

3. Human Rights Obligations

All governments are obligated to guarantee ESCR. Most are obligated by virtue of having ratified specific treaties, but even the handful of states that have not ratified the major human rights treaties are obligated to respect general principles of international law and human rights.

State parties to the Covenant are obligated to respect the full range of ESCR contained therein. They must also report periodically to the Committee monitoring compliance with the Covenant, which is mandated to review state reports, accept NGO submissions, and issue specific recommendations regarding implementation of the Covenant.¹ In addition, states that have ratified other international treaties, such as the Convention on the Rights of the Child, are obligated to respect the relevant articles and principles concerning ESCR and report on compliance to an expert committee.

Even states that have not ratified international treaties on ESCR are bound to respect human rights principles that are part of “customary law,” law that has gained universal acceptance in the international community.² The Universal Declaration is widely considered to be part of customary law and therefore binding on all states, whether or not they have ratified subsequent human rights treaties.

Moreover, states are legally responsible for policies that violate human rights beyond their own borders, and for policies that indirectly support violations by third parties. For example, the International Court of Justice found the United States responsible for abuses committed by the contras in Nicaragua by virtue of US political and financial support.³ Humanitarian law also holds states responsible for the well-being of occupied civilian populations living outside the state's proper borders.⁴

It is important to note that, in addition to states, a broad range of non-state actors have duties under human rights law even though they have not ratified specific treaties. The General Assembly proclaimed in the Universal Declaration that “every individual and every organ of society shall Épromote respect for these rights and freedoms.”⁵ The Committee has affirmed this broad concept of human rights responsibility in observing that third parties, intergovernmental organizations and agencies, and the international community as a whole have legal obligations regarding ESCR.⁶ For example, speaking directly to the issue of free trade and development, the Committee has noted that “international institutions promoting measures of structural adjustment should ensure

¹ Alston and Quinn, see note 10.

² See Alston and Simma, “The Sources of Human Rights Law: Custom, *Jus Cogens* and General Principles,” *Australian Yearbook of International Law*, vol. 12 (1992).

³ Case Concerning Military and Paramilitary Activities in and against Nicaragua, Judgment of 27 June 1986, ICJ Rep. Para. 107-109. See also the Inter-American Court of Human Rights judgment in the Velasquez-Rodriguez Case that a state has a positive duty to prevent human rights violations occurring in territory subject to its effective control, even if such violations are carried out by third parties. Velasquez-Rodriguez Case, 28 ILM 291, para. 166 (1989); Case 7615 Inter-Am. Ct. H.R., OAS/ser.L/V/II.66, Doc. 10.

⁴ For example, the IVth Geneva Convention obligates occupying powers to “facilitate the care and education of children” and to ensure the availability of “foodstuffs, medical stores and other articles” for civilian needs. *IVth Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, Aug. 12, 1949, Arts. XXIII, L, 6 UST. 3516, 75 UNTS. 287.

⁵ UDHR, see note 2, Preamble.

⁶ The Committee observed that these obligations “are multidimensional. At the macro-level, they affect: (1) national and local governments and agencies, as well as third parties capable of breaching those norms, (2) the international community of States, and (3) intergovernmental organizations and agencies.” Id. (emphasis added) UN Doc. E/CN.4/Sub.2/1991/17, 18-19.

that such measures do not compromise the enjoyment of [for example] the right to adequate housing."⁷

Accountability of non-state actors is the most important frontier of human rights protection. In the post-Cold War era of increasing free trade, non-state actors such as the International Monetary Fund (IMF), the World Trade Organization (WTO), and private corporations have gained increasing control over global, national, and even local economic policies. These policies affect everyone everywhere, yet the policy-makers are not elected and their decisions are not subject to popular or democratic oversight. Demanding human rights accountability from this new set of institutions will be a long and difficult struggle, but one with tremendous implications for the well-being of billions of people.⁸

⁷ General Comment 4, see n. 11, para. 19. These obligations have been further highlighted by recent UN conferences, all of which have made explicit reference to IFIs, urging them to assess the impact of their policies and programmes on the enjoyment of human rights" and underscoring their "special responsibility" to promote human rights through international cooperation. See 1993 Vienna Declaration, Part II, para. 2; Agenda 21, UN Doc A/CONF.151/26 (vol. III), para 38.41; Copenhagen Declaration on Social Development.

⁸ See, Jochnick, "Challenging Impunity: Accountability for Non-State Actors," *Human Rights Quarterly*, vol. 21, no. 2, 1999.