This Update provides a summary of the initiatives regarding economic, social and cultural (ESC) rights at the 36th session of the Human Rights Council (September 2017). It provides information on the following ESC rights initiatives:

- Rights to water and sanitation
- Right to health
- SDGs, development and human rights
- Other initiatives of interest

Overall, economic, social and cultural (ESC) rights did not feature so prominently in this Council session. The High Commissioner’s Opening Statement is instructive. High Commissioner Zeid did not address any economic and social rights issue explicitly in his Opening Statement, other than in relation to the situation in Gaza, Palestine, where he noted the dire situation in relation to health, water, sanitation and electricity. A look at the Communications Report of the Special Procedures mandate holders[1] also provides interesting insights. Civil and political rights focused mandates still send a much higher number of Communications. The highest numbers of Communications are sent by the Special Rapporteur on Human Rights Defenders (55 over this period and 3093 since 1 June 2006), then the Special Rapporteur on Freedom of Expression (66 over this period and 2842 since 1 June 2006) and third, the special Rapporteur on Torture (24 over this period and 2199 since 1 June 2006).

For ESC rights, the highest number of Communications were sent by the Special Rapporteur on the Right to Health (15 over this period and 609 since 1 June 2006), the second highest number were sent by the Special Rapporteur on Human Rights and the Environment [2] (12 over this period and 69 in total) and equal third are the Special Rapporteur on the Right to Adequate Housing (4 over this period and 320 in total), the Cultural Rights mandate (7 over this period and 83 in total) and the Education mandate (5 over this period and 77 in total).
Rights to water and sanitation

Service regulation and its role in the progressive realization of the human rights to water and sanitation, was the topic of the annual thematic report to the Human Rights Council (A/HRC/36/45) of the Special Rapporteur on the rights to water and sanitation.

The report is a comprehensive discussion of the importance of service regulation for the realisation of the rights to water and sanitation and provides practical information about how service regulation can incorporate human rights principles.

The Special Rapporteur begins by emphasising that there is no universal regulatory model and regulation should be adapted to the local context. In outlining States’ obligations with respect to regulation, he highlights 2 immediate obligations (ie. not subject to progressive realisation): to take deliberate, concrete and targeted steps to put in place a regulatory framework for water and sanitation service provision that is aligned with human rights; and ensure that regulations are not discriminatory. In relation to the the obligation to protect, he notes that States must prevent third parties from interfering with the enjoyment of the human rights to water and sanitation by establishing an effective regulatory system, with independent monitoring, genuine public participation, penalties for non-compliance and service standards.

*Where service provision is formally delegated by the State to non-State actors, the State cannot exempt itself from its human rights obligations and retains the obligation to regulate and monitor their activities. Non-State service providers (formal and informal), on the other hand, have human rights responsibilities, which include complying with the national regulatory framework and respecting the human rights to water and sanitation.*

The report also looks at the obligations of regulatory actors in the areas of standard-setting, monitoring and ensuring accountability for service provision. He explains that in relation to regulators’ immediate obligations of equality and non-discrimination, they must, when regulating tariffs, consider those who do not have the economic ability to pay for services, and implement mechanisms for their protection; they must also ensure that service providers deliver services to poorer neighbourhoods and informal settlements.

The Special Rapporteur makes the important point that being at the interface between policymakers, service providers and users, and as guarantors of accountability, regulatory actors are best placed to assess whether water and sanitation standards are being progressively met or are being overlooked. They have an obligation to monitor service providers’ compliance with the rights to water and sanitation, to identify root causes of retrogressions and to recommend investment decisions, and policy and legislative changes, in line with the human rights framework. He also underlines the obligations of regulators to facilitate public participation in decision-making and to collect and ensure access to information on service provision.

After considering different types of regulatory frameworks, the Special Rapporteur notes that public, independent regulatory entities can contribute significantly to the realization of the human rights to water and sanitation, particularly when supported by a strong national policy and legal framework based on the rights to water and sanitation.

The Special Rapporteur outlines the human rights elements to be incorporated in the setting of performance standards by States, which he says is about giving practical meaning to the normative content of the rights: availability; accessibility; quality and safety; affordability; acceptability, privacy and dignity; participation and access to information; equality and non-discrimination; sustainability; and accountability. He discusses the importance of service monitoring but notes the significant challenges associated with informal and small-scale service providers and particularly in rural areas.

Finally, the Special Rapporteur highlights the importance of accountability and access to
justice, both in terms of service providers but also in relation to decisions and activities of regulatory bodies. He discusses administrative, quasi-judicial and judicial accountability mechanisms and emphasizes the justiciability of the rights to water and sanitation.

**Right to health**

Whilst the Special Rapporteur on the right to health was not reporting at this session of the Council, a resolution on the right to health was presented, by Brazil and Portugal, on mental health and human rights (A/HRC/RES/36/13) and was adopted by consensus. The resolution drew heavily on the Special Rapporteur's last report (A/HRC/35/21), which addressed mental health, and his earlier report (A/HRC/34/58), which focused on the rights of persons with disabilities, and the report of the OHCHR (A/HRC/34/32) also presented earlier in the year.

In this resolution, the Council says it is:

*Deeply concerned that persons with mental health conditions or psychosocial disabilities, in particular persons using mental health services, may be subject to, inter alia, widespread discrimination, stigma, prejudice, violence, abuse, social exclusion and segregation, unlawful or arbitrary institutionalization, overmedicalization and treatment practices that fail to respect their autonomy, will and preferences.*

It expresses concern also that those practices may constitute or lead to violations of human rights, *sometimes amounting to torture or other cruel, inhuman, or degrading treatment or punishment* and that mental health remains marginalised within health policies and budgets and in medical education, research and practice. The Council stresses the importance of investing more in mental health promotion, addressing underlying social, economic and environmental determinants of mental health and the importance of participation and autonomy, and striving for independent living in the community.

Another important aspect of the resolution is its acknowledgment that the Convention on the Rights of Persons with Disabilities laid the foundation for a paradigm shift in mental health and created the momentum for deinstitutionalization and the identification of a model of care based on respect for human rights that, inter alia, addresses the global burden of obstacles in mental health, provides effective mental health and community-based services and respects the enjoyment of legal capacity on an equal basis with others.

Finally, the Council requests the OHCHR to organize a 1.5 day consultation before the
May 2018 session of the World Health Assembly, to discuss issues, challenges, best practices and technical guidance on a human rights perspective in mental health. It specifically requests the OHCHR to invite to the consultation, the WHO, the Special Rapporteurs on the right to health, disabilities and torture, and persons with psychosocial disabilities or using mental health services.

**SDGs, Development and Human Rights**

The link between development and human rights and discussion of the SDGs, continued to be an important theme in reports and meetings of the 36th session of the Human Rights Council.

The Council held a panel discussion on *The universal periodic review and the 2030 Agenda for Sustainable Development: achieve gender equality and empower all women and girls*, which explored the potential role the UPR mechanism can play in advancing the realization of the 2030 Agenda for Sustainable Development and, in particular Goal 5, at the global, regional and country levels.

This topic was also addressed in a resolution on *The full enjoyment of human rights by all women and girls and the systematic mainstreaming of a gender perspective into the implementation of the 2030 Agenda for Sustainable Development* (A/HRC/RES/36/8), which was proposed by the Lusophone group of countries and adopted by consensus. The resolution requests the OHCHR to hold a two-day intersessional expert meeting to consider gaps in, challenges to and best practices aimed at the full enjoyment of human rights by all women and girls and the systematic mainstreaming of a gender perspective in the implementation of the 2030 Agenda and report to the Council on the outcome.

The Council also adopted by consensus a resolution on *Promoting international cooperation to support national human rights follow-up systems, processes and related mechanisms, and their contribution to the implementation of the 2030 Agenda for Sustainable Development* (A/HRC/RES/36/29). The resolution, which was presented by Brazil and Paraguay, focuses on technical assistance and capacity building for national human rights follow-up systems and processes and how such systems and processes can enhance implementation of the SDGs:

- Recognizes that national human rights mechanisms for reporting and follow-up could make a contribution to the implementation of the Sustainable Development
Goals by strengthening the capacity of States to assess needs, set priorities and implement measures that effectively promote and protect, including on a preventive basis, the human rights of all persons, especially those living in vulnerable situations, thus leaving no one behind.

The newly appointed Special Rapporteur on the Right to Development presented his first report to the Human Rights Council (A/HRC/36/49). Given that he only took up the role on 1 May 2017, the report does not address a thematic topic, but sets out his preliminary views on the context of the mandate and challenges for its implementation and outlines important principles for how he will work and his approach to engagement with stakeholders.

The challenges to the realisation of the right to development identified by the Special Rapporteur include: the politicisation of the right; a lack of engagement by UN agencies and civil society; and adverse global trends such as the global financial and economic crisis, the energy and climate crisis, the increasing number of natural disasters, the new global pandemics, the increase in automation in many sectors, corruption, illicit financial flows, the privatization of public services, austerity and the ageing of the global population.

The Special Rapporteur sets out the over-arching considerations for his work:

- Participation, dialogue, consultation and transparency;
- Inclusiveness—he specifically mentions, indigenous persons, minorities, persons with disabilities and gender;
- Interdependence and indivisibility of rights; and
- International cooperation.

In discussing the priorities for the mandate, the Special Rapporteur emphasizes the need to reinvigorate the advocacy processes for the implementation of the right to development and states ‘The particular value of the right to development is that it shifts the focus away from statistics and goods to the well-being of people.’ While stressing the importance of access to education, healthcare and housing, the report makes no mention of the ICESCR or the existence of legally binding economic, social and cultural rights.

The Special Rapporteur says he will work to ensure that the right to development remains a focus in the global discourse on the SDGs, emphasizing that development should happen in accordance with human rights principles and with the goal of achieving the realization of the right to development for all, rather than simply for economic growth.
Finally, he states that the focus of his work will be to:

- remove structural obstacles to the implementation of the right to development, by assessing national and international development policies and provide recommendations on fostering effective international cooperation, including in relation to financing for development;
- identify, exchange and promote good practices regarding the realisation of the right;
- explore practical measures and provide recommendations for realisation at the national and international levels, particularly in the context of the 2030 Agenda, paying particular attention to participation in processes by all relevant stakeholders; and
- contribute to the work of the Working Group on the Right to Development.

In addition, the OHCHR published its report on the implementation of the right to development (June 2016 – May 2017) (A/HRC/36/23).

A resolution was also adopted on the right to development (A/HRC/RES/36/9) after a vote (31 Y, 11 N, 4 A) which, as in the past, saw the European and Western group of countries vote against the text with interesting abstentions from Portugal, Albania, Korea and Slovenia.

The text, presented by Venezuela on behalf of the 'Non-Aligned Movement' refers to the 'political impasse' in the Working Group on the Right to Development and encourages States to engage constructively in the discussions for the full implementation of the Declaration on the Right to Development. It asks the Working Group to finalise the criteria and operational sub-criteria by its 19th session, with the aim of them evolving into a basis for consideration of an international legal standard of a binding nature, through a collaborative process of engagement.

It also highlights business and human rights issues, expressing concern about the increasing number of cases of human rights violations and abuses by business and underlining the need to ensure that appropriate protection, justice and remedies are provided to the victims of human rights violations and abuses by business.

Further, the resolution reinforces the core group’s desire to mainstream the right to development, for example by requesting the OHCHR to take sufficient measures to ensure balanced and visible allocation of resources and due attention to ensure the visibility of the right to development by identifying and implementing tangible projects dedicated to the right to development, in collaboration with the Special Rapporteur on the right to development. The resolution stresses the need for the
right to development to be recognised in the same way as rights found in the human rights treaties. For instance, the Council decided that it will ensure that its agenda promotes and advances sustainable development and this will lead to raising the right to development, ..., to the same level and on a par with all other human rights and fundamental freedoms.

Finally, in its annual resolution addressing the rights of indigenous peoples (A/HRC/RES/36/14), the Human Rights Council also focused on development processes and the 2030 Agenda. The resolution:

- encourages States to collect and disseminate disaggregated data on indigenous peoples, in order to monitor and improve the impact of development policies, strategies and programmes aimed at improving the well-being of indigenous peoples;
- decides that the theme of the annual half-day panel discussion on the rights of indigenous peoples at the 39th session of the Council will be on the means of participation and the inclusion of indigenous peoples in the 2030 Agenda; and
- encourages States to give due consideration to the rights of indigenous peoples and the multiple and intersecting forms of discrimination faced by them, in the 2030 Agenda and in the elaboration of relevant international and regional programmes, as well as national action plans, strategies and programmes, applying the principle of leaving no one behind.

**Other initiatives of interest**

- **Hazardous waste**

Guidelines for good practices in relation to the human rights obligations related to the environmentally sound management and disposal of hazardous substances and wastes, was the topic of the thematic report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes. Whilst not intended to be a comprehensive compilation of all practices, the Guidelines aim to assist States, businesses, civil society, trade unions and other key actors to identify and address key problems that give rise to human rights abuses due to toxics (A/HRC/36/41). They report explains the duties of States, the responsibilities of business and the
importance of access to justice.

- **Peasants’ rights**

Bolivia, Cuba, Ecuador and South Africa (A/HRC/RES/36/22) presented the annual **resolution on the rights of peasants**. As is usual, the resolution was voted on and passed 34–2, with 11 abstentions. Only the US and the UK voted against the resolution, and most of the European countries abstained, other than Switzerland and Portugal, who voted in favour.

After expressing its concern about poverty and hunger in the rural population and that livelihoods in rural areas are disproportionately affected by poverty, climate change, lack of development and lack of access to scientific progress, the Council decides that the open-ended intergovernmental working group on a UN declaration on the rights of peasants and other people working in rural areas, will hold its 5th session before the June Council session in 2018, to work further on the draft declaration. It asks the Chair-Rapporteur to conduct consultations in the intervening period, including with peasants and persons working in rural areas.

The report of the Working Group’s last session was also published (A/HRC/36/58) at this session and provides a useful summary of State positions and civil society views on the declaration.

- **Slavery**

The **Special Rapporteur on contemporary forms of slavery**, including its causes and consequences, presented a report to the Human Rights Council on **access to justice and remedy for victims of contemporary forms of slavery**, particularly for persons subjected to practices in the context of labour exploitation that satisfy the legal definitions of slavery; debt bondage; and forced labour (A/HRC/36/43).

- **Indigenous Peoples and climate change**

The **Special Rapporteur on the rights of indigenous peoples** presented her report to the Council on the **impacts of climate change and climate finance on indigenous peoples** (A/HRC/36/46).

The report notes some of the impacts of climate change on indigenous peoples and in particular, on their natural resources, livelihoods and cultural identity and survival. The Special Rapporteur stresses that indigenous peoples are not only victims of climate change but have an important contribution to make in addressing climate change. Due to their close relationship with the environment, indigenous peoples are
uniquely placed to adapt to climate change and use traditional knowledge to respond and in the protection and conservation of biodiversity, forests and other natural resources.

The report looks at the work of human rights bodies with respect to indigenous peoples and climate change and then at relevant human rights and other international standards. It highlights the right to self-determination, the right to development, land rights, the right to participation and to free, prior and informed consent (FPIC). The report also discusses human rights obligations of international cooperation and the importance of redress and reparation.

On climate finance the Special Rapporteur reiterates concerns that current climate finance pledges are far below the $100 billion per year by 2020 committed by developed countries and insufficient to adequately address climate change. Further, she states that climate finance to date has significantly favoured mitigation and far more needs to be channelled to adaptation measures. She discusses a number of specific funding mechanisms and emphasises the need for safeguards policies requiring human rights due diligence and redress mechanisms and involving indigenous peoples in relevant processes and on-going monitoring.

The Special Rapporteur says she has received an increasing number of complaints about the adverse impacts on indigenous peoples of climate change mitigation projects, such as renewable energy projects, bio-fuel production and hydroelectric dam construction. She gives examples of cases she has addressed, most of which involve a lack of consultation and FPIC with indigenous peoples. She also noted evictions, violations of freedom of expression and assembly, arbitrary arrests and extrajudicial executions of indigenous peoples defending their lands.

The next session of the Human Rights Council will be the 37th session and will be held from 26 February - 23 March 2018.