

1. Historical Background of ESCR

The international law of human rights was created immediately following World War II in response to widespread atrocities committed by states against innocent civilians.¹ Human rights law broke new ground in international relations by establishing binding legal duties that governments owed to individuals and groups rather than to other governments. The purpose of the law was to provide protection to all human beings, regardless of who they were and where they lived.

The founding document of international human rights law was the Universal Declaration of Human Rights (UDHR), unanimously ratified by the UN General Assembly in 1948.² The Universal Declaration established the fundamental vision and principles of the new human rights regime by recognizing the interdependence and indivisibility of all human rights. Under this vision, people were guaranteed civil and political freedom through the human rights to life, physical integrity, free speech and belief, and due process of law - as well as economic and social well-being - through the human rights to an adequate standard of living, housing, work, education, food and health.

Over the past 50 years, ESCR were elaborated through a wide range of international treaties, laws, and principles, despite being neglected in practice.³ Of primary importance is the 1967 International Covenant on Economic, Social and Cultural Rights (the "Covenant"), which has been ratified by 137 states to date.⁴ ESCR have been recognized in all major international treaties protecting the human rights of vulnerable groups, such as the Convention on the Rights of the Child,⁵ the Convention on the Elimination All Forms of Discrimination Against Women,⁶ and the Convention on the Elimination of All Forms of Racial Discrimination,⁷ as well as various treaties of the International Labour Organization. ESCR have also been affirmed at the world conferences in Rio (on Development and Environment), Vienna (on Human Rights), Copenhagen (on Social Development), and Rome (on Food Security). Finally, ESCR have been incorporated into regional law through organizations such as the European Union, as well as the domestic law of many countries in the form of constitutional rights and national/local legislation.⁸

The international law of ESCR provides a legal, political, and moral framework to challenge policies that perpetuate poverty and inequality. Just as governments are accountable under human rights law for denying political freedom, so too they are accountable for denying adequate food or health care. ESCR also provide a framework for people to participate in claiming their own rights. This enables affected communities

¹ See, generally, Henkin, *The Age of Rights* (New York: Columbia University Press, 1990); Cassese, *Human Rights in a Changing World* (Cambridge, England: Polity, 1990).

² Universal Declaration of Human Rights, G.A. Res. 217A of 10 December 1948, UN Doc. A/810 (1948).

³ See Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (Oxford: Clarendon Press, 1995); Leckie, "Another Step Towards Indivisibility: Violations of Economic, Social and Cultural Rights" in *Human Rights Quarterly*, vol 20, no. 1, 1998, pp. 81-124; Eide, "Economic, Social and Cultural Rights as Human Rights" in Eide, Krause and Rosas, eds., *Economic, Social and Cultural Rights: A Textbook.*, (Netherlands: Kluwer Academic Publishers, 1995).

⁴ International Covenant on Economic, Social and Cultural Rights, UN Doc. A/RES/2200 A (XXI), (1966).

⁵ Convention on the Rights of the Child, UN Doc. A/RES/44/736 (1989).

⁶ Convention on the Elimination of All Forms of Discrimination Against Women, UN Doc. A/RES/34/180 (1979).

⁷ Convention for the Elimination of All Forms of Racial Discrimination, UN Doc. A/RES/2106 A (XX) (1965).

⁸ Leckie; Craven, and Eide, see note 3.

and NGOs to demand legal accountability in situations where policy-makers would prefer to obscure the lines of responsibility and avoid public scrutiny.