ESCR in preventing, addressing and transitioning from conflict

Second report

Internal Report

Introduction

This report contains a synthesis of conversations that took place amongst ESCR-Net members via two rounds of online discussions. The first, held between December 2017 and January 2018 amongst more than fifteen members from ten countries, facilitated mutual learning and deepened a shared analysis about the critical importance of advancing ESCR in conflict and post-conflict situations. Those conversations also began to identify strategies that members are using and consider opportunities for collective work at the intersection of ESCR and conflict. A second round of online discussions, held in June and July 2018 amongst eighteen members from ten countries, sought to deepen discussion about opportunities for collective work amongst ESCR-Net members to promote the respect and protection of ESCR in conflict and post-conflict situations.

The conversations amongst ESCR-Net members about the intersection of economic, social and cultural rights with conflict- and post-conflict situations are still in early stages and more needs to be done before the ESCR-Net has consolidated a set of recommendations or positions that might be communicated externally. While the above-mentioned conversations were an important initial step in this process, ESCR-Net members will continue to engage in internal discussions during the year 2019 in hopes of eventually arriving at some findings that may be used in other spaces. This present report, therefore, is intended only for existing members of ESCR-Net and should not be published or shared externally at this time.

The report begins with a brief section on the background to the conversation, followed by a summary of proceedings from the June and July online conversations, with references to the December 2017 and January 2018 discussions.[1] It then articulates some conclusions, followed by suggested actions. The report concludes with a list of relevant resources for ESCR-Net members to access if they wish to deepen their learning and analysis about the intersection between conflict and ESCR.

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[1] A full copy of the report on the first round of online discussions, can be found here.

Background

The need to effectively advance economic, social and cultural rights (ESCR) in conflict and post-conflict situations has been identified by ESCR-Net members in recent years. During the Network's Global Strategy Meeting in November 2016, several members argued for the need for ESCR-Net to work to advance economic, social and cultural rights in conflict and post-conflict situations, including in occupied territories. A mapping of issues and actors relevant to ESCR in the Middle East and North Africa region (MENA) that was carried out over 2016-2017 also highlighted the topic of conflict and post-conflict as central.

As a result, a concept note was developed by the ESCR-Net secretariat, following conversation with select members and some desk research. The concept note, understood as "a proposal for a possible cross-network discussion", was finalized in late 2017 and used as the basis to organize the first two online conversations, held in December 2017 and January 2018. The conversations aimed to facilitate mutual learning and deepen a shared analysis about the critical importance of advancing ESCR in conflict and post-conflict situations, identify strategies that members are using and consider opportunities for collective work at the intersection of ESCR and conflict.

Following this round, an internal report was issued and shared with participants. The report ended with a list of key recommendations based on the conversations that took place. These included:

- A focus on promoting accountability
- The need to assess, and then address, the gaps between international humanitarian law (IHL) and international human rights law (IHRL) with a focus on ESCR.
- Emphasis on clarifying key concepts
- The possibility of focusing on thematic issues of particular relevance for conflict and post-conflict situations, such as the role of private actors; health rights, including for women, the right to land, housing, and natural resources; and human rights defenders working in conflict- and post-conflict settings
- The centrality of ESCR in achieving sustainable peace in conflict affected settings.

The second round of discussions were organized in June and July 2018 to deepen discussion about opportunities for collective work amongst ESCR-Net members to promote the respect and protection of ESCR in conflict and post-conflict situations. Specifically, the conversations centered on participants' reactions to the first report, issues requiring further conversation, and ideas for collective work to advance ESCR in conflict and post-conflict situations.

Summary of proceedings

As was the case with the first round, participants helped initiate the conversation through interventions around one or more of the questions posed for the agenda.

The need to build the capacity of civil society activists in conflict zones to be able to use international human rights mechanisms was an issue raised by several participants in both rounds of discussions, particularly from members in the Occupied Palestinian Territories, such as Maryam Al Tibi from

[Democracy & Workers' Rights Center in Palestine](#) who stressed this need to ensure accountability. [Evelyne Schmid](#), an individual member teaching at the University of Lausanne in Switzerland, added to the issue of accountability in this round of discussions, emphasising the need to look beyond the technical terms of accountability, and rather look into the different opportunities that exist, such as UN treaty bodies and special procedures. According to her, these tools are underutilized when it comes to conflict, while they are not difficult to apply in those situations. If the information is there, using these tools can help in producing recommendations that could leverage campaigns on the ground. Schmid recognized that while UN human rights mechanisms are weak in terms of remedy, they are strong in identifying the violations. Accordingly, she suggested that we look into capacity building opportunities and expertise on documentation in conflict situations, while listing opportunities where ESCR-Net members can inform human rights mechanisms on conflict related issues.

On obstacles to accountability, members from the [Association of Environmental Lawyers in Liberia - Green Advocates](#) said that we should add to the list of thematic issues that are affected and affect how we manage conflict is the right to information which is violated and thus creates an obstacle to documentation and monitoring and thus accountability. Juan Bernardo Rosado Duque from [Escuela Nacional Sindical (ENS)](#) in Colombia agreed on the importance of information and development of data. He talked about their experience in building data to fill the gap between state produced information and the reality. He said that data production is very important, but it is a technical process and needs to adhere to international standards. Data needs to be interpreted well and to help us show the severity of ESCR violations.

Strongly linked to this issue was the work done by members with regards to corporate accountability. In this round of discussions, [Al Haq](#) in the West Bank (Occupied Palestinian Territories, or OPT), was represented by Maha Abdallah. She focused on the role of private actors in conflict and the importance of imposing regulations on businesses. A lot of work has been done on regulations of businesses even in conflicted affected areas but the problem is that there is no political will. She added that there remains a gap in addressing the role of corporations in conflict and remedies remain a theory as nothing is being implemented. She suggested that the network can target multinational corporations directly as part of its advocacy strategies to remind them of their obligations. In addition, the network could target mother countries to push them to prosecute violating businesses. In the previous round of online discussions, Wesam Ahmad, representing Al Haq referred to the undue influence acts of corporations in the occupied territories as 'corporate capture.' An example he gave focused on the profit-seeking motives behind the building of settlements in Palestine and how this has represented a serious obstacle to efforts to find solutions to the conflict. In the previous round, Saul Baños from [Fundación de Estudios para la Aplicación del Derecho – FESPAD](#) in El Salvador had also referred to the interests of transnational corporations is an obstacle to completely fulfilling the social and economic peace that were enshrined in the 26 year old peace agreement, thus showing the relevance of corporate accountability in tackling ESCR in conflict situations.

With regards to concepts, Amanda Cahill-Ripley, lecturer at Lancaster University with [Economic and Social Rights Academic Network UKI (ESRAN-UKI)](#) , said that we need to think about what is the most beneficial approach to ensure that ESCR is taken into account. The idea of "sustaining peace" gave a lot of traction in the UN in New York and Geneva. According to her, "sustaining peace" allows for a holistic approach as it is both an outcome and a process. As a concept it explicitly stresses the importance of tackling root causes and gives emphasis to conflict prevention. In addition, its an inclusive approach as it

allows for participation at the local level including the most vulnerable and marginalized who must be included in the process. In this manner, Cahill - Ripley stresses that by using such a holistic approach we can advocate the added value of ESCR in conflict prevention. She added that another concept we should strongly consider is "human security". It is useful as a bridging concept as it can bring people from different sectors (development, human rights, conflict resolution/peacebuilding) together which reaffirming the centrality of human rights. However, she raised that there will be areas of controversy that the network will need to navigate; for example, via positions on "resilience" and "resilient communities," among others

With regards to gaps between International Humanitarian Law and International Human Rights Law, Rasha Jarhum, individual member from Yemen, talked about the challenges she and her peer face when dealing with human rights violations in the context of the conflict in Yemen. This is particularly the case during advocacy, she adds, explaining that she has to resort to different terminologies depending on the situation and the kind of conflict she is dealing with. She gives the example of "detention" saying that under IHL it is called deprivation of liberty and then there are different kinds depending on the kind of conflict, not to mention that with regards to detention during non-international armed conflict the law is not as developed as with regards to international armed conflict. This is an issue that she had raised in the previous round, particularly that Yemen is considered an non-international armed conflict, emphasising that it has been quite difficult to ask humanitarian organizations to consider the impacts of the conflict on the livelihoods and well being of people. In her case, she has been working child marriages which has increased after a brief reduction just before the war broke out, and gender-based violence has increased by 70% as a result of the conflict.

On the different thematic issues that the network can focus on, we had identified several in previous discussions and during the first round. These included: the role of private actors (corporations) in conflict, with a focus on corporate accountability and corporate capture; women and their economic, social and cultural rights, including sexual and reproductive health rights; access to land, housing, and natural resources; and the protection of human rights defenders working in conflict- and post-conflict settings

Ahmed Mansour on behalf of Habitat International Coalition/Housing and Land Rights Network (HIC/HLRN) in the MENA region discussed the right to access land as being central to conflict saying that most wars are about land and people. For him land will link to other rights that directly affect people, particularly marginalized communities, and that by looking at problems of land we can see sources of conflict. He linked the argument with example of rights of indigenous populations and the link between the capture of their land and the role of MNCs in conflict. Raoul Kitungano from Justice Pour Tous in the DRC confirmed that land is a central issue to conflict, describing how post conflict, many companies have grabbed land from local communities, thus "delocalizing" them. In this context, he emphasised the importance of trying to figure out ways to demand remedies for such violations.

Regarding the right to health, Tamar Dekanosidze from the Georgian Young Lawyers' Association (GYLA) had previously talked about how the conflict with Russia over South Ossetia has led to people being displaced from their land and resulting violations in economic, social and cultural rights. Her organization has brought the issue to the European Court for Human Rights on behalf of several families. Tamar also referred to violations of the right to health, particularly with regards to sexual and reproductive health. In this round of online conversations, she insisted that it is a right that needs to be considered seriously as it is not a right that is strongly linked to other rights in the context of conflict and

thus needs special attention. In this regards, she emphasised the importance of targeted advocacy. In the previous round, Dymtro from the [Foundation of Medical Law and Bioethics of Ukraine](#) also stressed the threats to the right to health as a result of conflict. Particular concern was expressed about the eastern part of the country, where there was no respect to medical neutrality and parties to the conflict targeted medical personnel working on Ukraine's borders. He also highlighted the importance of promoting national legislation to ensure rights are respected and upheld.

In the [concept note](#), we had identified several dimensions to the relationship between conflict and ESCR. These are:

1. ESCR violations and socio-economic inequality as drivers of conflict, especially in the form of uprisings or social unrest. 2. ESCR violations as a tool of war and occupation

3. ESCR violations as an outcome of war/conflict

4. ESCR as vital to transitional justice and peacebuilding.

Amanda Cahill Ripley suggested that we add also an axis to state that ESCR is key to conflict prevention, risk assessment and early warning.

Challenges that members face working on conflict issues include political positions that are defined by their narrative. For example, Sawsan Zaher from [Adalah – Legal Center for Minority Rights in Israel](#) talked in the previous round of discussions about her organization's experience with strategic litigation to advocate for the economic, social and cultural rights of Palestinians in Israel and the Occupied Territories. For Adalah, the framework of IHRL provides space for positive demands or remedies. However, given the strategies they use, Adalah faces political challenges, since they are dealing with an occupying force and the resort to national litigation is viewed by some as political normalization of the occupation. This is a dilemma that they have not yet resolved. Rasha Jarhum raised the concerning the situation in Yemen. She said that for example asking an armed group to hold fair trials, runs the risk of legitimizing those actors. We must be clear on who we hold accountable and navigate controversy carefully.

However, using a human rights framework provides also opportunities on the ground. Niki Gamara formerly from [Defend Job Philippines](#) focused, in the last round of discussions, on the opportunities that a human rights framework offers for engaging a broader audience not directly (or personally) affected by conflict to better understand the issues in conflict-ridden areas, such as the conditions of people in the MENA region. In addition, a human rights framework provides a measurable tool that would facilitate bridging existing gaps and make sure that those affected by the conflict are included in post-conflict processes. She gave an example of the situation in the Philippines and how those who were affected by the conflict have not been included in the post-conflict settlement.

Proposed Actions:

Conversations about advancing ESCR in conflict and post-conflict settings have allowed the engagement of several existing members who haven't recently been involved in working groups or projects. After a year of exchange around these issues, members have articulated a desire to push forward collective work to advance ESCR in conflict-affected settings. We will soon need to make some decisions about where those activities might fit, within (or beyond) working group structures; about

which feedback from the Program team is welcomed. Collective actions that members have proposed related to this area of work include:

1) Enhancing a focus on conflict and post-conflict issues in existing collective projects, including with regards to the role of corporations (relevant to CAWG), triggering or exacerbating disputes related to land, housing and natural resources and the impacts of these on women (relevant to WESCR WG) and the ways in which post-conflict and transitions are affected by massive development projects and international financial institutions (relevant to EPWG).

2) The development of publications, such as a briefing document or position paper that captures the shared analysis of members, defines collective positions and proposes some ways to resolve some issues currently subject to debate. This (or these) document(s) could also reflect key demands and platforms/spaces to target future advocacy. Given that several of the issues that would be addressed in these publications are related to legal questions, it is possible that this would could be done in collaboration with the Strategic Litigation Working Group.

3) Capacity development for monitoring and documentation of ESCR violations which, according to members participating in these conversations, is essential in order to achieve effective accountability and inform advocacy to include ESCR in post conflict processes. Any collective work to facilitate monitoring and documentation would likely require collaboration with the Monitoring Working Group.

4) Advocacy, particularly vis-a-vis UN bodies, around the intersection between ESCR and conflict, offers additional opportunities for future collective work. This could entail an activity to identify international and regional advocacy opportunities (including via generating inputs to reports by special rapporteurs; thematic and periodic reporting to UN treaty bodies and the Human Rights Council, the ICC, UN Security Council and/or the Human Rights Committee in relation to the new GC on the Right to Life and other general comments; etc.). On this note it is worth mentioning that some members are already doing work. The ESCR and sustaining peace project at Lancaster University, for example, has held a briefing with the UN Committee on Economic, Social and Cultural Rights (CESCR) in March 2018 to discuss ICESCR and sustaining peace.[2] They also held workshops in Geneva and Lancaster that included the OHCHCR early warning team.

Amongst issues that members would like to coordinate advocacy around, the following have stood out:

- Addressing the gaps between humanitarian and human rights legal frameworks
- Confronting abuses, and/or undue influence wielded, by private actors in conflict and post-conflict settings
- Land rights in conflict/post-conflict settings, and
- Women's rights to sexual/reproductive health and health rights in general.
- Support women's protection, gender responsive reparation, and protection programs as ways to prevent conflict.

Conclusion:

In today's world, conflict and the threat of conflict is increasing as social and economic injustices continue with impunity. Plainly said: increasing inequality, often maintained through multiple forms of violence, may lead to wide-scale conflict. This observation further underscores the critical need to apply

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[2] For more information:
http://wp.lancs.ac.uk/escr-peacebuilding/2018/04/13/dr-amanda-cahill-ripley-and-karol-balfe-brief-the-un-committee-on-economic-social-and-cultural-rights/

a human rights framework to dealing with conflict which allows for the ESCR obligations of states—both domestically and extraterritorially—to be clarified, monitored and subjected to accountability.

After bilateral conversations with members working in this field, desk research and these initial conversations, ESCR-Net is now envisioning ways to facilitate collective actions with an aim to promote and ensure that ESCR is seriously considered when dealing with conflict situations and for the creation of sustainable peace. Future discussions will likely seek to identify opportunities for action and develop a collective action plan.

As next steps, it is suggested that participants reflect on this report, particularly recommendations for next steps and suggested actions, in a manner that could lead to collective work, drawing on the unique strengths of ESCR-Net.

Relevant resources

To watch the whole videos of the two rounds in the four languages:
https://drive.google.com/drive/folders/1IL4-0TNojDTLW1zJ-PVH7huPqTowDBnz?usp=sharing

Readings and references raised during the discussions:

- ICJ Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories: http://www.icj-cij.org/en/case/131
- Resources shared by the Foundation of Medical Law and Bioethics of Ukraine: https://www.youtube.com/watch?v=0bHM2XzFhu0 and http://medicallaw.org.ua/zhurnal-medychne-pravo/archive-of-volumes/17-2016-en/senyuta-iy-klapatyi-dy/
- Economic Social and Cultural Rights and Sustaining Peace, a website of a project run by Lancaster University http://wp.lancs.ac.uk/escr-peacebuilding/
- Amanda Cahill-Ripley and Diane Hendrick, Economic, Social and Cultural Rights and Sustaining Peace: An Introduction, Lancastar University, http://wp.lancs.ac.uk/escr-peacebuilding/files/2018/03/Economic-Social-and-Cultural-Rights-and-Sustaining-Peace-Report-2018.pdf
- Evelyne Schmid, Socio-Economic and Cultural Rights and Wrongs after Conflicts: Using the State Reporting Procedure Before the UN CESCR More Effectively, Netherlands Quarterly of Human Rights, September 2013, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2319884

- Golay, C., Mahon, C., & Cismas, I. (January 01, 2011). The impact of the UN special procedures on the development and implementation of economic, social and cultural rights. International Journal of Human Rights. https://www.tandfonline.com/doi/abs/10.1080/13642987.2011.537472

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Resources cited in the original concept note:

Evelyne Shmid and Aoife Nolan, 'Do No Harm? Exploring the Scope of Economic and Social Rights in Transitional Justice', International Journal of Transitional Justice (2014) 8 (3): 362 – 382 https://academic.oup.com/ijtj/article/8/3/362/2912086/Do-No-Harm-Exploring-the-Scope-of-Economic-and

Evelyne Schmid SHUR Project Final Conference "Human Rights in Conflict — The role of Civil Society", 3-6 June 2009, Luiss University, Rome.
https://poseidon01.ssrn.com/delivery.php?ID=29702408500410002701906809108708209902402700305902103809312000000902512109102910102202102602902211806104712612110912510107209204403803407901400702908707308410111601805505510112712601600300212509310308108010411503107700402201409600909706909107101708 2&EXT=pdf

Office of the High Commissioner for Human Rights (OHCHR), 2016, 'Early Warning and Economic, Social and Cultural Rights' http://www.ohchr.org/Documents/Issues/ESCR/EarlyWarning_ESCR_2016_en.pdf

Office of the High Commissioner for Human Rights (OHCHR), 2011, International Legal Protection of Human Rights in Armed Conflict,
http://www.globalprotectioncluster.org/_assets/files/tools_and_guidance/human_rights_protection/OHCHR_Int_Legal_Protection_HR_Armed_Conflict_2011-EN.pdf

Office of the High Commissioner for Human Rights (OHCHR), 2014, 'Transitional Justice and Economic, Social and Cultural Rights,' http://www.ohchr.org/Documents/Publications/HR-PUB-13-05.pdf

The Protection of Human Rights in Humanitarian Crises, A Joint Background Paper by OHCHR and UNHCR IASC Principals, 8 May 2013
http://www.globalprotectioncluster.org/_assets/files/tools_and_guidance/human_rights_protection/OHCHR-UNHCR%20Joint%20Paper_EN.pdf