict⁵⁷. Acknowledging this, the UN Food and Agricultural organisation (FAO) has been seeking at international policy and local project level to integrate a sustaining peace perspective given the close relationship between food, water and potential for destructive conflict.⁵⁸

Given the fundamental nature of the economic, social and environmental base for lives and livelihoods, attention to realising ESCR is vital for preventive work addressing root causes and structural inequalities. Significantly, the monitoring of ESCR violations can act as an important part of conflict risk assessment to ‘effectively inform early warning analysis and preventive efforts.’⁵⁹ Data which monitors ESCRs enjoyment can be used as indicators of discrimination against specific groups; more widespread or deepening discontent and grievances and/or repression; worsening poverty (poverty fuels conflict) and increasing or broadening structural violence (policies, implementation of services, etc.). However, there are some challenges to this process including definition of ‘early’ in terms of timing for interventions, and obtaining, gathering and sharing the required data. Here the role of civil society and particularly human rights defenders is key.⁶⁰

⁵⁵ Cahill-Ripley. A, 2014, p.185. See also Cahill-Ripley. A, ‘Reclaiming the peacebuilding agenda: economic and social rights as a legal framework for building positive peace - a human security plus approach to peace-building’, Human Rights Law Review, 2016, 16 (2), p. 223-246.

⁵⁶ Office of the High Commissioner for Human Rights (OHCHR), (2016) Early warning and economic, social and cultural rights, OHCHR: Geneva, p.2. OHCHR has argued that there is increasing evidence that violations of economic, social and cultural rights such as those relating to food and health, water crises, displacement and forced evictions are not only causes and consequences of violence, social unrest and conflict but need to be used as predictors within prevention strategies. For this reason, they advise that the analysis of economic, social and cultural rights should therefore be at the forefront of any national or international early warning effort.

⁵⁷ OHCHR, *Ibid*

⁵⁸ See The State of Food Security and Nutrition in the World, FAO, 2017, <http://www.fao.org/3/a-i7695e.pdf>

⁵⁹ OHCHR, Early Warning and Economic, Social and Cultural rights, 2016, op. cit. p.16.

⁶⁰ *Ibid*, section on Recommendations.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND CONFLICT PREVENTION

- Monitoring the number of economic, social and cultural rights violations; the broadening of the scope of violations; the widening of geographical spread of violations and the worsening vulnerability of particular groups in society/ community (hate crimes, discrimination both formal and informal), can help identify situations where there is increased risk of conflict emerging, escalating or relapsing
- Mapping economic, social and cultural rights violations that act as root causes and other conflict triggers (such as civil and political rights violations) reflecting the interdependence of rights, can assist in understanding how to address grievances before they ‘tip over’ into violence
- Monitoring progressive realisation of economic, social and cultural rights including human rights budget analysis, can indicate situations of conflict risk: for example, a decrease in the proportion of funding spent on healthcare or housing in a region may indicate discrimination. As such, obtaining disaggregated data is crucial.
- Including discussions of grievances related to the realisation of economic, social and cultural rights as part of negotiations and mediation can be helpful in addressing root causes underlying conflict or violations that have occurred as a result on violent conflict.
- Using the economic, social and cultural rights framework may also be useful for addressing arguments over distribution of resources in terms of humanitarian aid and longer-term development priorities.

Of the global developments that will make increased attention to economic, social and cultural rights a priority for sustaining peace policies and strategies, climate change may be the most far-reaching. Former UN High Commissioner for Human Rights Mary Robinson called climate change the greatest threat to human rights in the 21st century.⁶¹ It has been recognised as ‘a force that intensifies the likelihood of poverty and deprivation of all kinds; conflict; and the precarious migration of people.’⁶² Insofar it will be necessary for ESCR to be

⁶¹ Mary Robinson, Why climate change is a threat to human rights, TED Talk, May 2015 https://www.ted.com/talks/mary_robinson_why_climate_change_is_a_threat_to_human_rights

⁶² UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein, Opening Statement at the 30th session of the Human Rights Council (2015)

adequately considered in any responses to the impact of climate change and in any mitigation and adaptation strategies.⁶³

During Violent Conflict

Numerous ESCRs can be affected by hostilities and high-intensity violence as well as more protracted conflict and situations of occupation. Depending on the characteristics of a conflict – its intensity, duration, target and geography, ESCRs can be violated as a direct and deliberate act of the violence (as a means of warfare) or as a secondary consequence of the hostilities. ESCRs most commonly affected include the right to an adequate standard of living – food, water, sanitation, and housing; the right to health; work; education alongside civil and political rights to life, liberty and security; freedom from torture, cruel, degrading and inhumane treatment including sexual violence; freedom of expression and freedom of movement, illustrating the interdependence of all rights. Those affected by such violations include civilians and combatants but especially vulnerable groups such as Internally Displaced Peoples (IDPs) and Refugees; those under occupation; Women; Children; Minorities; those in poverty; those with disabilities; the elderly and the sick.

ESCR are protected under the IECSCR during times of war as well as peace. Furthermore, certain provisions under international humanitarian law provide rules that protect civilians from actions that would constitute violations of ESCR, such as the denial of medical attention, the destruction and appropriation of property or the deliberate starvation of civilians⁶⁴. The looting of crops or livestock and the denial of humanitarian relief can be part of a deliberate policy to target civilians: ‘Lack of access to water can prove deadlier than a massacre by firearms; and the same is true for the wilful hindrance of humanitarian assistance’.⁶⁵ Consequently, gross and systematic violations of ESCRs are a breach of international criminal law and can be considered war crimes or crimes against humanity.⁶⁶ Such violations must necessarily be addressed as part of any transitional justice process (see below). However, looking forward, it is also necessary to ensure that the future protection of ESCR are part and parcel of the peace-making and conflict resolution process between conflict parties at both a formal and informal level.

⁶³ See Sébastien Jodoin & Katherine Lofts (eds.), *Economic, Social, and Cultural Rights and Climate Change: A Legal Reference Guide* (New Haven, Ct.: CISDL, GEM & ASAP, 2013) <https://environment.yale.edu/content/documents/00004236/ESC-Rights-and-Climate-Change-Legal-Reference-Guide.pdf?1386877062>

⁶⁴ For examples see discussion by Cahill-Ripley, A, 2014, p.197-201.2

⁶⁵ Schmid, E, *War Crimes Related to Violations of Economic, Social and Cultural Rights*, 2011, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, http://www.zaoerv.de/71_2011/71_2011_3_a_523_542.pdf. See also Schmid, E, *Taking Economic, Social and Cultural Rights Seriously in International Criminal Law*. Cambridge: Cambridge University Press, 2015.

⁶⁶ Cahill-Ripley, 2014, p196; 197-201.

Peace-Making – Peace Agreements; Constitutions; Bills of Rights

Peace agreements are concerned with the cessation of immediate violence. In terms of quasi-legal/legal mechanisms, the first steps for parties in negotiations to end a conflict is some form of peace agreement. This may initially be interim provisions to be followed by further permanent agreements, such as peace accords, bills of rights and eventually new or revised state constitutions.⁶⁷ The essence of any peace agreement is concerned with human rights in the sense that peace agreements aim to end violent conflict and human rights abuses.⁶⁸ However, they may often contain explicit human rights provisions, mainly for civil and political rights but sometimes also for economic, social and cultural rights. Notably, if provisions for economic and social rights are included they are often weak.⁶⁹ Further, in reality, peace agreements often represent elite bargains and seldom include attention to underlying causes of the conflict, such as inequality and poverty. This failure to address such issues within the state can prevent the realisation of a lasting peace in a society. This is one of the key reasons why many peace deals fail in the longer term, and violent conflict re-erupts.⁷⁰

If ESCR have not been adequately taken into account in the peace-making phase then their importance can nevertheless be recognised through processes of constitution making and of truth and reconciliation commissions. In addition, even if initial peace agreements have included ESCRs, for peace agreements to be implemented it is also imperative that they are followed up by Bills of Rights and other constitutional guarantees, particularly for the successful protection and promotion of economic and social rights. As ‘many countries emerging from major conflicts suffer a relapse into conflict within five years of signing a peace agreement,’⁷¹ consequently, there is a need to ensure continuity between the agreement(s) itself, further constitutional codification and other programmatic peacebuilding measures. Moreover, constitution-making can in itself be an important part of the reconciliation process if it is carried out in an inclusive way and reflects a commitment to protect economic and social rights.⁷²

⁶⁷ Cahill-Ripley 2016, p.238.

⁶⁸ Bell, C (2000) *Peace Agreements and Human Rights*, Oxford: Oxford University Press, p. 33.

⁶⁹ International Council on Human Rights Policy (2006) ‘Negotiating Justice? Human Rights and Peace Agreements’ ICHRP: Versoix, Switzerland, p. 101.

⁷⁰ Cahill-Ripley, 2014, p.192.

⁷¹ UN Peacebuilding Support Office, *Frequently Asked Questions*, available at: UN Peacebuilding Support Office, *Frequently Asked Questions*, available at: <http://www.un.org/en/peacebuilding/pbso/faq.shtml> (last accessed 12 March 2018).

⁷² For detailed examples of states that have included economic and social rights within their Bills of Rights and other constitutional guarantees as well as transitional justice mechanisms, see University of Notre Dame Peace Matrix, available at: University of Notre Dame Peace Matrix, available at: <http://peaceaccords.nd.edu/> (last accessed 12 March 2018)

Transitional Justice

Transitional justice can be defined as ‘a response to systematic or widespread violations of human rights. It seeks recognition for the victims and to promote possibilities for peace, reconciliation and democracy [...]’.⁷³ It is therefore both dealing with the past abuses of human rights but also looking forward to protect and promote human rights as integral to peace and reconciliation. As such, for transitional justice to effectively contribute to establishing and sustaining peace, transitional justice bodies need to hold to account those responsible for violations of economic and social rights, just as it does for those responsible for violations of civil and political rights.

Unfortunately, ‘transitional justice mechanisms have traditionally ignored or side-lined violations of economic and social rights, focussing almost entirely on violations of civil and political rights as the primary grave human rights violations to be addressed when seeking justice for past atrocities.’⁷⁴ This marginalisation of ESCRs needs to be tackled; especially as such violations may be more widespread and systematic. For instance, in the conflict in Timor-Leste it was noted that far more people were affected by economic and social rights violations than civil and political rights violations.⁷⁵ Thus, ESCR violations need to be addressed from two angles: on the one hand seeking remedy for direct and deliberate acts of violence associated with the conflict⁷⁶ and, on the other, seeking remedy (where appropriate) for more structural endemic violations, root causes of the conflict and/or those that are persistent because of the ongoing conflict.

Post-Conflict Peacebuilding and Development

Not only should economic, social and cultural rights be incorporated into transitional justice mechanisms, but they also need to be encompassed into post-conflict peacebuilding, reconstruction and development programming. Using an ESCR framework can help prioritise resources for development and ensure attention is given to the needs of those most marginalised by the conflict. Currently however, this approach is the exception rather than the rule,

⁷³ International Centre for Transitional Justice, Fact Sheet ‘What is Transitional Justice?’ (ICTJ 2009) at <https://www.ictj.org/about/transitional-justice> (last accessed 12 March 2018).

⁷⁴ Cahill-Ripley 2014, p.184.

⁷⁵ The Commission for Reception, Truth and Reconciliation in Timor-Leste, ‘Chega! The Report of the Commission for Reception, Truth and Reconciliation in Timor-Leste (CAVR) (Commission for Reception, Truth and Reconciliation 31 October 2005)’, Executive Summary 74; ch. 7.9: Economic and Social Rights.

⁷⁶ Some examples may include the burning and destruction of homes and crops; the poisoning of water; forced evictions; deliberately induced starvation and displacement leading to lack of housing, water and food, subsequent ill health and disease, lack of education and employment and in the worst cases human deaths.

consequently undermining the human security necessary for sustaining peace.⁷⁷ Rather than seeing ESCRs as key elements of a comprehensive strategy for building and sustaining peace in post-conflict settings there is a tendency to wait for long-term progress in economic development to realise ESCR.⁷⁸

Moreover, underlying economic and social root causes of conflict can often be tied to vested interests. Consequently, the idea that free market economic development and an absence of violence will somehow resolve the economic and social grievances that fuelled the conflict or were exacerbated by the conflict, has been proved false time after time.⁷⁹ Economic growth does not automatically translate into an improvement of living standards, especially of vulnerable or marginalised groups, unless 'special measures or policies are directed to those ends'.⁸⁰

Furthermore, the influence of external actors upon transitional or post-conflict reconstruction, in particular regarding resources for institution building, development and reconstruction is often significant. However, international assistance is usually accompanied by vested interests and explicit conditions.⁸¹ In fact, plans for economic development are often left to international financial institutions, donors, and foreign investors. These arrangements are pursued 'according to current neo-liberal assumptions (such as privatization and austerity) and not as an integral part of the peace package.'⁸² It has been observed that 'International institutions, such as the World Bank and the International Monetary Fund, often push for market-driven reforms which may not take adequate account of the post-agreement need for largescale public spending.'⁸³ Thus, these market reforms can actually result in exacerbation of existing inequality and social grievances. Indeed, ill-timed market liberalization including privatization or public spending cuts in transitional societies can threaten broader peacebuilding goals, such as public service delivery.⁸⁴

⁷⁷ Christine Chinkin, *The Protection of Economic, Social And Cultural Rights Post-Conflict*, http://www2.ohchr.org/english/issues/women/docs/Paper_Protection_ESCR.pdf

⁷⁸ Report of the Secretary-General on the question of the realization in all countries of economic, social and cultural rights (A/HRC/4/62), 2007, p.18

⁷⁹ Ibid, p.15

⁸⁰ Ibid

⁸¹ Cahill-Ripley, 2016, p.240.

⁸² Madeleine Rees and Christine Chinkin, *Exposing the Gendered Myth of Post Conflict Transition: The Transformative Power of Economic And Social Rights* New York University Journal of International Law and Politics, 48 (4). p.1219

⁸³ International Council on Human Rights Policy, 2000, p. 101

⁸⁴ Newman.E, 'A Human Security Peace-Building Agenda' (2011) 32 Third World Quarterly 1737, at p. 1744.

In addition, 'Local demands for justice are excluded in favour of externally driven top-down processes which focus on dealing with elites and existing leaders and building state-level institutions. This hampers community-driven peacebuilding with alternative or conflicting priorities and agendas for peace.'⁸⁵ A renewed focus on addressing ESCRs, which are often stated as local priorities for peace, would help to challenge the dominance of external actors and enhance the effectiveness of peace-making processes.⁸⁶ Moreover, widening effective participation in peace processes to include such local agendas for peace would further attention to ESCR, for without adequate food, shelter, and employment such participation would not be feasible for those most affected by the conflict.⁸⁷

Economic, social and cultural rights can be utilised as a tool with which to ensure that basic needs and services are prioritized. They can also provide a framework for addressing underlying discrimination and inequalities (which may have triggered or worsened conflict). The state can be assessed against whether it can exercise its primary function of social protection, distribute justice, meet welfare and educational needs and undertake public service delivery. This process can be monitored through the benchmark of a state's compliance with its duty to respect, protect and fulfil the economic, social and cultural rights of citizens.⁸⁸

⁸⁵ Cahill-Ripley, 2016, p.228.

⁸⁶ Cahill-Ripley,A, 'Challenging Neoliberalism: Making Economic and Social Rights Matter in the Peacebuilding Agenda' in Frey D and MacNaughton. G (2018) *Economic and Social Rights in a Neoliberal World*, Cambridge: Cambridge University Press.

⁸⁷ Madeleine Rees and Christine Chinkin, *Exposing the Gendered Myth of Post Conflict Transition: The Transformative Power of Economic And Social Rights* op.cit., p.1219

⁸⁸ Cahill-Ripley, 2016, p.241.

Chapter IV

Country Examples illustrating the Importance of Economic, Social and Cultural Rights for Sustaining Peace

From UN processes to civil society practice, there are examples of economic, social and cultural rights and sustaining peace being considered together. This section provides a set of selected country specific examples to illustrate the potential of this approach and act as a stimulus to further action.

A Colombia

Economic, social and cultural rights, especially connected to land, have been recognised as underlying causes of violent conflict in Colombia over more than 50 years. The agreement reached to end the conflict in November 2016 includes extensive reference to human rights⁸⁹, and in particular ESCR. This basis for the peace agreement requires that rural life and livelihoods – the right to food, work and a decent standard of living including social protection – are adequately implemented along with demands for demobilisation, disarmament and reintegration, a point welcomed by the Committee on ESCR in their recent review of Colombia's report⁹⁰.

Given the central importance of land issues to the establishment of sustainable peace, there is a need to ensure that the rural reform committed to in the peace agreement is approached not just from a technical but also from a peacebuilding perspective. The UN Food and Agriculture Organisation (FAO), in collaboration with government ministries, donors and civil society, is attempting to combine these approaches by working on local resilience through social and economic inclusion and reconciliation. This includes fostering producer associations, social networks and partnerships with the private sector. A further aim is to strengthen rural population's capacities to recognise, reduce and manage situations of environmental and, significantly, social risks, including those associated with conflict, which affect agricultural livelihoods. Recognising the need for human rights grounding of this work, the FAO, along with others, is also seeking the inclusion of the Right to Food at constitutional level.

Meanwhile, post-conflict development inevitably includes a strong role for the private sector. The Committee on ESCR noted the need for appropriate measures to clearly establish

⁸⁹ Ibid

⁹⁰ UN CESCR, Concluding observations on the sixth periodic report of Colombia, 19 October 2017, E/C.12/COL/CO/6, paras.55-56.

the principle of human rights due diligence in relation to business and ESCRs within Colombia.⁹¹ There is also a need to augment such human rights risk assessment (HRRRA) in conflict affected settings⁹² to include conflict sensitivity to ensure effective application of due diligence. In addition, social conflict around large scale investment, with issues of private security forces and the targeting of human rights defenders, need to be given special attention.

Violence and displacement during the conflict has disproportionately impacted women – not least in their access to housing land and property. The identification of women as land rights holders, underpinned by the disaggregation of data, together with education for women on their land tenure rights and access to justice, has therefore the potential to empower them. The restitution is a crucial element of the prevention of further destructive conflict.⁹³ In 2017, CIASE⁹⁴ – an organisation that combines locally-based feminist peacebuilding research and practice with a focus on social, economic, cultural and environmental change informed by a human rights approach – submitted a report on the ESCRs situation for women in Colombia to inform the review of Colombia's report to the CESCR. The Committee subsequently noted in their review that the failure to guarantee women's effective participation in the implementation of the peace agreement was an obstacle to the realisation of women's ESCRs, highlighting the continuing gender inequality amongst victims of the conflict.⁹⁵

Their work demonstrates an integrated approach to human rights and sustaining peace at both policy and practice levels. While the Committee welcomed the positive developments in regard to legislative, institutional and policy measures⁹⁶ to promote the enjoyment of ESCRs within this challenging context, they also underlined the need for mechanisms to ensure all necessary measures are taken to optimise the opportunity represented by the peace agreement for the realisation of ESCRs within the State.⁹⁷

⁹¹ UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of Colombia, 19 October 2017, E/C.12/COL/CO/6.

⁹² As outlined by NGOs such as International Alert, see 'International Alert (Cleland.R and Orsini.Y), Human rights due diligence in conflict affected settings, Guidance overview and summary, London: International Alert, November 2016.

⁹³ Ivonne Astrid Moreno Horta, Colombian Rural Women Are Building Peace, World Bank Blog, November 16, 2017 <http://blogs.worldbank.org/latinamerica/colombian-rural-women-are-building-peace>

⁹⁴ CIASE's work provides an examples of an integrated approach to human rights and sustaining peace at both policy and practice levels. See Corporation for Research, Social and Economic Action, Colombia, www.ciase.org

⁹⁵ UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of Colombia, 19 October 2017, E/C.12/COL/CO/6, paras. 25-26.

⁹⁶ The CESCR also noted the limited progress to date in terms of 'guaranteeing rural peasant farmers, indigenous peoples and Afro-Colombians equitable access to land and natural resources.' UN CESCR, Concluding observations on the sixth periodic report of Colombia, op.cit.

⁹⁷ UN CESCR, Concluding observations on the sixth periodic report of Colombia, op. cit. paras.7, 8.

The ongoing peace process will bring up new challenges not foreseen in the peace agreement that will require a combined human rights, development and peacebuilding response.

B Democratic Republic of the Congo (DRC)

The recent history of the Democratic Republic of the Congo (DRC) has been one of tremendously destructive civil war, driven by both political and economic motivations. Thus, despite its immense economic resources, the people of DRC have been unable to enjoy security and the stability of good governance as the basis for the enjoyment of economic, social and cultural rights and sustainable development

The post-transitional government has taken some steps to rectify this situation. The Constitution of the DRC, adopted in 2011, now includes ESCRs such as provisions for the right to health, food, housing and water.⁹⁸

Ensuring the enjoyment of ESCR for all, however, and including ESCR in peacebuilding policies remains a challenge. In its 2017 review of the DRC, UN CESCR again underlined the role of ESCR in any peace process – negotiation and implementation. While the Committee recognised that the recurrent violent conflict poses great challenges to the ability of a State to fulfil its obligations under the Covenant, the question was put to the DRC ‘to what extent the realization of economic, social and cultural rights were incorporated in peace negotiations and agreements and to what extent they generated a domestic legal framework for their implementation.’⁹⁹ In their Concluding Observations the Committee reiterated the primary responsibility of the state for ensuring security in its territory and protecting civilians with respect to the rule of law, human rights and international humanitarian law.’ Particularly noting that ‘impunity for human rights violations and the illegal exploitation of the country’s natural resources, including by foreign companies, constitute major obstacles to the enjoyment of economic, social and cultural rights in the State party’.¹⁰⁰

⁹⁸ Journal Officiel de la République Démocratique du Congo Cabinet du Président de la République Constitution de la République Démocratique du Congo, modifiée par la Loi n° 11/002 du 20 janvier 2011 portant révision de certains articles de la Constitution de la République Démocratique du Congo du 18 février 2006 at <http://aceproject.org/ero-en/regions/africa/CD/democratic-republic-of-congo-constitution/view>; Constitue Project, ‘Congo (Democratic Republic of the)’s Constitution of 2005 with Amendments through 2011’, 2012 https://www.constituteproject.org/constitution/Democratic_Republic_of_the_Congo_2011.pdf?lang=en

⁹⁹ UN Committee on Economic, Social and Cultural Rights (CESCR), List of issues to be taken up in connection with the consideration of the second, third, fourth and fifth periodic reports of the Democratic Republic of the Congo concerning the rights covered by articles 1 to 15 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/COD/Q/5, 15 June 2009, para.4.

¹⁰⁰ UN CESCR, Concluding observations of the Committee on Economic, Social and Cultural Rights, Democratic Republic of the Congo, E/C.12/COD/CO/4, 16 December 2009, para.6.

Such comments implicitly convey the importance of ESCR for sustaining peace. However, an explicit clause, noting that such rights are essential to sustaining peace would balance the focus on civil and political rights that often exists in conflict-affected settings. Such an explicit consideration could then be extended to consideration of other state parties who are experiencing unrest, violent conflict or in transition to peace. Furthermore, the provision of ESCR could also be presented as a factor reducing the likelihood of destructive conflict within all societies.

Christian Aid Ireland, a development and humanitarian organisation, has enhanced its work over the past years to include tackling violence and building peace and has been applying this approach in the DRC. Using advocacy, resilience and capacity building, as well as conflict transformation approaches of trust-building and dialogue, they work with local partners to improve access to essential services and help change structures that keep Congolese people in poverty.¹⁰¹ Although not labelled an ESCR approach, such programming can address the lack of enjoyment of ESCRs. Indeed, such programming could be further strengthened and supported by applying an explicitly human rights framework to complement the developmental and peacebuilding elements of this work.

C Philippines

Over the past fifty years the Philippines has suffered two major armed conflicts: a self-determination struggle by Muslim communities in the southern island of Mindanao, involving the Moro Islamic Liberation Front, and a countrywide communist insurgency led by the New People's Army (NDA).

As the Committee on ESCR noted in their review of the Philippines in September 2016, there is still much to be done in the country to secure and implement ESCR. This situation constitutes a key element of the negotiations between the National Democratic Front (NDFP) and the government of the Philippines to end the insurgency. In October 2016 the Philippine Government and the NDFP succeeded in drafting a common framework and outline for the 'Comprehensive Agreement on Social and Economic Reforms' (CASER). It has the overall objective of 'eradicating Philippine poverty and reducing inequality' thus addressing the roots of the armed conflict and, at this stage, is couched in broad terms covering agrarian reform, national industrialization, environmental protection, rights of the working people, foreign

¹⁰¹ Christian Aid Ireland (Witt and Balfe), Civil Society, Conflict Transformation and Peace Building, A Christian Aid Ireland Learning Paper, February 2016, Christian Aid Ireland: Dublin, p.22.

economic and trade relations, and, monetary and fiscal policies¹⁰². Despite the subsequent disruption of negotiations in May 2017, the inclusion of ESCR in such an agreement is an encouraging sign.

An effective application of a human rights approach to peacebuilding could further be observed after a breakthrough agreement in March 2014 brought an end to conflict between the Moro Islamic Liberation Front (MILF) and the Government of the Philippines. The independent international organisation Conciliation Resources (CR), who continue to support dialogue between the two peace panels until the agreement is effectively implemented and sustained peace is achieved¹⁰³, engage in bringing the peace process down to community level and working between groups in conflict using a community security approach. Initially, adopting a typical peacebuilding methodology of dialogue with communities, CR engaged in situational analysis and the exploration of models for locally developed conflict mechanisms with partners and communities, including Indigenous and Muslim minorities. However, through reflection on this work, it emerged that an effective response to the roots of the conflicts at local level required the use of a human rights-based approach to local governance.

This has led to further programme development to bring in a local human rights organisation to provide training for both civil society and local government – with emphasis on health, education and livelihoods – as part of their conflict transformation strategy. This programme is only at the beginning and it will be instructive to observe how human rights-based approaches, with a focus on ESCR, can contribute to conflict transformation strategies benefitting all stakeholders.¹⁰⁴

¹⁰² The “desired outcomes” included in the draft:

1. Rural equality and development to achieve food self-sufficiency and security
2. A sovereign, self-reliant and industrialized national economy
 1. Protected and rehabilitated environment, just compensation for affected populations and sustainable development
 1. Social, economic and cultural rights of the working people upheld and discrimination eliminated
2. Sustainable living incomes for all
3. Affordable, accessible and quality social services and utilities
4. Sovereign foreign economic policies and trade relations supporting rural development and national industrialization
5. Monetary and fiscal policy regime for national development

Karlos Manlupig, Philippine Daily Inquirer 9 October , 2016, <http://globalnation.inquirer.net/146435/govt-ndfp-forge-agreement-on-social-economic-reforms>

¹⁰³ Conciliation Resources, <http://www.c-r.org>

¹⁰⁴ Personal communication with Conciliation Resources representatives in the Philippines, 13 February 2018.

D Ukraine

The ongoing violent conflict in the Ukraine negatively impacts on the enjoyment by all of economic and social rights, including the right to health services¹⁰⁵. Corruption has also had a devastating impact upon the enjoyment of ESCRs within the country disproportionately affecting the poor and the most vulnerable.¹⁰⁶

National Human Rights Institutions (NHRIs), as mechanisms that are independent from the government, can play an important role in preventing conflicts and ensuring respect for human rights and their protection in conflict and post-conflict situations. The Kyiv Declaration on the Role of National Human Rights Institutions in Conflict and Post-Conflict Situations 2015, established that NHRIs in conflict and post-conflict situations are required to inter alia provide guidance on the international legal framework and standards to be employed in post-conflict/transition periods and advise parties 'on guiding human rights principles for the success of the peacebuilding processes.'¹⁰⁷ Further, it established that NHRIs are required to take preventative measures where possible including addressing human rights violations; monitoring, assessing and documenting the human rights situation; promoting dialogue between parties to a conflict for the protection and promotion of human rights and to 'Take steps to ensure human rights are placed at the centre of negotiations between the conflicting parties, including in peace agreements, and monitor their implementation'.¹⁰⁸ In Ukraine, the Ombudsperson's Office, since the beginning of the conflict, has been actively engaged in responding to human rights violations resulting from the conflict.¹⁰⁹

This section has illustrated some of the many ways that ESCR are essential to sustaining peace in a variety of conflict settings. In order to realise this potential it requires many partners who go beyond their specialisations and collaborate to apply different analytical lenses, incorporate different perspectives and develop mutually reinforcing strategies.

¹⁰⁵ Office of the United Nations High Commissioner for Human Rights Report on the human rights situation in Ukraine 15 April 2014, A/68/262, para.39.

¹⁰⁶ Ibid

¹⁰⁷ UNDP, Ukrainian Parliament Commissioner for Human Rights, 'Final Report of the International Conference, The Role Of National Human Rights Institutions In Conflict And Post-Conflict Situations', 21-22 October 2015, Kyiv, Ukraine, p.30.

¹⁰⁸ Kyiv Declaration on the Role of National Human Rights Institutions in Conflict and Post-Conflict Situations International Conference on the Role of National Human Rights Institutions in Conflict and Post-Conflict Situations, Kyiv, Ukraine, 21-22 October 2015, p.3.

¹⁰⁹ UNDP, Ukrainian Parliament Commissioner for Human Rights, 'Final Report of the International Conference, The Role Of National Human Rights Institutions In Conflict And Post-Conflict Situations', 21-22 October 2015, Kyiv, Ukraine, p.6.

Chapter V

Next Steps and Recommendations: Applying Economic, Social and Cultural Rights towards Sustaining Peace

A Next Steps and Challenges

With the advent of the concept of sustaining peace and the renewed focus on peacebuilding there are new opportunities to highlight the importance of economic, social and cultural rights in this process and to address some of the gaps that have resulted in a narrowly focussed conception of the role of human rights within peacebuilding (conceived of as all processes from prevention to post-conflict).

There is a role to play for local, national and international bodies, including both human rights and peacebuilding bodies, in maximising the possibilities for enhancing the sustaining peace agenda and in increasing the efficacy of peacebuilding through the use of economic, social and cultural rights and in ensuring that economic, social and cultural rights are considered as integral and essential to sustainable peace.

The Secretary General's recent Report on Sustaining Peace¹¹⁰ is welcome as it addresses several significant issues concerning sustaining peace, including tackling fragmentation, an increased focus on prevention of violent conflict, the need for strong and collaborative leadership and recognition of the role of both development and human rights in sustaining peace. However, whilst the report does note human rights in several paragraphs¹¹¹, there is no explicit mention of economic, social and cultural rights. Significantly, the Secretary General's report recognises that 'The international human rights framework, in particular Member States' obligations under the Universal Declaration of Human Rights, provides a critical foundation for sustaining peace,' particularly in the identification of 'the root causes of and responses to conflict.'¹¹² Further it notes, 'In that respect, it will remain imperative for the peace and security and development pillars to make better use of the existing human rights mechanisms, such as special procedures, the treaty bodies and the universal periodic review, and their re-

¹¹⁰ UN General Assembly and Security Council, Peacebuilding and sustaining peace - Report of the Secretary-General, A/72/707-S/2018/43, 18 January 2018.

¹¹¹ There are 19 specific references to human rights.

¹¹² UN General Assembly and Security Council, Peacebuilding and sustaining peace - Report of the Secretary-General, A/72/707-S/2018/43, 18 January 2018, para.21.

commendations in support of Member States.¹¹³ This is a welcome development. However, as regards economic, social and cultural rights much more could have been included to recognise the previous marginalisation of such rights within peacebuilding and to highlight their role as essential to the process and goal of sustaining peace. Consequently, it is imperative for those with a mandate for the protection and promotion of economic, social and cultural rights, such as treaty bodies, to advance this issue. There are several steps that are required to tackle the current challenges to incorporating economic, social and cultural rights within the process of sustaining peace:

Tackling Fragmentation, Building Expertise and Collaborative Leadership

As recognised extensively within the Secretary General's report, fragmentation within the UN system needs to be addressed.¹¹⁴ To this end, and indeed for the sustaining peace concept to be successful in practice, the prevalent silo mentality needs to be tackled and replaced by coordination and collaboration across all the pillars and agencies of the UN. This includes Geneva based UN human rights bodies such as treaty bodies, Special Procedures and the UPR, UN New York based peacebuilding architecture such as the UN PBC and the PBSO, as well as coordination with HRUF and Country Teams and NHRI's.

Challenges to tackling this fragmentation include the complexity of the organisation overall and ensuring effective collaborative leadership that has both the capability and the vision to take this agenda forward.¹¹⁵ There is currently a lack of expertise in how these previously largely independent areas intersect and existing knowledge can be limited to one's own field. As such, there is also a need for training and education of staff. Human rights training and peacebuilding training for each group of professionals could be both joint and separate, depending on needs. This training aspect is neglected within the recent Secretary General's report and is even more important in relation to economic, social and cultural rights due to the predominant focus on civil and political rights that is often utilised.

Moreover, in such cooperation it is crucial that human rights are understood as encompassing all rights including those of an economic, social and cultural nature. It needs to be

¹¹³ UN General Assembly and Security Council, Peacebuilding and sustaining peace - Report of the Secretary-General, A/72/707-S/2018/43, 18 January 2018, para.21.

¹¹⁴ UN General Assembly and Security Council, Peacebuilding and sustaining peace - Report of the Secretary-General, A/72/707-S/2018/43, 18 January 2018, paras.7, 38, 45, 46 and Section II. Operational and policy coherence to strengthen support to peacebuilding and sustaining peace.

¹¹⁵ UN General Assembly and Security Council, Peacebuilding and sustaining peace - Report of the Secretary-General, A/72/707-S/2018/43, 18 January 2018, Section III Leadership, accountability and capacity in supporting peacebuilding and sustaining peace.

ensured that such rights are not to be equated with economic development but are distinct legal entitlements with corresponding state obligations.

Lastly, wider fragmentation needs to be addressed: for example, a coordinated response to conflict prevention requires those working on prevention of violent conflict within regional organisations or civil society to work and consult with organisations working on human rights, especially economic, social and cultural rights.

Enhancing Conflict Prevention

As the Secretary General's Report notes, 'An important breakthrough in the twin resolutions was the recognition that efforts to sustain peace were necessary not only once conflict had broken out but also long beforehand, through the prevention of conflict and addressing its root causes. [...] Building a common vision of society must involve paying attention to the causes of those problems.'¹¹⁶

Hence, the need for an enhanced focus on prevention of violent conflict rather than responding to crises has been recognised. In doing so, it is essential that conflict prevention includes all human rights as interdependent and indivisible (emphasising previously side-lined economic, social and cultural rights) as a tool for conflict risk assessment, monitoring and as an element of early warning. Significantly, addressing root causes must necessarily include dealing with economic, social and cultural rights violations or threats to the enjoyment of such rights (as noted in Chapter 3.b).

Inclusivity – Valuing Local Approaches to Peacebuilding

Whilst the need for 'closer strategic and operational partnerships' between the UN and other stakeholders has been recognised,¹¹⁷ there is a need for **inclusive civil society and community led interventions**, concerning economic, social and cultural rights to be better acknowledged as an element of building and sustaining peace and supported towards enhancing their work and engagement with a broader set of partners. This is particularly pertinent to such rights as they are often priorities for local grassroots communities in the wake of violent conflict or transitional and post-conflict periods.

¹¹⁶ UN General Assembly and Security Council, Peacebuilding and sustaining peace - Report of the Secretary-General, A/72/707-S/2018/43, 18 January 2018, para.3.

¹¹⁷ UN General Assembly and Security Council, Peacebuilding and sustaining peace - Report of the Secretary-General, A/72/707-S/2018/43, 18 January 2018, para.6.

Data Gathering

A significant challenge is gathering and collating relevant data, both qualitative and quantitative. Obtaining access to relevant data can be difficult as it often requires states parties and/or non-state actors cooperation. However, there is already a wealth of existing human rights data that can be utilised for prevention of destructive conflict and early warning as well as for monitoring sustainable peace post-conflict. As noted in the Peacebuilding and Sustaining Peace Report (see above), this includes data from HRC Special Procedures reports, the Universal Periodic Review; UN Treaty bodies reports; UN Country Teams; National and regional human rights bodies' reports and data from regional bodies such as OSCE . Other sources of data can also be utilised such as SDGs monitoring data. Better sharing of data then is one way to tackle this challenge and such data can contribute significantly to peacebuilding actions.

Coordination of this process is a challenge.: Certainly, the Secretary General's proposals for a single 'political-operational structure with regional responsibilities [...] will support a more holistic approach to peacebuilding and sustaining peace.'¹¹⁸ However whilst joint action between development and peacebuilding bodies is comprehensively considered, coordination with human rights bodies is less so. Given that the 'OHCHR has established a conceptual and methodological framework for developing human rights indicators,'¹¹⁹ which they have recognised 'could effectively inform early warning analysis and preventive efforts,'¹²⁰ it is disappointing that the added value of human rights methodology, in particular the contribution of economic, social and cultural rights, is not acknowledged further. However, there are positive developments, for example, the OHCHR highlight 'Sharing information and managing data are also crucial in early warning efforts. While United Nations agencies and other organizations share data, no common information management system currently exists.' This is complicated further by a lack of a 'uniform methodology in extracting the necessary data, the varying degree of credibility of sources and the related protection risks. In this regard, under the Human Rights Up Front initiative, OHCHR has been tasked to lead an inter-agency effort to promote regular, common analysis of information at the field level, and to ensure that this information is transmitted rapidly to decision-makers.'¹²¹

To respond to the above challenges and operationalise economic, social and cultural rights as part of the sustaining peace process, the following paragraphs outline concrete recommendations for the different actors.

¹¹⁸ UN General Assembly and Security Council, Peacebuilding and sustaining peace - Report of the Secretary-General, A/72/707-S/2018/43, 18 January 2018, para.18.

¹¹⁹ OHCHR, Early Warning and para.49.

¹²⁰ OHCHR, Early Warning and para.47.

¹²¹ OHCHR, Early Warning and para.59.

B Recommendations for UN human rights bodies, UN peacebuilding actors, States, NHRIs, Civil Society and other stakeholders

What UN Human Rights Bodies can do:

OHCHR

The OHCHR has already undertaken sporadic work contributing to a sustaining peace approach, for example, the important work on early warning. Such work needs to be continued and developed further, such as developing models and guidance from OSCE and other bodies with expertise in early warning and prevention. Moreover, systematic consideration of the contribution the OHCHR can make to sustaining peace is required.

The OHCHR can make more targeted and effective use of existing mechanisms to contribute to sustainable peace and to ensure economic, social and cultural rights are considered as part of a sustaining peace approach to peacebuilding.

Human Rights Council

The Human Rights Council should explicitly highlight the importance of the realisation of economic, social and cultural rights as part of a long-term sustainable peaceful society. For example, mechanisms such as Special Procedures and the Universal Periodic Review could identify human rights situations that could lead to conflict and explicitly note the role of ESCR in contributing to such risk as well as where ESCRs violations contribute to conflict. Importantly they can also highlight their role in prevention of conflict and in transforming conflict.

An important institutional step in this direction was taken when in its 34th regular session the Human Rights Council held a High-Level Panel on Human Rights, ‘with the objective of promoting the mainstreaming of human rights throughout the United Nations system, with a focus on “the contribution of human rights to peacebuilding through the enhancement of dialogue and international cooperation for the promotion of human rights”’.¹²² The High Commissioner emphasized that ‘using the broad human rights framework, which importantly took into account violations of economic, social and cultural rights, helped understand the structural violence, exclusion and inequality which bred violence.’ He further reaffirmed that ‘the broad spectrum of human rights recommendations into all peacebuilding work was also essential to sustaining peace’¹²³.

¹²² Human Rights Council, Report of the Human Rights Council on its thirty-fourth session, 4th August 2017, A/HRC/34/2, para.11.

¹²³ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21242&LangID=E>

In the longer term the HRC could consider the appointment of a Special Rapporteur on ESCRs and Sustaining Peace to specifically explore such issues and develop coordinated thinking and practice.

UN Treaty bodies

Similarly, UN Treaty bodies could systematically note the role of ESCRs as contributing to sustaining peace within examination of State parties reports and concluding observations. The UN Committee on Economic, Social and Cultural Rights (UN CESCR) have done this in several cases¹²⁴ (see Chapter 4). Across the different treaty bodies, however consideration of these aspects could be more comprehensive and methodical.

In addition, the UN CESCR could draft and adopt a Statement on Economic, Social and Cultural Rights and Sustaining Peace. Furthermore, acknowledging budgetary and workload limitations, in the longer term, the UN CESCR could adopt a General Comment on ESCRs and Sustaining Peace.

As noted previously, all human rights bodies could broaden and deepen collaboration and liaison with those working on peacebuilding (and development) within the UN, especially the peacebuilding architecture but also externally with regional and sub-regional organisations such as the OSCE, regional human rights institutions, as well as with country teams and NGOs and civil society. For example, there may be potential scope for the 'Human Rights Up Front' initiative to involve the broader UN system in ESCRs and peacebuilding. The newly introduced Regional Monthly Reviews that bring all relevant actors together to discuss a country situation are here a promising step in the right direction, though it needs to be ensured that they are cohesive.

Finally, the UN CESCR has explicitly recognised the importance of the work of human rights defenders 'to the effective promotion, protection and realisation of economic, social and cultural rights'.¹²⁵ In addition, the value of human rights defenders work in conflict prevention and early warning has previously been highlighted by Jilani who notes, 'There should be no hesitation in saying that without the work of human rights defenders, today, in countries where there is ongoing armed conflict, millions of people would be much more vul-

¹²⁴ For example see, UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of Colombia, 19 October 2017, E/C.12/COL/CO/6; UN Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee on Economic, Social and Cultural Rights, Democratic Republic of the Congo, E/C.12/COD/CO/4, 16 December 2009.

¹²⁵ UN CESCR Human Rights Defenders and Economic, Social and Cultural Rights, Statement by the Committee on Economic, Social and Cultural Rights, 7 October 2016, E/C.12/2016/2, para.1.

nerable to violations of their rights to life, physical integrity, liberty, food, health, adequate housing, education and many others, and the United Nations system would be much less well equipped to address the conflict.¹²⁶ Defenders also contribute to documenting and reporting on threats to ESCRs (such as corruption), sustaining life through negotiating and enabling humanitarian access and assistance and contributing to addressing impunity for past violations.¹²⁷ Consequently, there would be further benefit in explicitly highlighting the intersection of the work of human rights defenders with their important work in the specific context of violent conflict and the need to build and sustain peace.

What UN Peacebuilding Actors can do:

Incorporate a broader conception of human rights

In the first instance there is a need to incorporate a broader conception of human rights within the work of the UN peacebuilding actors: one that acknowledges that economic, social and cultural rights are human rights and that such rights are crucial to successful peacebuilding.

Recognize ESCRs as distinct legal entitlements

Secondly, they need to recognise that ESCRs are distinct legal entitlements and are not the same as economic development or delivery of social services. Through training and more regular cooperation across silos, peacebuilding bodies can deepen their understanding of the contribution economic, social and cultural rights can make to sustaining peace through forward looking preventative mechanisms (and not just seen as a measure for addressing past violations through transitional justice). For example, the new joint political and operational peacebuilding body could work closely with the OHCHR to develop a coherent holistic conflict prevention strategy that includes all human rights.

Include ESCRs in analysis and prevention strategies

Thirdly, in addition to the UN peacebuilding architecture, other bodies responsible for conflict prevention actions should embed consideration of ESCRs within their remit and seek to include such rights within joint or at the very least comprehensive analysis and prevention strategies where relevant.

¹²⁶ UN GA A/60/339 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, 7 September 2005, para. 14.

¹²⁷ UN GA A/60/339 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, 7 September 2005, paras.30-32.

Create links with human rights bodies at all levels

Finally, peacebuilding bodies should seek new opportunities to develop links with human rights bodies at international, national and local levels as this will be beneficial to gaining and developing a mutual understanding of what sustaining peace entails and how they can collaborate to achieve this common goal.

What States can do:

States have a crucial role to play in embedding ESCRs within their peacebuilding policy and practice.

Integrate ESCRs in (legal) measures

Fundamentally, states should integrate ESCRs in all relevant peace-making quasi-legal and legal measures: peace agreements and Bills of Rights as well as ensuring codification of socio-economic rights within their constitutions. Similarly states parties should ratify relevant international human rights instruments.

Highlight actions taken to promote ESCRs in situations of conflict

States could also highlight within their reports to treaty bodies and within UPR reviews the actions they have taken to ensure the protection and promotion of ESCRs within situations of high risk of conflict, during conflict and in the transitional and post-conflict period. In addition, they can systematically note how such rights have been embedded in their peace-building actions.

Incorporate ESCRs in conflict prevention and peacebuilding programmes

In terms of practice, state parties should be encouraged to incorporate economic, social and cultural rights within their strategies for risk assessment and early warning and within conflict prevention measures more broadly, for example dealing with grievances based on economic and social rights violations as part of negotiations and mediation.

Further, states should incorporate measures to ensure the protection and promotion of such rights within post-conflict peacebuilding programmes as noted previously. For example, States should ensure that any post-conflict development involving non-state actors such as international financial institutions, development agencies and private businesses consider economic, social and cultural rights as a priority and carries out human rights risk assessment and due diligence.

Provide data in situations of conflict

Furthermore, cooperating with relevant actors, such as UN agencies, so that they can obtain relevant data is imperative, especially given the challenge of gathering detailed and accurate data in situations of conflict and transition (see Chapter 2).

What NHRIs can do:

As outlined previously (see Chapter 4.d), 'National Human Rights Institutions (NHRIs), as mechanisms that are independent from the government, can play an important role in preventing conflicts and ensuring respect for human rights and their protection in conflict and post-conflict situations. For example, in Ukraine, the Ombudsperson's Office, since the beginning of the conflict, has been actively engaged in responding to human rights violations resulting from the conflict.'¹²⁸

Play an active role in peace processes

A key role can be played by NHRIs in early warning and conflict prevention, implementing peace agreements and human rights standards and building and sustaining peace: The Kyiv Declaration on the Role of National Human Rights Institutions in Conflict and Post-Conflict Situations 2015, established that NHRIs in conflict and post-conflict situations are required to inter alia provide guidance on the international legal framework and standards to be implored in post-conflict/transition periods and advise parties 'on guiding human rights principles for the success of the peacebuilding processes.'¹²⁹

Take preventative measures

Further, it established that NHRIs are required to take preventative measures where possible including addressing human rights violations; monitoring, assessing and documenting the human rights situation; promoting dialogue between parties to a conflict for the protection and promotion of human rights and to 'Take steps to ensure human rights are placed at the centre of negotiations between the conflicting parties, including in peace agreements, and monitor their implementation'.¹³⁰

¹²⁸ UNDP, Ukrainian Parliament Commissioner for Human Rights, 'Final Report of the International Conference, The Role Of National Human Rights Institutions In Conflict And Post-Conflict Situations', 21-22 October 2015, Kyiv, Ukraine, p.6.

¹²⁹ UNDP, Ukrainian Parliament Commissioner for Human Rights, 'Final Report of the International Conference, The Role Of National Human Rights Institutions In Conflict And Post-Conflict Situations', 21-22 October 2015, Kyiv, Ukraine, p.30.

¹³⁰ Kyiv Declaration on the Role of National Human Rights Institutions in Conflict and Post-Conflict Situations International Conference on the Role of National Human Rights Institutions in Conflict and Post-Conflict Situations, Kyiv, Ukraine, 21-22 October 2015, p.3.

Collect data and monitor human rights situation

Moreover, as national bodies NHRIs are also often well placed to collect data, monitor human rights situations and subsequently be in a position to 'understand the causes of conflict and to propose solutions for it',¹³¹ thus contributing to peacebuilding through national and local initiatives. 'In post-conflict situations, NHRIs are also well-positioned to investigate and provide evidence of allegations of human rights abuses committed during conflict. They can also play an important role in the setup of referral mechanisms and facilitate access to justice and remedies for conflict-affected populations.'¹³²

What Civil Society can do:

The existence of a strong and resilient civil society, including actors such as human rights defenders and non-governmental organisations (NGOs) is essential for an inclusive and effective approach to sustaining peace. Building such a resilient and mobilised civil society is also necessary in order to tackle corruption which is often fuelling continuing conflict as well as to ensure inclusive participation of all groups within society to peacebuilding initiatives.

Embedding ESCRs in peacebuilding work

Consequently, the role of civil society is important for ensuring that economic, social and cultural rights are embedded within approaches to sustaining peace, through their own programmes, through engagement with human rights mechanisms and peacebuilding programmes and in terms of economic, social and cultural rights advocacy in conflict and transitional settings.

In their own work, civil society organisations can engage with economic, social and cultural rights as an element of their peacebuilding work. For example, Christian Aid Ireland utilise ESCRs as part of their tackling violence building peace strategy with the aim of transforming conflict and reducing violence by ensuring human rights for all¹³³ – and CIASE¹³⁴ who submitted a report on the ESCRs situation for women in Colombia to inform the review of Colombia's report to the CESCR, and informed their report with unique vantage point of an

¹³¹ UNDP, Ukrainian Parliament Commissioner for Human Rights, 'Final Report of the International Conference, The Role Of National Human Rights Institutions In Conflict And Post-Conflict Situations', 21-22 October 2015, Kyiv, Ukraine, p.6.

¹³² Ibid, p.7.

¹³³ Christian Aid, Tackling Violence, Building Peace Global Strategy 2016, Dublin: Christian Aid Ireland.

¹³⁴ CIASE's work provides an examples of an integrated approach to human rights and sustaining peace at both policy and practice levels. See Corporation for Research, Social and Economic Action, Colombia, www.ciase.org

organisation that uses locally-based feminist peacebuilding research and practice with a focus on social, economic, cultural and environmental change.¹³⁵

Highlight importance of ESCRs

Moreover, in their parallel reports to UN treaty bodies, NGOs can highlight such rights as root causes of conflict or as key to conflict prevention strategies, peace-making, transitional justice and post-conflict peacebuilding in particular states.

Collect data

Civil society organisations also have an important role to play in gathering data: documenting grievances or violations of such rights and monitoring risk factors associated with triggering or escalation of conflict as well as relapse into conflict. As such they can contribute to sustaining peace through ensuring their monitoring of human rights includes economic, social and cultural rights. Human rights defenders should continue to monitor and gather evidence on violations of ESCRs as crucial to sustain peace. On a positive note, the UN Special Rapporteur on the situation of human rights defenders, recently noted the possibility of conducting joint initiatives with the Dept. of Peacekeeping Operations, and with special procedures mandate holders in relation to better protection for defenders of economic, social and cultural rights in a peacebuilding context.¹³⁶

What other Stakeholders/Non-State Actors can do:

Other non-state actors also have a responsibility for sustaining peace. In particular, actors that are engaged in post-conflict reconstruction and development can have significant impacts upon economic, social and cultural rights.

For example, businesses operating in conflict settings need to be aware of their impacts upon peacebuilding and human rights. Businesses should act at all times in accordance with the UN Guiding Principles on Business and Human Rights.¹³⁷ In addition, NGOs such as International Alert have issued guidance for businesses on how to act with human rights due diligence in conflict affected settings including how to ‘help companies integrate conflict sensitivity into the human rights due diligence process’ and ‘ensure respect for human rights

¹³⁵ UN Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of Colombia, 19 October 2017, E/C.12/COL/CO/6, paras. 25-26.

¹³⁶ A/HRC/34/52 23 January 2017, Report of the Special Rapporteur on the situation of human rights defenders Human Rights Council Thirty-fourth session 27 February-24 March 2017, paras. 33, 53.

¹³⁷ Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, 21 March 2011, A/HRC/17/31.

in their operations without exacerbating or generating conflicts'.¹³⁸ They advocate 'integrating a conflict analysis into the human rights impact assessment process' as a method to 'bring to light additional risks and impacts (and their implications in terms of human rights) which are not captured by a traditional HRIA [Human Rights Impact Assessment]'.¹³⁹

However, further advances need to be made to address economic, social and cultural rights as a priority, given their previous marginalisation within human rights and peacebuilding policy and their equation with general economic development.

C Conclusion

This report aims to introduce stakeholders to the issue of economic, social and cultural rights and sustaining peace. It is not intended to be a blueprint for utilising economic, social and cultural rights in sustaining peace and indeed is limited in scope due its nature as an introductory report. Several important issues that intersect with the issue of economic, social and cultural rights and sustaining peace that could not be addressed in any significant depth within this report but should be highlighted as key issues include climate change, natural resources, extractives and land; gender issues and the Women, Peace and Security Agenda and resilience approaches to peacebuilding. These issues require further research and knowledge exchange is key to advancing effective policy and practice.

However, the report does illustrate that knowledge exchange has resulted in the development of both theory, policy and practice on sustaining peace and economic, social and cultural rights. Several key conclusions can be drawn:

- To achieve sustainable peace within societies, peacebuilding measures must address the protection and promotion of economic, social and cultural rights at all stages of peacebuilding processes – from prevention of destructive conflict, including early warning through to post-conflict peacebuilding actions.
- This requires mainstreaming of economic, social and cultural rights within all pillars of the UN system and more widely within other international organisations and civil society.

In sum, all parties can better protect and promote economic, social and cultural rights and contribute to sustaining peace through:

¹³⁸ International Alert (Cleland.R and Orsini.Y), Human rights due diligence in conflict affected settings, Guidance overview and summary, London: International Alert, November 2016, p.3.

¹³⁹ International Alert (Cleland.R and Orsini.Y), Human rights due diligence in conflict affected settings, Guidance overview and summary, London: International Alert, November 2016, p.8.

- Utilising existing International Human Rights Law to provide a coordinated framework for using economic, social and cultural rights (as well as civil and political rights) to enable peacebuilding. The existing framework provides a legal basis, clear obligations, measurable objectives and guidelines for the management and prioritisation of resources to meet basic rights.

- Operationalising human rights especially ESCRs for peacebuilding on the ground through a rights-based approach to development, conflict prevention strategies and conflict risk assessment that includes economic, social and cultural rights. This could be achieved by using an economic, social and cultural rights framework to assist with prioritising resources for post-conflict peacebuilding and capacity building through participation, training and institutional reform.

There is a need for stakeholders to consider the concrete steps that can be taken to this end as well as to continue developing thinking, policy and practice on this crucial topic. To this end, on-going knowledge exchange, cooperation, collaboration and sharing good practices amongst all stakeholders is imperative.

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