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Social Economic Rights and Human Rights Commissions

Mario Gomez

I. INTRODUCTION

There is widespread acceptance now of the ideas of interdependence and indivisibility. While the debate may not yet be over, a consensus is clearly emerging on this point. By accepting that all human rights are interdependent and indivisible, states and nonstate actors accept that both civil and political rights, and economic, social, and cultural rights should be protected and promoted with the same intensity. They reject the argument that civil and political rights should be given priority over economic, social, and cultural rights, or vice versa.

This increasing concern with socioeconomic rights has raised at the same time a need for new and effective machinery. While, no doubt, the first step is the recognition of these claims as rights, the need for effective enforcement also becomes important. This increasing concern with socioeconomic rights has emerged in an environment in which the strongest supporters of these rights, and many of the supporters of a strong state, have disappeared. The market has reared its head as the dominant ideology and the state is in the process of being rolled back.¹

The ideal human rights machinery needs to be accessible, effective, and credible. Too many institutions and processes have been created which have failed to meet these criteria. This has been one of the major concerns in relation to human rights commissions or national institutions. In Sri Lanka, for example, the chances that the creation of a commission may result in a propaganda exercise for the state are very real.

This paper deals with two problematic areas in the field of human rights: effective mechanisms and socioeconomic rights. It argues for the

1. See generally JANE KELSEY, *ROLLING BACK THE STATE: PRIVATISATION OF POWER IN AOTEAROA/NEW ZEALAND* (1993).

creation of a separate human rights commission to address questions relating to the realization of socioeconomic rights.²

II. NATIONAL MECHANISMS FOR THE PROTECTION AND PROMOTION OF RIGHTS

National or domestic mechanisms for protecting and promoting human rights can take many forms. Among them are the courts, ombudsmen, and human rights commissions.

A. The Courts

The human rights movement has traditionally looked upon the judiciary as the primary method through which human rights could be enforced. The courts have been entrusted with the task of interpreting bills of rights or national legislation dealing with human rights.

Courts can provide a remedy when a right is violated. Thus, the violation is addressed retrospectively. However, the jurisprudence of the court also lays down standards for future conduct. Moreover, judicial pronouncements provide a fertile source for giving meaning to broad and vague human rights norms. The role of the courts though is limited to acting on complaints brought to their attention. They seldom, if ever, initiate action on their own. Thus, their success depends to a large degree on a socially conscious citizenry and active public interest groups.

In other areas, such as education, the role of the courts is limited. They cannot engage in educational efforts directly. They depend on media coverage and academic discussion for a dissemination of the ideas contained in their judgments.

Although the role of the courts may be restricted in the area of socioeconomic rights, this does not mean that they have no role to play in this area. The jurisprudence developed by the Indian Supreme Court is a clear example of what a court can do.

Two decisions of the Indian Supreme Court on the right to education are recent examples of an attempt to develop these rights. The decisions in question are *Mohini Jain v. State of Karnataka*³ and *Unni Krishnan v. State of Andhra Pradesh*.⁴ Both decisions relate to the same set of facts.

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2. The term socioeconomic rights is used to refer to those rights contained in the International Covenant on Economic, Social, and Cultural Rights, *adopted* 16 Dec. 1966, 993 U.N.T.S. 3.
 3. *Mohini Jain v. State of Karnataka*, JT [1992] 4 S.C. 292 (India).
 4. *Unni Krishnan v. State of Andhra Pradesh*, [1993] 1 S.C.C. 645 (India).

In *Mohini Jain*, the Supreme Court, taking a broad view of the Indian constitution, held that every citizen has a right to education.⁵ Although the right was not expressly incorporated in the Indian Constitution, it flows directly from the right to life recognized in Article 21. The Court observed that “[t]he right to life under Article 21 and the dignity of [the] individual cannot be assured unless it is accompanied by the right to education.”⁶ The Court argued that the Indian Constitution combines “social and economic rights along with political and justiciable rights”⁷ and that fundamental rights have to be interpreted against the backdrop of the Directive Principles⁸ contained in the Indian Constitution.⁹

In the subsequent decision of *Unni Krishnan*, a larger bench tempered somewhat the ideas expounded in *Mohini Jain*, but agreed that the Indian Constitution does recognize a right to education.¹⁰

These decisions are a part of a larger jurisprudence taking shape in India which has sought to reinterpret the fundamental rights contained in the Indian Constitution against the backdrop of the Directive Principles contained in that constitution.¹¹

B. Ombudsman

The office of the ombudsman (or ombudsperson) has also been frequently used to deal with questions of human rights violations. Traditionally, the office of the ombudsman has been used to address complaints relating to maladministration by public officials. However recently—for example, in Namibia and Uganda—the office of the ombudsman has been used to investigate violations of human rights as well.¹²

An ombudsman is similar to a court in that it is also a “complaints-oriented” model. It is used by individuals who feel aggrieved by action taken by some state or state allied officer. Upon receiving a bona fide complaint, an investigation is undertaken, usually free of charge, and recommendations issued.

Unlike the courts though, an ombudsman may use mediation or other

5. *Mohini Jain*, JT [1992] 4 S.C. 292 at ¶ 17.

6. *Id.* at ¶ 12.

7. *Id.* at ¶ 8.

8. INDIA CONST., §§ 36–51 (Directive Principles of State Policy).

9. *Mohini Jain*, JT [1992] 4 S.C. 292 at ¶ 9.

10. *Unni Krishnan*, [1993] 1 S.C.C. at 655.

11. See *Bandhua Mukti Morcha v. Union of India*, 71 A.I.R. (S.C.) 802 (1984) (India); *Mullin v. Union Territory of Delhi*, [1981] 2 S.C.R. 516 (India).

12. COMMONWEALTH HUMAN RIGHTS INITIATIVE ADVISORY GROUP, PUT OUR WORLD TO RIGHTS: TOWARDS A COMMONWEALTH HUMAN RIGHTS POLICY 199 (1991) [hereinafter COMMONWEALTH HUMAN RIGHTS INITIATIVE].

methods of dispute resolution. Most often, the thrust of the approach (unlike the adversarial approach of litigation) is on mediation and on reaching “a compromise.”

The chief advantages of the office lie in its flexibility and accessibility. The office has the power to use several methods in resolving conflict. Moreover it is—or should be—easily accessible. Unfortunately, in some countries the ombudsman can only be approached through a minister of parliament.¹³ This tends to hamper access.

Another advantage of the office is that it has the capacity for the speedy resolution of conflict. It also appears that people from all social and economic backgrounds use the office, some of them with little or no education.¹⁴ In some countries the office has developed wide contacts with government officials and has access to a large amount of information and documents. This has facilitated a resolution of conflict.¹⁵ The ombudsman may also be vested with the jurisdiction to initiate investigations on his or her own.

Recently established offices in two African countries—Uganda and Namibia—enjoy wide powers to investigate human rights abuses. In the Namibian case, the ombudsman may also give legal assistance or advice to those seeking enforcement of fundamental rights through the courts.¹⁶ The power to investigate abuses with regard to environmental rights is also conferred on the office.¹⁷

C. Human Rights Commissions

Human rights commissions are broader institutions and perform a wide range of functions. These include educational, research, monitoring, documentation, advisory work, and conflict resolution functions.

Human rights commissions are entities set up under the constitution or under statute, with the broad objective of both protecting and promoting human rights through the use of a variety of methods.

They have emerged in the post World War II era because of some of the deficiencies of the traditional mechanism—the courts. The recognition that a complaints-driven model of human rights protection is inadequate has been a major reason for their emergence. The effective promotion and protection of human rights requires more flexible mechanisms.

13. See, e.g., Parliamentary Commissioner for Administration Act, Act No. 17 of 1981, § 10(1), S(II) 178 (Sri Lanka).

14. COMMONWEALTH HUMAN RIGHTS INITIATIVE, *supra* note 12, at 197.

15. *Id.* at 193.

16. *Id.* at 199–200.

17. *Id.* at 200.

A complaints-driven model, like the courts, would work in a situation where the violation giving rise to the complaint can be established with a degree of precision. The existence of a body of case law or writings on the subject would assist in identifying a violation. Thus a legal advisor would recommend legal action most often in circumstances where there is jurisprudence to support a client's case. In the absence of such jurisprudence, litigation would seldom be recommended.

While there has been a recent increase of interest with regard to human rights commissions and similar national institutions, they became a concern of the United Nations as early as 1946. At that time, there was a request from the Economic and Social Council to member states to explore the desirability of establishing local committees or groups to assist the work of the Commission on Human Rights. Some writers argue that the idea can be found in an embryonic form even in some ancient civilizations.¹⁸

Of crucial importance to the work of these institutions are the questions of flexibility and autonomy: flexibility in terms of methods and strategies, and autonomy from the state and powerful nonstate forces.

In 1991, the Centre for Human Rights in Geneva convened a meeting to consider several questions relating to national human rights institutions. The "Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights,"¹⁹ formulated at this meeting, were subsequently endorsed by the Commission on Human Rights in 1992.

These principles emphasized both the flexibility aspect and the need for autonomy and independence. They emphasized that the national human rights commissions should operate independently of governments and have the necessary infrastructures and resources to carry out their functions effectively.²⁰ The principles also emphasized the importance of ensuring that the members of these commissions be drawn from different sections of society.²¹

Human rights commissions may also be vested with the following tasks: issuing annual reports on the state of human rights in individual countries; holding public sittings regarding large scale and systemic violations of human rights; and advising governmental and nongovernmental agencies on questions of human rights. Their tasks may further include the review of bills to ascertain their compliance with international human rights norms,

18. See C. G. WEERAMANTRY, AN INVITATION TO THE LAW 194–95 (1982).

19. Centre for Human Rights, Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights (Geneva, 1991) (*endorsed* by the Commission on Human Rights in 1992).

20. *Id.*

21. *Id.*

and the review of existing legislation and administrative practices against the criterion of international standards. They may also be vested with the power to hear complaints and pass orders. The power to initiate action in a court on behalf of a complainant may also be conferred on these bodies.

III. SOCIOECONOMIC RIGHTS

International human rights law has traditionally drawn a distinction between civil and political rights, on the one hand, and economic, social, and cultural rights, on the other. The international human rights law discourse has also emphasized civil and political rights and underplayed the significance of socioeconomic rights. However, recently there has emerged, at least at the level of rhetoric, an increasing concern with socioeconomic rights. For example, the Vienna Declaration of June 1993 affirms that:

[a]ll human rights are universal, indivisible and interdependent and interrelated. . . . While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.²²

Despite this sort of public proclamation, however, violations of civil and political rights have continued to be treated as though they are far more serious, and more patently intolerable, than are massive and direct denials of economic, social, and cultural rights.²³

Several factors have hampered the development of a strong global socioeconomic rights culture. First, the modern human rights discourse has been strongly influenced by traditional natural law ideas; the result is that the focus of the discourse has been on curbing state excesses in relation to civil and political liberties.²⁴ A consequence of this has been that human rights are initially addressed to states. Human rights have become a standard against which state conduct is evaluated. They have been used as

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22. The Vienna Declaration and Programme of Action, *adopted* June 24, 1993, §5, U.N. GAOR, World Conference on Human Rights (Vienna, June 14–25, 1993), U.N. Doc. A/Conf.157/24 (Pt. I) at 23 (Oct. 13, 1993).
 23. See *Statement to the World Conference on Human Rights*, U.N. Committee on Economic, Social, and Cultural Rights, U.N. Doc. E/C.12/1992/crp.2/Add.1 (1992); *Statement Submitted by Non-governmental Organizations Concerned with Human Rights in the Asian Region*, U.N. GAOR, World Conference on Human Rights, Preparatory Committee, 4th Sess., Prov. Agenda Item 5, U.N. Doc. A/Conf.157/PC/63/Add.5 (March 5, 1993).
 24. For the philosophical underpinnings of human rights, see Jerome J. Shestack, *The Jurisprudence of Human Rights*, in 1 HUMAN RIGHTS IN INTERNATIONAL LAW: LEGAL AND POLICY ISSUES 69 (Theodor Meron ed., 1984).

a method of challenging state action, especially when questions of liberty have been involved.

Secondly, while states, both in the North and the South, have incorporated civil and political rights in their constitutions, few states have similarly incorporated socioeconomic rights either in their constitutions or domestic legislation. Socioeconomic rights have remained at the level of nonjusticiable principles of state policy.

Other factors have also hampered the development of a strong socioeconomic jurisprudence. Chief among these has been the lack of conceptual clarity with regard to these rights. The norms are vague and lack the precision of their counterparts in the Civil and Political Rights Covenant.²⁵ Giving clarity and content to these standards is one of the major tasks awaiting the human rights movement. However, it must be noted that the norms are vague because they have not received sufficient attention from the courts, academics, or other agencies. Civil and political rights, on the other hand, have long been the subject of interpretation by courts and other agencies, and have thus acquired a degree of clarity.

Moreover, the human rights movement has to a large extent been dominated by lawyers. Thus procedures for the implementation and realization of human rights have had a legalistic and litigation oriented bias. These approaches have sometimes failed to facilitate the realization of socioeconomic rights, which may require other approaches apart from litigation.

The ideological debate between East and West then, and between North and South now, has also affected the realization of these rights. In the past, socioeconomic rights were seen as requiring a strong state and forceful state action. They were thus championed strongly by the former Soviet Union and Eastern European countries. The countries of the West, on the other hand, sometimes did not even recognize them as rights. This was one reason why the General Assembly adopted two covenants and not one.

A similar ideological clash is taking place now. Countries of the South, led by China, India, Indonesia, and Malaysia, argue that socioeconomic rights are equally important as, if not more important than, civil and political rights.²⁶ Very few of these countries have recognized socioeconomic rights as human rights, though they have spoken strongly in favor of these issues at several international fora. Their views, however, have been given increasing prominence because some of these countries are in the

25. International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171.

26. See Yash Ghai, *The Asian Perspective on Human Rights*, LAW AND SOCIETY TRUST, Aug. 1, 1993, at 1.

forefront of the economic boom that is now taking place in the Asia Pacific region.

Institutions and mechanisms for the promotion of socioeconomic rights have also been terribly inadequate. At the international level, it was only in 1987 that the Committee on Economic, Social and Cultural Rights was established. The Committee was preceded by a Working Group, the effectiveness of which left much to be desired. The Human Rights Committee under the Civil and Political Rights Covenant, on the other hand, was set up in 1977, a year after the Covenant came into force.

There are now moves to adopt an Optional Protocol to the Covenant on Economic, Social and Cultural Rights. The Optional Protocol would permit individuals to make direct complaints to the Committee in cases of widespread violations of these rights.

At the domestic level, the situation has been even worse. Few countries, if any, have had national institutions to monitor compliance with these rights. The number of NGOs working in the area has also been extremely small. Moreover, as we noted above, few of these rights have been incorporated in national legislation or in bills of rights.

Recently, the emergence of the market as the dominant ideology has also put into jeopardy some of these rights. The "reforms" advocated by the international financial institutions have sought to cut government spending on several social welfare measures with adverse consequences for several of the corresponding rights.

IV. A COMMISSION FOR SOCIOECONOMIC RIGHTS

The current human rights discourse witnesses to a strong concern for the question of socioeconomic rights. The ideas of indivisibility, interdependence, and inter-relatedness are being increasingly emphasized. Against this backdrop, national commissions for human rights, with specific mandates to deal with questions of socioeconomic rights, would provide a strong impetus for the realization of these rights.

A model commission would, at one level, fill an institutional gap that now exists because few organizations address themselves to these concerns. At another level, the commission could focus on what is the primary problem in this area—the task of giving content and clarity to these rights. It would be broad enough in scope to pursue a multiplicity of strategies in promoting these rights.

In the civil and political sphere, content and clarity was given through a process of judicial interpretation. However many of the socioeconomic rights may not be susceptible to this sort of process. Giving content and clarity to the rights will require the efforts of not just lawyers and judges, but

also economists, agriculturalists, medical specialists, trade unionists, and others.

The very nature of socioeconomic rights demands that models for their realization not be confined to a complaints-oriented model such as the court process. While not downplaying the role that the courts could possibly play in this area (and the role played by the Indian Supreme Court has already been noted), the realization of socioeconomic rights would require other strategies as well as litigation. A national commission with a specific mandate would be better equipped for this task.

The envisaged commission would be an independent body, equipped with sufficient resources and comprised of people from different sectors of society. It would be vested with the tasks of defining, monitoring, critiquing, and adjudicating and dialoguing on, questions of economic, social, and cultural rights.

V. SOME TASKS FOR THE COMMISSION

A. Defining Socioeconomic Rights

The major task of the commission would be to identify and define these rights. The task no doubt is easily stated, but immensely difficult to perform.

One of the problems with regard to these rights relates to the principle of progressive realization. In terms of the Covenant on Economic, Social, and Cultural Rights, a state must take measures "with a view to achieving progressively . . . the rights recognized . . . to the maximum of its available resources."²⁷ Trubek has argued that this calls into question the binding nature of these obligations.²⁸

However, the Committee on Economic, Social, and Cultural Rights has recently argued in its Third General Comment, that the Covenant *does* impose specific obligations on a state party.²⁹ The Committee has argued that some of these obligations are of immediate effect and are not "wholly aspirational."³⁰ Two particular steps have been identified—the obligation relating to nondiscrimination and the obligation to take appropriate steps "towards meeting the obligation recognized in the Covenant."³¹ The

27. International Covenant on Economic, Social, and Cultural Rights, *supra* note 2, art. 2.

28. David Trubek, *Economic, Social and Cultural Rights in the Third World: Human Rights Law and Human Needs Programs*, in 1 HUMAN RIGHTS IN INTERNATIONAL LAW: LEGAL AND POLICY ISSUES, *supra* note 24, at 205, 214.

29. Philip Alston, *The Committee on Economic, Social and Cultural Rights*, in THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL 472, 495 (Philip Alston ed., 1992).

30. *Id.*

31. *Id.*

Committee has argued that these steps must be taken within a reasonably short time after a state's ratification of the Covenant.³²

The Committee on Economic, Social, and Cultural Rights has also identified certain core obligations which the state should discharge. For example, if significant numbers are deprived of basic health care, education etc., then the burden is on the state to demonstrate that resource constraints make it impossible to comply with these obligations.³³ Alston has argued that:

there would be no justification for elevating a "claim" to the status of a right . . . if its normative content could be so indeterminate as to allow for the possibility that the rightholders possess no particular entitlement to anything. Each right must therefore give rise to an absolute minimum entitlement, in the absence of which a state party is to be considered to be in violation of it [*sic*] obligations.³⁴

The Indian Supreme Court's decision in *Unni Krishnan*, noted above, is also an attempt to develop a minimum core entitlement with regard to these rights. In that case, the Court argued that the right to education implies that every child has a right to free education until the age of fourteen. After that age, the right is circumscribed by the economic capacity of the state.³⁵

B. Exploring the Potential Use of Indicators

Indicators have been held out as another means of promoting the realization of these rights. There has been a revival of interest in indicators consequent to the publication of the UNDP's Human Development Index and Human Freedom Index. Danilo Türk, Special Rapporteur to the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, dealt extensively with the question of indicators in his reports to the Sub-Commission.³⁶

32. *Id.*

33. *Id.*

34. Philip Alston, *Out of the Abyss: The Challenges Confronting the New U.N. Committee on Economic, Social and Cultural Rights*, 9 HUMAN RIGHTS Q. 332, 352–53 (1987).

35. Unni Krishnan, [1993] 1 S.C.C. 645 at 733.

36. *The New International Economic Order and the Promotion of Human Rights: Realization of Economic, Social and Cultural Rights, First Progress Report Prepared by the Special Rapporteur to the Sub-Commission on Prevention of Discrimination and Protection of Minorities*, U.N. ESCOR Comm. on Human Rights, 42d Sess., Prov. Agenda Item 7, U.N. Doc. E/CN.4/Sub.2/1990/19 (July 6, 1990) [hereinafter *First Progress Report*]; *The Realization of Economic, Social and Cultural Rights, Second Progress Report Prepared by the Special Rapporteur to the Sub-Commission on Prevention of Discrimination and Protection of Minorities*, U.N. ESCOR Comm. on Human Rights, 43d Sess., Prov. Agenda Item 8, U.N. Doc. E/CN.4/Sub.2/1991/17 (July 18, 1991) [hereinafter *Second Progress Report*].

Türk argued that indicators could play a useful role in the realization of economic, social, and cultural rights. They would assist in measuring the progressive realization of economic, social, and cultural rights and also help in identifying the core content of these rights.³⁷ However, he conceded that more work needed to be done in identifying indicators, especially universally applicable indicators.³⁸ He also noted that indicators could be manipulated with adverse consequences.³⁹ Türk recommended the convening of an expert seminar on the question of indicators under the auspices of the Commission for Human Rights.⁴⁰ The seminar was held in early 1993 in Geneva.

The Expert Seminar, however, did not share Türk's optimism with regard to the potential of indicators.⁴¹ "The seminar [instead] concluded that the first priority was to identify and clarify the content of the various rights and obligations. Only then would it be possible to" assess the most effective way of achievement, "which may or may not involve . . . indicators."⁴²

Indicators involve several problems. Among them are the collection of data, its interpretation and analysis, and the identification of sources of data. Exploring the potential use of indicators in the realization of socioeconomic rights would be another task for a commission for socioeconomic rights. The commission would be able to assist in the collection of data, in collaboration with NGOs and grassroots groups.

C. Analyzing Human Rights Postulates or Criteria

The Expert Seminar on Indicators drew attention to the use of "inviolable postulates or principles"⁴³ and "human rights criteria,"⁴⁴ to assist in the realization of economic, social, and cultural rights. These "inviolable postulates" would reflect such values as "nondiscrimination, the right to information, equality in land relations, democratic participation, gender equality, the right to a healthy living environment, economic parity, the maintenance of cultural identity and skills and the role of and nature of governance."⁴⁵

37. *First Progress Report*, *supra* note 36, ¶¶ 1–105.

38. *Second Progress Report*, *supra* note 36, ¶ 8.

39. *Id.* ¶ 11(f).

40. *First Progress Report*, *supra* note 36, ¶ 220(a).

41. Preparatory Committee, World Conference on Human Rights, Report of the Secretariat, U.N. GAOR, 4th Sess., Agenda Item 6, U.N. Doc. A/Conf. 157/PC/73 (April 20, 1993).

42. *Id.* ¶ 153.

43. *Id.* ¶ 26.

44. *Id.* ¶ 27.

45. *Id.*

D. Submitting National Reports

The task of preparing national reports under the Covenant is also one that could be performed by the commission. States that are party to the Covenant on Economic, Social, and Cultural Rights are required to comply with certain reporting obligations under Articles 16 through 22. States are required to report on the measures they have adopted and the progress they have made in achieving their obligations under the Covenant.⁴⁶

However, reporting obligations have never been taken seriously by states. Some states have failed to even submit a single report. As Alston notes:

[T]he task of compiling and presenting the reports has tended to be seen almost exclusively as a diplomatic chore [to] be carried out with . . . little involvement on the part of those in government who are actually concerned with the rights in question, and with no involvement at all of the broader range of social partners in the community.⁴⁷

Recently, the Committee on Economic, Social, and Cultural Rights has sought to make the reporting obligation more than just a sterile exercise. It has indicated that the obligation entails, *inter alia*, that:

- (1) "a comprehensive . . . review of national legislation, administrative rules and procedures" takes place soon after ratification.
- (2) regular monitoring with respect to each of the rights, occurs.
- (3) "clearly stated and carefully targeted policies" for the realization of the rights in the Covenant be formulated.
- (4) public scrutiny of government documentation be facilitated and all sectors of society be involved in the formulation of such policies.⁴⁸

E. Scrutinizing Public Policy

The commission would need to play a major role in scrutinizing public policy against the norms embodied in the Covenant on Economic, Social, and Cultural Rights. This would include recommending changes to national policies, legislation, and programs and addressing specific proposals to targeted ministries and governmental agencies. It would also include analyzing public expenditure patterns and reports submitted by professional

46. International Covenant on Economic, Social and Cultural Rights, *supra* note 2, art. 16(1).

47. Alston, *supra* note 29, at 491.

48. *Id.* at 492.

organizations and NGOs. Moreover, in the present market environment, it may also include highlighting areas where the market is not working and thus requires governmental intervention.

The commission's tasks in this area would also include monitoring agreements and treaties and the work of the international financial institutions. Devising new conditionalities that would not infringe upon human rights would also be addressed by the commission.

F. Compiling Human Rights Impact Statements

The commission's public policy role would also be linked with the compilation of human rights impact statements. De Waart notes that a human rights impact statement would address:

the possible adverse effects of the proposed activity, temporary and long term, on the full enjoyment of human rights by any sector of the national society; the contribution of the proposed activity to the full enjoyment of human rights by the population affected; and the establishment of participatory mechanisms for monitoring and evaluations.⁴⁹

G. Working with NGOs and Professional Groups

The national human rights commission would need to work closely with civil society groups. These groups would provide alternative sources of information and data. The work of the commission would be enriched by information from as wide a range of sources as is feasible. Moreover, these groups would provide the commission with critiques of governmental policies and programs.

The commission should also be vested with the power to receive complaints from groups of citizens who allege violation of their economic, social, and cultural rights. The Commission could be vested with the power to hold inquiries—both public and private—and issue reports and orders.

VI. RIGHTS

Rights are inherently empowering. They provide a strong mobilization point for programs and action. By stating that a person has a right to food, for

49. Paul de Waart, *Implementing the Right to Development: The Perfection of Democracy*, in *THE RIGHT TO DEVELOPMENT IN INTERNATIONAL LAW* (Subrata Roy Chowdhury et al. ed., 1992).

example, one is providing a strong impulse to improve the quality of nutrition that a person may receive. Rights provide a standard against which governmental and nongovernmental conduct could be evaluated. Rights also possess a transformative dimension. They could provide standards towards which programs and action could be directed.

One of the first steps towards the realization of the rights contained in the Covenant on Economic, Social, and Cultural Rights is the recognition that these claims are "rights." The recognition that the global community does possess these rights would provide a strong impetus for programs for their realization.

VII. CONCLUSION

Three major factors have hampered the realization of socioeconomic rights: (1) the ambiguous nature of these rights; (2) the lawyer-based approach to human rights protection; and (3) the lack of institutions concerned with socioeconomic rights.

The thrust of this paper has been to suggest a model that will go some way towards overcoming these obstacles. The model commission would firstly fill an institutional gap that now exists. Secondly, it would seek to clarify the content of these socioeconomic rights as one of its primary tasks. Thirdly, it would adopt a broad-based approach to the realization of economic, social, and cultural rights.

We have referred briefly to the philosophical underpinnings of human rights. We have noted that initially human rights were viewed as a method of securing governmental accountability, especially in the civil and political spheres.

Yet for many societies of the South, human rights are becoming more than a method of seeking governmental accountability. They are increasingly seen as a method of bringing about social transformation. They have raised the possibility of social and economic advancement.

The call made in this paper for the establishment of national human rights commissions, to deal specifically with economic, social, and cultural rights does not support the argument that economic, social, and cultural rights should be given priority over civil and political rights. On the contrary, this paper endorses the view that both sets of rights are equally important and that their realization should be pursued with the same intensity. The argument advanced here is that the establishment of a specific commission with the specific mandate of promoting socioeconomic rights would fill an institutional gap that now exists and do much to advance the realization of these rights.

It is desirable that other institutions for the protection of civil and

political rights should also exist side by side with a commission for socioeconomic rights. An ombudsman type model with great accessibility would be an ideal foil to the socioeconomic commission.

The legal system is limited in its capacity to deal with the many nuances of economic, social, and cultural rights. The realization of these rights requires programs and action in a wider array of arenas. The political arena needs to be addressed, as does the public policy process. Public awareness also needs to be raised.

A commission equipped with the resources and the mandate to deal with these issues would be better placed to promote the realization of these rights.