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The International Covenant on Economic, Social and Cultural Rights of 1966 and its Optional Protocol of 2008

Introduction

The 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), together with the Universal Declaration and the International Covenant on Civil and Political Rights and its two optional protocols, form the so-called "International Bill of Human Rights", a universal system for the protection of human rights anchored in the United Nations.

The Covenant, as we will call it throughout this text, does not establish a territorial scope of application, but extends to any territory under the sovereignty of the State party.

This Covenant does not appear to confer rights directly, but rather makes them dependent on the fulfilment of certain positive obligations by states.

In particular:



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- The obligation to take measures by all appropriate means and within the shortest possible time.

- And the obligation to guarantee all rights without discrimination.

And who are the beneficiaries of the human rights recognised by the Covenant? On the one hand, the Peoples, since the Covenant recognises that:

- All peoples have the right of self-determination, and that....

- All peoples may freely dispose of their natural wealth and resources.

And, on the other hand, all individuals.

Rights recognised in the Covenant

But what are the social, cultural and economic rights protected by the Covenant? The list of protected rights is as follows:

- Right to work
- The right to just and favourable conditions of work.
- Trade union rights and the right to strike.
- Right to social security.

- Protection and assistance to the family.
- Right to an adequate standard of living.
- Right to the enjoyment of the highest attainable standard of health.
- Right to education.
- The right to participate in cultural life and to enjoy the benefits of scientific progress.

We must bear in mind, however, that there is the possibility of establishing limitations to these rights and that, therefore, they are not rights of an absolute nature. In any case, they must be limitations established by law, which will be admitted only to the extent compatible with the nature of these rights and for the sole purpose of promoting the general welfare in a democratic society.

The Covenant itself recognises the possibility of including limitations applicable only to persons who are not nationals of the State party (in which case the State must determine the extent to which it will guarantee the economic rights recognised) or specific limitations on the enjoyment of certain rights: for example, legal restrictions on the exercise of association, trade union and strike

rights by members of the armed forces, the police or the State administration.

Control mechanism

Knowing the recognised rights, we must now underline how States' compliance with their obligations under the Covenant is monitored.

The compulsory monitoring method is the submission of national reports on the measures adopted and the progress made. Under the reporting system, States undertake to submit a report on the measures they have adopted that give effect to the rights recognised in the Covenant and on the progress they have made in the enjoyment of those rights.

The Covenant provided for the first report to be submitted within one year of the date of entry into force of the Covenant in respect of each State party. Today, they are submitted every 5 years.

The procedure designed involved their submission to the Secretary-General, who then transmitted them to ECOSOC for review, and ECOSOC to the specialised agencies concerned and to the Commission on Human Rights (for consideration). ECOSOC then issued a report with

its general recommendations and a summary to all States in the General Assembly.

Since 1985, ECOSOC established a Committee on Economic, Social and Cultural Rights (by its Resolution ECOSOC 1985/17) composed of 18 independent experts elected by ECOSOC from among State candidates, which meets in Geneva (two sessions per year).

This Committee not only specifies the monitoring obligations, but is also responsible for issuing observations and recommendations.

The 2008 Optional Protocol

The system has been modernised with the entry into force of the 2008 Optional Protocol on 5 May 2013. This Optional Protocol is dedicated to revising and enhancing the Committee's powers to

- Receive and consider communications from individuals who claim that their rights under the Covenant have been violated.

- The Committee may also, in certain circumstances, undertake enquiries into gross or systematic violations of any of the economic, social and cultural rights set forth in the Covenant (3 States)

- Consider inter-State complaints (no State).

With regard to individual Communications (complaints), it should be noted that these must be made by or on behalf of an individual or group of individuals claiming to be victims of a violation of the Covenant by a State Party to the Optional Protocol that has recognised the competence of the Committee to do so.

Anonymous communications are not permitted.

The complaint should present a summary of the main facts of the case in chronological order, including the remedies pursued at the domestic level and the decisions taken by the national authorities (exhaustion of domestic remedies rule). The time limit for submitting a communication after exhaustion of domestic remedies is 1 year.

Once admissibility has been granted, the Committee will issue an opinion on the merits, giving the State concerned a period of 6 months to take measures to rectify the conflict.

On the other hand, the enquiry procedure may be initiated when the Committee obtains reliable information indicating grave or systematic violations of Covenant rights by a State Party. In this case, the

State Party will be invited to cooperate in the examination of the information and, to this end, to submit its observations thereon. Once the investigation has been completed, appropriate observations and recommendations will be made, and the 6 months deadline for action will be repeated.

In short: The 1966 Covenant on Economic, Social and Cultural Rights and its 2008 Optional Protocol form the basis for the protection of these rights, the protection and importance of which has been renewed in the wake of the 2030 Agenda and the Sustainable Development Goals.



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