

Examining the Debates on Economic, Social and Cultural Rights at the United Nations' Human Rights Council, 2006-2013

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DECLARATION

I declare that the dissertation entitled **Examining the Debates on Economic, Social and Cultural Rights at the United Nations' Human Rights Council, 2006-2013** submitted by me for the award of the degree of Master of Philosophy of Jawaharlal Nehru University is my own work. The dissertation has not been submitted for any other degree of this University or any other university.

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CERTIFICATE

We recommend that this dissertation be placed before the examiners for evaluation.

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Errors which remain are mine.

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List of Acronyms:

CAT	Committee against Torture (United Nations)
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations)
CEDAW	Committee on the Elimination of Discrimination against Women (United Nations)
CEDAW	Convention on the Elimination of Discrimination against Women (United Nations)
CERD	Committee on the Elimination of Racial Discrimination (United Nations)
CESCR	Committee on Economic, Social and Cultural Rights (United Nations)
CHR	Commission on Human Rights (United Nations)
CRC	Committee on the Rights of the Child (United Nations)
CRC	Convention on the Rights of the Child (United Nations)
ECOSOC	Economic and Social Council (United Nations)
FAO	Food and Agriculture Organization
FAQs	Frequently asked questions
GA	General Assembly (United Nations)
HC	High Commissioner (UNHCR)
HIV/AIDS	Human Immunodeficiency Virus / Acquired Immune Deficiency Syndrome
HLD	High Level Dialogue on International Migration and Development
HRC	Human Rights Committee HRC Human Rights Council
HRO/HUMRO	Humanitarian Relief Operations
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
IMF	International Monetary Fund
MDGs	Millennium Development Goals
NGOs	Non-governmental organizations
NHRI	National Human Rights Institution
OECD	Organisation for Economic Cooperation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights

PRSP	Poverty Reduction Strategy Paper (United Nations)
S &I	Standards and Indicators SC Security Council (United Nations)
SAPs	Structural Adjustment Programmes
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UNHCHR	United Nations High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
UNSC	United Nations Security Council
UPR	Universal Periodic Review
WFP	World Food Programme
WHO	World Health Organization
WTO	World Trade Organization

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Chapter 1

Introduction

This dissertation aims to describe the debates on economic, social and cultural rights at the United Nations' Human Rights Council (HRC), between the years: 2006-2013. In the past two decades, especially in the context of globalization wherein income gaps have been stark, interest in the promotion and protection of economic, social and cultural rights has received much attention. Inter-governmental organizations, non-governmental organizations (NGOs), academia, governments and judiciary have been engaged in deliberations as to the protection of these rights in their programmes, policies and case laws, and the need to respect them as a key to ensuring greater overall enjoyment of human rights. This is timely, particularly given that the denial of economic, social and cultural rights continues and is even intensifying, in wealthy and poor countries alike. As the introductory chapter, this segment of the dissertation seeks to put forward the basic framework of the substantive themes, research questions, hypotheses and methodology guiding the research.

The Human Right Council with its headquarters in Geneva is the key UN agency for deliberations on human rights. Established in 2006, as a successor to the UN Human Rights Commission, the HRC has been an important fore and platform for states and non-state actors to deliberate on various aspects of human rights obligations and responsibilities. Focusing mainly on the legal instruments available to the Organization, namely the International Covenant on Economic, Social and Cultural Rights and other related conventions, the study tries to draw attention to some of the key debates that took place in the HRC in the first five years of its existence.

Inter-state deliberations on any issue are by nature deeply political, and discussions in the HRC on human rights are no exception. Human Rights discourses have been broadly divided into generational phases. The first generation of rights refers to civil and political rights that include right to freedom of expression, association, equal representation etc. The second generation of rights comprises economic, social and cultural rights, such as right to health, education, housing, work etc. The third generation refers to collective group rights dealing with specific issues such

as the rights of minorities, refugees etc. It is important to note that such divisions are never watertight and that the fulfillment of one is very much dependent on the realization of others.

For example, the right to work cannot be fought for if workers are not allowed to make their own associations. Similarly workers as groups of people, have rights that they share in solidarity with others such as the right to adequate housing, social security benefits etc. This intermingling of rights is therefore an important consideration in defining the relationship that exists between economic, social and cultural claims and all other rights and freedoms. The division that is often sought to be created between generations of rights is therefore erroneous. While it is true that in contrast to civil and political rights that calls upon the State to simply refrain from interfering with individual freedoms; economic, social and cultural rights definitely require greater involvement of the State and higher levels of investment (both financial and human) to ensure their full enjoyment; yet the point remains that one set of rights do not necessarily precede the other.

The subject of economic, social and cultural rights encompass a broad range of rights that include the right to adequate food ,the right to housing, the right to take part in culture life , the etc. Indeed the broad sweep of rights that this category of rights entails definitely makes it a subject of political debate. Countries for example, are reluctant to explicitly give recognition to the wide set of rights that fall within the larger set of economic, social and cultural rights. As a result, many authors are of the opinion that economic, social and cultural rights are not justiciable since in many countries these rights are not capable of being invoked in courts of law. However, there are others who opine that the Limburg principles formulated in 1986 concerning the interpretation of the International Covenant on Economic, Social and Cultural Rights (ICESCR), does introduce an element of justiciability and possibility of moral enforcement of such rights in courts of law.

Review of Literature

Economic, Social and Cultural Rights as Human Rights

Are economic, social, and culture rights fundamentally different from civil and political rights, can each of us claim economic, social, and culture rights, what are the obligations of states on economic, social and culture rights, are such rights justiciable etc.? These are just some of the questions that scholars have raised through their writings on the meaning and scope of economic, social and cultural rights within the larger purview of human rights (Eide 1997, 21-40). The Vienna Declaration 1993 affirms that “all human rights are universal, indivisible and interdependent and interrelated” and that “the international community must treat all human rights in a fair and equal manner, on the same footing, and with the same emphasis (Vienna Declaration 1993).

The Kantian understanding of human beings being treated as an ends in themselves, not as a means to any other ends as they are embodiment of reason and rationality, forms the basis for the exposition of such claims.

The language of rights permeates and dominates our contemporary political, social and economic life. We have the right to life, the right to freedom of expression, right to equality etc. The concept of rights according to scholars is based on the “acceptance of ideas of personal autonomy, individuality, liberty, and human equality” (Ramaswamy 2015:236). As claims, rights represent a particular sort of “justification for a demand namely a fundamental moral principal that accords importance to certain basic individual values such as equality, autonomy or moral agency” (Waldron 1987:443). Legal rights are those that are accorded recognition by law and enforced by courts. The others that do not come within the purview of existing laws are moral and natural rights (Cranston 1973: 9-17). All legal rights are positive rights based on social recognition. Moral rights although not enforceable legally depend on their validity of them being morally justifiable.

The concern for economic, social and cultural rights emerged in Europe primarily in the context of industrialization in Britain. The demand for improvement in working conditions at the national level gave rise to the need to cooperate at the international level. As a result, following certain initial conferences the “International Association for Labour Legislation” was established in 1901 in Basel (Eide 1997: 27). Later in 1919 the International Labor Organization (ILO) was also established to look after the issues related to workers rights. The debate on economic, social and cultural rights became important once gain in the 1930s under welfare capitalism, wherein

the state undertook the responsibility to fund public programmes and policies in relation to these rights. In this endeavor the Nordic countries took the lead in institutionalizing practices that guaranteed the enjoyment of such rights.

The domain of economic, social and cultural rights extends across a vast area of rights such as the right to food, right to adequate housing, water, sanitation, right to education etc. They are particularly perceived as being conducive to development rather than as being central to establishing political stability. Economic, social and cultural rights are therefore better described as entitlements or necessary human goods that individuals must have and enjoy in order to live wholesome lives (Beitz 1984:172, McCloskey 1982:143). They may be defined as being basic to the project of human development.

Reference to economic, social and cultural rights may be found in treaties such as the UN Charter, article 1 (3), 55 and 56, the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, the Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 1965 article 5 (e), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979 articles 10, 11, 12, 14, the Convention on the Rights of the Child (CRC) 1989 especially articles 22-30, the Convention on the Human Rights of Migrant Workers and their Families (ICRMW) 1990, the Convention Relating to the Status of Refugees (RC) 1951, the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (GC IV) 1949, Additional Protocol relating to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts 1977, Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts 1977, Rome Statute of an International Criminal Court (ICC), 1998, articles 43 (6), Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), 2000, ILO Conventions, especially Equal Remuneration Convention 1951 Social Security (Minimum Standards) Convention, 1952 Discrimination (Employment and Occupation) Convention 1958, Equality of Treatment (Social Security) Convention, 1962; Indigenous and Tribal Peoples Convention 1989, and the Convention on the Rights of Persons with Disabilities (ICRPD), 2006. Member states

have a legal obligation to respect, protect, and fulfill economic, social and cultural rights and are expected to take progressive action to fulfillment these rights.

The Limburg Principles on the Implementation of Economic, Social and Cultural Rights and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, are some of the yardsticks that have been developed at the international level for assessing the progress of the implementation of these rights (Krennerich 2010:11). There have four ways through which economic, social and culture rights may be measured – these include by substantiating claims relating to ESCR violations, by identifying and drawing attention to access of such rights to marginalized and vulnerable groups, by making transparent the process of policy making and by promoting public participation in monitoring. Besides this, case law related to civil and political rights have been made use of to counter violations of economic, social and cultural rights. For example, the principle of non-discrimination (Article 26 of ICCPR) is often cited to ensure that the State does not differentiate between persons belonging to different groups on issues involving fulfillment of rights of economic, social and cultural nature.

The claim of universalism that pervades the language of rights has however not gone unchallenged. Cultural relativists argues that no human rights are absolute, that there is infinite cultural invariability, and that all cultural practices are morally equal and valid (Shestack 2003: 30). Cultural relativists advocate for an indigenous notion of human rights. K Pannikar argues that human rights are merely one window through which one particular cultural envisages a just human order for its individuals (Howard 1997-98: 98). This assumes special importance in the context of economic, social and cultural rights. According to one scholar, a cultural challenge to human rights arises at present from three distinct sources - from resurgent Islam from within the West itself and from East- Asia (Ignatieff 2003: 407). The next segment of the chapter examines precisely these themes by focusing on the discussions at the level of the UN.

UN and Economic, Social and Cultural Rights

Article 55 of the UN Charter (adopted in 1945) prescribes that "the United Nations shall promote: (a) higher standards of living, full employment, and conditions of economic and social progress and development. Towards this, the UN through deliberations in various organs such as the General Assembly, the Economic and Social Council, particularly the Commission of Human Rights, the International Court of Justice, and of late the Security Council, have been responsible for drawing up codes related to the field of economic, social and cultural rights.

For example, apart from important Conventions, a range of secondary legal sources on economic, social and cultural rights have been provided by the United Nations Committee on Economic, Social and Cultural Rights located within the Office of the High Commissioner on Human Rights (OHCHR) at Geneva. The Committee has been central in developing the normative definition of key economic, social and cultural rights, interpreting the role of state parties to the ICESCR and monitoring protection and violence of such rights. The Committee issues periodic guidelines in the form of General Comments explaining the potential of the rights falling within the ambit of economic, social and cultural rights (Kaufman 2008:409).

The UN's role in promotion of such rights has been documented by many scholars. Some scholars such as Forsythe have focused on the political debate surrounding the interface between civil and political rights and economic social and cultural rights. There are others scholars who have focused on specific themes such as right to food, right to education etc. The reports brought out by the Human Rights Council especially by the Special Rapporteurs appointed by them for investigating violations of such rights also form an important source of literature. In "Themes emerging from the United Nations Human Rights Council", Smith (2011), has defined the mechanism of the Universal Periodic Review (UPR) as representing a unique opportunity for every UN member state to be scrutinized in turn on a regular basis, as many states have not yet ratified all the core international human rights treaties.

The Universal Periodic Review (UPR) is an innovative mechanism by which the Human Rights Council reviews the human rights records of all U.N. member states every four years. By this mechanism countries got an opportunity discuss actions taken with regard to fulfillment of important human rights. Special Procedures another U.N. Charter based mechanism, serves as the UN's "eye and ears" for addressing human rights issues in specific countries or aiding discussion on thematic issues, usually called by a Special Rapporteur, Special Representative, or

Independent Expert, or a working group on the subject. Currently mandates exist for 33 thematic and 8 country-specific special procedures. Thematic mandates cover a broad range of issues including adequate housing, education, extreme poverty, and health. In recent years, U.N. experts, including the Special Rapporteur on the right to education, the Independent Expert on the question of Human Rights and Extreme Poverty, the Special Rapporteur on the Human Rights of Migrants, the Independent Expert on the Human Right to Water and Sanitation, and the Special Rapporteur on the Right to Adequate Housing have all made official visits for gathering information on the implementation of the above rights to various countries (Kaufman 2004: 420).

Definition, Rationale and Scope of Study

Economic, Social, and Culture Rights (ESCR) like other human rights, contain dual freedoms: freedom from the State and freedom through the State. For example, the right to adequate housing covers a right to be free from forced evictions carried out by State agents (freedom from the State) as well as a right to receive assistance to access adequate housing in certain situations (freedom through the State). They have become increasingly well defined in national, regional and global legal systems, in laws and regulations, in national constitutions, and in international treaties. Accepting them as human rights creates legal obligations on States to ensure everyone in the country can enjoy these rights and to provide remedies if they are violated. As with other human rights, recognizing economic, social and cultural rights together with the principle of non-discrimination puts the focus on the most excluded, discriminated and marginalized groups in society.

The rationale of this study is that economic, social and culture rights are necessary for human development and that these rights should be protected and promoted. While the primary obligation lies with individual states for protection of these rights, international organizations to play an important role. The study focuses on the work of the UN Human Rights Council and its role in the protection and promotion of such rights at the international level.

Research Questions

1. What does the recognition of economic, culture and social rights by the international community imply with regard to the responsibilities of states and other non-state actors?
2. What is the role of UN and other treaty human bodies for fulfillment of economic social and culture rights?
3. What are the mechanisms available to the UN Human Rights Council for the promotion and protection economic, social and culture rights?
4. What are the items and agenda adopted in this regard by the Human Rights Council in period 2006-2013?

Hypothesis

External factors such as globalisation and the onset of the global financial crisis, played an important role in the Human Rights Council taking up issues related to fulfillment of economic, social and cultural rights.

Research Methodology

Methodology simply refers to a way of doing research or the path on which one proceeds. It is a structure of approaches and methods which are employed by researchers.

The main focus of the research is on the debates on economic, social and cultural rights at the UN Human Rights Council between the period, 2006-2013. It therefore depends official reports, reports submitted by special experts, and the Universal Periodic Reports. The research design is both exploratory and descriptive relying on both primary (government documents, resolutions passed by various international organizations and reports of many agencies) as well as secondary (books, journals, and articles) sources.

Tentative Chapterization

Chapter1- Introduction

As the introductory chapter, this details out the main objectives and themes of the study on Economic, Social and Cultural Rights, and the role of the Human Rights Council in relation to the protection and promotion of such rights.

Chapter 2- Impact of Globalisation on Economic, Social and Cultural Rights

The second chapter deals with the impact of globalisation on the realization of economic, social and cultural Rights. It mainly focuses on the period of economic crisis of the 1980s when countries had to take economic assistance from the IMF and World Bank and the impact of such programmes on the fulfillment of such rights.

Chapter 3- United Nations and the Codification of Economic, Social and Cultural Rights

Codification of Economic, Social and Cultural Rights within the United Nations forms the focus of chapter three. The chapter looks at various UN instruments and bodies before focusing on the UN Human Rights Council in particular.

Chapter 4 – Working of the Human Rights Council, 2006-2013

The role of the Human Rights Council in the protection and promotion of economic, social and cultural rights forms the main subject of this chapter. Focusing on the working of the HRC between 2006-2013, the chapter examines some of the important debates around the issue of economic, social and cultural rights taking place at the Council.

Chapter 5- Conclusion

The conclusion provides a summary of the main findings of the research.

Chapter II

Impact of Globalization on Economic, Social, and Cultural Rights

This chapter focuses on the period of 1980s -1990s, addressing specifically the impact of globalisation on the realization of economic, social and cultural rights across countries. The chapter is broadly divided into three main sections. The first takes a look at the phenomenon of globalization. The second broadly deals with the impact that globalization had on the economic and social development of communities, while the third focuses on the renewed interest in the important of economic , social and cultural rights of communities.

Economic, Social and Cultural rights as recognized by the international community refer to a set of rights that relate to fulfillment of basic human needs such as the right to food, adequate housing, education, health, standard of living and so on. These rights are considered as basic for human survival. In the last twenty years of globalization, the promotion and protection of economic, social and cultural rights has received much attention at the international level, from governments, non-governmental organizations (NGOs), academia, who have been engaged in collective deliberations as to the protection of these rights in their programmes, policies and case laws, and the need to respect them as a key to ensuring greater overall enjoyment of human rights. This attention has largely been forced upon the international community by the failure to achieve basic parameters of development, in the backdrop of globalization.

This chapter that focuses on globalization and its impact is divided into two broad segments. The first part deals with the phenomenon that we generally refer to as globalization. It attempts to place the process in a historical context, before coming to the discussion on the present phase and its characteristics. The second part deals specifically with the experience and negative impact that economic adjustment and reform policies initiated by the International Monetary Fund and the World Bank on the lives of people, and the large scale criticism of such policies leading to a renewed focus on economic and social well being of communities living in a globalised world.

Globalization: An Overarching Phenomenon

The phenomenon of globalization permeates almost all levels of our daily lives. Globalisation as a process is changing the ways in which people interact across boundaries, notably physical (such as the nation-state), temporal (such as instantaneous communication via email), and cognitive (such as cultural identity). new actors (MNCs, WTOs and international NGOs, regional blocks and policy coordination groups such as G-7, G- 10, G-22 and OECD), new rules and norms (individualized liberalism, democracy, human rights movements, consensus on global environment and peace and multilateral agreements such as Intellectual Property Rights) and new faster and cheaper means of communication channels such as internet, cellular phones, fax, computer-aided design, etc (UNDP: 1999).

While its impact is fiercely debated, there is no single definition of the term globalization that captures all facets of this very complex, multifaceted phenomenon. Today most of the serious issues related with the phenomena like question of capitalism, inequality, power, development, ecology, culture, gender, identity, are all being studied under the broad rubric of globalisation. The term globalisation is used to describe a variety of changes in a number of fields like economic, social, cultural, and political with wide ranging consequences and effects. From the consolidation and expansion of corporate power, to the much celebrated revolution in information technology; expanding, transnational movement of goods, services, and capital; increasing homogenization of consumer tastes; sharp increases in wealth and poverty, the 'McDonaldisation' of food and culture, and the growth of liberal democratic ideas are all, in one way or another, attributed to globalisation (Guttal 2007: 524).

David Held and his colleagues define globalisation as “the widening and deepening of worldwide interconnectedness in all aspects of contemporary social life, from the cultural to the criminal, the financial to the spiritual” (Held 2003,2). Similarly for Risse, globalisation essentially means the internationalization of financial market and production networks and erosion of border and end of the nation states” (Ferguson and Mansbach 2012: 17). Jan Aart Scholte identifies five different definitions of globalization - the first is internationalization meaning cross border relations between countries and growth of international exchange and interdependence, second, globalisation as economic liberalisation that removes artificial state restrictions on borderless markets, a third conception is Universalisation that local cultures will be synthesized into a sort of “planetary humanism” a fourth definition relates to

westernization or modernization in non-Western tradition societies and by fundamentalist religious movement and fifth approach is respatialization “increased transplanetary connections” with among persons”(Scholte 1997: 430).

The phenomenon of globalisation is not new and may be traced to the early stages of capitalist growth dating back to the colonization of Asia, Africa, and the Americas by the dominant European powers. Its birth is related to the expansion of capitalism, the search for new markets, new sources of wealth, industrial revolution, which resulted in the establishment of international commodity markets and trade links. This aspect of the globalization process has been highlighted in the work of many scholars like Wallerstein (1980), Baran (1957), Frank (1978, 1982), Alavi (1982) and Frank (1978, 1982).

According to these scholars globalisation as a process is not a spontaneous outcome of the growth of market forces but a result of well planned policy of certain economically powerful states. In its contemporary phase, the process took hold in the early 1980s when the Reagan administration in the USA and the Thatcher government in the UK, lent their support to neo-liberal ideas as the basis for economic policies through the reforms package introduced by international finance institutions (IFIs') in the developing world.

The Thatcher and Reagan era signalled an end to state-enforced regulations constraining economic growth. Structural Adjustment Packages (SAPs) provided 'economic reforms' aimed at establishing market economies. In that reducing government expenditure as social spending in areas such as health and education; liberalising imports; removing national restrictions and controls on foreign investment and capital mobility; devaluing the national currency to make exports more competitive and thus generate revenues to service the external debt; privatising state enterprises, utilities, and functions; and removing protections for workers and local producers that were viewed as restrictive to private investment and capital mobility. SAPs sought to remove the government from the economy, thus creating spaces for the expansion of private, transnational capital through corporate activity. Guttal argues that “the ideology underpinning SAPs was the same as that which impelled globalisation that markets unfettered by national regulation are efficient allocators of resources and, by tying themselves to borderless world markets, poor countries can achieve rapid economic growth, which in turn will generate the revenues needed for national development”(Guttal 2007:527).

The wide spread adoption of neo-liberalism in many of the world's nations led to sharp increases in state support for the private sector and allowed companies to concentrate resources through mergers and acquisitions. Soon, corporations were often bigger sources of capital than the state and its financial institutions. By the mid 1990s, 51 of the world's top 100 economic entities were transnational corporations (TNCs), including General Motors, Wal-Mart, Exxon Mobil, Toyota Motor, Royal Dutch Shell, and IBM (Guttal 2007: 525). While the World Bank and the IMF, along with the WTO and the specialised agencies of the UN provided the economic and financial architecture for globalisation, others like the Organization of Economic Co-operation and Development (OECD) and the World Economic Forum served as forums to determine the rules of capitalist global governance. In this context, Sklair's argument about the role played by the transnational class in supporting the project of globalization becomes important. (Sklair 2002).

Such a transnational class comprising of executives of multinational corporate companies, bureaucracy and politicians (who take decision making positions in international organisations or structures of governance - such as the United Nations, IMF, World Bank, European Union, professionals (such as IT specialists, and finance and management consultants) and media, play an important role in the socialization of the benefits of globalization worldwide (Dhanagare 2003:10).

Globalisation and Economic, Social and Cultural Rights

Globalisation is undoubtedly a deeply political phenomenon. While the proponents of globalisation claim that it creates convergences of income, access to knowledge and technology, consumption power, higher living standards, its critics differ in assessment. According to supporters of globalization by integrating local and national economies into a global economy that is unfettered by protectionism, economic growth will increase, wealth will be created, and more people in the world will be able to enjoy the advantages and fruits of modernization, technological progress, and civilization (Guttal 2007: 524). However, there are others who assert that the effects of globalization are not automatically the same for all sets of people. They cite the negative impact of the SAPs on the lives of the poor as evidence of the growing gaps in development outcomes of people within and across countries.

Between 1980- 85 there were 47 countries undertaking economic reforms as per the SAP package advocated by the IMF and the World Bank. (Cornia 1987:12).The IMF gave loans to countries for improving balance of payment problems while the World Bank gave Structural Adjustment Loans (SALs) or Structural Adjustment Credits (SACs) for development in particular sectors. These loans came as a package for countries borrowing resources from these institutions. In Africa, 84 per cent of the population experienced negative growth rates of GDP per capital (Cornia 1987.p 18). There were also direct effects of the programme through cuts in government health expenditure, reduction food subsidies, sharp increase food prices ad fiscal policy typically implementation. In Ghana worsening health and nutrition resulted in the infant mortality rate which had fallen about 80 per 1,000 in the 1970, to rise to 100 in 1980 and then to 110-120 period of 1983- 1984.

In the early 1980s, the United Nations Children’s Fund (UNICEF) began reporting that most cases of malnutrition reported were among women and children living in countries of Latin America and Africa, undergoing structural adjustment. Research by UNICEF and various NGOs in the field revealed that after a decade of Structural Adjustment programmes, the number of people living in poverty in Latin America rose from 130 million in 1980 to 180 million by the beginning of the 1990s (Hoy 1998 :54). “A World Bank study mentioned that adjustment loans in seven countries showed that only two were able to increase their export earnings substantially (Hoy 1998:55). The rise of unemployment and fall in wages and the migration to areas with marginal land and cuts in government spending worsened the situation.

The impact of globalization on economic social and cultural rights has therefore been responsible for generating very important debates between scholars and practitioners. On the one hand, those who believe liberal, free-market arguments assert that globalization has a positive impact on economic, social and cultural rights as foreign direct investments lead to generation of wealth through creation of jobs, better and more employment opportunities. This increases economic growth (the primary generator of wealth), living standards, and political stability (Payne 2009:415). Therefore, according to free market supporters economic liberalization creates an increase in the available wealth, which is not only for the elite but for all in the society. On the other hand, those critical of globalization claim that it negatively impacts respect for development because multinational companies do not create enough employment or provide job

security for workers. These companies according to them from the very start are drawn to the developing world because of cheap raw materials and low wages.

Critics of globalization lay much more emphasis on its impact on human rights especially on economic social and cultural rights, of particularly the poor. Impoverishment and lowering standards of living, increasing inequality, discrimination, deprivation of satisfaction of basic needs such as food, clean water and housing, create conditions of vulnerability that affects not just the present generation but future generations as well in terms of the capacity to develop. “Governments, particularly of the developing countries, have been pressured to sacrifice human rights for the sake of globalization. Many authors provide evidence on the adverse effects of government adoption of globalization economic agreements on basic indices of human development due to the reduced overall government spending on services and increasing tendencies towards privatization of these services. Shiva for example argues that “ during 1979-81 and 1992-1993, calorie intake declined by 3 percent in Mexico, 4.1 percent in Argentina ,10.9 percent in Kenya , 10.0 percent in Tanzania , and 9.9 percent in Ethiopia In India, the per capita cereal consumption declined by 12.2 for rural areas and 5.4 percent in urban areas (Ahmed 2002: 7).

Under the Trade Related Intellectual Property (TRIPs) agreement of the World Trade Organization, countries have to implement patent laws granting exclusive, monopolistic rights to the pharmaceutical and biotech industry; this prevents countries from producing low cost generic drugs. Patented HIV/AIDS medicine costs US\$15,000 while generic drugs made by India and Brazil cost US\$250-300 for one year’s treatment. Protection of Intellectual property rights in the form of patents are therefore negatively impacting the rights of patients to health care” (Ahmed 2007: 5).

Globalization has also resulted in the violation of the fundamental right to work. In 1995, the ILO “announced that one third of the world’s population was either unemployed or underemployed. However instead of creating employment security, globalization encouraged of rampant casualization and informalization of labor, given the flexible norms that companies adopted vis-à-vis workers. Rajamoorthy mentions that “only 8% of the labor force in India is in the formal economy while 90% works in the informal economy have no legal protection or

security and are subject to ruthless exploitation. Many companies, including TNCs get rid of their unionized labor force and moved their operations to low wage and depressed areas to avail themselves of the large supply of unorganized and unprotected, mainly female labor” (Ahmed: 2007) .

Hobsbawm and Kapstein argue that worst employment crisis is being faced by the world after in 1930s, with about one-third of the earth's 2.8 billion workers being either jobless or underemployed. New labour saving technologies have increased problems for workers. Global competition and financial squeeze on governments, have given private companies the flexibility to hire and fire workers, leading to growing income inequality, job insecurity, and unemployment (Garg 2005, 820). Due to closure of uneconomic units, shrinkage in public sector employment, reduction in expenditure in different activities of governments many workers in developing countries have lost their jobs. Competition has forced restructuring of many units. “This involves labour restructuring leading to loss of jobs and increased unemployment in different forms.

Impacts of globalisation on women’s labour have been observed to be far more complex than generally assumed. It was found that feminization of work and in formalizations caused by globalisation have had a dual effect. On the one hand while they have contributed to women' s emancipation and empowerment, on the other these very processes have led to destitution and class polarization between the native elite women and the domestic (Cheng:1999).

Statistics brought out by the Institute for International Economics in 2001 show the challenges that confront the world with regard to globalisation (Hfbaur 2001).

- Half the world nearly three billion people live on less than two dollars a day.
- The top 5% of the world’s richest people enjoy 82% of the expanding export trade and 68% of foreign direct investment –while the bottom 5%, barely more than 1%.
- In 1960, 20 % of the world’s people in the richest countries had 30 times the income of the poorest. In contrast in 1997 20%--of the same had 74 times as much.
- A few hundred millionaires now own as much wealth as the world’s poorest 2.5 billion people.

- The combined wealth of the world's 200 richest people hit US\$1 trillion in 1999; the combined incomes of the 582 million people living in the least developed countries for the same period was approximately US\$ 146 billion.

Globalisation has therefore had very mixed results. The deprived are exposed daily, if not every minute to images and evidences of the huge gap in standards of living between the rich and the poor. There is enough evidence that the world's wealth is in general, rapidly increasing due to the advance in science and technology and that it is more than enough to satisfy the needs of all the dwellers of the globe. Globalisation has also led to overexploitation of children of the third world, social polarization and exclusion all over, leading to what is called the "black holes of informational capitalism"(Castells 1998)

Promotion and Protection of Economic, Social, and Cultural Rights: Institutional Responses

Globalization has led to an increased responsibility of all international actors to ensure that negative impact of globalization on populations, are addressed. International institutions and scholars have responded with various proposals for mitigating the adverse effects of unregulated liberalisation and privatisation.

The World Bank for example given the negative publicity of its programmes, was forced to go in for a more humane form of adjustment and reforms, by increasing its investments in the social sector. Social protection during the adjustment phase specifically targeting the vulnerable population became a key strategy of the Bank's adjustment operations. For example, while previously the Bank's economic adjustment programmes had largely ignored questions of well being of persons working in the small farm sector in agriculture; by the 1990s there was a distinct change with the Bank willing to address specific problems of the poor engaged in this sector. These included a variety of measures such as funding nutrition programmes for families, providing agricultural inputs for farmers and investing in agricultural research.

Similarly the ILO in the 1998 Declaration on Fundamental Principles about Rights at Work, pressed for an international consensus on the content of the core labor standards that provide a

social floor to the global economy and In 1998, the ILO adopted the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention No. 182, Worst forms of Child Labour Convention (1999, Convention No. 182), Part Time Work (1994, Convention No. 175), Employment Promotion and Protection (1998, Convention No. 168), Protection of worker claim (Employment 's Insolvency) (1991, Convention No. 178).

Both the ILO and the UNDP have launched special public work programmes (SPWPs) and many countries have responded by agreeing to make work available during periods of recession and adjustment by investing specifically in public work schemes The UNDP, has also created several development strategies that have particular relevance for human rights such as sustainable human development programming with a focus on eliminating poverty, targeting disadvantaged or excluded groups thereby linking development with social justice and addressing governance issues (such as corruption, the rule of law, participation, democratization, and accountability) in which human rights have been integral but, all too often, not explicitly spelled out and (UNDP: 1998).

In a 1998 statement on globalization and economic, social, and cultural rights, the UN Committee on Economic, Social and Cultural Rights (CESCR) expressed the negative impact of globalization on the enjoyment of economic, social, and cultural rights, and called on states and multilateral institutions to pay attention for a rights-based approach to economic policy-making. The CESCR urged WTO members to adopt a human rights approach at the conference, recognizing the fact that, “promotion and protection of human rights is the first responsibility of Governments.” The Commission on Human Rights also affirmed that, “the exercise of the basic rights of the people of debtor countries to food, housing, clothing, employment, education, health services and a healthy environment could not be subordinated to the implementation of structural adjustment policies and economic reforms arising from the debt” (Stewart 2004: 469)” The Special Rapporteurs of the UN working on different aspects of globalization and its impact on the full enjoyment of human rights asserted that, “the primacy of human rights law over all other regimes of international law is a basic and fundamental principle that should not be departed from (Rakshit 1991:453)

The purpose of social policies during adjustment was therefore to expand the supply of basic goods and services, particularly to the poorest segments of the society.

In this context the Millennium Declaration of 2000 set out an ambitious of international agenda to tackle the peace and security, development, human rights, and the environment. Alongside development goals on poverty, water and education, commitments were also made to promoting democracy and respect for all human rights. This included the right to development and relevant economic, social and cultural rights, with a particular focus on the rights of minorities, women and migrants, and the right to access to information there were eight goals that were identified for fulfillment by the year 2015. These were:

- (i) eradicate extreme poverty and hunger;
- (ii) Achieve universal primary education,
- (iii) promote gender equality and empower women,
- (iv) reduce child mortality,
- (v) improve maternal health,
- (vi) combat HIV/AIDS, malaria and other diseases,
- (vii) ensure environmental sustainability and
- (viii) develop a global partnership for development.

These goals broadly connected with the subject of economic, social and cultural rights were drawn up by the United Nations Secretary-General to be implemented in collaboration with other international actors. The table below provides a summary of the goals and their interface with various dimensions of human development.

Table 1: Millennium Development Goals: Linkages between Targets and Human Rights

Goals and Targets		Human Rights
Goal 1	<i>Eradicate extreme poverty and hunger</i>	
	People having income less than 1 \$ day	<i>Right to adequate standard of living</i>
	Employment for all women and youth and decent work.	Right to work
	People suffering from hunger between 1990 to 2015.	Right to food

Goal 2	<i>Achieve universal primary education</i>	
	Ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling.	Right to Education
Goal 3.	<i>Promote gender equality and empower women</i>	
	Eliminate gender disparity in primary and secondary education, preferably by 2005, and in all levels of education no later than 2015.	Right to equality and education
Goal 4.	<i>Reduce child mortality</i>	
	Reduce by two thirds, between 1990 and 2015, the under-five mortality rate.	Right to life
Goal 5.	<i>Combat HIV/AIDS, malaria and other diseases and improve maternal health</i>	
	By 2015 reverse the spread of HIV/AIDS.	Right to Health
	Universal access to treatment for HIV/AIDS for all those who need it.	Right to Health
	Reverse the incidence of malaria and other major diseases.	Right to Health
Goal 6.	<i>Improve maternal health</i>	
	Reduce by three quarters, between 1990 and 2015, the maternal mortality ratio.	Right to life and health
	Achieve by 2015, universal access to reproductive health.	Right to life and health
Goal 7.	<i>Ensure environmental sustainability</i>	
	Integrate the principles of sustainable development into country policies and programmes and reverse the loss of environmental resources.	Rights relating to environmental health
	Reduce biodiversity loss, by 2010, a significant reduction in the rate of loss.	Rights relating to environmental health
	Reducing by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation.	Right to water and sanitation
	By 2020 achieve a significant improvement in the lives of at least 100 million slum-dwellers.	Right to adequate housing
Goal 8.	<i>Develop a global partnership for development</i>	
	Cover aid, trade, debt, landlocked and small island States.	Right to development
	In cooperation with pharmaceutical companies, provide access to affordable essential drugs in developing countries.	Right to Health

Source: UN

Concluding Remarks

The 1980s and the beginning of the 1990s have been identified as the dark period of contemporary history by scholars. Given the widespread opportunities that were ushered in by the wave of globalization; the negative consequence of unregulated capitalism on the economic

and social well being of peoples have indeed created a situation of grave concern. While those at the helm of affairs, be it in the international financial and economic organizations or at the level of individual governments, have been forced to accept the challenges that are posed by globalization and have sought to introduce new ways of dealing with them, the situation nevertheless remains grim. For example, while the World Bank may have adhered to the call for increasing spending in the social sector in countries undergoing adjustment, it is important to note that it hasn't given up on the programme of reforms either. A human face to adjustment cannot hide the grave challenges that societies face in the context of globalization.

Having said that, we now move onto the mechanisms that have been developed within the UN system to monitor the promotion and protection of human rights. The UN is a unique inter-governmental organization, with a near universal membership. While on the economic front, it may not have the financial powers like those enjoyed by the Bretton Woods organizations,; yet on the social front, it definitely provides a platform for countries to air their grievances aloud. This is not say that there are no power politics at play. Like other international organizations, the UN also is open to pulls and pressures from different quarters, especially the economically powerful states of the world. However, one can't deny the important role that it plays in terms of standard setting. Functional cooperation is the key to international society. In the absence of a World Government, the UN is probably the only fore for state and non-state actors to articulate their concerns on important matters of the day including issues related to human rights violations.

Chapter 3

United Nations and the Codification of Economic, Social and Cultural Rights

This focus of this chapter is on the different norms and standards established by the United Nations for the protection and promotion human rights such as economic, social and cultural rights. While the principal organs like the General Assembly, Security Council and the Secretariat all play a role in the formulation of norms and standards, it is the Economic and Social Council where the functional responsibility for monitoring of human rights primarily lie. The UN relies on treaties and conventions to get member states to comply with human rights standards and norms.

UN Mechanisms and Procedures

The Charter of the United Nations defines the promotion of universal respect for, and observance of human rights and fundamental freedoms as one of the basic objectives of the organization. It is important to note that at the time of the drafting of the Charter, the Latin American countries pushed that idea inclusion in an International Bill of human rights. “Some of the consultants from the forty-two NGOs invited by the U.S state department to advise the American delegation met with U.S Secretary for case of human rights provision”(Roosevelt 1947:4). The Charter of UN describes in Article 13(1) calls upon the General Assembly to “initiate studies and make recommendations for the purpose of promoting international cooperation in the economic, social, cultural, educational and health field and assisting in the realization freedom to all without any distinction as to race, sex, language or religion” In Article 55, the charter recommends the promotion of “higher standards of living, full employment, and conditions of economic, and social progress and development, solutions of international economic, social, health and related problems and international cultural and educational cooperation”. Article 62 of the Charter calls upon the Economic, Social and Council to initiate studies and reports and make recommendations for the purpose of promoting respect for and observance of human rights and fundamental freedoms for all”. It also gave the ECOSOC the responsibility of forming “commissions in economic and social fields and for the promotion of human rights” (Article 68).

As a result, right from the start expectations prevailed that the UN would be able to undertake the task of preparing a document that would provide a universal framework for the promotion and protection of human rights for all. Through carefully conducted deliberations at the level of the General Assembly and the Economic and Social Council, particularly the Commission of

Human Rights established in 1946, the UN was able to draw up a universal code called the Universal Declaration of Human Rights (UDHR) in 1948.

The UDHR was a major policy document that sought to lay down the essential framework of a universally applicable human rights regime. Henry Steiner and Philip Alston, two intellectual leaders of the human rights movement, call UDHR as a “the parent document” (Mutua 2007:554). Hans Kelsen, Karl Vasak noted that the UDHR served as a source of inspiration for other binding instruments for the protection of human rights (Vyver: 144). However, other scholars such as Rajai-Khorasani, have argued that the UDHR is largely a Western construct, that fails to recognize the cultural requirements of the Muslim community (Mayer 2007: 9). Similar opinion is voiced by another scholar who argues that the language of the Universal Declaration derived from western religious and political philosophical traditions, notably Christianity and the Enlightenment, does lend credibility to the claim made by cultural relativists (Tuijl 2000: 619).

In 1946, at the time when the UDHR precepts were being founded, more attention was paid to the mechanisms by which the rights would be instituted within the UN System than the meaning and concept of the rights themselves. According to Evans, ‘endless debate about the moral and philosophical foundations of human rights w[ere] seen as a threat to achieving this task (Evans 2011, 10). As an idea while the UDHR precepts were welcome to states, Cold War politics of the day swayed the debate in another direction. While the UDHR itself made no distinction between rights, the distinction appeared in the context of the deepening cold war tensions between East and West. “The call for including economic and social rights in any international law on human rights was seen as ‘socialism by treaty,’ ‘un-American’ and unacceptable by many influential groups within the United States (Evans 2011,9).

The West led by the United States of America demanded that the rights contained in the UDHR be dealt with in two separate conventions, one dealing with civil and political rights (ICCPR) that it championed and the other backed by the Soviet Union on economic, social and cultural rights (ICESCR). The market economies of the West tended to put greater emphasis on civil and political rights, while the centrally planned economies of the Eastern bloc highlighted the importance of economic, social and cultural rights. This led to the negotiation and adoption of

two separate Covenants—one on civil and political rights, and another on economic, social and cultural rights. However, this strict separation has since been abandoned and there has been a return to the original architecture of the Universal Declaration. In recent decades, human rights treaties such as the Convention on the Rights of the Child represent a holistic approach to rights promotion and protection.

Figure 1 provides a summary of the functional importance given to human rights by different organs of the United Nations.

In 1968 the United Nations convened the international conference on human rights in Tehran Iran review of the Universal Declarations of Human Rights (UDHR) in 1948 and then twenty five years later in 1993 the world conference was held on human rights in Vienna conference, Austria. “The objectives of the 1993 World Conference on Human Rights as specified by the

United Nations General Assembly was to review and assess the progress that had been made in the field of human rights since the adoption of the Universal Declaration of Human Rights and to identify obstacles to further progress in this area and ways in which they could be overcome (Vyver:126). The implementation of economic, social and cultural rights received a boost in 1985 with the establishment of a new UN Committee on Economic, Social and Cultural Rights. The Committee is a body of 18 independent experts established through ECOSOC Resolution 1985/17 of 28 May 1985, to monitor the implementation of the ICESCR.

In June 1986 a conference was held in Maastricht at which a group of experts in international law and representatives of the UN and its specialised agencies discussed the nature and scope of the obligations of States Parties under the ICESCR. The result of this conference was that unanimous adoption of the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights. In 1993 eight years after the creation a Committee on Economic, Social and Cultural rights (CESCR) the Special Rapporteur on the Realization of Economic, Social and Cultural Rights, Danilo Turk, recommended a seminar for indicators progressive realization of economic, social, and cultural rights (ESCR). Experts from around the world created the Limburg Principles on the Implementation of Economic, Social and Cultural Rights and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, which were later adopted by the CESCR as accurate interpretations of the Covenant's obligations” (Welling 2008:936).

Table 2: UN Conventions Related to Economic, Social and Cultural Rights

S. no	Name	Year of Adoption	Ratification (by countries)
1.	International Convention on the Elimination of All Form of Racial Discrimination	21 Dec 1969	87
2.	International Covenant on Economic, Social and Cultural Rights	16 Dec 1976	70
3.	Convention on the Elimination of All Forms of Discrimination against Women	18 Dec 1981	80
4.	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	10 Dec 1987	81
5.	Convention on Rights of the Child	20 Nov 1990	140
6.	Optional Protocol to the Convention on the Elimination of Discrimination Against	10 Dec 2000	80

	Women		
7.	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography	25 May 2002	121
8.	International Convention on the Protection of the Rights of all Migrant Workers and Member of their families	18 Dec 2003	38
9.	Optional Protocol to the Convention against Torture and other cruel, inhuman or Degrading Treatment or Punishment	18 Dec 2006	75
10.	Optional Protocol to the Convention on the Right of Person with Disabilities	12 Dec 2008	92
11.	Convention on the Rights of Persons with Disabilities	13 Dec 2008	159
12.	International Convention for the protection of all Persons from enforced Disappearance	20 Dec 2010	94
13.	Optional Protocol to the Covenant on Economic, Social and Cultural Rights	10 Dec 2013	45

Source: UN

To ensure monitoring of implementation of these rights the Commission followed a system of appointment of experts called Special Rapporteurs to look into various aspects of implementation of rights such as the right to housing, right to education, and right to food, and realization of economic, social and cultural Rights. Table 3 provides a glimpse of the various areas where Special Rapporteurs and Independent Experts have been appointed by the Commission on Human Rights. The Office of High Commissioner for Human Rights (OHCHR) works as the nodal agency coordinating the work of different experts. Following Secretary-General Kofi Annan's call for human rights to be mainstreamed throughout the UN system emphasized the human rights framework in implementing their mandates” (Robinson 2004:867).

Table3: Special Rapporteurs on Different Areas of Economic, Social and Cultural Rights

S.No.	Title	Mandate established in/ by	Mandate extended in/ by
1.	Special Rapporteur on adequate	2000 Commission on	2007 Human Rights

	housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context	Human Rights	Council 2010 Human Rights Council 2013 Human Rights Council
2.	Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography	1990 Commission on Human Rights	2008 Human Rights Council 2011 Human Rights Council Human Rights Council
3.	Special Rapporteur in the Field of Cultural Rights	2009 Human Rights Council	2012 Human Rights Council
4.	Special Rapporteur on the Right to Education	1998 Human Rights Commission	2008 Human Rights Council 2011 Human Rights Council
5.	Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and Sustainable Environment	2012 Human Rights Council	2015 Human Rights Council
6.	Special Rapporteur on Extreme Poverty and Human Rights	1998 Human Rights Commission resolution	2011 Human Rights Council 2014 Human Rights Council
7.	Special Rapporteur on the right to Food	2000 Commission on Human Rights	2010 Human Rights Council 2013 Human Rights Council
8.	Independent Expert on the effects of Foreign Debt and other Related international financial Obligations of States on the Full Enjoyment of all Human rights, Particularly Economic, Social and Cultural rights	2000 Commission on Human Rights	2008 Human Rights Council 2011 Human Rights Council 2014 Human Rights Council
9.	Special Rapporteur on Freedom of Religion or Belief	1986 Commission on Human Rights	2007 Human Rights Council 2010 Human Rights Council 2013 Human Rights Council
10.	Special Rapporteur on the right	2002 Commission on	2010 Human Rights

	of Everyone to the enjoyment of the highest Attainable Standard of Physical and Mental Health	Human Rights	Council 2013 Human Rights Council
11.	Special Rapporteur on the Human Rights of Migrants	1999 Commission on Human Rights	2008 Human Rights Council 2011 Human Rights Council 2014 Human Rights Council
12.	Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation	2008 Human Rights Council	2011 Human Rights Council 2012 Human Rights Council
13.	Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes	1995 Commission on Human Rights	2011 Human Rights Council 2012 Human Rights Council
14.	Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading treatment or punishment	1995 Commission on Human Rights	2008 Human Rights Council 2011 Human Rights Council

Source: UN

From Commission to Council

The initiative for reform came from the UN Secretary General's office calling for the High Level on Panel Threats, Challenges and Changes, suggesting reform of the Commission on Human Rights. The Secretary General asked Anand Panyarachun who was the former Prime Minister of Thailand, to Chair the High Level Panel. This Panel recommended the replacement of the UN Commission for Human Rights with a smaller standing committee body called the Human Rights Council (Kofi Anan reform proposal: In Larger Freedom Security and Development for all 2005). The Secretary General left the decision to Member states whether they wanted the Human Rights Council to be a principal body of the UN or a subsidiary organ of the General Assembly. He recommended in the report that the members of the proposed Human Rights Council be elected directly by the General Assembly by a two-thirds majority of members present and voting. He argued that the creation of Human Rights Council would accord human rights the

same hierarchical level for security, development, corresponding to the primacy of human rights in the Charter of United Nations (Annan 2005).

It is interesting to note the different viewpoints that were expressed by representatives of various countries in this regard. The Norwegian representative for example, participating in the debate over the creation of Human Rights Council in third Committee of General Assembly, expressed his opinion that the Council ought to be a principal organ, whose objectives would be best met by membership numerically not significantly lower than that of the Human Rights Commission (Third Committee 2005). The representative of Peru suggested that the Council should be a permanent body of with full powers to promote universal respect for human rights and address human rights violations. The Ukrainian representative called for a Human Rights Council with an enhanced status. The Swiss representative also favored the creation of a Human Rights Council that would ensure promotion of human rights. Myanmar expressed the need to ensure a constructive dialogue on human rights issues (Third Committee 2005).

On the basis of Resolution 60/251, the Human Rights Council based in Geneva, was created by the General Assembly as a replacement for the Commission on Human Rights. The Human Rights Council so created was given the status of a subsidiary organ of the General Assembly. In comparison to the Commission, the Council was placed on a pedestal in the hierarchy of the United Nations.

Membership

The Human Rights Council is composed of 47 members and while this membership is open to all states, seats are distributed between states on a geographical basis. Thus, 13 seats are reserved for Africa, 13 for Asia, 6 for Eastern Europe, 8 for Latin America and the Caribbean, and 7 for Western Europe and other Countries (including the United States and Canada). The term of membership is 3 years and members are not eligible for immediate reelection after two consecutive terms. The General Assembly by a two third majority of the members present

Figure 2 on the next page provides a detailed breakup of the various sub-structures that constitute the HRC.

Voting may suspend the right of a member of the Council that commits gross and systematic violence of human rights.

Mandate

The General Assembly resolution (A/RES/60/251) establishing Human Rights Council clearly pronounces the mandate of the new body as:

- i. Council shall be responsible for promoting universal human rights and fundamental freedom for all without any distinction of any kind.
- ii. It shall address situations violence of human rights, including gross and systematic violations and make the recommendations on the situations.
- iii. It shall promote Economic, Social and Cultural rights on the basis of thematic mandates like right to food, right to education, right to safe drinking water, etc.
- iv. The Council shall recommend to the General Assembly for further development of international law in the field of economic, social and cultural rights.
- v. It shall cooperate through dialogue the prevention of violations of human rights.
- vi. It shall work with in close cooperation in the field of human rights with government regional organizations, national human rights institutions and the civil society.
- vii. It shall submit the annual reports to the General Assembly.

Universal Periodic Review

The Universal Periodic Review (UPR) is a mechanism by which the U.N. Human Rights Council reviews the human rights records of all U.N. member states, every four years. The UPR is a Charter based mechanism, that presents all members of UN and States parties to the relevant treaty to submit periodic reports to the Committee demonstrating their compliance with the terms of the treaty or the progress made in towards fulfilling their treaty obligations. Each state is required to submit a national report to the OHCHR that it then defends in the interactive dialogue that takes place amongst members. Civil society groups may also send in reports on various aspects of the treaty obligations as shadow reports to the main country report submitted. Chapter 4 presents more details of the UPR mechanism in terms of sessions and discussions held.

U.N. Special Procedures

“The desirability of ‘increasing cooperation with all mechanisms of the United Nations human rights system, including special procedures and treaty bodies’ was expressed in the UN voluntary

human rights goals”(Smith 2012: 15). UN Special Procedures that came into being under the auspices of the Commission on Human Rights has continued to be an integral part of the HRC structure. Special Procedures like the UPR represent another U.N. Charter based mechanism. They serve as the UN’s “eye and ears” as they address different aspects of human rights obligations related to particular rights in specific countries. Special procedures may either involve the services of an individual (usually called a Special Rapporteur, Special Representative, or Independent Expert) or a working group with expertise in the specific subject matter. Each Special Procedure is defined by a resolution and created by it. Currently mandates exist for 33 thematic and 8 country-specific special procedures. This includes themes related to both civil, political, economic, social and cultural rights. Thematic mandates cover a broad range issues including adequate housing, education, extreme poverty, and health. Table 3 below provides a list of the Special Rapporteurs existing on areas pertaining to economic social and cultural rights within the UN framework.

Technical assistance is provided and coordinated through the Office of High Commissioner of Human Rights (OHCHR). Both the UPR process and Special Procedure visits in countries can result in recommendations of technical assistance. During the interactive dialogue of the working groups various recommendations of technical assistance and offers of cooperation are made by the member states. A more detailed account of the functioning of Special Procedures is provided in Chapter 4.

Advisory Committee

Human Rights Council Advisory Committee has been established to function as the think tank for the Council. The Committee is composed of 18 independent experts from different professional backgrounds representing various regions of the world (5 from African States; 5 from Asian States; 2 from Eastern European States; 3 from Latin American and Caribbean States, and 3 from Western European and other States). It meets twice a year, for one week in February immediately before the March session of the Council and for one week in August. The Advisory Committee provides expertise to the Council in the manner and form requested by it. It mainly focuses on studies and research-based advice linked to thematic issues pertaining to the mandate of the Council, namely promotion and protection of all human rights.

Complaint Procedure of Human Rights Council

On 30 June, 2006 the Council consensually decided to extend the life of the procedure established in accordance with ECOSOC resolution 1503 (XL VIII) of May 1970. The Council created a working group to review the complaint procedures, as recommended by the General Assembly's 60/251 para 6, within one year from the start of its first session. This was followed by various countries expressing their individual preferences in the debates that took place in the working group established to review the complaint procedures, The Argentinean representative for example, suggested that the 1503 procedure should not be abolished but improved; it should transfer to the Council serious and systematic violations of human rights. Majority of speakers were also of the opinion that confidentiality of 1503 should stay. Countries like Indonesia, Algeria, Philippines and Iran, Canada demanded a revision of 1503 procedure, so that it could be made comprehensive and combine confidentiality with timeliness of action and transparency of results (Summary Records from of the Human Rights Council 2006). On 18 June 2007, the Human Rights Council adopted resolution 5/1 entitled "Institution-Building of the United Nations Human Rights Council" by which a new complaint procedure was established to address violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.

The Complaint Procedures of the HRC seeks to address situations of human rights violations through communications submitted by individuals, groups, or non-governmental organizations having information and knowledge of violations. There are two working groups - one the working group on communication and the other is the working group on situations, both are responsible, respectively, for examining the human rights violations submitted on the basis of written communication.

Other Subsidiary bodies of HRC

The Expert Mechanism on the Rights of Indigenous People, Forum on Minority Issues, Social Forum and the Forum on Business and Human Rights are four other subsidiary bodies of the HRC. The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) established by the Human Rights Council, the UN's main human rights body, in 2007 under Resolution 6/36 is a subsidiary body of the Council. This expert mechanism works with Human Rights Committee on

thematic issues. It undertakes studies and research suggests proposals for consideration and the approval. The Forum on Minority Issues established through the Human Rights Council resolution 6/15 2007, and renewed by resolution 19/23, 2012, serves as a platform for promoting dialogue and issues on religion, ethnic, national and other thematic issues. The Social Forum serves as an open dialogue forum between representatives and civil society members including grassroots organizations and intergovernmental organizations on human rights issues. While the Forum on Business and Human Rights promotes dialogue and cooperation on the interface of business with rights issues between different stakeholders.

Open-ended working groups

In relation to economic, social and cultural rights, there are five open-ended working groups that exist. These are the Open-ended Working Group on an optional protocol to the Convention on the Rights of the Child to provide a communications procedure, the Ad Hoc Committee on the elaboration of complementary standards, the Open-ended intergovernmental working group on a draft United Nations declaration on the right to peace, the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action, and the Intergovernmental Working Group on the Right to Development. Chapter 4 has a more detailed account of the workings of these groups.

Concluding Remarks

Economic, Social and Cultural rights are essentially rights relating to different aspects of development, and although there are countries that have questioned the very basis of their recognition as rights; the UN system it must be admitted has institutionalized various norms and standards for the codification of economic, social and cultural rights. The UN Committee on Economic, Social and Cultural Rights in this context has played a crucial role in aiding this process of progressive recognition that has been accorded to economic, social and cultural rights by the international community.

Particular expertise in the field has been provided by experts working on different dimensions of rights protection and realization. These include extensive commentaries in the form of General Comments on various aspects of the rights enlisted in the related UN Conventions. For example, in the debates on the General Comment on cultural rights in 2005, discussions were focused on different aspects such as the right of protection in relation to scientific, literary or artistic production, elimination of discrimination to ensure equal access to effective protection of moral and material interests, along with deliberations on the core obligations and responsibilities of states. Similar debates exist for General Comments on the right to work, employment condition, social security, children rights, protection of family, nutrition, shelter, education etc.

In addition to the CESCR, the UN also has treaties bodies like CEDAW, CRC, and the Committee on the rights of person with disabilities, looking after the protection of social and economic rights of particular sections. These treaties bodies create norms and mechanisms by which states that have ratified the agreements have to submit periodic reports related to the progress made in the realization of such rights. This procedure is similar to that followed under the Universal Periodic Review and the Special Procedures of the HRC.

Chapter- 4

Working of the Human Rights Council, 2006-2013

This chapter is divided into three sections: one, an introduction that lays out the main themes underlying the work of the Human Rights Council (HRC) in the period 2006-2013, second elaboration on some of the important thematic debates, third, critical analysis of the work undertaken on particular issues on economic, social and cultural rights by the HRC in conjunction with other actors. The HRC procedure for monitoring of rights consists of the following mechanisms that are vested in particular bodies of the HRC. These are Advisory Committee, Universal Periodic Review, Special Procedures, Complaint Procedures, Other Subsidiary Bodies, Open-ended Working Groups and Commission of Inquiry/fact finding missions. The chapter therefore in analyzing the work of the HRC looks into the operations of each of these bodies and relates it to the wider debates on economic, social and cultural rights within the UN.

Before moving into the debates, it would be useful to have a look at the membership of the Human Rights Council during these years. Table 4 provides a list of member states for various years who have been presiding as members of the HRC. As mentioned earlier, while there is a principle of geographical representation that is adhered to in the selection of countries, what is important to note that a large number of countries that are present in the HRC are from the developing world. In the context of discussions on economic, social and cultural rights, this becomes important, as it facilitates deliberations on universal problems on a matter that is inherently political. As we saw in Chapter 2, that globalization while it had brought upon opportunities for a small section of wealthy people, by and large it had had a negative impact on the economic and social well being of people. A new class of the new poor had emerged in these countries, largely caused by loss of jobs due to retrenchment or displaced due to development projects and programmes. It was not also as if the more relatively wealthy countries were immune from these problems either. The financial crises in 1997, 2008 drove home the hard truths about unregulated capitalism that could easily burst the bubble in these well to do

economies. Therefore, the debates on economic, social and cultural rights that took place in the Human Rights Council were one, in which all member states despite their differences were all themes and issues that had a much larger universal appeal to it.

Table 4: Membership of the Human Rights Council 2006- 2013

S. no	Date	Countries
1.	19 June 2006- 18 June 2007	Algeria, Argentina, Bahrain, Czech Republic, Ecuador, Finland, India, Indonesia, Morocco, Netherland, Philippines, Poland, South Africa, Tunisia.
2.	19 June 2007- 18 June 2008	Brazil, France, Gabon, Ghana, Guatemala, Japan, Mali, Pakistan, Peru, Republic of Korea, Sri Lanka, Ukraine, UK, Zambia.
3.	19 June 2008- 18 June 2009	Azerbaijan, Bangladesh, Cameroon, Canada, China, Cuba, Djibouti, Germany, Jordan, Malaysia, Mauritius, Mexico, Nigeria, Russia Federation, Sudia Arabia, Senegal, Switzerland, Uruguay.
4.	19 June 2009- 18 June 2010	Angola, Bolivia, Bosnia and Herzegovina, Egypt, India, Indonesia, Italy, Madagascar, Philippines, Qatar, Slovenia, South Africa.
5.	19 June 2010- 18 June 2011	Argentina, Bahrain, Brazil, Burkina Faso, Chile, France, Gabon, Ghana, Japan, Pakistan, Republic of Korea, Slovakia, Ukraine, U.K, Zambia.
6.	19 June 2011- 31 December 2012	Bangladesh, Belgium, Cameroon, China, Cuba, Djibouti, Hungary, Jordan, Kyrgyzstan, Mauritius, Mexico, Nigeria, Norway, Russian Federation, Sudia Arabia, Senegal, USA, Uruguay.
7.	1 January- 31 December 2013	Angola, Ecuador, Guatemala, Libya, Malaysia, Maldives, Mauritania, Poland, Qatar, Republic of Moldova, Spain, Switzerland, Thailand, Uganda.

Source: Human Rights Council

The broad themes of the debates in the HRC around economic, social and cultural rights may be grasped by looking at discussions that were happening across the various sub-bodies of the organization. Though there was a mix of country and theme specific discussion at times, each of these could easily be incorporated within a larger set of issues and concerns. For example, one of the main underlying themes of the debates was the protection and fulfillment of economic and social well being in the context of globalization. Another important theme that interconnected arrange of issues was the violation of economic, social and cultural rights in context of wars,

both inter-state and intra-state. The discussions that were held also helped in clarifying basic meanings and contents of certain rights. The HRC brought out factsheets for public dissemination explaining the content of important rights such as the right to food, right to adequate housing, right to water etc. It even defined the parameters of how poverty and the contentious issue of the right to development were to be addressed. Extreme or chronic poverty according to the concerned Special Rapporteur was the worst form of human rights violation.

Apart from regular sessions, the HRC also convened a number of special sessions on specific issues and themes. Table 5 gives the list of special sessions held between 2006-2013.

Table 5: List of Special Sessions of the Human Rights Council

S. no	Special Sessions	Date
1.	Human Rights situation in the occupied Palestinian Territory	5 July 2006
2.	Human Rights Situation in Lebanon caused by Israeli military operations	11 August 2006
3.	Situation of Human Rights Darfur	12 December 2006
4.	Situation of Human Rights in Myanmar	2 October 2007
5.	Human Rights violence emanating from Israeli military attacks and in cushions in the occupied Palestinian	23 January 2008
6.	The Negative impact on the worsening of the World Food	22 May 2008
7.	Human Rights Situations Democratic Republic of Congo	28 November 2008
8.	The Grave situations of Human Rights in the occupied Palestinian Territory, particularly due to the recent Israeli Military attack against Gaza strip	26 January 2009
9.	Human Rights situation in Sri Lanka	26 May 2009
10.	Human Rights situation in East Jerusalem	15 October 2009.
11.	Human Rights situation in Haiti by Earthquake	12 January 2010
12.	Human Rights situation Cote D' Ivory	23 December 2010
13.	Human Rights situation in Libyan Arab Jamahiriya.	25 February 2011
14.	Human Rights situation Syrian Arab Republic.	29 April 2011
15.	Human Rights situations Syrian Arab Republic.	22 August 2011
16.	Human Rights situation Syrian Arab Republic.	2 December 2011
17.	Human Rights situation Syrian Arab Republic.	1 June 2012

Source: Human Rights Council

HRC Advisory Committee

The main areas of concern of the mandate of the Advisory Committee's work on economic social and cultural rights has been on the following areas : (i) human rights education and training; (ii) international cooperation; (iii) international solidarity; (iv) leprosy-related discrimination; (v) right to food; (vi) right to peace and (vii) traditional values. Between 2006 and 2013 there have been 11 sessions of the Advisory Committee.

For example, in the fourth session the "Advisory Committee sought to draw attention to the right to food by focusing on the problem at hand. According to it, more than 1 billion people were suffering from undernourishment worldwide, and that the existing inequalities between the world's regions and the vulnerability of the poorest members of developing countries were deepening as a result of three concomitant crises, namely, food, economic and environmental crises and the fact that many individuals and groups suffered from hunger and malnutrition as a result of political, legal, economic, social or cultural discrimination and exclusion, in particular peasants, the urban poor, women, children, refugees, indigenous people and minorities" (A/HRC/AC/4/4:2010).

Within the context of its work on the right to food, the Advisory Committee in the period 2006 and 2013 undertook and finalized studies on discrimination in the context of the right to food; on ways and means to further advance the rights of people working in rural areas; and on the relationship between severe malnutrition and childhood diseases, taking children affected by Noma as an example. Similarly on the right to education, it placed emphasis on quality directed to the "full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms (A/HRC/AC/4/4:2010).

"In its 10th session the human rights council advisory committee discussed issues relating to the integration of a gender perspective, the integration of the perspective of persons with disabilities, the promotion of a democratic and equitable international order, and international cooperation in the field of human rights. It also debated working methods with other subsidiary bodies of the Human Rights Council including the Social Forum, the Expert Mechanism on the Rights of Indigenous Peoples, the Forum on Minority Issues and the Forum on Business and Human Rights" ((Tenth session A/HRC/AC/10/3).

“In the 11th session the Advisory Committee highlighted three action points: first, dealing with human rights in post-disaster and post-conflict situations; second, the enhancement of international cooperation in the field of human rights; and third, the negative impact of corruption on the enjoyment of human rights” (Eleventh session A/ HRC/ AC/ 11/2 :2013).

For each of these topics, the Committee designated members of a drafting group, which were tasked with preparing a progress report to be submitted to the Committee, before presenting their report to the Human Rights Council. In addition to members of the Committee, Observer State Members of the Human Rights Council, non-governmental organizations and external speakers were also invited to participate. Table 5 gives a breakup of the various themes covered in different sessions of the Advisory Committee.

Table 6: Advisory Committee Sessions (2006-2013) - Thematic Overview

Sessions	Date	Issues
First Session	15 August 2008	Gender equality, peasants rights, right to food, participation of local government, child malnutrition child and elimination of leprosy
Second Session	30 January 2009	Seven recommendations to the Human Rights Council were adopted: elimination of discrimination against person those affected by leprosy, gender mainstreaming including action oriented mechanism, recommendation on the right to food, the food crisis, ‘Hunger Refugees’ as a new concept,
Third Session	7 August 2009	Patient affected by leprosy, education and training, discrimination in the context of the right to food, missing persons and rights of people to peace.
Fourth Session	29 January 2010	The right to education, right to religion, right to minorities and the right to employment and discussion the gender main streaming and right to marriage.
Fifth Session	13 August 2010	Employment, education, health, marriage, religion, public utilities and public peace, leprosy as a public health problem and its elimination.
Sixth Session	20 January 2011	New priorities -enjoyment of the highest attainable standard of physical and mental health of the old persons, the right to food, right of people to peace, enhancement of

		international cooperation in the field of human rights, rights of peasants, and other people working in rural areas.
Seventh Session	12 August 2011	Right to cultural life, youth rights, new technologies and effects of globalisation on the human rights, and violation of human rights in conflict situations.
Eighth Session	24February 2012	Youth, globalisation, and human rights, impact of new technologies on human rights, discrimination against the poor and other marginalized groups, price speculation on corn, rice and wheat, in the context the right to food, traditional values of human kind, enhancement cooperation in the field of human rights, malnutrition and childhood diseases with children by Noma as an example, study of rural women and their enjoyment of the right to food.
Ninth Session	10 August 2012	New priorities, enhancement of cooperation in human rights, the role of local government in the implementation of human rights, humanitarian action, human rights and international solidarity, traditional values of human kind, the right to food, enhancement of international cooperation to the promotion of human rights, human rights of youth, human rights humanitarian actions, equal opportunities, and non discrimination in protection of human rights.
Tenth Session	18 February 2013	Rights of peasants, rights of men and women, on poverty and right to food, gender perspectives on disabilities, promotion of a democratic and equitable international order, international co-operation on the field of human rights, mechanism on the right of indigenous people, forum on minorities issues, speaking on gender mainstreaming, and the discussion on CEDAW.
Eleventh Session	16 August 2013	Promotion and protection of human rights in post disaster and post conflict- situation, humanitarian action, violence of social rights, humanitarian crisis, gender perspective, realization of human rights by person with disabilities and rights to peasants.

Source: Office of the High Commissioner for Human Rights

Universal Periodic Review

Universal periodic review as mentioned earlier is a very important process where all the member states are obliged to submit reports relating to situation of human rights in their respective countries. Currently, no other universal mechanism of this kind exists. Table 7 provides a brief summary of the UPR sessions that took place between 2006-2013.

Table 7: Universal Periodic Review - Sessions

No.	Date	Countries
1	7-18 April 2008	Bahrain, Ecuador Tunisia, Morocco, Indonesia, Finland, United Kingdom, India, Brazil, Philippines, Algeria, Poland Netherlands, South Africa, Czech Republic, Argentina (16)
2	5-16 May 2008	Gabon, Ghana, Peru, Guatemala, Benin, Republic of Korea, Switzerland, Pakistan, Zambia, Japan, Ukraine, Sri Lanka, France, Tonga, Romania Mali (16)
3	1-15 December 2008	Botswana, Bahamas, Burundi, Luxembourg, Barbados, Montenegro, United Arab Emirates, Israel, Liechtenstein, Serbia, Turkmenistan, Burkina Faso, Cape Verde, Colombia Uzbekistan, Tuvalu (16)
4	2-13 February 2009	Cameroon, Djibouti, Mauritius, Nigeria, Senegal, Bangladesh, China, Jordan, Malaysia ,Saudi Arabia, Cuba, Mexico, Canada Germany, Russian Federation, Azerbaijan (16)
5	4-15 May 2009	Central African Republic, Chad, Comoros, Congo, Vanuatu, Viet Nam, Yemen, Afghanistan, Uruguay, Belie, Chile, Malta, Monaco, New Zealand, Slovakia, The Former Yugoslav Republic of Macedonia (16)
6	30 Nov- 11December 2009	Côte d'Ivoire, Democratic Republic of the Congo, Equatorial Guinea, Eritrea, Ethiopia, Bhutan, Brunei Darussalam, Cambodia, Cyprus, Democratic People's Republic of Korea, Costa Rica, Dominica, Dominican Republic, Norway, Portugal Albania(16)
7	8 -19 February 2009	Angola, Egypt, Madagascar, Gambia, Qatar, Fiji, Iran (Islamic Republic of), Iraq Kazakhstan, Bolivia, Nicaragua, El Salvador, Italy, San Marino, Slovenia, Bosnia and Herzegovina (16)
8	3-14 May 2010	Guinea, Guinea Bissau, Kenya, Lesotho, Kiribati, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Grenada, Guyana, Haiti, Spain, Sweden, Turkey, Armenia Belarus(16)

9	1-12 November 2010	Liberia, Malawi, Mongolia, Panama, Maldives, Andorra, Bulgaria, Honduras, USA, Marshall Islands, Croatia, Jamaica, Libyan Arab Jamahiriya, Micronesia, Lebanon, Mauritania (16)
10	26 Jan- 4 February 2011	Nauru, Rwanda, Nepal, St. Lucia, Oman, Austria, Myanmar, Australia, Georgia, St. Kitts and Nevis, Sao Tome and Principe, Namibia, Niger, Mozambique, Estonia, Paraguay (16)
11	2-13 May 2011	Belgium, Denmark, Palau, Somalia, Seychelles, Solomon Islands, Latvia, Singapore, Suriname, Greece, Samoa, St. Vincent and the Grenadines, Sudan, Hungary, Papua New Guinea, (16)
12	3-14 October 2011	Tajikistan, United Republic of Tanzania, Antigua and Barbuda, Swaziland, Trinidad and Tobago, Thailand, Ireland, Togo, Syrian Arab Republic, Venezuela, Iceland, Zimbabwe, Lithuania, Uganda, Timor Leste, Republic of Moldova (16)
13	21 May - 4 June 2012	Review of Bahrain, Ecuador, Tunisia, Morocco, Indonesia, Finland, United Kingdom, India, Brazil, Philippines, Algeria, Poland, Netherland, South Africa (14)
14	22 October - 5 November 2012	Czech Republic, Gabon, Benin, Argentina, Ghana, Guatemala, Republic of Korea, Switzerland, Pakistan, Peru, Republic Argentina, Ukraine, Zambia, Benin, Japan, Sri Lanka (16)
15	21 January - 1 February 2013	France, Tonga, Romania, Mali, Botswana, Bahamas, Burundi, Luxembourg, Barbados, Montenegro, Liechtenstein, United Arab Emirates, Israel, Serbia, (16)
16	22 April - 3 May 2013	Turkmenistan, Cape Verde, Burkina Faso, Review of Colombia, Uzbekistan, Tuvalu, Germany, Djibouti, Canada, Bangladesh, Russian Federation, Azerbaijan, Cuba, Germany, Cameroon (16)
17	21 October - 1 November 2013	Arabia, Senegal, China, Nigeria, Mexico, Mauritius, Jordan, Malaysia, Central African Republic, Monaco, Belize, Chad, Israel, Congo, Malta, (16)

Source : Office of the High Commissioner for Human Rights

It is indeed interesting to note that by 2011, almost all the 192 countries (South Sudan joined later) that comprised the entire UN membership had been compelled through the UPR to present their reports on the implementation of human rights obligations in their respective states. If one looks at the reports submitted with regard to implementation of economic, social and cultural rights, it becomes all the more important. Many countries including India for the first time were forced to submit a detailed report on the implementation status of fulfillment of economic, social and cultural rights in their respective jurisdictions.

In terms of issues raised, it's interesting to note the specific rights that came in for discussion. For example, the developing countries in their representations paid extra emphasis on globalization and its impact on a variety of rights linked with issues of economic, social and cultural aspects of development. For example in its report Ghana, that had been seriously impacted by the World Bank's loans in the 1980s submitted in 2008, raised issues related to the right to education, international health insurance programmes, child labour and youth employment, and laws to protect individuals against human trafficking. Similar concerns were raised by Bangladesh in 2009 on the issue of economic, social and cultural rights in the context of poverty, impact of financial crisis and the need for social safety net policies to safeguard the rights of people in times of economic crises.

Concerns regarding the protection of cultural rights were raised by countries like Bhutan, Belarus, Iran, Morocco, Belgium and China in their reports. Freedom of religion was an issue that was common to Bhutan, Belarus and China. Morocco on the other hand emphasized the need to protect the larger realm of cultural rights, which included the improvement of economic, and social situation of the Roma peoples. Discrimination based on grounds of race and caste were raised in the context of Australia and India. France in its report emphasized the need for non-discrimination on grounds of religion, race, ethnicity and sexual orientation, within societies. Majority of the countries identified cultural rights of minorities to be an important subject. The inability to protect cultural resources of indigenous peoples on account of large scale modernization and development also figured in the discussions. Violence wrecked on cultural heritage of peoples and countries in wars and conflicts also came up for discussion in case of Afghanistan and Iraq. Table 8 below provides a glimpse of some specific country mandates taken up for discussions in the HRC.

Table 8: Specific Country Mandates

S.no.	Country Mandate	Period	Issues
1.	Situation of Human Rights in Islamic Republic of Iran	8 April 2011	Issues on economic, social and cultural rights like security of women and children and protection of religious rights

2.	Situation of Human Rights in Belarus	16 July 2012	Issues of Belarus 's government lack of co-operation with the Human Rights Council especially regarding economic, social and cultural rights, and issues of torture, human rights violations and violence of due process and fair trial
3.	Situation of Human Rights in Eritrea	17 July 2012	Issues of forced labour, medical care, protection of women and children
4.	Situation of Human Rights in the Syrian Arab Republic	31 Jan 2013	Issues of Torture and ill-treatment, especially women and children, sexual violence against civilians, medical care without discrimination, safe and hindered access for humanitarian actors like medical supply and protection of people's property rights.
5.	Assistance to the Republic of Mali in the Field of Human Rights	10 April 2013	Issues of serious humanitarian crisis, violence against women, children and the destruction of cultural rights and religious sites
6.	Assistance to Somalia in the field of Human Rights	8 October 2013	Importance of rights of women in the economic field, concern at the abuse and violence perpetrated against women including sexual violence and the need for accountability of all such abuses and violence, to ensure accountability of state institutions and security forces, ensuring safe and sanitary new sites and that have basic services as well as unfettered access for humanitarian organizations.
7.	Assistance to Cambodia in the field of Human Rights	8 October 2013	Issues of achievement and improvement in social and economic cultural fields, frail health of persons, combating sexual harassment against women and children
8.	Technical assistance to the Central African Republic in the field of Human Rights.	9 October 2013	Security and humanitarian situation, destruction of property, humanitarian assistance to

			refugees
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Source: Office of the High Commissioner for Human Rights

In each of these cases, the concerned government was asked to reply to queries raised by other member states. The devastating effects of war on economic, social and cultural rights of peoples was a theme that ran through majority of the cases taken up. The discussion focused mainly on the humanitarian crisis created on account of war, namely, destruction of property and livelihoods, large scale displacement, refugee movements, sexual targeting of women and children, child soldiers and their rehabilitation etc.

The HRC during this period also looked into 14 specific cases of complaints received against countries with respect to violations of economic, social and cultural rights. Table 9 provides a breakup of the issues and recommended action taken in each case. For example, in some like Kyrgyzstan and Eritrea, it decided to make its reports public and asked the states to cooperate with UN agencies to help them rectify the situation. In case of religious minorities in Iraq and the Democratic Republic of Congo, it asked the Office of the High Commissioner for Human Rights to intervene in the situations that had been created in both these countries.

Table 9 : Complaint Procedures since 2006

S. no.	Situation of Human Rights Considered by Human Rights Council (HRC)	Years - HRC Sessions	Action on Issues
1.	Human rights situation in Kyrgyzstan	2006 – 2th session	The Human Rights Council examined the human rights situation in Kyrgyzstan under the complaint procedure, and decided present decision should be public.
2.	Human rights situation in the Islamic Republic of Iran Human rights situation in Uzbekistan	2007 – 4th session	The Human Rights Council decided to discontinue the consideration of the human rights situation in the Islamic Republic of Iran The Human Rights Council decided to discontinue the consideration of the human rights situation in Uzbekistan.
3.	Human rights situation in Turkmenistan	2008 – 7th session	The Human Rights Council decided to keep the human rights situation in Turkmenistan under review.

		2008 – 9th session	
		2009 – 10th session	The Human Rights Council decided to discontinue considering the human rights situation in Turkmenistan.
4.	Human rights situation in the Maldives	2008 – 9th session	Decided to discontinue the consideration of the human rights situation
5.	Human rights situation in the Democratic Republic of the Congo	2009 – 11th session	Decided to discontinue the consideration of the human rights situation
6.	Human rights situation in Guinea	2009 – 12th session	The Human Rights Council has decided to keep the human rights situation in Guinea under review
		2010 – 13th session	Decided to discontinue the consideration of the human rights situation
7.	Human rights situation in Tajikistan	2011 – 16th session	The Human Rights Council decided to keep the human rights situation in Tajikistan under review.
		2011 – 17th session	
		2011 – 18th session	
8.	Human rights situation in Turkmenistan	2012 – 19th session	Decided to discontinue the consideration of the human rights situation
9.	Human rights situation in the Democratic Republic of the Congo	2011 – 18th session	The Human Rights Council has decided to keep under review the human rights situation in the Democratic Republic of the Congo as well as to recommend that the Office of the High Commissioner for Human Rights provide the Democratic Republic of the Congo with technical cooperation, capacity- building, assistance or advisory services as needed in both situations examined under the complaint procedure.
		2012 – 19th session	
10.	Human rights situation in Iraq	2012 – 19th	Recommend the Office of the High Commissioner for Human Rights

		session	increase technical cooperation, capacity building, assistance and advisory services to that country
11.	Situation of religious minorities in Iraq	2012 – 20th session	Decided to discontinue the consideration of the human rights situation of religious minorities in the Republic of Iraq and recommended that the Office of the United Nations High Commissioner for Human Rights provide Iraq with technical cooperation, capacity-building, assistance and advisory services.
12.	Situation of trade unions and human rights defenders in Iraq	2012 – 21st session	Decided to discontinue the consideration of the human rights situation of trade unions and their members and leaders, as well as human rights defenders in the Iraq.
13.	Human rights situation in Eritrea	2012 – 21st session	decides that the documentation considered by the Human Rights Council under its complaint procedure relating to the situation of human rights in Eritrea should no longer be considered confidential, with the exception of the names or any other identifying information of specific individuals who have not consented, and should therefore be transmitted to the Special Rapporteur on the situation of human rights in Eritrea, the Government of Eritrea to cooperate fully with the Special Rapporteur, in particular to permit access to visit all parts of the country and to provide the information

Source : Office of the High Commissioner for Human Rights

Open-ended Working Groups and Forums

This particular set of bodies also witnessed interesting discussions on various aspects of the economic, social and cultural mandate given to them. The Expert Mechanism on the Rights of

Indigenous Peoples (EMRIP) for example came out with three important reports pertaining to the rights of indigenous peoples. The first was on their right to education in 2009, the second on their right to participate in decision making in 2011 and third on the best practices by which to realize the Millennium Development Goals for indigenous peoples in 2012. All three reports were submitted to the HRC for its consideration. The reports covered case studies from both the developing and the developed world countries. A similar set of issues was raised by the Forum on Minorities between 2008-2011 on different aspects of the rights of such people, such as their right to education in their own language, their right to political participation and in economic life and a special recommendation for safeguarding the rights of women and children belonging to minority communities. IN both these bodies, the inter linkages between economic, social and cultural rights were explored and examined.

The same was the case for the Working Group on the Right to Development. Between 2006 and 2013 it had had 8 sessions. Existing prior to the establishment of the HRC, this working group has been responsible for spurring a new debate on the right to development among countries. Its proponents define the right to development as the right to every individual “to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.” It is based on the understanding of development as a process which is rights based- i.e it adheres to the principles of equity, transparency, participation , accountability and justice. Not easy to implement given the inherent nature of the development process that comprises one or the other elements, the idea is nevertheless a noble one, worthy of being emulated by peoples in their struggles against big corporate and other domestic and international actors.

Concluding Remarks

The HRC’s work on the codification of various aspects of economic, social and cultural rights in the backdrop of globalisation is commendable. Having extended the mandate that it had inherited from the UN Commission on Human Rights, the HRC has definitely through its work managed to bring parity between the discussion on civil and political rights and economic, social

and cultural rights at the global level. With new challenges, it has been able to break the marked boundaries that separated the discussion between the two strands of human rights discourse that characterized earlier human rights work of the UN. In this context, it has also been able to take along third generation rights by interlinking questions of political participation of groups and communities with the making of development policies.

Chapter 5

Conclusion

To conclude, one must admit that the forces of globalization have indeed led to an increased sense of responsibility amongst international actors regarding the promotion and protection of economic, social and cultural rights. International institutions like the Human Rights Council have responded with various proposals for strengthening the international rights regime. In terms of development of human rights law, HRC's observations through its rulings and recommendations are providing new meanings and setting standards that in course of time have the potential to become part of customary international law. In fact the work of the HRC has expanded to so many different areas, that it is probably not possible to capture the intricacies of arguments made within the scope of a few pages. However, there are four main points that stand out in what has been attempted and discussed in the chapters.

First, the HRC despite being an intergovernmental body has managed to bring in experts to elaborate upon new and fresh perspectives on rights. Although membership is restricted to states, the presence of professionals from different social backgrounds have managed to extend the scope and meaning of rights in a way that is borne out of the challenges that people face with respect to economic, social and cultural rights in their day to day lives in different parts of the world. The space given to civil society organizations through bodies like the Social Forum has opened up the possibilities of actually having a UN body with a strong civil society presence. In terms of particular themes, its engagement over the first 5 years of its existence, a basis has been created for further work on these very issues in the years to come.

Second, the contribution that the HRC has made conceptually, needs to be appreciated. In a subtle message, given by the HRC, it can be said that it is quite clear from the debates that economic social and cultural rights are not simply the concerns of just the developing world. Rather, even the developed states have also to take the issue of assimilation and difference more seriously, especially given recent incidents of targeting of migrants, religious minority groups in such countries. The debates in the UPR sessions which involve presentation of reports of both developed and developing countries is a relevant illustration of the above. It is indeed commendable that the HRC has been able to compel all member states of the UN to submit country reports on the human rights situation in their respective territories. The fact that states have to respond to queries raised in the course of their presentations is a big step towards ensuring greater accountability. Historically sovereign states have used domestic jurisdiction as a

pretext for foreclosing discussion on human rights violations within their borders. That argument no longer holds today and organizations like the HRC can initiate a discussion on most issues.

Having said that however, as an inter-governmental body the HRC does have certain structural limitations. Located within the UN system and being a subsidiary body reporting to the General Assembly, the HRC is not immune from political influences. Like most UN agencies working on development issues, the HRC can suffer from heightened expectations about its power. However, given the fact that it draws its powers from the UN system which operates on the principle of sovereign equality and voluntary compliance of states, the HRC cannot really make it mandatory for countries to abide by its recommendations. The maximum that it can hope to achieve is to pursue a policy of naming and shaming rights violators, as happened in the HRC's special session on Sri Lanka in 2009.

Can HRC be said to enjoy certain autonomy in its functioning. That is an aspect that is worth exploring more. From the brief review undertaken, one cannot deny that there are spaces that the HRC can hope to explore to make itself relatively autonomous. This calls for the organization to treat all countries at par and not just target the weak but also the strong. So for example, in the Working Group on Transnational Corporations and Human Rights, it must be able to lay down strong recommendations on how these companies run their businesses. Similarly in conflict zones, it must exercise discretion to identify and stand by the rights of civilians who are caught between warring groups in the line of fire.

To end, it can be said that the move to replace the Commission on Human Rights by the Human Rights Council in 2006, has definitely been a step forward with regard to substantive evolution of the rights discourse. A move that was timely given the new challenges of the day, and one which has helped in bringing the discourse on human rights with all its interconnections and interdependence centre stage.

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