

# Economic, Social & Cultural Rights in Conflict Affected Areas: “Three Feet of Ice does not Result From One Day of Cold Weather”

By BIPIN ADHIKARI

The liberal democrat chief whip at Westminster in England was considering recently whether to sack Dr Jenny Tonge, a frontbencher who said that she would think of becoming a suicide bomber if she lived in the Palestinian territories. She was summoned to explain her comments to the chief whip of her party after telling a Westminster rally that the daily “killings and the bulldozings and all the other horrible things” in the occupied territories made her understand why people became suicide bombers. Dr Tonge, the spokeswoman on children, told a meeting of the Palestinian Solidarity Campaign that “this particular brand of terrorism, the suicide bomber, is truly born out of desperation. Many many people criticise, many many people say it is just another form of terrorism, but I can understand and I am a fairly emotional person and I am a mother and a grand mother, I think if I had to live in that situation, and I say this advisedly, I might just consider becoming one myself. And that is a terrible thing to say.” Her analysis of the situation might be criticized for some apparent flaws, but why she should consider being a suicide bomber might not be an irrelevant question. The morale from this story is that the trouble in any relationship indicates a long history of problems.

The economic, social and cultural rights in the conflict affected areas of Nepal also have a long history of problems. The ongoing Maoist conflict and mobilization of security forces to contain it has made these problems more complicated.

The escalating violence continues to provoke chain of violence from both sides, and the government, in particular, is failing its obligation to protect human rights in the context of conflict. This obligation goes further from the responsibility of acting according to the rules of the Terrorist and Destructive Activities (Control and Punishment) Act, or the compulsions under the International Covenant on Civil and Political Rights. Together with civil and political rights, ESC rights also constitute part of an integral, interrelated, interdependent, and indivisible international human rights corpus enshrined in important legal instruments such as the Universal Declaration of Human Rights, which the government of Nepal has the obligation to implement. Those ESC rights which are particularly under attack of both the warring groups are the right to an adequate standard of living, the right to food, the human right to adequate housing, health, property, social security, the right to work and rights in work, the right to education, and the rights of selected beneficiaries like women, children, minorities and indigenous peoples, and of those who are forced to join the Maoist insurgents against their will.

The International Covenant on Economic Social and Cultural Rights was adopted by the United Nations General Assembly in December 1966, and entered into force in January 1976. As of April 2001, 144 states had ratified the Covenant, and are thus bound by the provisions of it. Article 2(1) of the Covenant provides for the general obligations that

states that ratify are supposed to fulfill. Article 2(1) reads: “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the right recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” As preeminently proclaimed by the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom of speech and belief, freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his ESC rights, as well as his civil and political rights.

Today, the issue around the world is no longer whether ESC rights are valid human rights but rather how they may be usefully, effectively and practically translated to the benefit of the people. There is, therefore, the recognition of the obligation to take positive action to ensure that these rights are being enjoyed, it is not just enough to refrain from interference. Like civil and political rights, economic, social and cultural rights impose three different types of obligations on States: the obligations to respect, protect and fulfill. Failure to perform any one of these three obligations constitutes a violation of such rights. The obligation to respect requires States to refrain from interfering with the enjoyment of economic, social and cultural

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rights... The obligation to protect requires States to prevent violations of such rights by third parties... the obligation to fulfill requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights. In the context of Nepal, the challenge is to protect those who are in the conflict zones of Nepal and are worse off socially and economically. In these zones, the question of economic social and cultural rights in times of armed conflict should also be seen in the context of the fact that humanitarian law has increasingly become related to human rights law. ICESCR does not contain any public emergency clause. This can be interpreted to mean that the ICESCR is, in principle, fully applicable in times of armed conflict and other public emergencies.

The standard of progressive realization arises out of Article 2(1) of the ICESCR, which commits states parties —countries that have ratified the covenant—to take steps individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized. But effective monitoring of this Covenant, which is central to the realization of the rights it enumerates, is not taking place. ■

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