

AUSTRALIAN
SOCIAL &
ECONOMIC
RIGHTS
PROJECT

RESOURCE KIT

Revision 1999.09.14

AUSTRALIAN SOCIAL & ECONOMIC RIGHTS PROJECT

RESOURCE KIT

Revision 1999.12.13

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This document was signed and ratified by the Australian Government. In turn, the Government is legally obligated to respect, protect, promote and fulfil the human rights contained in this Covenant.

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The Committee adopts General Comments to assist States in fulfilling their reporting obligations and to provide greater interpretative clarity as to the intent, meaning and content of the Covenant. These General Comments can be used to assist NGOs in framing their issues of concern for the Committee and developing legal arguments at both the international and domestic levels. General Comments will also assist NGOs in understanding the meaning of various rights contained in the Covenant.

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International Covenant on Economic, Social and Cultural Rights

*Adopted and opened for signature, ratification and accession
by General Assembly resolution 2200A (XXI) of 16 December 1966*

ENTRY INTO FORCE: 3 January 1976, in accordance with article 27

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. 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 rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.
2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8

1. The States Parties to the present Covenant undertake to ensure:
 - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
 - (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
 - (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
 - (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
 - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the

principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:
 - (c) To take part in cultural life;
 - (d) To enjoy the benefits of scientific progress and its applications;
 - (e) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.
2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;
(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.
2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.
3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 26;

- (b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

Committee on Economic, Social and Cultural Rights

Introduction: the purpose of general comments

Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies

U.N. Doc. HRI\GEN\1\Rev.1, at 42 (1994).*

1. At its second session, in 1988, the Committee decided (E/1988/14, paras. 366 and 367), pursuant to an invitation addressed to it by the Economic and Social Council (resolution 1987/5) and endorsed by the General Assembly (resolution 42/102), to begin, as from its third session, the preparation of general comments based on the various articles and provisions of the International Covenant on Economic, Social and Cultural Rights with a view to assisting the States parties in fulfilling their reporting obligations.
2. The Committee, and the sessional working group of governmental experts which existed prior to the creation of the Committee, have examined 138 initial reports and 44 second periodic reports concerning rights covered by articles 6 to 9, 10 to 12 and 13 to 15 of the Covenant as of the end of its third session. This experience covers a significant number of States parties to the Covenant, currently consisting of 92 States. They represent all regions of the world, with different socio-economic, cultural, political and legal systems. Their reports submitted so far illustrate many of the problems which might arise in implementing the Covenant although they have not yet provided any complete picture as to the global situation with regard to the enjoyment of economic, social and cultural rights. The introduction to annex III (General Comments) of the Committee's 1989 report to the Economic and Social Council (E/1989/22) explains the purpose of the general comments as follows:
3. "The Committee endeavours, through its general comments, to make the experience gained so far through the examination of these reports available for the benefit of all States parties in order to assist and promote their further implementation of the Covenant; to draw the attention of the States parties to insufficiencies disclosed by a large number of reports; to suggest improvements in the reporting procedures and to stimulate the activities of the States parties, the international organizations and the specialized agencies concerned in achieving progressively and effectively the full realization of the rights recognized in the Covenant. Whenever necessary, the Committee may, in the light of the experience of States parties and of the conclusions which it has drawn therefrom, revise and update its general comments."

* Contained in document E/1989/22.

GENERAL COMMENT 3 (Fifth session, 1990)

14 December 1990

The nature of States parties obligations (art. 2, para. 1 of the Covenant)

1. Article 2 is of particular importance to a full understanding of the Covenant and must be seen as having a dynamic relationship with all of the other provisions of the Covenant. It describes the nature of the general legal obligations undertaken by States parties to the Covenant. Those obligations include both what may be termed (following the work of the International Law Commission) obligations of conduct and obligations of result. While great emphasis has sometimes been placed on the difference between the formulations used in this provision and that contained in the equivalent article 2 of the International Covenant on Civil and Political Rights, it is not always recognized that there are also significant similarities. In particular, while the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes various obligations which are of immediate effect. Of these, two are of particular importance in understanding the precise nature of States parties obligations. One of these, which is dealt with in a separate General Comment, and which is to be considered by the Committee at its sixth session, is the “undertaking to guarantee” that relevant rights “will be exercised without discrimination ...”.
2. The other is the undertaking in article 2 (1) “to take steps”, which in itself, is not qualified or limited by other considerations. The full meaning of the phrase can also be gauged by noting some of the different language versions. In English the undertaking is “to take steps”, in French it is “to act” (“s’engage à agir”) and in Spanish it is “to adopt measures” (“adoptar medidas”). Thus while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant’s entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.
3. The means which should be used in order to satisfy the obligation to take steps are stated in article 2 (1) to be “all appropriate means, including particularly the adoption of legislative measures”. The Committee recognizes that in many instances legislation is highly desirable and in some cases may even be indispensable. For example, it may be difficult to combat discrimination effectively in the absence of a sound legislative foundation for the necessary measures. In fields such as health, the protection of children and mothers, and education, as well as in respect of the matters dealt with in articles 6 to 9, legislation may also be an indispensable element for many purposes.
4. The Committee notes that States parties have generally been conscientious in detailing at least some of the legislative measures that they have taken in this regard. It wishes to emphasize, however, that the adoption of legislative measures, as specifically foreseen by the Covenant, is by no means exhaustive of the obligations of States parties. Rather, the phrase “by all appropriate means” must be given its full and natural meaning. While each State party must decide for itself which means are the most appropriate under the circumstances with respect to each of the rights, the “appropriateness” of the means chosen will not always be self-evident. It is therefore desirable that States parties’ reports should indicate not only the measures that have been taken but also the basis on which they are considered to be the most “appropriate” under the circumstances. However, the ultimate determination as to whether all appropriate measures have been taken remains one for the Committee to make.
5. Among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable. The Committee notes, for example, that the enjoyment of the rights recognized, without discrimination, will often be appropriately promoted, in part, through the provision of judicial or other effective remedies. Indeed, those States parties which

are also parties to the International Covenant on Civil and Political Rights are already obligated (by virtue of arts. 2 (paras. 1 and 3), 3 and 26) of that Covenant to ensure that any person whose rights or freedoms (including the right to equality and non-discrimination) recognized in that Covenant are violated, “shall have an effective remedy” (art. 2 (3) (a)). In addition, there are a number of other provisions in the International Covenant on Economic, Social and Cultural Rights, including articles 3, 7 (a) (i), 8, 10 (3), 13 (2) (a), (3) and (4) and 15 (3) which would seem to be capable of immediate application by judicial and other organs in many national legal systems. Any suggestion that the provisions indicated are inherently non-self-executing would seem to be difficult to sustain.

6. Where specific policies aimed directly at the realization of the rights recognized in the Covenant have been adopted in legislative form, the Committee would wish to be informed, inter alia, as to whether such laws create any right of action on behalf of individuals or groups who feel that their rights are not being fully realized. In cases where constitutional recognition has been accorded to specific economic, social and cultural rights, or where the provisions of the Covenant have been incorporated directly into national law, the Committee would wish to receive information as to the extent to which these rights are considered to be justiciable (i.e. able to be invoked before the courts). The Committee would also wish to receive specific information as to any instances in which existing constitutional provisions relating to economic, social and cultural rights have been weakened or significantly changed.
7. Other measures which may also be considered “appropriate” for the purposes of article 2 (1) include, but are not limited to, administrative, financial, educational and social measures.
8. The Committee notes that the undertaking “to take steps ... by all appropriate means including particularly the adoption of legislative measures” neither requires nor precludes any particular form of government or economic system being used as the vehicle for the steps in question, provided only that it is democratic and that all human rights are thereby respected. Thus, in terms of political and economic systems the Covenant is neutral and its principles cannot accurately be described as being predicated exclusively upon the need for, or the desirability of a socialist or a capitalist system, or a mixed, centrally planned, or laissez-faire economy, or upon any other particular approach. In this regard, the Committee reaffirms that the rights recognized in the Covenant are susceptible of realization within the context of a wide variety of economic and political systems, provided only that the interdependence and indivisibility of the two sets of human rights, as affirmed inter alia in the preamble to the Covenant, is recognized and reflected in the system in question. The Committee also notes the relevance in this regard of other human rights and in particular the right to development.
9. The principal obligation of result reflected in article 2 (1) is to take steps “with a view to achieving progressively the full realization of the rights recognized” in the Covenant. The term “progressive realization” is often used to describe the intent of this phrase. The concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. In this sense the obligation differs significantly from that contained in article 2 of the International Covenant on Civil and Political Rights which embodies an immediate obligation to respect and ensure all of the relevant rights. Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the raison d’être, of the Covenant which is to establish clear obligations for States parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the

totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.

10. On the basis of the extensive experience gained by the Committee, as well as by the body that preceded it, over a period of more than a decade of examining States parties' reports the Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its raison d'être. By the same token, it must be noted that any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned. Article 2 (1) obligates each State party to take the necessary steps "to the maximum of its available resources". In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.
11. The Committee wishes to emphasize, however, that even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. Moreover, the obligations to monitor the extent of the realization, or more especially of the non-realization, of economic, social and cultural rights, and to devise strategies and programmes for their promotion, are not in any way eliminated as a result of resource constraints. The Committee has already dealt with these issues in its General Comment 1 (1989).
12. Similarly, the Committee underlines the fact that even in times of severe resources constraints whether caused by a process of adjustment, of economic recession, or by other factors the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes. In support of this approach the Committee takes note of the analysis prepared by UNICEF entitled "Adjustment with a human face: protecting the vulnerable and promoting growth"¹, the analysis by UNDP in its *Human Development Report 1990*² and the analysis by the World Bank in the *World Development Report 1990*.³
13. A final element of article 2 (1), to which attention must be drawn, is that the undertaking given by all States parties is "to take steps, individually and through international assistance and cooperation, especially economic and technical ...". The Committee notes that the phrase "to the maximum of its available resources" was intended by the drafters of the Covenant to refer to both the resources existing within a State and those available from the international community through international cooperation and assistance. Moreover, the essential role of such cooperation in facilitating the full realization of the relevant rights is further underlined by the specific provisions contained in articles 11, 15, 22 and 23. With respect to article 22 the Committee has already drawn attention, in General Comment 2 (1990), to some of the opportunities and responsibilities that exist in relation to international cooperation. Article 23 also specifically identifies "the furnishing of technical assistance" as well as other activities, as being among the means of "international action for the achievement of the rights recognized ...".
14. The Committee wishes to emphasize that in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly

1 G.A. Cornia, R. Jolly and F. Stewart, eds., Oxford, Clarendon Press, 1987.

2 Oxford, Oxford University Press, 1990.

3 Oxford, Oxford University Press, 1990.

incumbent upon those States which are in a position to assist others in this regard. The Committee notes in particular the importance of the Declaration on the Right to Development adopted by the General Assembly in its resolution 41/128 of 4 December 1986 and the need for States parties to take full account of all of the principles recognized therein. It emphasizes that, in the absence of an active programme of international assistance and cooperation on the part of all those States that are in a position to undertake one, the full realization of economic, social and cultural rights will remain an unfulfilled aspiration in many countries. In this respect, the Committee also recalls the terms of its General Comment 2 (1990).

GENERAL COMMENT 4 (Sixth session, 1991)*

The right to adequate housing (art. 11 (1) of the Covenant)

1. Pursuant to article 11 (1) of the Covenant, States parties “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. The human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.
2. The Committee has been able to accumulate a large amount of information pertaining to this right. Since 1979, the Committee and its predecessors have examined 75 reports dealing with the right to adequate housing. The Committee has also devoted a day of general discussion to the issue at each of its third (see E/1989/22, para. 312) and fourth sessions (E/1990/23, paras. 281-285). In addition, the Committee has taken careful note of information generated by the International Year of Shelter for the Homeless (1987) including the Global Strategy for Shelter to the Year 2000 adopted by the General Assembly in its resolution 42/191 of 11 December 1987.⁴ The Committee has also reviewed relevant reports and other documentation of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities.⁵
3. Although a wide variety of international instruments address the different dimensions of the right to adequate housing⁶ article 11 (1) of the Covenant is the most comprehensive and perhaps the most important of the relevant provisions.
4. Despite the fact that the international community has frequently reaffirmed the importance of full respect for the right to adequate housing, there remains a disturbingly large gap between the standards set in article 11 (1) of the Covenant and the situation prevailing in many parts of the world. While the problems are often particularly acute in some developing countries which confront major resource and other constraints, the Committee observes that significant problems of homelessness and inadequate housing also exist in some of the most economically developed societies. The United Nations estimates that there are over 100 million persons homeless worldwide and over 1 billion inadequately housed.⁷ There is no indication that this number is decreasing. It seems clear that no State party is free of significant problems of one kind or another in relation to the right to housing.

* Contained in document E/1992/23.

4 Official Records of the General Assembly, Forty-third Session, Supplement No. 8, addendum (A/43/8/Add.1).

5 Commission on Human Rights resolutions 1986/36 and 1987/22; reports by Mr. Danilo Türk, Special Rapporteur of the Sub-Commission (E/CN.4/Sub.2/1990/19, paras. 108-120; E/CN.4/Sub.2/1991/17, paras. 137-139); see also Sub-Commission resolution 1991/26.

6 See, for example, article 25 (1) of the Universal Declaration on Human Rights, article 5 (e) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 (2) of the Convention on the Elimination of All Forms of Discrimination against Women, article 27 (3) of the Convention on the Rights of the Child, article 10 of the Declaration on Social Progress and Development, section III (8) of the Vancouver Declaration on Human Settlements, 1976 (Report of Habitat: United Nations Conference on Human Settlements (United Nations publication, Sales No. E.76.IV.7 and corrigendum), chap. I), article 8 (1) of the Declaration on the Right to Development and the ILO Recommendation Concerning Workers' Housing, 1961 (No. 115).

7 See footnote 4.

5. In some instances, the reports of States parties examined by the Committee have acknowledged and described difficulties in ensuring the right to adequate housing. For the most part, however, the information provided has been insufficient to enable the Committee to obtain an adequate picture of the situation prevailing in the State concerned. This General Comment thus aims to identify some of the principal issues which the Committee considers to be important in relation to this right.
6. The right to adequate housing applies to everyone. While the reference to “himself and his family” reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitations upon the applicability of the right to individuals or to female-headed households or other such groups. Thus, the concept of “family” must be understood in a wide sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2 (2) of the Covenant, not be subject to any form of discrimination.
7. In the Committee’s view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. This “the inherent dignity of the human person” from which the rights in the Covenant are said to derive requires that the term “housing” be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in article 11 (1) must be read as referring not just to housing but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: “Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities — all at a reasonable cost”.
8. Thus the concept of adequacy is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute “adequate housing” for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following:
 - (a) Legal security of tenure. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;
 - (b) Availability of services, materials, facilities and infrastructure. An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;

- (c) Affordability. Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials;
- (d) Habitability. Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the Health Principles of Housing⁸ prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;
- (e) Accessibility. Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement;
- (f) Location. Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants;
- (g) Cultural adequacy. The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.
9. As noted above, the right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments. Reference has already been made in this regard to the concept of human dignity and the principle of non-discrimination. In addition, the full enjoyment of other rights — such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom of residence and the right to participate in public decision-making — is indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary or

8 Geneva, World Health Organization, 1990.

unlawful interference with one's privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing.

10. Regardless of the state of development of any country, there are certain steps which must be taken immediately. As recognized in the Global Strategy for Shelter and in other international analyses, many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices and a commitment to facilitating "self-help" by affected groups. To the extent that any such steps are considered to be beyond the maximum resources available to a State party, it is appropriate that a request be made as soon as possible for international cooperation in accordance with articles 11 (1), 22 and 23 of the Covenant, and that the Committee be informed thereof.
11. States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others. The Committee is aware that external factors can affect the right to a continuous improvement of living conditions, and that in many States parties overall living conditions declined during the 1980s. However, as noted by the Committee in its General Comment 2 (1990) (E/1990/23, annex III), despite externally caused problems, the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant.
12. While the most appropriate means of achieving the full realization of the right to adequate housing will inevitably vary significantly from one State party to another, the Covenant clearly requires that each State party take whatever steps are necessary for that purpose. This will almost invariably require the adoption of a national housing strategy which, as stated in paragraph 32 of the Global Strategy for Shelter, "defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals and the most cost-effective way of using them and sets out the responsibilities and time-frame for the implementation of the necessary measures". Both for reasons of relevance and effectiveness, as well as in order to ensure respect for other human rights, such a strategy should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives. Furthermore, steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations under article 11 of the Covenant.
13. Effective monitoring of the situation with respect to housing is another obligation of immediate effect. For a State party to satisfy its obligations under article 11 (1) it must demonstrate, inter alia, that it has taken whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of homelessness and inadequate housing within its jurisdiction. In this regard, the revised general guidelines regarding the form and contents of reports adopted by the Committee (E/C.12/1991/1) emphasize the need to "provide detailed information about those groups within ... society that are vulnerable and disadvantaged with regard to housing". They include, in particular, homeless persons and families, those inadequately housed and without ready access to basic amenities, those living in "illegal" settlements, those subject to forced evictions and low-income groups.
14. Measures designed to satisfy a State party's obligations in respect of the right to adequate housing may reflect whatever mix of public and private sector measures considered appropriate. While in some States public financing of housing might most usefully be spent on direct construction of new housing, in most cases, experience has shown the inability of Governments to fully satisfy housing deficits with publicly built housing. The promotion by States parties of "enabling strategies", combined with a full commitment to obligations under the right to

adequate housing, should thus be encouraged. In essence, the obligation is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.

15. Many of the measures that will be required will involve resource allocations and policy initiatives of a general kind. Nevertheless, the role of formal legislative and administrative measures should not be underestimated in this context. The Global Strategy for Shelter (paras. 66-67) has drawn attention to the types of measures that might be taken in this regard and to their importance.
16. In some States, the right to adequate housing is constitutionally entrenched. In such cases the Committee is particularly interested in learning of the legal and practical significance of such an approach. Details of specific cases and of other ways in which entrenchment has proved helpful should thus be provided.
17. The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to: (a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (d) allegations of any form of discrimination in the allocation and availability of access to housing; and (e) complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness.
18. In this regard, the Committee considers that instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.
19. Finally, article 11 (1) concludes with the obligation of States parties to recognize “the essential importance of international cooperation based on free consent”. Traditionally, less than 5 per cent of all international assistance has been directed towards housing or human settlements, and often the manner by which such funding is provided does little to address the housing needs of disadvantaged groups. States parties, both recipients and providers, should ensure that a substantial proportion of financing is devoted to creating conditions leading to a higher number of persons being adequately housed. International financial institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing. States parties should, when contemplating international financial cooperation, seek to indicate areas relevant to the right to adequate housing where external financing would have the most effect. Such requests should take full account of the needs and views of the affected groups.

GENERAL COMMENT 5 (Eleventh session, 1994)*

9 December 1994

Persons with disabilities

1. The central importance of the International Covenant on Economic, Social and Cultural Rights in relation to the human rights of persons with disabilities has frequently been underlined by the international community.⁹ Thus a 1992 review by the Secretary-General of the implementation

* Contained in document E/1995/22.

⁹ For a comprehensive review of the question, see the final report prepared by Mr Leandro Despouy, Special Rapporteur, on human rights and disability (E/CN.4/Sub.2/1991/31).

of the World Programme of Action concerning Disabled Persons and the United Nations Decade of Disabled Persons concluded that “disability is closely linked to economic and social factors” and that “conditions of living in large parts of the world are so desperate that the provision of basic needs for all — food, water, shelter, health protection and education — must form the cornerstone of national programmes”.¹⁰ Even in countries which have a relatively high standard of living, persons with disabilities are very often denied the opportunity to enjoy the full range of economic, social and cultural rights recognized in the Covenant.

2. The Committee on Economic, Social and Cultural Rights, and the working group which preceded it, have been explicitly called upon by both the General Assembly¹¹ and the Commission on Human Rights¹² to monitor the compliance of States parties to the Covenant with their obligation to ensure the full enjoyment of the relevant rights by persons with disabilities. The Committee’s experience to date, however, indicates that States parties have devoted very little attention to this issue in their reports. This appears to be consistent with the Secretary-General’s conclusion that “most Governments still lack decisive concerted measures that would effectively improve the situation” of persons with disabilities.¹³ It is therefore appropriate to review, and emphasize, some of the ways in which issues concerning persons with disabilities arise in connection with the obligations contained in the Covenant.
3. There is still no internationally accepted definition of the term “disability”. For present purposes, however, it is sufficient to rely on the approach adopted in the Standard Rules of 1993, which state:

“The term ‘disability’ summarizes a great number of different functional limitations occurring in any population ... People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature.”¹⁴
4. In accordance with the approach adopted in the Standard Rules, this General Comment uses the term “persons with disabilities” rather than the older term “disabled persons”. It has been suggested that the latter term might be misinterpreted to imply that the ability of the individual to function as a person has been disabled.
5. The Covenant does not refer explicitly to persons with disabilities. Nevertheless, the Universal Declaration of Human Rights recognizes that all human beings are born free and equal in dignity and rights and, since the Covenant’s provisions apply fully to all members of society, persons with disabilities are clearly entitled to the full range of rights recognized in the Covenant. In addition, in so far as special treatment is necessary, States parties are required to take appropriate measures, to the maximum extent of their available resources, to enable such persons to seek to overcome any disadvantages, in terms of the enjoyment of the rights specified in the Covenant, flowing from their disability. Moreover, the requirement contained in article 2 (2) of the Covenant that the rights “enunciated ... will be exercised without discrimination of any kind” based on certain specified grounds “or other status” clearly applies to discrimination on the grounds of disability.
6. The absence of an explicit, disability-related provision in the Covenant can be attributed to the lack of awareness of the importance of addressing this issue explicitly, rather than only by implication, at the time of the drafting of the Covenant over a quarter of a century ago. More recent international human rights instruments have, however, addressed the issue specifically. They include the Convention on the Rights of the Child (art. 23); the African Charter on Human

¹⁰ See A/47/415, para. 5.

¹¹ See para. 165 of the World Programme of Action concerning Disabled Persons, adopted by the General Assembly by its resolution 37/52 of 3 December 1982 (para. 1).

¹² See Commission on Human Rights resolutions 1992/48, para. 4 and 1993/29, para. 7.

¹³ See A/47/415, para. 6.

¹⁴ Standard Rules on the Equalization of Opportunities for Persons with Disabilities, annexed to General Assembly resolution 48/96 of 20 December 1993 (Introduction, para. 17).

and Peoples' Rights (art. 18 (4)); and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (art. 18). Thus it is now very widely accepted that the human rights of persons with disabilities must be protected and promoted through general, as well as specially designed, laws, policies and programmes.

7. In accordance with this approach, the international community has affirmed its commitment to ensuring the full range of human rights for persons with disabilities in the following instruments: (a) the World Programme of Action concerning Disabled Persons, which provides a policy framework aimed at promoting "effective measures for prevention of disability, rehabilitation and the realization of the goals of 'full participation' of [persons with disabilities] in social life and development, and of 'equality'";¹⁵ (b) the Guidelines for the Establishment and Development of National Coordinating Committees on Disability or Similar Bodies, adopted in 1990;¹⁶ (c) the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, adopted in 1991;¹⁷ (d) the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (hereinafter referred to as the "Standard Rules"), adopted in 1993, the purpose of which is to ensure that all persons with disabilities "may exercise the same rights and obligations as others".¹⁸ The Standard Rules are of major importance and constitute a particularly valuable reference guide in identifying more precisely the relevant obligations of States parties under the Covenant.

I. GENERAL OBLIGATIONS OF STATES PARTIES

8. The United Nations has estimated that there are more than 500 million persons with disabilities in the world today. Of that number, 80 per cent live in rural areas in developing countries. Seventy per cent of the total are estimated to have either limited or no access to the services they need. The challenge of improving the situation of persons with disabilities is thus of direct relevance to every State party to the Covenant. While the means chosen to promote the full realization of the economic, social and cultural rights of this group will inevitably differ significantly from one country to another, there is no country in which a major policy and programme effort is not required.¹⁹
9. The obligation of States parties to the Covenant to promote progressive realization of the relevant rights to the maximum of their available resources clearly requires Governments to do much more than merely abstain from taking measures which might have a negative impact on persons with disabilities. The obligation in the case of such a vulnerable and disadvantaged group is to take positive action to reduce structural disadvantages and to give appropriate preferential treatment to people with disabilities in order to achieve the objectives of full participation and equality within society for all persons with disabilities. This almost invariably means that additional resources will need to be made available for this purpose and that a wide range of specially tailored measures will be required.
10. According to a report by the Secretary-General, developments over the past decade in both developed and developing countries have been especially unfavourable from the perspective of persons with disabilities:
- "... current economic and social deterioration, marked by low-growth rates, high unemployment, reduced public expenditure, current structural adjustment programmes and privatization, have negatively affected programmes and services ... If the present negative

¹⁵ World Programme of Action concerning Disabled Persons (see note 3 above), para. 1.

¹⁶ A/C.3/46/4, annex I. Also contained in the Report on the International Meeting on the Roles and Functions of National Coordinating Committees on Disability in Developing Countries, Beijing, 5-11 November 1990 (CSDHA/DDP/NDC/4). See also Economic and Social Council resolution 1991/8 and General Assembly resolution 46/96 of 16 December 1991.

¹⁷ General Assembly resolution 46/119 of 17 December 1991, annex.

¹⁸ Standard Rules, (see note 6 above), Introduction, para. 15.

¹⁹ See A/47/415, *passim*.

trends continue, there is the risk that [persons with disabilities] may increasingly be relegated to the margins of society, dependent on ad hoc support.”²⁰

As the Committee has previously observed (General Comment No. 3 (Fifth session, 1990), para. 12), the duty of States parties to protect the vulnerable members of their societies assumes greater rather than less importance in times of severe resource constraints.

11. Given the increasing commitment of Governments around the world to market-based policies, it is appropriate in that context to emphasize certain aspects of States parties’ obligations. One is the need to ensure that not only the public sphere, but also the private sphere, are, within appropriate limits, subject to regulation to ensure the equitable treatment of persons with disabilities. In a context in which arrangements for the provision of public services are increasingly being privatized and in which the free market is being relied on to an ever greater extent, it is essential that private employers, private suppliers of goods and services, and other non-public entities be subject to both non-discrimination and equality norms in relation to persons with disabilities. In circumstances where such protection does not extend beyond the public domain, the ability of persons with disabilities to participate in the mainstream of community activities and to realize their full potential as active members of society will be severely and often arbitrarily constrained. This is not to imply that legislative measures will always be the most effective means of seeking to eliminate discrimination within the private sphere. Thus, for example, the Standard Rules place particular emphasis on the need for States to “take action to raise awareness in society about persons with disabilities, their rights, their needs, their potential and their contribution”.²¹
12. In the absence of government intervention there will always be instances in which the operation of the free market will produce unsatisfactory results for persons with disabilities, either individually or as a group, and in such circumstances it is incumbent on Governments to step in and take appropriate measures to temper, complement, compensate for, or override the results produced by market forces. Similarly, while it is appropriate for Governments to rely on private, voluntary groups to assist persons with disabilities in various ways, such arrangements can never absolve Governments from their duty to ensure full compliance with their obligations under the Covenant. As the World Programme of Action concerning Disabled Persons states, “the ultimate responsibility for remedying the conditions that lead to impairment and for dealing with the consequences of disability rests with Governments”. World Programme of Action concerning Disabled Persons (see note 3 above), para. 3.²²

II. MEANS OF IMPLEMENTATION

13. The methods to be used by States parties in seeking to implement their obligations under the Covenant towards persons with disabilities are essentially the same as those available in relation to other obligations (see General Comment No. 1 (Third session, 1989)). They include the need to ascertain, through regular monitoring, the nature and scope of the problems existing within the State; the need to adopt appropriately tailored policies and programmes to respond to the requirements thus identified; the need to legislate where necessary and to eliminate any existing discriminatory legislation; and the need to make appropriate budgetary provisions or, where necessary, seek international cooperation and assistance. In the latter respect, international cooperation in accordance with articles 22 and 23 of the Covenant is likely to be a particularly important element in enabling some developing countries to fulfil their obligations under the Covenant.
14. In addition, it has been consistently acknowledged by the international community that policy-making and programme implementation in this area should be undertaken on the basis of close consultation with, and involvement of, representative groups of the persons concerned. For this

²⁰ Ibid., para. 5.

²¹ Standard Rules, (see note 6 above) Rule 1.

²² World Programme of Action concerning Disabled Persons (see note 3 above), para. 3.

reason, the Standard Rules recommend that everything possible be done to facilitate the establishment of national coordinating committees, or similar bodies, to serve as a national focal point on disability matters. In doing so, Governments should take account of the 1990 Guidelines for the Establishment and Development of National Coordinating Committees on Disability or Similar Bodies.²³

III. THE OBLIGATION TO ELIMINATE DISCRIMINATION ON THE GROUNDS OF DISABILITY

15. Both *de jure* and de facto discrimination against persons with disabilities have a long history and take various forms. They range from invidious discrimination, such as the denial of educational opportunities, to more “subtle” forms of discrimination such as segregation and isolation achieved through the imposition of physical and social barriers. For the purposes of the Covenant, “disability-based discrimination” may be defined as including any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights. Through neglect, ignorance, prejudice and false assumptions, as well as through exclusion, distinction or separation, persons with disabilities have very often been prevented from exercising their economic, social or cultural rights on an equal basis with persons without disabilities. The effects of disability-based discrimination have been particularly severe in the fields of education, employment, housing, transport, cultural life, and access to public places and services.
16. Despite some progress in terms of legislation over the past decade,²⁴ the legal situation of persons with disabilities remains precarious. In order to remedy past and present discrimination, and to deter future discrimination, comprehensive anti-discrimination legislation in relation to disability would seem to be indispensable in virtually all States parties. Such legislation should not only provide persons with disabilities with judicial remedies as far as possible and appropriate, but also provide for social-policy programmes which enable persons with disabilities to live an integrated, self-determined and independent life.
17. Anti-discrimination measures should be based on the principle of equal rights for persons with disabilities and the non-disabled, which, in the words of the World Programme of Action concerning Disabled Persons, “implies that the needs of each and every individual are of equal importance, that these needs must be made the basis for the planning of societies, and that all resources must be employed in such a way as to ensure, for every individual, equal opportunity for participation. Disability policies should ensure the access of [persons with disabilities] to all community services”.²⁵
18. Because appropriate measures need to be taken to undo existing discrimination and to establish equitable opportunities for persons with disabilities, such actions should not be considered discriminatory in the sense of article 2 (2) of the International Covenant on Economic, Social and Cultural Rights as long as they are based on the principle of equality and are employed only to the extent necessary to achieve that objective.

IV. SPECIFIC PROVISIONS OF THE COVENANT

A. Article 3 $\frac{3}{4}$ Equal rights for men and women

19. Persons with disabilities are sometimes treated as genderless human beings. As a result, the double discrimination suffered by women with disabilities is often neglected.²⁶ Despite frequent calls by the international community for particular emphasis to be placed upon their situation, very few efforts have been undertaken during the Decade. The neglect of women with

²³ See note 8 above.

²⁴ See A/47/415, paras. 37-38.

²⁵ World Programme of Action concerning Disabled Persons (see note 3 above), para. 25.

²⁶ See E/CN.4/Sub.2/1991/31 (see note 1 above), para. 140.

disabilities is mentioned several times in the report of the Secretary-General on the implementation of the World Programme of Action.²⁷ The Committee therefore urges States parties to address the situation of women with disabilities, with high priority being given in future to the implementation of economic, social and cultural rights-related programmes.

B. Articles 6-8 3/4 Rights relating to work

20. The field of employment is one in which disability-based discrimination has been prominent and persistent. In most countries the unemployment rate among persons with disabilities is two to three times higher than the unemployment rate for persons without disabilities. Where persons with disabilities are employed, they are mostly engaged in low-paid jobs with little social and legal security and are often segregated from the mainstream of the labour market. The integration of persons with disabilities into the regular labour market should be actively supported by States.
21. The “right of everyone to the opportunity to gain his living by work which he freely chooses or accepts” (art. 6 (1)) is not realized where the only real opportunity open to disabled workers is to work in so-called “sheltered” facilities under substandard conditions. Arrangements whereby persons with a certain category of disability are effectively confined to certain occupations or to the production of certain goods may violate this right. Similarly, in the light of principle 13 (3) of the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care,^{28 29} “therapeutical treatment” in institutions which amounts to forced labour is also incompatible with the Covenant. In this regard, the prohibition on forced labour contained in the International Covenant on Civil and Political Rights is also of potential relevance.
22. According to the Standard Rules, persons with disabilities, whether in rural or urban areas, must have equal opportunities for productive and gainful employment in the labour market. Standard Rules (see note 6 above), Rule 7. For this to happen it is particularly important that artificial barriers to integration in general, and to employment in particular, be removed. As the International Labour Organisation has noted, it is very often the physical barriers that society has erected in areas such as transport, housing and the workplace which are then cited as the reason why persons with disabilities cannot be employed.³⁰ For example, as long as workplaces are designed and built in ways that make them inaccessible to wheelchairs, employers will be able to “justify” their failure to employ wheelchair users. Governments should also develop policies which promote and regulate flexible and alternative work arrangements that reasonably accommodate the needs of disabled workers.
23. Similarly, the failure of Governments to ensure that modes of transportation are accessible to persons with disabilities greatly reduces the chances of such persons finding suitable, integrated jobs, taking advantage of educational and vocational training, or commuting to facilities of all types. Indeed, the provision of access to appropriate and, where necessary, specially tailored forms of transportation is crucial to the realization by persons with disabilities of virtually all the rights recognized in the Covenant.
24. The “technical and vocational guidance and training programmes” required under article 6 (2) of the Covenant should reflect the needs of all persons with disabilities, take place in integrated settings, and be planned and implemented with the full involvement of representatives of persons with disabilities.
25. The right to “the enjoyment of just and favourable conditions of work” (art. 7) applies to all disabled workers, whether they work in sheltered facilities or in the open labour market. Disabled workers may not be discriminated against with respect to wages or other conditions if

²⁷ See A/47/415, paras. 35, 46, 74 and 77.

²⁸ See note 9 above.

²⁹ Standard Rules (see note 6 above), Rule 7.

³⁰ See A/CONF.157/PC/61/Add.10, p. 12.

their work is equal to that of non-disabled workers. States parties have a responsibility to ensure that disability is not used as an excuse for creating low standards of labour protection or for paying below minimum wages.

26. Trade union-related rights (art. 8) apply equally to workers with disabilities and regardless of whether they work in special work facilities or in the open labour market. In addition, article 8, read in conjunction with other rights such as the right to freedom of association, serves to emphasize the importance of the right of persons with disabilities to form their own organizations. If these organizations are to be effective in “the promotion and protection of [the] economic and social interests” (art. 8 (1) (a)) of such persons, they should be consulted regularly by government bodies and others in relation to all matters affecting them; it may also be necessary that they be supported financially and otherwise so as to ensure their viability.
27. The International Labour Organization has developed valuable and comprehensive instruments with respect to the work-related rights of persons with disabilities, including in particular Convention No. 159 (1983) concerning vocational rehabilitation and employment of persons with disabilities³¹ The Committee encourages States parties to the Covenant to consider ratifying that Convention.

C. Article 9 ~~3~~ Social security

28. Social security and income-maintenance schemes are of particular importance for persons with disabilities. As stated in the Standard Rules, “States should ensure the provision of adequate income support to persons with disabilities who, owing to disability or disability-related factors, have temporarily lost or received a reduction in their income or have been denied employment opportunities”.³² Such support should reflect the special needs for assistance and other expenses often associated with disability. In addition, as far as possible, the support provided should also cover individuals (who are overwhelmingly female) who undertake the care of a person with disabilities. Such persons, including members of the families of persons with disabilities, are often in urgent need of financial support because of their assistance role.³³
29. Institutionalization of persons with disabilities, unless rendered necessary for other reasons, cannot be regarded as an adequate substitute for the social security and income-support rights of such persons.

D. Article 10 ~~3~~ Protection of the family and of mothers and children

30. In the case of persons with disabilities, the Covenant’s requirement that “protection and assistance” be rendered to the family means that everything possible should be done to enable such persons, when they so wish, to live with their families. Article 10 also implies, subject to the general principles of international human rights law, the right of persons with disabilities to marry and have their own family. These rights are frequently ignored or denied, especially in the case of persons with mental disabilities.³⁴ In this and other contexts, the term “family” should be interpreted broadly and in accordance with appropriate local usage. States parties should ensure that laws and social policies and practices do not impede the realization of these rights. Persons with disabilities should have access to necessary counselling services in order to fulfil their rights and duties within the family.³⁵
31. Women with disabilities also have the right to protection and support in relation to motherhood and pregnancy. As the Standard Rules state, “persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience

31 See also Recommendation No. 99 (1955) concerning vocational rehabilitation of the disabled, and Recommendation No. 168 (1983) concerning vocational rehabilitation and employment of persons with disabilities.

32 Standard Rules (see note 6 above) Rule 8, para. 1.

33 See A/47/415, para. 78.

34 See E/CN.4/Sub.2/1991/31 (see note 1 above), paras. 190 and 193.

35 See the World Programme of Action concerning Disabled Persons (see note 3 above) para. 74.

parenthood”.³⁶ The needs and desires in question should be recognized and addressed in both the recreational and the procreational contexts. These rights are commonly denied to both men and women with disabilities worldwide.³⁷ Both the sterilization of, and the performance of an abortion on, a woman with disabilities without her prior informed consent are serious violations of article 10 (2).

32. Children with disabilities are especially vulnerable to exploitation, abuse and neglect and are, in accordance with article 10 (3) of the Covenant (reinforced by the corresponding provisions of the Convention on the Rights of the Child), entitled to special protection.

E. Article 11 ¾ The right to an adequate standard of living

33. In addition to the need to ensure that persons with disabilities have access to adequate food, accessible housing and other basic material needs, it is also necessary to ensure that “support services, including assistive devices” are available “for persons with disabilities, to assist them to increase their level of independence in their daily living and to exercise their rights”.³⁸ The right to adequate clothing also assumes a special significance in the context of persons with disabilities who have particular clothing needs, so as to enable them to function fully and effectively in society. Wherever possible, appropriate personal assistance should also be provided in this connection. Such assistance should be undertaken in a manner and spirit which fully respect the human rights of the person(s) concerned. Similarly, as already noted by the Committee in paragraph 8 of General Comment No. 4 (Sixth session, 1991), the right to adequate housing includes the right to accessible housing for persons with disabilities.

F. Article 12 ¾ The right to physical and mental health

34. According to the Standard Rules, “States should ensure that persons with disabilities, particularly infants and children, are provided with the same level of medical care within the same system as other members of society”.³⁹ The right to physical and mental health also implies the right to have access to, and to benefit from, those medical and social services — including orthopaedic devices — which enable persons with disabilities to become independent, prevent further disabilities and support their social integration.⁴⁰ Similarly, such persons should be provided with rehabilitation services which would enable them “to reach and sustain their optimum level of independence and functioning”.^{41 42} All such services should be provided in such a way that the persons concerned are able to maintain full respect for their rights and dignity.

G. Articles 13 and 14 ¾ The right to education

35. School programmes in many countries today recognize that persons with disabilities can best be educated within the general education system. See A/47/415 para. 73. Thus the Standard Rules provide that “States should recognize the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities, in integrated settings”.⁴³ In order to implement such an approach, States should ensure that teachers are trained to educate children with disabilities within regular schools and that the necessary equipment and support are available to bring persons with disabilities up to the same level of education as their non-disabled peers. In the case of deaf children, for example, sign language

36 Standard Rules (see note 6 above), Rule 9, para. 2.

37 See E/CN.6/1991/2, paras. 14 and 59-68.

38 Standard Rules (see note 6 above), Rule 4.

39 Ibid., Rule 2, para. 3.

40 See the Declaration on the Rights of Disabled Persons (General Assembly resolution 3447 (XXX) of 9 December 1975), para. 6; and the World Programme of Action concerning Disabled Persons (see note 3 above), paras. 95-107.

41 Standard Rules (see note 6 above), Rule 3.

42 See A/47/415 para. 73.

43 Standard Rules (see note 6 above), Rule 6.

should be recognized as a separate language to which the children should have access and whose importance should be acknowledged in their overall social environment.

H. Article 15 ^{3/4}The right to take part in cultural life and enjoy the benefits of scientific progress

36. The Standard Rules provide that “States should ensure that persons with disabilities have the opportunity to utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of their community, be they in urban or rural areas. ... States should promote the accessibility to and availability of places for cultural performances and services...”.⁴⁴ The same applies to places for recreation, sports and tourism.
37. The right to full participation in cultural and recreational life for persons with disabilities further requires that communication barriers be eliminated to the greatest extent possible. Useful measures in this regard might include “the use of talking books, papers written in simple language and with clear format and colours for persons with mental disability, [and] adapted television and theatre for deaf persons”.⁴⁵
38. In order to facilitate the equal participation in cultural life of persons with disabilities, Governments should inform and educate the general public about disability. In particular, measures must be taken to dispel prejudices or superstitious beliefs against persons with disabilities, for example those that view epilepsy as a form of spirit possession or a child with disabilities as a form of punishment visited upon the family. Similarly, the general public should be educated to accept that persons with disabilities have as much right as any other person to make use of restaurants, hotels, recreation centres and cultural venues.

GENERAL COMMENT 6 (Thirteenth session, 1995)⁴⁶

8 December 1995

The economic, social and cultural rights of older persons

1. Introduction

1. The world population is ageing at a steady, quite spectacular rate. The total number of persons aged 60 and above rose from 200 million in 1950 to 400 million in 1982 and is projected to reach 600 million in the year 2001 and 1.2 billion by the year 2025, at which time over 70 per cent of them will be living in what are today’s developing countries. The number of people aged 80 and above has grown and continues to grow even more dramatically, going from 13 million in 1950 to over 50 million today and projected to increase to 137 million in 2025. This is the fastest growing population group in the world, projected to increase by a factor of 10 between 1950 and 2025, compared with a factor of six for the group aged 60 and above and a factor of little more than three for the total population.⁴⁷
2. These figures are illustrations of a quiet revolution, but one which has far-reaching and unpredictable consequences and which is now affecting the social and economic structures of societies both at the world level and at the country level, and will affect them even more in future.
3. Most of the States parties to the Covenant, and the industrialized countries in particular, are faced with the task of adapting their social and economic policies to the ageing of their populations, especially as regards social security. In the developing countries, the absence or deficiencies of social security coverage are being aggravated by the emigration of the

⁴⁴ *ibid.*, Rule 10, paras.1-2

⁴⁵ See A/47/415 para. 79

⁴⁶ Contained in document E/1996/22.

⁴⁷ Global targets on ageing for the year 2001: a practical strategy. Report of the Secretary-General (A/47/339), para. 5.

younger members of the population and the consequent weakening of the traditional role of the family, the main support of older people.

2. Internationally endorsed policies in relation to older persons

4. In 1982 the World Assembly on Ageing adopted the Vienna International Plan of Action on Ageing. This important document was endorsed by the General Assembly and is a very useful guide, for it details the measures that should be taken by Member States to safeguard the rights of older persons within the context of the rights proclaimed by the International Covenants on Human Rights. It contains 62 recommendations, many of which are of direct relevance to the Covenant.⁴⁸
5. In 1991 the General Assembly adopted the United Nations Principles for Older Persons which, because of their programmatic nature, is also an important document in the present context.⁴⁹ It is divided into five sections which correlate closely to the rights recognized in the Covenant. “Independence” includes access to adequate food, water, shelter, clothing and health care. To these basic rights are added the opportunity to remunerated work and access to education and training. By “participation” is meant that older persons should participate actively in the formulation and implementation of policies that affect their well-being and share their knowledge and skills with younger generations, and should be able to form movements and associations. The section headed “care” proclaims that older persons should benefit from family care, health care and be able to enjoy human rights and fundamental freedoms when residing in a shelter, care or treatment facility. With regard to “self-fulfilment”, the Principles that older persons should pursue opportunities for the full development of their potential through access to the educational, cultural, spiritual and recreational resources of their societies. Lastly, the section entitled “dignity” states that older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse, should be treated fairly, regardless of age, gender, racial or ethnic background, disability, financial situation or any other status, and be valued independently of their economic contribution.
6. In 1992, the General Assembly adopted eight global targets on ageing for the year 2001 and a brief guide for setting national targets. In a number of important respects, these global targets serve to reinforce the obligations of States parties to the Covenant.⁵⁰
7. Also in 1992, and in commemoration of the tenth anniversary of the adoption of the Vienna International Plan of Action by the Conference on Ageing, the General Assembly adopted the Proclamation on Ageing in which it urged support of national initiatives on ageing so that older women are given adequate support for their largely unrecognized contributions to society and older men are encouraged to develop social, cultural and emotional capacities which they may have been prevented from developing during breadwinning years; families are supported in providing care and all family members encouraged to cooperate in caregiving; and that international cooperation is expanded in the context of the strategies for reaching the global targets on ageing for the year 2001. It also proclaimed the year 1999 as the International Year of Older Persons in recognition of humanity’s demographic “coming of age”.⁵¹
8. The United Nations specialized agencies, especially the International Labour Organization, have also given attention to the problem of ageing in their respective fields of competence.

48 *Report of the World Assembly on Ageing*, Vienna, 26 July-6 August 1982; (United Nations publication, Sales No. E.82.I.16).

49 General Assembly resolution 46/91 of 16 December 1991, “Implementation of the International Plan of Action on Ageing and related activities”, annex.

50 Global targets on ageing for the year 2001: a practical strategy (A/47/339), chapters III and IV.

51 General Assembly resolution 47/5 of 16 October 1992, “Proclamation on Ageing”.

3. The rights of older persons in relation to the International Covenant on Economic, Social and Cultural Rights

9. The terminology used to describe older persons varies considerably, even in international documents. It includes: “older persons”, “the aged”, “the elderly”, “the third age”, “the ageing”, and, to denote persons more than 80 years of age, “the fourth age”. The Committee opted for “older persons” (in French, personnes âgées; in Spanish, personas mayores), the term employed in General Assembly resolutions 47/5 and 48/98. According to the practice in the United Nations statistical services, these terms cover persons aged 60 and above (Eurostat, the statistical service of the European Union, considers “older persons” to mean persons aged 65 or above, since 65 is the most common age of retirement and the trend is towards later retirement still).
10. The International Covenant on Economic, Social and Cultural Rights does not contain any explicit reference to the rights of older persons, although article 9 dealing with “the right of everyone to social security, including social insurance”, implicitly recognizes the right to old-age benefits. Nevertheless, in view of the fact that the Covenant’s provisions apply fully to all members of society, it is clear that older persons are entitled to enjoy the full range of rights recognized in the Covenant. This approach is also fully reflected in the Vienna International Plan of Action on Ageing. Moreover, in so far as respect for the rights of older persons requires special measures to be taken, States parties are required by the Covenant to do so to the maximum of their available resources.
11. Another important issue is whether discrimination on the basis of age is Prohibited by the Covenant. Neither the Covenant nor the Universal Declaration of Human Rights refers explicitly to age as one of the prohibited grounds. Rather than being seen as an intentional exclusion, this omission is probably best explained by the fact that, when these instruments were adopted, the problem of demographic ageing was not as evident or as pressing as it is now.
12. This is not determinative of the matter, however, since the prohibition of discrimination on the grounds of “other status” could be interpreted as applying to age. The Committee notes that while it may not yet be possible to conclude that discrimination on the grounds of age is comprehensively prohibited by the Covenant, the range of matters in relation to which such discrimination can be accepted is very limited. Moreover, it must be emphasized that the unacceptableness of discrimination against older persons is underlined in many international policy documents and is confirmed in the legislation of the vast majority of States. In the few areas in which discrimination continues to be tolerated, such as in relation to mandatory retirement ages or access to tertiary education, there is a clear trend towards the elimination of such barriers. The Committee is of the view that States parties should seek to expedite this trend to the greatest extent possible.
13. Accordingly, the Committee on Economic, Social and Cultural Rights is of the view that States parties to the Covenant are obligated to pay particular attention to promoting and protecting the economic, social and cultural rights of older persons. The Committee’s own role in this regard is rendered all the more important by the fact that, unlike the case of other population groups such as women and children, no comprehensive international convention yet exists in relation to the rights of older persons and no binding supervisory arrangements attach to the various sets of United Nations principles in this area.
14. By the end of its thirteenth session, the Committee and, before that, its predecessor, the Sessional Working Group of Governmental Experts, had examined 144 initial reports, 70 second periodic reports and 20 initial and periodic global reports on articles 1 to 15. This examination made it possible to identify many of the problems that may be encountered in implementing the Covenant in a considerable number of States parties that represent all the regions of the world and have different political, socio-economic and cultural systems. The reports examined to date have not provided any information in a systematic way on the

situation of older persons with regard to compliance with the Covenant, apart from information, of varying completeness, on the implementation of article 9 relating to the right to social security.

15. In 1993, the Committee devoted a day of general discussion to this issue in order to plan its future activity in this area. Moreover, it has, at recent sessions, begun to attach substantially more importance to information on the rights of older persons and its questioning has elicited some very valuable information in some instances. Nevertheless, the Committee notes that the great majority of States parties reports continue to make little reference to this important issue. It therefore wishes to indicate that, in future, it will insist that the situation of older persons in relation to each of the rights recognized in the Covenant should be adequately addressed in all reports. The remainder of this General Comment identifies the specific issues which are relevant in this regard.

4. General obligations of States parties

16. Older persons as a group are as heterogeneous and varied as the rest of the population and their situation depends on a country's economic and social situation, on demographic, environmental cultural and employment factors and, at the individual level, on the family situation, the level of education, the urban or rural environment and the occupation of workers and retirees.
17. Side by side with older persons who are in good health and whose financial situation is acceptable, there are many who do not have adequate means of support, even in developed countries, and who feature prominently among the most vulnerable, marginal and unprotected groups. In times of recession and of restructuring of the economy, older persons are particularly at risk. As the Committee has previously stressed (General Comment No. 3 (1990), para. 12), even in times of severe resource constraints, States parties have the duty to protect the vulnerable members of society.
18. The methods that States parties use to fulfil the obligations they have assumed under the Covenant in respect of older persons will be basically the same as those for the fulfilment of other obligations (see General Comment No. 1 (1989)). They include the need to determine the nature and scope of problems within a State through regular monitoring, the need to adopt properly designed policies and programmes to meet requirements, the need to enact legislation when necessary and to eliminate any discriminatory legislation and the need to ensure the relevant budget support or, as appropriate, to request international cooperation. In the latter connection, international cooperation in accordance with articles 22 and 23 of the Covenant may be a particularly important way of enabling some developing countries to fulfil their obligations under the Covenant.
19. In this context, attention may be drawn to Global target No. 1, adopted by the General Assembly in 1992, which calls for the establishment of national support infrastructures to promote policies and programmes on ageing in national and international development plans and programmes. In this regard, the Committee notes that one of the United Nations Principles for Older Persons which Governments were encouraged to incorporate into their national programmes is that older persons should be able to form movements or associations of older persons.

5. Specific provisions of the Covenant

Article 3: Equal rights of men and women

20. In accordance with article 3 of the Covenant, by which States parties undertake "to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights", the Committee considers that States parties should pay particular attention to older women who, because they have spent all or part of their lives caring for their families without

engaging in a remunerated activity entitling them to an old-age pension, and who are also not entitled to a widow's pension, are often in critical situations.

21. To deal with such situations and comply fully with article 9 of the Covenant and paragraph 2 (h) of the Proclamation on Ageing, States parties should institute non-contributory old-age benefits or other assistance for all persons, regardless of their sex, who find themselves without resources on attaining an age specified in national legislation. Given their greater life expectancy and the fact that it is more often they who have no contributory pensions, women would be the principal beneficiaries.

Articles 6 to 8: Rights relating to work

22. Article 6 of the Covenant requires States parties to take appropriate steps to safeguard the right of everyone to the opportunity to gain a living by work which is freely chosen or accepted. In this regard, the Committee, bearing in mind that older workers who have not reached retirement age often encounter problems in finding and keeping jobs, stresses the need for measures to prevent discrimination on grounds of age in employment and occupation.⁵²
23. The right “to the enjoyment of just and favourable conditions of work” (Covenant, art. 7) is of special importance for ensuring that older workers enjoy safe working conditions until their retirement. In particular, it is desirable, to employ older workers in circumstances in which the best use can be made of their experience and know-how.⁵³
24. In the years preceding retirement, retirement preparation programmes should be implemented, with the participation of representative organizations of employers and workers and other bodies concerned, to prepare older workers to cope with their new situation. Such programmes should, in particular, provide older workers with information about: their rights and obligations as pensioners; the opportunities and conditions for continuing an occupational activity or undertaking voluntary work; means of combating detrimental effects of ageing; facilities for adult education and cultural activities, and the use of leisure time.⁵⁴
25. The rights protected by article 8 of the Covenant, namely, trade union rights, including after retirement age, must be applied to older workers.

Article 9: Right to social security

26. Article 9 of the Covenant provides generally that States parties “recognize the right of everyone to social security”, without specifying the type or level of protection to be guaranteed. However, the term “social security” implicitly covers all the risks involved in the loss of means of subsistence for reasons beyond a person's control.
27. In accordance with article 9 of the Covenant and the provisions concerning implementation of the ILO social security conventions — Convention No. 102 concerning Social Security (Minimum Standards) (1952) and Convention No. 128 concerning Invalidity, Old-Age and Survivors' Benefits (1967) — States parties must take appropriate measures to establish general regimes of compulsory old-age insurance, starting at a particular age, to be prescribed by national law.
28. In keeping with the recommendations contained in the two ILO Conventions mentioned above and Recommendation No. 162, the Committee invites States parties to establish retirement age so that it is flexible, depending on the occupations performed and the working ability of elderly persons, with due regard to demographic, economic and social factors.
29. In order to give effect to the provisions of article 9 of the Covenant, States parties must guarantee the provision of survivors' and orphans' benefits on the death of the breadwinner who was covered by social security or receiving a pension.

⁵² See ILO Recommendation 162 (1980) concerning Older Workers, paras. 3-10.

⁵³ *Ibid.*, paras. 11-19.

⁵⁴ *Ibid.*, para. 30.

30. Furthermore, as already observed in paragraphs 20 and 21, in order fully to implement the provisions of article 9 of the Covenant, States parties should, within the limits of available resources, provide non-contributory old-age benefits and other assistance for all older persons, who, when reaching the age prescribed in national legislation, have not completed a qualifying period of contribution and are not entitled to an old-age pension or other social security benefit or assistance and have no other source of income.

Article 10: Protection of the family

31. On the basis of article 10, paragraph 1, of the Covenant and recommendations 25 and 29 of the Vienna International Plan of Action on Ageing, States parties should make all the necessary efforts to support, protect and strengthen the family and help it, in accordance with each society's system of cultural values, to respond to the needs of its dependent ageing members. Recommendation 29 encourages Governments and non-governmental organizations to establish social services to support the whole family when there are elderly people at home and to implement measures especially for low-income families who wish to keep elderly people at home. This assistance should also be provided for persons living alone or elderly couples wishing to remain at home.

Article 11: Right to an adequate standard of living

32. Of the United Nations Principles for Older Persons, principle 1, which stands at the beginning of the section relating to the independence of older persons, provides that: "Older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help". The Committee attaches great importance to this principle, which demands for older persons the rights contained in article 11 of the Covenant.
33. Recommendations 19 to 24 of the Vienna International Plan of Action on Ageing emphasize that housing for the elderly must be viewed as more than mere shelter and that, in addition to the physical, it has psychological and social significance which should be taken into account. Accordingly, national policies should help elderly persons to continue to live in their own homes as long as possible, through the restoration, development and improvement of homes and their adaptation to the ability of those persons to gain access to and use them (recommendation 19). Recommendation 20 stresses the need for urban rebuilding and development planning and law to pay special attention to the problems of the ageing, assisting in securing their social integration, while recommendation 22 draws attention to the need to take account of the functional capacity of the elderly in order to provide them with a better living environment and facilitate mobility and communication through the provision of adequate means of transport.

Article 12: Right to physical and mental health

34. With a view to the realization of the right of elderly persons to the enjoyment of a satisfactory standard of physical and mental health, in accordance with article 12, paragraph 1, of the Covenant, States parties should take account of the content of recommendations 1 to 17 of the Vienna International Plan of Action on Ageing, which focus entirely on providing guidelines on health policy to preserve the health of the elderly and take a comprehensive view, ranging from prevention and rehabilitation to the care of the terminally ill.
35. Clearly, the growing number of chronic, degenerative diseases and the high hospitalization costs they involve cannot be dealt with only by curative treatment. In this regard, States parties should bear in mind that maintaining health into old age requires investments during the entire life span, basically through the adoption of healthy lifestyles (food, exercise, elimination of tobacco and alcohol, etc.). Prevention, through regular checks suited to the needs of the elderly, plays a decisive role, as does rehabilitation, by maintaining the

functional capacities of elderly persons, with a resulting decrease in the cost of investments in health care and social services.

Articles 13 to 15: Right to education and culture

36. Article 13, paragraph 1, of the Covenant recognizes the right of everyone to education. In the case of the elderly, this right must be approached from two different and complementary points of view: (a) the right of elderly persons to benefit from educational programmes; and (b) making the know-how and experience of elderly persons available to younger generations.
37. With regard to the former, States parties should take account of: (a) the recommendations in principle 16 of the United Nations Principles for Older Persons to the effect that older persons should have access to suitable education programmes and training and should, therefore, on the basis of their preparation, abilities and motivation, be given access to the various levels of education through the adoption of appropriate measures regarding literacy training, life-long education, access to university, etc.; and (b) recommendation 47 of the Vienna International Plan of Action on Ageing, which, in accordance with the concept of life-long education promulgated by the United Nations Educational, Scientific and Cultural Organization (UNESCO), recommends informal, community-based and recreation-oriented programmes for the elderly in order to develop their sense of self-reliance and the community's sense of responsibility. Such programmes should enjoy the support of national Governments and international organizations.
38. With regard to the use of the know-how and experience of older persons, as referred to in the part of the recommendations of the Vienna International Plan of Action on Ageing dealing with education (paras. 74-76), attention is drawn to the important role that elderly and old persons still play in most societies as the transmitters of information, knowledge, traditions and spiritual values and to the fact that this important tradition should not be lost. Consequently, the Committee attaches particular importance to the message contained in recommendation 44 of the Plan: "Educational programmes featuring the elderly as the teachers and transmitters of knowledge, culture and spiritual values should be developed".
39. In article 15, paragraphs 1 (a) and (b), of the Covenant, States parties recognize the right of everyone to take part in cultural life and to enjoy the benefits of scientific progress and its applications. In this respect, the Committee urges States parties to take account of the recommendations contained in the United Nations Principles for Older Persons, and in particular of principle 7: "Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations"; and principle 16: "Older persons should have access to the educational, cultural, spiritual and recreational resources of society".
40. Similarly, recommendation 48 of the Vienna International Plan of Action on Ageing encourages Governments and international organizations to support programmes aimed at providing the elderly with easier physical access to cultural institutions (museums, theatres, concert halls, cinemas, etc.).
41. Recommendation 50 stresses the need for Governments, non-governmental organizations and the ageing themselves to make efforts to overcome negative stereotyped images of older persons as suffering from physical and psychological disabilities, incapable of functioning independently and having neither role nor status in society. These efforts, in which the media and educational institutions should also take part, are essential for achieving a society that champions the full integration of the elderly.
42. With regard to the right to enjoy the benefits of scientific progress and its applications, States parties should take account of recommendations 60, 61 and 62 of the Vienna International Plan of Action and make efforts to promote research on the biological, mental and social aspects of ageing and ways of maintaining functional capacities and preventing and delaying

the start of chronic illnesses and disabilities. In this connection, it is recommended that States, intergovernmental organizations and non-governmental organizations should establish institutions specializing in the teaching of gerontology, geriatrics and geriatric psychology in countries where such institutions do not exist.

General Comment No. 7 (Sixteenth session, 1997)

20 May 1997

The right to adequate housing (art. 11.1 of the Covenant): forced evictions

1. In its General Comment No. 4 (1991), the Committee observed that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. It concluded that forced evictions are prima facie incompatible with the requirements of the Covenant. Having considered a significant number of reports of forced evictions in recent years, including instances in which it has determined that the obligations of States Parties were being violated, the Committee is now in a position to seek to provide further clarification as to the implications of such practices in terms of the obligations contained in the Covenant.
2. The international community has long recognized that the issue of forced evictions is a serious one. In 1976, the United Nations Conference on Human Settlements noted that special attention should be paid to “undertaking major clearance operations should take place only when conservation and rehabilitation are not feasible and relocation measures are made”.⁵⁵ In 1988, in the Global Strategy for Shelter to the Year 2000, adopted by the General Assembly in its resolution 43/181, the “fundamental obligation [of Governments] to protect and improve houses and neighbourhoods, rather than damage or destroy them” was recognized.⁵⁶ Agenda 21 stated that “people should be protected by law against unfair eviction from their homes or land”.⁵⁷ In the Habitat Agenda Governments committed themselves to “protecting all people from, and providing legal protection and redress for, forced evictions that are contrary to the law, taking human rights into consideration; [and] when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided”.⁵⁸ The Commission on Human Rights has also indicated that “forced evictions are a gross violation of human rights”.⁵⁹ However, although these statements are important, they leave open one of the most critical issues, namely that of determining the circumstances under which forced evictions are permissible and of spelling out the types of protection required to ensure respect for the relevant provisions of the Covenant.
3. The use of the term “forced evictions” is, in some respects, problematic. This expression seeks to convey a sense of arbitrariness and of illegality. To many observers, however, the reference to “forced evictions” is a tautology, while others have criticized the expression “illegal evictions” on the ground that it assumes that the relevant law provides adequate protection of the right to housing and conforms with the Covenant, which is by no means always the case. Similarly, it has been suggested that the term “unfair evictions” is even more subjective by virtue of its failure to refer to any legal framework at all. The international community, especially in the context of the Commission on Human Rights, has opted to refer to “forced evictions”, primarily since all suggested alternatives also suffer from many such defects.
4. The term “forced evictions” as used throughout this General Comment is defined as the permanent or temporary removal against their will of individuals, families and/or communities

55 Report of Habitat: United Nations Conference on Human Settlements, Vancouver, 31 May-11 June 1976 (A/CONF.70/15), chap. II, recommendation B.8, para. C (ii).

56 Report of the Commission on Human Settlements on the work of its eleventh session, Addendum (A/43/8/Add.1), para. 13.

57 Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, Volume I (A/CONF.151/26/Rev.1(vol.I), annex II, Agenda 21, chap. 7.9 (b).

58 Report of the United Nations Conference on Settlements (Habitat II) (A/CONF.165/14), annex II, The Habitat Agenda, para. 40 (n).

59 Commission on Human Rights resolution 1993/77, para. 1.

from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.

5. The practice of forced evictions is widespread and affects persons in both developed and developing countries. Owing to the interrelationship and interdependency which exist among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.
6. Although the practice of forced evictions might appear to occur primarily in heavily populated urban areas, it also takes place in connection with forced population transfers, internal displacement, forced relocations in the context of armed conflict, mass exoduses and refugee movements. In all of these contexts, the right to adequate housing and not to be subjected to forced eviction may be violated through a wide range of acts or omissions attributable to States Parties. Even in situations where it may be necessary to impose limitations on such a right, full compliance with article 4 of the Covenant is required so that any limitations imposed must be “determined by law only insofar as this may be compatible with the nature of these [i.e. economic, social and cultural] rights and solely for the purpose of promoting the general welfare in a democratic society”.
7. Many instances of forced eviction are associated with violence, such as evictions resulting from international armed conflicts, internal strife and communal or ethnic violence.
8. Other instances of forced eviction occur in the name of development. Evictions may be carried out in connection with conflict over land rights, development and infrastructure projects, such as the construction of dams or other large-scale energy projects, with land acquisition measures associated with urban renewal, housing renovation, city beautification programmes, the clearing of land for agricultural purposes, unbridled speculation in land, or the holding of major sporting events like the Olympic Games.
9. In essence, the obligations of States Parties to the Covenant in relation to forced evictions are based on article 11.1, read in conjunction with other relevant provisions. In particular, article 2.1 obliges States to use “all appropriate means” to promote the right to adequate housing. However, in view of the nature of the practice of forced evictions, the reference in article 2.1 to progressive achievement based on the availability of resources will rarely be relevant. The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions (as defined in para. 3 above). Moreover, this approach is reinforced by article 17.1 of the International Covenant on Civil and Political Rights which complements the right not to be forcefully evicted without adequate protection. That provision recognizes, *inter alia*, the right to be protected against “arbitrary or unlawful interference” with one’s home. It is to be noted that the State’s obligation to ensure respect for that right is not qualified by considerations relating to its available resources.
10. Article 2.1 of the Covenant requires States Parties to use “all appropriate means”, including the adoption of legislative measures, to promote all the rights protected under the Covenant. Although the Committee has indicated in its General Comment No. 3 (1990) that such measures may not be indispensable in relation to all rights, it is clear that legislation against forced evictions is an essential basis upon which to build a system of effective protection. Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply to all agents acting under the authority of the State or who are accountable to it.

Moreover, in view of the increasing trend in some States towards the Government greatly reducing its responsibilities in the housing sector, States Parties must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies. States Parties should therefore review relevant legislation and policies to ensure that they are compatible with the obligations arising from the right to adequate housing and repeal or amend any legislation or policies that are inconsistent with the requirements of the Covenant.

11. Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless. The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.
12. Whereas some evictions may be justifiable, such as in the case of persistent non-payment of rent or of damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected.
13. Forced eviction and house demolition as a punitive measure are also inconsistent with the norms of the Covenant. Likewise, the Committee takes note of the obligations enshrined in the Geneva Conventions of 1949 and Protocols thereto of 1977 concerning prohibitions on the displacement of the civilian population and the destruction of private property as these relate to the practice of forced eviction.
14. States Parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. States Parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected. In this respect, it is pertinent to recall article 2.3 of the International Covenant on Civil and Political Rights, which requires States Parties to ensure “an effective remedy” for persons whose rights have been violated and the obligation upon the “competent authorities (to) enforce such remedies when granted”.
15. In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality. In this regard it is especially pertinent to recall General Comment 16 of the Human Rights Committee, relating to article 17 of the International Covenant on Civil and Political Rights, which states that interference with a person’s home can only take place “in cases envisaged by the law”. The Committee observed that the law “should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances”. The Committee also indicated that “relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted”.
16. Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b)

- adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.
17. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State Party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.
 18. The Committee is aware that various development projects financed by international agencies within the territories of State Parties have resulted in forced evictions. In this regard, the Committee recalls its General Comment No. 2 (1990) which states, *inter alia*, that “international agencies should scrupulously avoid involvement in projects which, for example ... promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are duly taken into account”.⁶⁰
 19. Some institutions, such as the World Bank and the Organization for Economic Cooperation and Development (OECD) have adopted guidelines on relocation and/or resettlement with a view to limiting the scale of and human suffering associated with forced evictions. Such practices often accompany large-scale development projects, such as dam-building and other major energy projects. Full respect for such guidelines, insofar as they reflect the obligations contained in the Covenant, is essential on the part of both the agencies themselves and States Parties to the Covenant. The Committee recalls in this respect the statement in the Vienna Declaration and Programme of Action to the effect that “while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights” (Part I, para. 10).
 20. In accordance with the guidelines for reporting adopted by the Committee, State Parties are requested to provide various types of information pertaining directly to the practice of forced evictions. This includes information relating to (a) the “number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction”, (b) “legislation concerning the rights of tenants to security of tenure, to protection from eviction” and (c) “legislation prohibiting any form of eviction”.⁶¹
 21. Information is also sought as to “measures taken during, *inter alia*, urban renewal programmes, redevelopment projects, site upgrading, preparation for international events (Olympics and other sporting competitions, exhibitions, conferences, etc.) beautiful city’ campaigns, etc. which guarantee protection from eviction or guarantee rehousing based on mutual consent, by any persons living on or near to affected sites”.⁶² However, few States Parties have included the requisite information in their reports to the Committee. The Committee therefore wishes to emphasize the importance it attaches to the receipt of such information.

60 E/1990/23, annex III, paras. 6 and 8 (d).

61 E/C.12/1990/8, annex IV.

62 Ibid.

22. Some States Parties have indicated that information of this nature is not available. The Committee recalls that effective monitoring of the right to adequate housing, either by the Government concerned or by the Committee, is not possible in the absence of the collection of appropriate data and would request all States Parties to ensure that the necessary data is collected and is reflected in the reports submitted by them under the Covenant.

General comment No. 9 (Nineteenth session, 1998)⁶³

3 December 1998

The domestic application of the Covenant

A. The duty to give effect to the Covenant in the domestic legal order

1. In its General Comment No. 3 (1990) the Committee addressed issues relating to the nature and scope of States parties' obligations. The present general comment seeks to elaborate further certain elements of the earlier statement. The central obligation in relation to the Covenant is for States parties to give effect to the rights recognized therein. By requiring Governments to do so "by all appropriate means", the Covenant adopts a broad and flexible approach which enables the particularities of the legal and administrative systems of each State, as well as other relevant considerations, to be taken into account.
2. But this flexibility coexists with the obligation upon each State party to use all the means at its disposal to give effect to the rights recognized in the Covenant. In this respect, the fundamental requirements of international human rights law must be borne in mind. Thus the Covenant norms must be recognized in appropriate ways within the domestic legal order, appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place.
3. Questions relating to the domestic application of the Covenant must be considered in the light of two principles of international law. The first, as reflected in article 27 of the Vienna Convention on the Law of Treaties of 1969, is that "[A] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty". In other words, States should modify the domestic legal order as necessary in order to give effect to their treaty obligations.⁶⁴ The second principle is reflected in article 8 of the Universal Declaration of Human Rights, according to which "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." The Covenant contains no direct counterpart to article 2.3 (b) of the International Covenant on Civil and Political Rights which obligates States parties to, *inter alia*, "develop the possibilities of judicial remedy". Nevertheless, a State party seeking to justify its failure to provide any domestic legal remedies for violations of economic, social and cultural rights would need to show either that such remedies are not "appropriate means" within the terms of article 2.1 of the Covenant or that, in view of the other means used, they are unnecessary. It will be difficult to show this and the Committee considers that, in many cases, the other "means" used could be rendered ineffective if they are not reinforced or complemented by judicial remedies.

B. The status of the Covenant in the domestic legal order

4. In general, legally binding international human rights standards should operate directly and immediately within the domestic legal system of each State party, thereby enabling individuals to seek enforcement of their rights before national courts and tribunals. The rule requiring the exhaustion of domestic remedies reinforces the primacy of national remedies in this respect. The existence and further development of international procedures for the pursuit of individual

⁶³ Adopted at the 51st meeting on 1 December 1998 (nineteenth session).

⁶⁴ A/CONF.39/27.

claims is important, but such procedures are ultimately only supplementary to effective national remedies.

5. The Covenant does not stipulate the specific means by which it is to be implemented in the national legal order. And there is no provision obligating its comprehensive incorporation or requiring it to be accorded any specific type of status in national law. Although the precise method by which Covenant rights are given effect in national law is a matter for each State party to decide, the means used should be appropriate in the sense of producing results which are consistent with the full discharge of its obligations by the State party. The means chosen are also subject to review as part of the Committee's examination of the State party's compliance with its obligations under the Covenant.
6. An analysis of State practice with respect to the Covenant shows that States have used a variety of approaches. Some States have failed to do anything specific at all. Of those that have taken measures, some States have transformed the Covenant into domestic law by supplementing or amending existing legislation, without invoking the specific terms of the Covenant. Others have adopted or incorporated it into domestic law, so that its terms are retained intact and given formal validity in the national legal order. This has often been done by means of constitutional provisions according priority to the provisions of international human rights treaties over any inconsistent domestic laws. The approach of States to the Covenant depends significantly upon the approach adopted to treaties in general in the domestic legal order.
7. But whatever the preferred methodology, several principles follow from the duty to give effect to the Covenant and must therefore be respected. First, the means of implementation chosen must be adequate to ensure fulfilment of the obligations under the Covenant. The need to ensure justiciability (see para. 10 below) is relevant when determining the best way to give domestic legal effect to the Covenant rights. Second, account should be taken of the means which have proved to be most effective in the country concerned in ensuring the protection of other human rights. Where the means used to give effect to the Covenant on Economic, Social and Cultural Rights differ significantly from those used in relation to other human rights treaties, there should be a compelling justification for this, taking account of the fact that the formulations used in the Covenant are, to a considerable extent, comparable to those used in treaties dealing with civil and political rights.
8. Third, while the Covenant does not formally oblige States to incorporate its provisions in domestic law, such an approach is desirable. Direct incorporation avoids problems that might arise in the translation of treaty obligations into national law, and provides a basis for the direct invocation of the Covenant rights by individuals in national courts. For these reasons, the Committee strongly encourages formal adoption or incorporation of the Covenant in national law.

C. The role of legal remedies

Legal or judicial remedies?

9. The right to an effective remedy need not be interpreted as always requiring a judicial remedy. Administrative remedies will, in many cases, be adequate and those living within the jurisdiction of a State party have a legitimate expectation, based on the principle of good faith, that all administrative authorities will take account of the requirements of the Covenant in their decision-making. Any such administrative remedies should be accessible, affordable, timely and effective. An ultimate right of judicial appeal from administrative procedures of this type would also often be appropriate. By the same token, there are some obligations, such as (but by no means limited to) those concerning non-discrimination,⁶⁵ in relation to which the provision of some form of judicial remedy would seem indispensable in order to satisfy the requirements of

⁶⁵ Pursuant to article 2.2 States "undertake to guarantee" that the rights in the Covenant are exercised "without discrimination of any kind".

the Covenant. In other words, whenever a Covenant right cannot be made fully effective without some role for the judiciary, judicial remedies are necessary.

Justiciability

10. In relation to civil and political rights, it is generally taken for granted that judicial remedies for violations are essential. Regrettably, the contrary assumption is too often made in relation to economic, social and cultural rights. This discrepancy is not warranted either by the nature of the rights or by the relevant Covenant provisions. The Committee has already made clear that it considers many of the provisions in the Covenant to be capable of immediate implementation. Thus, in General Comment No. 3 it cited, by way of example, articles 3, 7 (a) (i), 8, 10.3, 13.2 (a), 13.3, 13.4 and 15.3. It is important in this regard to distinguish between justiciability (which refers to those matters which are appropriately resolved by the courts) and norms which are self-executing (capable of being applied by courts without further elaboration). While the general approach of each legal system needs to be taken into account, there is no Covenant right which could not, in the great majority of systems, be considered to possess at least some significant justiciable dimensions. It is sometimes suggested that matters involving the allocation of resources should be left to the political authorities rather than the courts. While the respective competences of the various branches of government must be respected, it is appropriate to acknowledge that courts are generally already involved in a considerable range of matters which have important resource implications. The adoption of a rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society.

Self-executing

11. The Covenant does not negate the possibility that the rights it contains may be considered self-executing in systems where that option is provided for. Indeed, when it was being drafted, attempts to include a specific provision in the Covenant to the effect that it be considered “non-self-executing” were strongly rejected. In most States, the determination of whether or not a treaty provision is self-executing will be a matter for the courts, not the executive or the legislature. In order to perform that function effectively, the relevant courts and tribunals must be made aware of the nature and implications of the Covenant and of the important role of judicial remedies in its implementation. Thus, for example, when Governments are involved in court proceedings, they should promote interpretations of domestic laws which give effect to their Covenant obligations. Similarly, judicial training should take full account of the justiciability of the Covenant. It is especially important to avoid any a priori assumption that the norms should be considered to be non-self-executing. In fact, many of them are stated in terms which are at least as clear and specific as those in other human rights treaties, the provisions of which are regularly deemed by courts to be self-executing.

D. The treatment of the Covenant in domestic courts

12. In the Committee’s guidelines for States’ reports, States are requested to provide information as to whether the provisions of the Covenant “can be invoked before, and directly enforced by, the Courts, other tribunals or administrative authorities”.⁶⁶

Some States have provided such information, but greater importance should be attached to this element in future reports. In particular, the Committee requests that States parties provide details of any significant jurisprudence from their domestic courts that makes use of the provisions of the Covenant.

13. On the basis of available information, it is clear that State practice is mixed. The Committee notes that some courts have applied the provisions of the Covenant either directly or as

⁶⁶ Reporting guidelines, E/C.12/1990/8, Annex IV.

interpretive standards. Other courts are willing to acknowledge, in principle, the relevance of the Covenant for interpreting domestic law, but in practice, the impact of the Covenant on the reasoning or outcome of cases is very limited. Still other courts have refused to give any degree of legal effect to the Covenant in cases in which individuals have sought to rely on it. There remains extensive scope for the courts in most countries to place greater reliance upon the Covenant.

14. Within the limits of the appropriate exercise of their functions of judicial review, courts should take account of Covenant rights where this is necessary to ensure that the State's conduct is consistent with its obligations under the Covenant. Neglect by the courts of this responsibility is incompatible with the principle of the rule of law, which must always be taken to include respect for international human rights obligations.
15. It is generally accepted that domestic law should be interpreted as far as possible in a way which conforms to a State's international legal obligations. Thus, when a domestic decision maker is faced with a choice between an interpretation of domestic law that would place the state in breach of the Covenant and one that would enable the State to comply with the Covenant, international law requires the choice of the latter. Guarantees of equality and non-discrimination should be interpreted, to the greatest extent possible, in ways which facilitate the full protection of economic, social and cultural rights.

General Comment No. 13 (Twenty-first session, 1999)

2 December 1999

The right to education (Article 13)

UNEDITED VERSION

IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

General Comment No. 13 (Twenty-first session, 1999)

The right to education (Article 13 of the Covenant)

1. Education is both a human right in itself and an indispensable means of realising other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalised adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognised as one of the best financial investments available to States, but the importance of education is not just practical and instrumental. A well-stocked, enlightened and active mind, able to range freely and widely, is one of the joys and rewards of human existence.
2. The International Covenant on Economic, Social and Cultural Rights (ICESCR) devotes two articles to the right to education, articles 13 and 14. Article 13, the longest provision in the Covenant, is the most wide-ranging and comprehensive article on the right to education in international human rights law. The Committee has already adopted General Comment 11 on article 14 (plans of action for primary education); General Comment 11 and the current General Comment are complementary and should be considered together. The Committee is aware that, for millions of people throughout the world, the enjoyment of the right to education remains a distant goal. Moreover, in many cases, this goal is becoming increasingly remote. The Committee is also conscious of the formidable structural and other obstacles impeding the full realisation of article 13 in many States parties.

3. With a view to assisting States parties' implementation of the Covenant and fulfilment of their reporting obligations, this General Comment focuses on the normative content of article 13 (Part I, paras 4-42), some of the obligations arising from it (Part II, paras 43-57), and some illustrative violations (Part II, paras 58-59). Part III briefly remarks upon the obligations of actors other than States parties. The General Comment is based upon the Committee's experience in examining State party reports over many years.

I. NORMATIVE CONTENT OF ARTICLE 13

Article 13(1): Aims and objectives of education

4. State parties agree that all education, whether public or private, formal or non-formal, shall be directed towards the aims and objectives identified in article 13(1). The Committee notes that these educational objectives reflect the fundamental purposes and principles of the UN as enshrined in articles 1 and 2 of the Charter of the United Nations. For the most part, they are also found in article 26(2) of the Universal Declaration of Human Rights, although article 13(1) adds to the Declaration in three respects: education shall be directed to the human personality's "sense of dignity", it shall "enable all persons to participate effectively in a free society", and it shall promote understanding among all "ethnic" groups, as well as nations, racial and religious groups. Of those educational objectives which are common to article 26(2) of the Universal Declaration of Human Rights and article 13(1) of the Covenant, perhaps the most fundamental is that "education shall be directed to the full development of the human personality".
5. The Committee notes that since the UN General Assembly adopted the Covenant in 1966, other international instruments have further elaborated the objectives to which education should be directed. Accordingly, the Committee takes the view that state parties are required to ensure that education conforms to the aims and objectives identified in article 13(1), as interpreted in the light of the World Declaration on Education for All (Jomtien, 1990) (article 1), the Convention on the Rights of the Child (article 29(1)), the Vienna Declaration and Programme of Action (paragraphs 33 and 80), and the Plan of Action for the UN Decade for Human Rights (paragraph 2). While all these texts closely correspond to article 13(1) of the Covenant, they also include elements which are not expressly provided for in article 13(1), such as specific references to gender equality and respect for the environment. These new elements are implicit in, and reflect a contemporary interpretation of, article 13(1). The Committee obtains support for this point of view from the widespread endorsement that the previously mentioned texts have received from all regions of the world.⁶⁷

Article 13(2): The right to receive an education - some general remarks

6. While the precise and appropriate application of the terms will depend upon the prevailing conditions in a particular State party, education in all its forms and at all levels shall exhibit the following inter-related and essential features:⁶⁸
- a. *Availability* - functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained

⁶⁷ The World Declaration on Education for All was adopted by 155 governmental delegations; the Vienna Declaration and Programme of Action was adopted by 171 governmental delegations; the Convention on the Rights of the Child has been ratified or acceded to by 191 States parties; the Plan of Action of the UN Decade for Human Rights Education was adopted by a unanimous resolution of the UN General Assembly, see Doc. GA/RES/49/184.

⁶⁸ This approach corresponds with the Committee's analytical framework adopted in relation to the rights to adequate housing and food, as well as the work of the UN Special Rapporteur on the Right to Education. In its General Comment 4, the Committee identifies a number of factors which bear upon the right to adequate housing, including "availability", "affordability", "accessibility" and "cultural adequacy". In its General Comment 12, the Committee identifies elements of the right to adequate food, such as "availability", "acceptability" and "accessibility". In her preliminary report to the UN Commission on Human Rights, the Special Rapporteur on the Right to Education sets out "four essential features that primary schools should exhibit, namely availability, accessibility, acceptability and adaptability", see Doc. E/CN.4/1999/49, para 50.

teachers on domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer laboratory and information technology.

- b. *Accessibility* - educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the state party. Accessibility has three overlapping dimensions:

Non-discrimination - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds (see paras 31-37 on non-discrimination);

Physical accessibility - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a 'distance learning' programme);

Economic accessibility - education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13(2) in relation to primary, secondary and higher education; whereas primary education shall be available "free to all", States parties are required to progressively introduce free secondary and higher education.

- c. *Acceptability* - the form and substance of education, including curricula and teaching methods, has to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13(1) and such minimum educational standards as may be approved by the State (see article 13(3) and (4));
- d. *Adaptability* - education has to be flexible so it can adapt to the needs of changing societies and communities, and respond to the needs of students within their diverse social and cultural settings.

7. When considering the appropriate application of these "inter-related and essential features" the best interests of the student shall be a primary consideration.

Article 13(2)a: The right to primary education

8. Primary education includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms and at all levels.⁶⁹
9. The Committee obtains guidance on the proper interpretation of the term "primary education" from the World Declaration on Education for All which states: "The main delivery system for the basic education of children outside the family is primary schooling. Primary education must be universal, ensure that the basic learning needs of all children are satisfied, and take into account the culture, needs and opportunities of the community" (article 5). "(B)asic learning needs" are defined in article 1 of the World Declaration.⁷⁰ While primary education is not synonymous with basic education, there is a close correspondence between the two. In this regard, the Committee endorses the position taken by UNICEF: "Primary education is the most important component of basic education."⁷¹
10. As formulated in article 13(2)a, primary education has two distinctive features: it is "compulsory" and "available free to all". For the Committee's observations on both terms, see paragraphs 6 and 7 of General Comment 11 on article 14 of the Covenant.

⁶⁹ See para 6.

⁷⁰ The Declaration defines "basic learning needs" as: "essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning" (article 1).

⁷¹ Advocacy Kit, Basic Education 1999 (UNICEF), Section 1, page 1.

Article 13(2)b: The right to secondary education

11. Secondary education includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms and at all levels.⁷²
12. While the content of secondary education will vary among States parties and over time, it includes completion of basic education and consolidation of the foundations for life-long learning and human development. It prepares students for vocational, and higher educational, opportunities.⁷³ Article 13(2)b applies to secondary education “in its different forms”, thereby recognising that secondary education demands flexible curricula and varied delivery systems to respond to the needs of students in different social and cultural settings. The Committee encourages ‘alternative’ educational programmes which parallel regular secondary school systems.
13. According to article 13(2)b, secondary education “shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education”. The phrase “generally available” signifies, firstly, that secondary education is not dependent on a student’s apparent capacity or ability and, secondly, that secondary education will be distributed throughout the State in such a way that it is available on the same basis to all. For the Committee’s interpretation of “accessible”, see para 6 above. The phrase “every appropriate means” reinforces the point that States parties should adopt varied and innovative approaches to the delivery of secondary education in different social and cultural contexts.
14. “(P)rogressive introduction of free education” means that, while States must prioritise the provision of free primary education, they also have an obligation to take concrete steps towards achieving free secondary and higher education. For the Committee’s general observations on the meaning of the word “free”, see paragraph 7 of General Comment 11 on article 14.

Technical and vocational education

15. Technical and vocational education (TVE) forms part of both the right to education and the right to work (article 6(2)). Article 13(2)b presents TVE as part of secondary education, reflecting the particular importance of TVE at this level of education. Article 6(2), however, does not refer to TVE in relation to a specific level of education; it comprehends that TVE has a wider role, helping “to achieve steady economic, social and cultural development and full and productive employment”. Also, the Universal Declaration of Human Rights states that “(t)echnical and professional education shall be made generally available” (article 26(1)). Accordingly, the Committee takes the view that TVE forms an integral element of all levels of education.⁷⁴
16. An introduction to technology and to the world of work should not be confined to specific TVE programmes but should be understood as a component of general education. According to the UNESCO Convention on Technical and Vocational Education (1989), TVE consists of “all forms of the educational process involving, in addition to general knowledge, the study of technologies and related sciences and the acquisition of practical skills, know-how, attitudes and understanding relating to occupations in the various sectors of economic and social life”. This view is also reflected in certain ILO Conventions.⁷⁵ Understood in this way, the right to TVE includes the following aspects:
 - a. enables students to acquire knowledge and skills which contribute to their personal development, self-reliance and employability, and enhance the productivity of their families and communities, including the State party’s economic and social development;

⁷² See para 6.

⁷³ See International Standard Classification of Education 1997, UNESCO, para 52.

⁷⁴ A view also reflected in ILO Human Resources Development Convention 1975 (No. 142) and the Social Policy (Basic Aims and Standards) Convention 1962 (No. 117).

⁷⁵ See footnote 74.

- b. takes account of the educational, cultural and social background of the population concerned; the skills, knowledge and levels of qualification needed in the various sectors of the economy; and occupational health, safety and welfare;
- c. provides retraining for adults whose current knowledge and skills have become obsolete due to technological, economic, employment, social or other changes;
- d. consists of programmes which give students, especially those from developing countries, the opportunity to receive TVE in other States, with a view to the appropriate transfer and adaptation of technology;
- e. consists, in the context of the Covenant's non-discrimination and equality provisions, of programmes which promote the TVE of women, girls, out-of-school youth, unemployed youth, the children of migrant workers, refugees, persons with disabilities, and other disadvantaged groups.

Article 13(2)c: The right to higher education

17. Higher education includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms at all levels.⁷⁶
18. While article 13(2)c is formulated on the same lines as article 13(2)b, there are three differences between the two provisions. Article 13(2)c includes a reference to neither education “in its different forms” nor specifically to TVE. In the Committee's opinion, these two omissions reflect only a difference of emphasis between article 13(2)b and c. If higher education is to respond to the needs of students in different social and cultural settings, it must have flexible curricula and varied delivery systems, such as distance learning; in practice, therefore, both secondary and higher education have to be available “in different forms”. As for the omission in article 13(2)c to any express reference to technical and vocational education, given article 6(2) of the Covenant and article 26(1) of UDHR, TVE forms an integral component of all levels of education, including higher education.⁷⁷
19. The third and most significant difference between article 13(2)b and c is that while secondary education “shall be made generally available and accessible to all”, higher education “shall be made equally accessible to all, on the basis of capacity”. According to article 13(2)c, higher education is not to be “generally available”, but only available “on the basis of capacity”. The “capacity” of individuals should be assessed by reference to all their relevant expertise and experience.
20. So far as the wording of article 13(2)b and c is the same (e.g. “the progressive introduction of free education”) see the previous comments on article 13(2)b.

Article 13(2)d: The right to fundamental education

21. Fundamental education includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms and at all levels.⁷⁸
22. In general terms, fundamental education corresponds to basic education as set out in the World Declaration on Education For All.⁷⁹ By virtue of article 13(2)d, individuals “who have not received or completed the whole period of their primary education” have a right to fundamental education, or basic education as defined in the World Declaration on Education For All.
23. Since everyone has the right to the satisfaction of their “basic learning needs” as understood by the World Declaration, the right to fundamental education is not confined to those “who have not received or completed the whole period of their primary education”. The right to

⁷⁶ See para 6.

⁷⁷ See para 15.

⁷⁸ See para 6.

⁷⁹ See para 9 of this General Comment.

fundamental education extends to all those who have not yet satisfied their “basic learning needs”.

24. It should be emphasised that enjoyment of the right to fundamental education is not limited by age or gender; it extends to children, youth and adults, including older persons. Fundamental education, therefore, is an integral component of adult education and life-long learning. Because fundamental education is a right of all age groups, curricula and delivery systems must be devised which are suitable for students of all ages.

Article 13(2)e: A school system; adequate fellowship system; material conditions of teaching staff

25. The requirement that the “development of a system of schools at all levels shall be actively pursued” means that a State party is obliged to have an overall developmental strategy for its school system. The strategy must encompass schooling at all levels, but the Covenant requires States parties to prioritise primary education (see para 51). “(A)ctively pursued” suggests the overall strategy should attract a degree of governmental priority and, in any event, must be implemented with vigour.
26. The requirement that “an adequate fellowship system shall be established” should be read with the Covenant’s non-discrimination and equality provisions; the fellowship system should enhance equality of educational access for individuals from disadvantaged groups.
27. While the Covenant requires that “the material conditions of teaching staff shall be continuously improved”, in practice the general working conditions of teachers have deteriorated, and reached unacceptably low levels, in many States parties over recent years. Not only is this inconsistent with article 13(2)e, but it is also a major obstacle to the full realisation of students’ right to education. The Committee also notes the relationship between articles 13(2)e, 2(2), 3 and 6-8 of the Covenant, including the right of teachers to organise and bargain collectively, draws the attention of States parties to the joint UNESCO/ILO Recommendation Concerning the Status of Teachers (1966) and the UNESCO Recommendation Concerning the Status of Higher-Education Teaching Personnel (1997), and urges States parties to report measures they are taking to ensure all teaching staff enjoy the conditions and status commensurate with their role.

Article 13(3) and (4): The right to educational freedom

28. Article 13(3) has two elements, one of which is that States parties undertake to respect the liberty of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions.⁸⁰ The Committee is of the view that this element of article 13(3) permits public school instruction in subjects such as the general history of religions and ethics if it is given in an unbiased and objective way, respectful of the freedoms of opinion, conscience and expression. It notes that public education that includes instruction in a particular religion or belief is inconsistent with article 13(3) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.
29. The second element of article 13(3) is the liberty of parents and guardians to choose other than public schools for their children, provided the schools conform to “such minimum educational standards as may be laid down or approved by the State”. This has to be read with the complementary provision, article 13(4), which affirms “the liberty of individuals and bodies to establish and direct educational institutions”, provided the institutions conform to the educational objectives set out in article 13(1) and certain minimum standards. These minimum standards may relate to issues such as admission, curricula and the recognition of certificates. In

⁸⁰ This replicates article 18(4) ICCPR and also relates to the freedom to teach a religion or belief as stated in article 18(1) ICCPR. (See Human Rights Committee General Comment 22 on article 18 ICCPR, forty-eighth session, 1993). The Committee notes that the fundamental character of article 18 ICCPR is reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4(2) of that Covenant.

their turn, these standards must be consistent with the educational objectives set out in article 13(1).

30. Under article 13(4), everyone, including non-nationals, has the liberty to establish and direct educational institutions. The liberty also extends to “bodies” i.e. legal persons or entities. It includes the right to establish and direct all types of educational institutions, including nurseries, universities and institutions for adult education. Given the principles of non-discrimination, equal opportunity, and effective participation in society for all, the State has an obligation to ensure that the liberty set out in article 13(4) does not lead to extreme disparities of educational opportunity for some groups in society.

Article 13: Special topics of broad application

Non-discrimination and equal treatment

31. The prohibition against discrimination enshrined in article 2(2) of the Covenant is subject to neither progressive realisation nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination. The Committee interprets articles 2(2) and 3 in the light of the UNESCO Convention Against Discrimination in Education, the relevant provisions of the Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Elimination of Racial Discrimination, Convention on the Rights of the Child, and the Indigenous and Tribal Peoples’ Convention (ILO Convention 169), and wishes to draw particular attention to the following issues.
32. The adoption of temporary special measures intended to bring about de facto equality for men and women, and disadvantaged groups, is not a violation of the right to non-discrimination with regard to education, so long as such measures do not lead to the maintenance of unequal or separate standards for different groups, and provided they are not continued after the objectives for which they were taken have been achieved.
33. In some circumstances, separate educational systems or institutions for groups defined by the categories in article 2(2), shall be deemed not to constitute a breach of the Covenant. In this regard, the Committee affirms article 2 of the UNESCO Convention against Discrimination in Education (1960).⁸¹
34. The Committee takes note of article 2 of the Convention on the Rights of the Child and article 3(e) of UNESCO Convention Against Discrimination in Education and confirms that the principle of non-discrimination extends to all persons of school age residing in the territory of a State party, including non-nationals and irrespective of their legal status.
35. Sharp disparities in spending policies that result in differing qualities of education for persons residing in different geographic locations may constitute discrimination under the Covenant.
36. The Committee affirms para 35 of General Comment 5, which addresses the issue of persons with disabilities in the context of the right to education, and paras 36-42 of General Comment 6, which address the issue of older persons in relation to articles 13-15.

⁸¹ According to article 2: “When permitted in a State, the following situations shall not be deemed to constitute discrimination, within the meaning of article 1 of this Convention:

- (a) The establishment or maintenance of separate educational systems or institutions for pupils of the two sexes, if these systems or institutions offer equivalent access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study;
- (b) The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil’s parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level;
- (c) The establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that object, and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level.”

37. States parties must closely monitor education - including all relevant policies, institutions, programmes, spending patterns and other practices - so as to identify, and take measures to redress, any de facto discrimination. Educational data should be disaggregated on the prohibited grounds of discrimination.

*Academic freedom and institutional autonomy*⁸²

38. In the light of the Committee's examination of numerous States parties' reports, it has formed the view that the right to education can only be enjoyed if accompanied by the academic freedom of staff and students. Accordingly, even though the issue is not explicitly mentioned in article 13, it is appropriate and necessary for the Committee to make some observations about academic freedom. The following remarks give particular attention to institutions of higher education because, in the Committee's experience, staff and students in higher education are especially vulnerable to political and other pressures which undermine academic freedom. The Committee wishes to emphasise, however, that staff and students throughout the education sector are entitled to academic freedom and many of the following observations have general application.
39. Members of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing. Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognised human rights applicable to other individuals in the same jurisdiction. The enjoyment of academic freedom carries with it obligations, such as the duty to respect the academic freedom of others, to ensure the fair discussion of contrary views, and to treat all without discrimination on any of the prohibited grounds.
40. The enjoyment of academic freedom requires the autonomy of institutions of higher education. Autonomy is that degree of self-governance necessary for effective decision-making by institutions of higher education in relation to their academic work, standards, management and related activities. Self-governance, however, must be consistent with systems of public accountability, especially in respect of funding provided by the State. Given the substantial public investments made in higher education, an appropriate balance has to be struck between institutional autonomy and accountability. While there is no single model, institutional arrangements should be fair, just and equitable, and as transparent and participatory as possible.

*Discipline in schools*⁸³

41. In the Committee's view, corporal punishment is inconsistent with the fundamental guiding principle of international human rights law enshrined in the Preambles to the Universal Declaration of Human Rights and both Covenants: the dignity of the individual.⁸⁴ Other aspects of school discipline may also be inconsistent with human dignity, such as public humiliation. Nor should any form of discipline breach other rights under the Covenant, such as the right to food. A State party is required to take measures to ensure that discipline, which is inconsistent with the Covenant, does not occur in any public or private educational institution within its jurisdiction. The Committee welcomes initiatives taken by some States parties, which actively encourage schools to introduce 'positive', non-violent approaches to school discipline.

⁸² See UNESCO Recommendation Concerning the Status of Higher-Education Teaching Personnel (1997).

⁸³ In formulating this paragraph, the Committee has taken note of the practice evolving elsewhere in the international human rights system, such as the interpretation given by the Committee on the Rights of the Child to article 28(2) of the Convention on the Rights of the Child, as well as the Human Rights Committee's interpretation of article 7 of ICCPR.

⁸⁴ The Committee notes that, although it is absent from article 26(2) of the Declaration, the drafters of ICESCR expressly included the dignity of the human personality as one of the mandatory objectives to which all education is to be directed (article 13(1)).

Limitations on article 13

42. The Committee wishes to emphasise that the Covenant's limitations clause, article 4, is primarily intended to be protective of the rights of individuals rather than permissive of the imposition of limitations by the State. Consequently, a State party which closes a university or other educational institution on grounds such as national security or the preservation of public order has the burden of justifying such a serious measure in relation to each of the elements identified in article 4.

II. STATES PARTIES' OBLIGATIONS AND VIOLATIONS*General legal obligations*

43. While the Covenant provides for progressive realisation and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect.⁸⁵ States parties have immediate obligations in relation to the right to education, such as the "guarantee" that the right "will be exercised without discrimination of any kind" (article 2(2)) and the obligation "to take steps" (article 2(1)) towards the full realisation of article 13.⁸⁶ Such steps must be "deliberate, concrete and targeted" towards the full realisation of the right to education.
44. The realization of the right to education over time, that is 'progressively', should not be interpreted as depriving States parties' obligations of all meaningful content. Progressive realisation means that state parties have a specific and continuing obligation "to move as expeditiously and effectively as possible" towards the full realisation of article 13.⁸⁷
45. There is a strong presumption against the permissibility of any retrogressive measures taken in relation to the right to education, as well as other rights enunciated in the Covenant. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the State party's maximum available resources.⁸⁸
46. The right to education, like all human rights, imposes three types or levels of obligations on States parties: the obligations to respect, protect and fulfil. In turn, the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide.
47. The obligation to respect requires States parties to avoid measures that hinder or prevent the enjoyment of the right to education. The obligation to protect requires States parties to take measures that prevent third parties from interfering with the enjoyment of the right to education. The obligation to fulfil (facilitate) requires States to take positive measures that enable and assist individuals and communities to enjoy the right to education. Finally, States parties have an obligation to fulfil (provide) the right to education. As a general rule, States parties are obliged to fulfil (provide) a specific right in the Covenant when an individual or group is unable, for reasons beyond their control, to realise the right themselves by the means at their disposal. However, the extent of this obligation is always subject to the text of the Covenant.
48. In this respect, two features of article 13 require emphasis. First, it is clear that article 13 regards States as having principal responsibility for the direct provision of education in most circumstances; States parties recognize, for example, that the "development of a system of schools at all levels shall be actively pursued" (article 13(2)e). Secondly, given the differential wording of article 13(2) in relation to primary, secondary, higher and fundamental education, the parameters of a State party's obligation to fulfil (provide) are not the same for all levels of education. Accordingly, in light of the text of the Covenant, States parties have an enhanced

⁸⁵ See the Committee's General Comment 3, para 1.

⁸⁶ See the Committee's General Comment 3, para 2.

⁸⁷ See the Committee's General Comment 3, para 9.

⁸⁸ See the Committee's General Comment 3, para 9.

obligation to fulfil (provide) regarding the right to education, but the extent of this obligation is not uniform for all levels of education. The Committee observes that this interpretation of the obligation to fulfil (provide) in relation to article 13 coincides with the law and practice of numerous States parties.

Specific legal obligations

49. States parties are required to ensure that curricula, for all levels of the educational system, are directed to the objectives identified in article 13(1).⁸⁹ They are also obliged to establish and maintain a transparent and effective system which monitors whether or not education is, in fact, directed to the educational objectives set out in article 13(1).
50. In relation to article 13(2), States have obligations to respect, protect and fulfil each of the “essential features” (availability, accessibility, acceptability, adaptability) of the right to education. By way of illustration, a State must respect the availability of education by not closing private schools; protect the accessibility of education by ensuring third parties, including parents and employers, do not stop girls from going to school; fulfil (facilitate) the acceptability of education by taking positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples, and of good quality for all; fulfil (provide) the adaptability of education by designing and resourcing curricula which reflect the contemporary needs of students in a changing world; and fulfil (provide) the availability of education by actively developing a system of schools, including building classrooms, delivering programmes, providing teaching materials, training teachers and paying them domestically competitive salaries.
51. As already observed, the obligations of States parties in relation to primary, secondary, higher and fundamental education are not identical. Given the wording of article 13(2), States parties are obliged to prioritise the introduction of compulsory, free primary education.⁹⁰ This interpretation of article 13(2) is reinforced by the priority accorded to primary education in article 14. The obligation to provide primary education for all is an immediate duty of all States parties.
52. In relation to article 13(2)b-d, a State party has an immediate obligation “to take steps” (article 2(1)) towards the realisation of secondary, higher and fundamental education for all those within its jurisdiction. At a minimum, the State party is required to adopt and implement a national educational strategy which includes the provision of secondary, higher and fundamental education in accordance with the Covenant. This strategy should include mechanisms, such as indicators and benchmarks on the right to education, by which progress can be closely monitored.
53. Under article 13(2)e, States parties are obliged to ensure that an educational fellowship system is in place to assist disadvantaged groups.⁹¹ The obligation to actively pursue the “development of a system of schools at all levels” reinforces the principal responsibility of States parties to ensure the direct provision of the right to education in most circumstances.⁹²
54. States parties are obliged to establish “minimum educational standards” to which all educational institutions, established in accordance with article 13(3) and (4), are required to conform. They must also maintain a transparent and effective system to monitor such standards. A State party

89 There are numerous resources to assist state parties in this regard, such as UNESCO’s Guidelines for Curriculum and Textbook Development in International Education (ED/ECS/HCI). One of the article 13(1) objectives is to “strengthen the respect of human rights and fundamental freedoms”; in this particular context, state parties should examine the initiatives developed within the framework of the UN Decade for Human Rights Education - especially instructive is the Plan of Action for the UN Decade for Human Rights, adopted by the General Assembly in 1996, and the Guidelines for National Plans of Action for Human Rights Education, developed by the Office of the High Commissioner for Human Rights to assist states in responding to the UN Decade for Human Rights Education.

90 On the meaning of ‘compulsory’ and ‘free’, see paragraphs 6 and 7 of General Comment 11 on article 14.

91 In appropriate cases, such a fellowship system would be an especially appropriate target for the international assistance and co-operation anticipated by article 2(1).

92 In the context of basic education, UNICEF has observed: “Only the State ... can pull together all the components in to a coherent but flexible education system”, *The State of the World’s Children 1999: Education* (UNICEF), page 77.

has no obligation to fund institutions established in accordance with article 13(3) and (4); however, if a State elects to make a financial contribution to private educational institutions, it must do so without discrimination on any of the prohibited grounds.

55. States parties have an obligation to ensure that communities and families are not dependent on child labour. The Committee especially affirms the importance of education in eliminating child labour and the obligations set out in article 7(2) of the ILO's Worst Forms of Child Labour Convention (1999).⁹³ Additionally, given article 2(2), States parties are obliged to remove gender and other stereotyping which impedes the educational access of girls, women and other disadvantaged groups.
56. In its General Comment 3, the Committee draws attention to the obligation of all States parties to take steps, "individually and through international assistance and co-operation, especially economic and technical", towards the full realisation of the rights recognised in the Covenant, such as the right to education.⁹⁴ Articles 2(1) and 23 of the Covenant, article 56 of the Charter of the United Nations, article 10 of the World Declaration on Education for All, and para 34 of the Vienna Declaration and Programme of Action, all reinforce the obligation of States parties in relation to the provision of international assistance and cooperation for the full realisation of the right to education. In relation to the negotiation and ratification of international agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to education. Similarly, States parties have an obligation to ensure that their actions as members of international organisations, including international financial institutions, take due account of the right to education.
57. In General Comment 3, the Committee confirms that States parties have "a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels" of each of the rights enunciated in the Covenant, including "the most basic forms of education". In the context of article 13, this core includes an obligation: to ensure the right of access to public educational institutions and programmes on a non-discriminatory basis; to ensure education conforms to the objectives set out in article 13(1); to provide primary education for all in accordance with article 13(2)a; to adopt and implement a national educational strategy which includes provision for secondary, higher and fundamental education; and to ensure free choice of education without interference from the State or third parties, subject to conformity with "minimum educational standards" (article 13(3) and (4)).

Violations

58. When the normative content of article 13 (Part I) is applied to the general and specific obligations of States parties (Part II), a dynamic process is set in motion which facilitates identification of violations of the right to education. Violations of article 13 may occur through the direct action of States parties (acts of commission) or through their failure to take steps required by the Covenant (acts of omission).
59. By way of illustration, violations of article 13 include: the introduction or failure to repeal legislation which discriminates against individuals or groups, on any of the prohibited grounds, in the field of education; the failure to take measures which address de facto educational discrimination; the use of curricula inconsistent with the educational objectives set out in article 13(1); the failure to maintain a transparent and effective system to monitor conformity with article 13(1); the failure to introduce, as a matter of priority, primary education which is compulsory and available free to all; the failure to take "deliberate, concrete and targeted" measures towards the progressive realisation of secondary, higher and fundamental education in accordance with article 13(2)b-d; the prohibition of private educational institutions; the failure

⁹³ According to article 7(2), "(e)ach Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to: _ (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour" (ILO Convention 182, Worst Forms of Child Labour, 1999).

⁹⁴ See the Committee's General Comment 3, paras 13-14.

to ensure private educational institutions conform to the “minimum educational standards” required by article 13(3) and (4); the denial of academic freedom of staff and students; the closure of educational institutions in times of political tension in non-conformity with article 4.

III. OBLIGATIONS OF ACTORS OTHER THAN STATES PARTIES

60. Given article 22 of the Covenant, the role of the United Nations agencies, including at the country level through the United Nations Development Assistance Framework (UNDAF), is of special importance in relation to the realisation of article 13. Coordinated efforts for the realisation of the right to education should be maintained to improve coherence and interaction among all the actors concerned, including the various components of civil society. UNESCO, UNDP, UNICEF, ILO, World Bank, regional development banks, IMF and other relevant bodies within the UN system, should enhance their cooperation for the implementation of the right to education at the national level, with due respect to their specific mandates, and building on their respective expertise. In particular, the international financial institutions, notably the World Bank and IMF, should pay greater attention to the protection of the right to education in their lending policies, credit agreements, structural adjustment programmes and measures taken in response to the debt crisis. (29)⁹⁵ When examining the reports of States parties, the Committee will consider the effects of the assistance, provided by all actors other than States parties, on the ability of States to meet their obligations under article 13. The adoption of a human rights-based approach by UN specialized agencies, programmes and other UN bodies, will greatly facilitate implementation of the right to education.

Fact Sheet No.16 (Rev.1), The Committee on Economic, Social and Cultural Rights

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. 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.

VIENNA DECLARATION AND PROGRAMME OF ACTION (Part 1, para. 5),
adopted by the World Conference on Human Rights,
Vienna, 25 June 1993
(A/CONF. 157/24 (Part 1), chap. III).

1. Introduction

International human rights law has been designed to protect the full range of human rights required for people to have a full, free, safe, secure and healthy life. The right to live a dignified life can never be attained unless all basic necessities of life-work, food, housing, health care, education and culture-are adequately and equitably available to everyone. Based squarely on this fundamental principle of the global human rights system, international human rights law has established individual and group rights relating to the civil, cultural, economic, political and social spheres.

The primary basis of United Nations activities to promote, protect and monitor human rights and fundamental freedoms is the International Bill of Human Rights. The Bill comprises three texts: the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966), and the International Covenant on Civil and Political Rights (1966) and its two optional protocols.⁹⁶

⁹⁵ See the Committee’s General Comment 2, para 9.

⁹⁶ For the texts, see *Human Rights: A Compilation of International Instruments*, vol. 1 (2 parts), *Universal Instruments* (United Nations publication, Sales No. E.94.XIV. 1).

These instruments enshrine global human rights standards and have been the inspiration for more than 50 supplemental United Nations human rights conventions, declarations and bodies of international minimum rules and other universally recognized principles. These additional standards have further refined international legal norms relating to a very wide range of issues, including women's rights, protection against racial discrimination, protection of migrant workers, the rights of children, and many others.

The two Covenants are international legal instruments. Thus, when Member and non-Member States of the United Nations ratify a Covenant and become a "State party" to it, they are willfully accepting a series of legal obligations to uphold the rights and provisions established under the text in question.

When a State ratifies one of the Covenants, it accepts a solemn responsibility to apply each of the obligations embodied therein and to ensure the compatibility of their national laws with their international duties, in a spirit of good faith. Through the ratification of human rights treaties, therefore, States become accountable to the international community, to other States which have ratified the same texts, and to their own citizens and others resident in their territories.

This Fact Sheet examines many of the key issues relating to the International Covenant on Economic, Social and Cultural Rights, as well as the work of the Committee on Economic, Social and Cultural Rights which has been entrusted by the international community with monitoring compliance by States parties with the provisions of the Covenant. It is designed to provide a general overview of the Covenant and the Committee in order to assist with the continued strengthening of the enjoyment of economic, social and cultural rights for everyone, everywhere.

2. The indivisibility and interdependence of all human rights

Under international human rights law (as well as in terms of its application at the national level), civil and political rights have, in many respects, received more attention, legal codification and judicial interpretation, and have been instilled in public consciousness to a far greater degree, than economic, social and cultural rights. It is therefore sometimes wrongly presumed that only civil and political rights (right to a fair trial, right to equality of treatment, right to life, right to vote, right to be free from discrimination, etc.) can be subject to violation, measures of redress and international legal scrutiny. Economic, social and cultural rights are often viewed as effectively "second-class rights"-unenforceable, non-justiciable, only to be fulfilled "progressively" over time.

Such perspectives, however, overlook a postulate of the global human rights system formulated as long ago as 1948 with the adoption of the Universal Declaration of Human Rights, namely, that the indivisibility and interdependence of civil and political rights and economic, social and cultural rights are fundamental tenets of international human rights law. This point of view has been repeatedly reaffirmed, most recently at the World Conference on Human Rights in 1993.⁹⁷

Economic, social and cultural rights are fully recognized by the international community and throughout international human rights law. Although these rights have received less attention than civil and political rights, far more serious consideration than ever before is currently being devoted to them. The question is not whether these rights are basic human rights, but rather what entitlements they imply and the legal nature of the obligations of States to realize them.

Economic, social and cultural rights are designed to ensure the protection of people as full persons, based on a perspective in which people can enjoy rights, freedoms and social justice simultaneously. In a world where, according to the United Nations Development Programme (UNDP), "a fifth of the developing world's population goes hungry every night, a quarter lacks

97 One of the central reaffirmations of the equal nature of these two sets of rights is found in General Assembly resolution 32/130 of 16 December 1977, which asserts (para. 1):

"(a) All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights;

"(b) The full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible; the achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development, as recognized by the Proclamation of Teheran of 1968;

access to even a basic necessity like safe drinking-water, and a third lives in a state of abject poverty-at such a margin of human existence that words simply fail to describe it⁹⁸ the importance of renewed attention and commitment to the full realization of economic, social and cultural rights is self-evident.

Despite significant progress since the establishment of the United Nations in addressing problems of human deprivation, well over one billion people live in circumstances of extreme poverty, homelessness, hunger and malnutrition, unemployment, illiteracy and chronic ill health. More than 1.5 billion people lack access to clean drinking-water and sanitation, some 500 million children don't have access to even primary education; and more than one billion adults cannot read and write. This massive scale of marginalization, in spite of continued global economic growth and development, raises serious questions, not only of development, but also of basic human rights.

Of all global human rights standards, the International Covenant on Economic, Social and Cultural Rights provides the most important international legal framework for protecting these basic human rights.

3. International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (see annex I) was adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966, following almost 20 years of drafting debates. It finally gained the force of law a decade later, entering into force on 3 January 1976.

The Covenant contains some of the most significant international legal provisions establishing economic, social and cultural rights, including rights relating to work in just and favourable conditions, to social protection, to an adequate standard of living, to the highest attainable standards of physical and mental health, to education and to enjoyment of the benefits of cultural freedom and scientific progress.

As at 12 April 1996, 133 States had ratified the Covenant (see annex II) thereby voluntarily undertaking to implement its norms and provisions.

Compliance by States parties with their obligations under the Covenant and the level of implementation of the rights and duties in question is monitored by the Committee on Economic, Social and Cultural Rights.

The Committee works on the basis of many sources of information including reports submitted by States parties and information from United Nations specialized agencies-International Labour Organisation, United Nations Educational, Scientific and Cultural Organisation, World Health Organization, Food and Agriculture Organization of the United Nations-from the Office of the United Nations High Commissioner for Refugees, and from the United Nations Centre for Human Settlements (Habitat) and others. It also receives information from non-governmental and community-based organizations working in States which have ratified the Covenant, from international human rights and other non-governmental organizations, from other United Nations treaty bodies, and from generally available literature.

4. Substantive provisions of the International Covenant on Economic, Social and Cultural Rights

Self-determination

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle

98 UNDP, *Human Development Report 1994* (Oxford University Press, 1994), p. 2.

of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Article 1 of the Covenant is worded in precisely the same terminology as article 1 of its sister text, the International Covenant on Civil and Political Rights. The self-determination provisions in common article 1 are particularly important because the realization of this right is a fundamental prerequisite for the effective guarantee and observance of individual human rights and is pivotal in securing and strengthening human rights protection measures.

The right to self-determination is a cornerstone of the international legal system, and has been a premier concern of the international community since the creation of the United Nations in 1945, particularly in regard to issues such as independence, non-interference and democracy. This right has both external and internal dimensions and has been the subject of some controversy in recent years, as it is increasingly asserted by groups within countries, as distinct from ex-colonies and occupied countries.

As far as the rights contained in the Covenant are concerned, the right of peoples freely to pursue their economic, social and cultural development includes freedom to carry on economic, social and cultural activities.

Obligations of States parties

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 2 is one of the most important articles of the Covenant because it outlines the nature of States parties' legal obligations under the Covenant and determines how they must approach the implementation of the substantive rights contained in articles 6 to 15.

Any analysis of obligations relating to economic, social and cultural rights cannot be isolated from the obligations inherent in securing the individual entitlements of the beneficiaries of the right(s) in question. Most frequently, obligations are divided into "layers" reflecting duties to (a) respect, (b) protect, (c) promote, and (d) fulfil each of the rights contained in the Covenant. Each of these legal responsibilities can take on more specific obligations of "conduct" (e.g. action or inaction) and obligations of "result" (e.g. ends).

"undertakes to take steps . . . by all appropriate means, including particularly the adoption of legislative measures"

This provision from article 2, paragraph 1, requires all States parties to begin immediately to take measures towards the full enjoyment by everyone of all the rights in the Covenant. The adoption of legislation will, in many cases, be indispensable if economic, social and cultural rights are to be made real, but laws alone are not a sufficient response at the national level. Administrative, judicial,

policy, economic, social and educational measures and many other steps will be required by Governments in order to ensure these rights to all.

Under article 2, paragraph 1, States parties are legally obliged to undertake legislative action in some instances, particularly when existing laws are clearly incompatible with the obligations assumed under the Covenant. This would be the case when, for instance, a law in a given country was patently discriminatory or had the express effect of preventing the enjoyment of any of the rights in the Covenant, or when legislation allowed the violation of rights, especially in terms of negative duties of States. Laws allowing Governments forcibly to remove people from their homes, evicting them without due process of law, would have to be amended in order to bring domestic legislation into conformity with the Covenant.

“to [achieve] progressively the full realization of the rights”

The “progressive obligation” component of the Covenant is often mistakenly taken to imply that only once a State reaches a certain level of economic development must the rights established under the Covenant be realized. This is not the intent of this clause. Rather, the duty in question obliges all States parties, notwithstanding their level of national wealth, to move immediately and as quickly as possible towards the realization of economic, social and cultural rights. This clause should never be interpreted as allowing States to defer indefinitely efforts to ensure the enjoyment of the rights laid down in the Covenant.

Whereas certain rights, by their nature, may be more apt to be implemented in terms of the “progressive obligation” rule, many obligations under the Covenant are clearly required to be implemented immediately. This would apply especially to non-discrimination provisions and to the obligation of States parties to refrain from actively violating economic, social and cultural rights or withdrawing legal and other protection relating to those rights.

The Committee on Economic, Social and Cultural Rights has asserted that this duty exists independently of an increase in available resources and thus recognizes that all existing resources must be devoted in the most effective way possible to the realization of the rights enshrined in the Covenant.

“to the maximum of its available resources”

Like the “progressive realization” provision, this standard is also used to justify the non-enjoyment of rights. However, as recognized in the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights,⁹⁹ this requirement obliges States parties to ensure minimum subsistence rights for everyone, regardless of the level of economic development in a given country.

The term “available resources” applies both to domestic resources and to any international economic or technical assistance or cooperation available to a State party. In the use of available resources, due priority should be given to the realization of rights recognized in the Covenant, considering the need to assure to everyone the satisfaction of subsistence requirements, as well as the provision of essential services.

“without discrimination”

Article 2, paragraph 2, requires States parties to ensure the provision of judicial review and other recourse procedures should discrimination occur. Importantly, the grounds of discrimination mentioned in this provision are not exhaustive and thus certain other forms of unfair discrimination negatively affecting the enjoyment of the rights enunciated in the Covenant (for instance, on the basis of sexual orientation) must be prevented.

According to the Limburg Principles, special measures taken for the sole purpose of securing adequate advancement of certain groups or individuals requiring protection in order to ensure their

⁹⁹ Approved by a group of experts in international law meeting, at Maastricht (Netherlands) from 2 to 6 June 1986. See *Human Rights Quarterly*, vol. 9, No. 2 (May 1987), p. 122. Text reproduced in United Nations document E/CN.4/1987/17, annex.

equal enjoyment of economic, social and cultural rights are not considered discrimination, provided that such measures do not lead to the maintenance of separate rights for different groups and are not continued after their objectives have been achieved. This applies, for example, to affirmative-action program.

This provision not only obliges Governments to desist from discriminatory behaviour and to alter laws and practices which allow discrimination, it also applies to the duty of States parties to prohibit private persons and bodies (third parties) from practising discrimination in any field of public life.

Equal rights for men and women

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Women often suffer substantial and disproportionate difficulties in securing human rights, including economic, social and cultural rights. Article 3 guarantees that men and women possess precisely the same legal entitlement to the rights set forth in the Covenant and that, if necessary, special measures will be employed by States parties to ensure that this position of equality is attained.

The Covenant provides a framework for instigating progressive and immediate measures such that women may enjoy on an equal footing rights which have often been denied them. For instance, the housing rights provisions in article 11, paragraph 1, of the Covenant must apply to men and women equally, and thus women must be accorded equal rights to housing inheritance—something which is still not the case in many countries. Together, article 3 and article 2, paragraph 2, thus provide significant legal protection against all forms of discrimination in the pursuit of economic, social and cultural rights.

Limitations

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing, in the present Covenant may be interpreted as implying for any State group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.
2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

Articles 4 and 5 were not intended by the drafters of the Covenant to be overly permissive of the imposition of limitations by the state on the rights provided for. Rather, these provisions are formulated in such a manner as to be protective of the rights of individuals. They are also not designed to introduce limitations on rights affecting the subsistence or survival of the individual or the integrity of the person.

If a State party finds it necessary to invoke the provisions of these articles, it may do so only if this is provided for by law and only if the measures in question are consistent with the Covenant. Such measures cannot be applied in an arbitrary, unreasonable or discriminatory way. Moreover, individuals should have legal safeguards and effective remedies against illegal or abusive imposition of limitations on economic, social and cultural rights.

The term “democratic society” (art. 4) further restricts the imposition of limitations under the Covenant and thus the burden rests on the State to prove that any limitations do not impair the democratic functioning of society.

None of the provisions in the law relating to any limitation may be interpreted in such a way as to nullify any of the rights or freedoms recognized in the Covenant. The main purpose of article 5, paragraph 2, is to ensure that no provision of the Covenant is interpreted so as to prejudice provisions of domestic law or any other legal instrument already in force, or which may come into force, under which more favourable treatment would be accorded to persons protected.

The right to work

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Freely chosen work remains an essential part of being human. For many people, whether employed in the formal or informal sectors, work represents the primary source of income on which subsistence, survival and life depend. The right to work is fundamental to the enjoyment of certain subsistence and livelihood rights such as food, clothing, housing, etc. Moreover, one’s working status may easily affect the enjoyment of other rights relating to health and education. The right to work is increasingly important as Governments the world over continue to withdraw from the provision of basic services, leaving these to market forces and non-governmental actors.

The right to work is fundamental to ensuring the dignity and self-respect of the beneficiaries of the rights contained in the Covenant. Article 6 obliges States parties to refrain from instigating or allowing forced labour. The Committee on Economic, Social and Cultural Rights has examined this article in terms of the implementation of policies and measures aimed at securing work for all who are available to work. This right encompasses, therefore, both the right to enter into employment and the right not to be unjustly deprived of work. Although unemployment persists in all States parties, these States must apply the basic principles set out in article 2 for ensuring the full realization of the right to work.

The right to just and favourable conditions of work

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working, conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 7 establishes a right to a minimum remuneration for employment, stipulating fair wages sufficient to guarantee a decent living, as well as working conditions that are just and favourable. Wages must be equitable and just in order to be considered fair.

This article relates closely to a large number of conventions adopted by the International Labour Organisation, including the Minimum Wage Fixing Convention (No. 131, 1970) and the Equal Remuneration Convention (No. 100, 1951).

People must be afforded minimum conditions of occupational health and safety, and States parties are responsible for adopting policies and laws to that end. A coherent national policy in this regard is incumbent on all States parties.

The standards laid down in article 7 also relate to the duties of States parties to reduce the working week in a progressive manner and to ensure that workers enjoy adequate rest and holidays. For all aspects of this article, States parties must establish a baseline or minimum standard below which the working conditions of no worker should be allowed to fall; they must also develop enforcement measures guaranteeing these rights.

The right to form and join trade unions

Article 8

1. The States Parties to the present Covenant undertake to ensure:
 - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
 - (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

The right to form and join trade unions is closely linked to the right to freedom of association, which is widely recognized throughout international human rights law. These rights, combined with the right to strike, are fundamental if the rights of workers and other citizens under the Covenant are to be implemented.

Article 8 provides for a right not to be compelled to join a particular trade union, in accordance with the term “of his choice” (para. 1(a)). It also includes the right to federate or confederate, which should not be subject to state control. The right to collective bargaining, the right to protection from dissolution or suspension and the right to strike are also protected.

States parties are allowed some measure of discretion concerning the implementation of article 8, as evidenced by the language concerning limitations in the interests of national security, public order and the rights and freedoms of others. These grounds for exemption, however, must be interpreted narrowly by States parties seeking to invoke them.

With regard to national security concerns, for instance, the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights¹⁰⁰ stress that the systematic violation of economic, social and cultural rights undermines true national security and may jeopardize international peace and security. A State responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practices against its population. (Principle 65.)

The right to social security and social insurance

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

A large number of States do not maintain adequate social security or social insurance provisions under domestic laws protecting people in circumstances such as old age, disability, ill health or other situations not allowing them to earn a decent living. At the same time, many countries which do provide such protection are beginning to transfer responsibility for these matters from the state to the private sector. These issues raise serious concerns regarding enjoyment of the rights contained in the Covenant.

The Committee on Economic, Social and Cultural Rights specifically asks States parties whether they maintain social security schemes in the following areas: medical care, cash sickness benefits, maternity benefits, old-age benefits, invalidity benefits, survivors' benefits, employment injury benefits, unemployment benefits and family benefits.

The Committee has devoted particular attention to enjoyment of the rights provided for in article 9 by women, older persons (General Comment No. 6 (1995)),¹⁰¹ and persons with disabilities (General Comment No. 5 (1994)).¹⁰²

Protection and assistance for the family

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 10 provides protection for the family, mothers and children. It includes the right to enter freely into marriage, raising doubts as to the situation in countries where marriage occurs without the free and informed consent of one or another spouse, almost invariably the woman. Mothers are to be accorded substantial protection before and after childbirth. The Committee on Economic, Social and Cultural Rights regularly requests information from States parties as to whether any particular groups of women lack such protection.

100 See footnote 99 above.

101 E/1996/22, annex IV.

102 E/1995/22, annex IV.

The Committee has not spent a great deal of time examining situations relating to family rights, but has devoted increased attention to the rights of the child as they are established under article 10, paragraph 3. It has paid particular attention to child labour and the living conditions of children. The most intensive work within the United Nations system on children's rights is carried out by the Committee on the Rights of the Child, with which the Committee on Economic, Social and Cultural Rights works closely.

The right to an adequate standard of living

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programmes, which are needed:
 - (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
 - (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 11 incorporates a broad range of concerns relating to the lives and livelihoods of residents of States parties, in particular food, clothing and housing. The Committee on Economic, Social and Cultural Rights has devoted extensive attention to this article, particularly as it relates to the human right to adequate housing. To date, the right to adequate housing is the only right in the Covenant which has had an entire general comment devoted to it (General Comment No. 4 (1991)).¹⁰³

General Comment No. 4 reveals the extensive nature of the protection included under article 11 and elaborates legal interpretations of the right to adequate housing which go far beyond restricted visions of this right as simply a right to shelter. In it, the Committee, which has given more attention to the right to housing than to any other right under the Covenant, states:

. . . the right to housing, should not be interpreted in a narrower restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head . . . Rather it should be seen as the right to live somewhere in security, peace and dignity . . . (Para. 7.)

The Committee has defined the term "adequate housing" to comprise security of tenure, availability of services, affordability, habitability, accessibility, location and cultural adequacy.

Article 11 does not imply a stagnant state of affairs, but also includes a right "to the continuous improvement of living conditions" (para. 1) and the possibilities associated with international cooperation in the event of States parties being unable to guarantee the rights in question. This is particularly relevant in times of food crises or famine.

The Committee has decided on several occasions that certain States parties had violated provisions of article 11, particularly as a result of the practice of forced evictions. This is indicative of the seriousness which the Committee accords article 11.

The right to the highest attainable standard of physical and mental health

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Recognition of the right to health obviously does not mean that beneficiaries of this right have a right to be healthy. Rather, the Covenant stresses the obligation of States parties to ensure for their citizens “the highest attainable standard of . . . health”.

Article 12 therefore places emphasis on equal access to health care and minimum guarantees of health care in the event of sickness.

The Committee on Economic, Social and Cultural Rights has spent increasing energy on clarifying and monitoring health rights, having held a general discussion on the topic and adopted a general comment on the rights of persons with disabilities (General Comment No. 5 (1994)). The rights of people with HIV/AIDS have also received increasing attention from the Committee in recent years.

The right to education

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
 - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Articles 13 and 14 recognize that education is a fundamental precondition for the enjoyment and assertion of human rights and that education strengthens human rights and basic democratic principles. The international community has long recognized these basic truths and has proclaimed the decade 1995-2004 the United Nations Decade for Human Rights Education.¹⁰⁴ The Committee on Economic, Social and Cultural Rights held a general discussion on this topic in 1994.

These two articles guarantee all children a right to free and compulsory primary education, wherever they may live. They also enshrine the right to equal access to education and equal enjoyment of education facilities; the freedom to choose education and to establish educational institutions; the protection of pupils against inhuman disciplinary measures; and academic freedom.

The right to culture and to benefit from scientific progress

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:
 - (a) To take part in cultural life;
 - (b) To enjoy the benefits of scientific progress and its applications;
 - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific and cultural fields.

The rights to enjoy culture, to participate in cultural life and to benefit from technological and scientific progress form the foundation of article 15. Although these issues may not seem to be matters of human rights, they are of fundamental importance to the principles of equality of treatment, freedom of expression, the right to receive and impart information, and the right to the full development of the human personality.

Cultural attributes can often be attacked or derided by States in attempts to favour one national, racial or ethnic group over another, to cite but one example of how important the rights in question are. Moreover, these rights include the right to participate in the life of society, giving a wide reading to the term “culture”.

The right to benefit from scientific progress and its applications is designed to ensure that everyone in society can enjoy advances in this regard, in particular disadvantaged groups. It includes the right of everyone to seek and receive information about such advances resulting from

104 See General Assembly resolution 49/184 of 23 December 1994.

new scientific insights and to have access to any developments which could enhance their enjoyment of the rights contained in the Covenant.

5. Applicability of the Covenant within domestic law

... *There must be a concerted effort to ensure recognition of economic, social and cultural rights at the national, regional and international levels.*

VIENNA DECLARATION AND PROGRAMME OF ACTION¹⁰⁵
(Part II, para. 98)

Although the Committee on Economic, Social and Cultural Rights can assist in the implementation of the Covenant from an international perspective, the ultimate effectiveness of this instrument is contingent on the measures taken by Governments to give actual effect to their international legal obligations. In this regard, the Committee has recognized the essential importance of the adoption by States of appropriate legislative measures and the provision of judicial remedies, indicating the very real legal nature of economic, social and cultural rights.¹⁰⁶

The necessity of implementing the provisions of the Covenant through domestic legislation is consistent with article 27 of the 1969 Vienna Convention on the Law of Treaties, which states that “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”. Indeed, the Covenant often requires legislative action to be taken in cases where existing legislation is in violation of the obligations assumed under the Covenant.

The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights¹⁰⁷ emphasize that “States parties shall provide for effective remedies, including, where appropriate, judicial remedies” (principle 19). Because there does not yet exist an individual complaints procedure under the Covenant, the full implementation of the rights which this instrument contains is all the more dependent on the provision of appropriate laws and remedies at the national level.

At minimum, the national and local judiciaries of States parties must consider international human rights laws such as the Covenant an interpretative aid to domestic law and ensure that domestic law is interpreted and applied in a manner consistent with the provisions of international human rights instruments ratified by the State. From the perspective of international law, the underlying principle is that courts should avoid placing their Government in violation of the terms of an international treaty which it has ratified.¹⁰⁸

Regarding the justiciability of the rights contained in the Covenant-i.e. the possibility of their being subjected to judicial review-the Committee has stated in its General Comment No. 3 (1990):¹⁰⁹

Among, the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable . . . (Para. 5.)

In this regard, the Committee has indicated that a number of articles in the Covenant are capable of immediate implementation, including article 3, article 7, subparagraph (a) (i), article 8, article 10, paragraph 3, article 13, paragraphs 2 (a), 3 and 4, and article 15, paragraph 3. It has also stressed, with respect to the right to adequate housing, for example, that “instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international

105 Adopted by the World Conference on Human Rights, Vienna, 25 June 1993 (A/CONF. 157/24 (Part 1), chap. III).

106 See Craven, “The domestic application of the International Covenant on Economic, Social and Cultural Rights”, *Netherlands International Law Review*, vol. XL (1993), p. 367

107 See footnote 99 above.

108 See P. Alston and G. Quinn, “The nature and scope of States parties’ obligations under the International Covenant on Economic, Social and Cultural Rights”, *Human Rights Quarterly*, vol. 9, No. 2 (May 1987), p. 171.

109 E 1991/23, annex III.

law”.¹¹⁰ In order to put such obligations into effect domestically, national courts would obviously have an important role to play in ensuring respect for the rights in question.

6. Monitoring the implementation of the Covenant: the Committee on Economic, Social and Cultural Rights

Creation and composition of the Committee

Unlike the five other human rights treaty bodies, the Committee on Economic, Social and Cultural Rights was not established by its corresponding instrument. Rather, the Economic and Social Council (ECOSOC) created the Committee, following the less than ideal performance of two previous bodies entrusted with monitoring the Covenant.

The Committee was established in 1985, met for the first time in 1987 and has to date held 14 sessions. Meeting initially on an annual basis, the Committee currently convenes twice a year, holding two three-week sessions, generally in May and November/December. It holds all its meetings at the United Nations Office at Geneva.

The Committee is comprised of 18 members who are experts with recognized competence in the field of human rights. Members of the Committee are independent and serve in their personal capacity, not as representatives of Governments. At present, the Committee is made up of 13 men and five women. The Committee itself selects its chairperson, three vice-chairpersons and rapporteur.

Members of the Committee are elected by ECOSOC for four year terms, and are eligible for re-election if renominated. The Committee is thus a subsidiary organ of ECOSOC and derives its formal authority from that body. Elections take place in a secret ballot from a list of nominees proposed by States parties to the Covenant. States which have not ratified the Covenant cannot, therefore, nominate their own nationals for positions on the Committee. The principles of equitable geographical distribution and the representation of different social and legal systems guide the selection process. The Committee is serviced by the United Nations Centre for Human Rights.

What does the Committee do?

The primary function of the Committee is to monitor the implementation of the Covenant by States parties. It strives to develop a constructive dialogue with States parties and seeks to determine through a variety of means whether or not the norms contained in the Covenant are being adequately applied in States parties and how the implementation and enforcement of the Covenant could be improved so that all people who are entitled to the rights enshrined in the Covenant can actually enjoy them in full.

Drawing on the legal and practical expertise of its members, the Committee can also assist Governments in fulfilling their obligations under the Covenant by issuing specific legislative, policy and other suggestions and recommendations such that economic, social and cultural rights are more effectively secured.

How do States parties report to the Committee?

Under articles 16 and 17 of the Covenant, States parties undertake to submit periodic reports to the Committee-within two years of the entry into force of the Covenant for a particular State party, and thereafter once every five years-outlining the legislative, judicial, policy and other measures which they have taken to ensure the enjoyment of the rights contained in the Covenant. States parties are also requested to provide detailed data on the degree to which the rights are implemented and areas where particular difficulties have been faced in this respect.

110 General Comment No. 4 (1991) (E/1992/23, annex III), para. 18.

The Committee has assisted the reporting process by providing States parties with a detailed 22-page set of reporting guidelines specifying the types of information the Committee requires in order to monitor compliance with the Covenant effectively.

The reporting requirement is much more than simply a formalistic commitment. Although the reporting process is imbued with a number of difficulties, not the least of which are the non-submission of reports by a large number of States parties and problems relating to resource constraints of States, this mechanism has a number of important functions. Among these are the initial review function, the monitoring function, the policy formulation function, the public scrutiny function, the evaluation function, the function of acknowledging problems and the information-exchange function.¹¹¹

The Committee has emphasized that reporting obligations under the Covenant fulfil seven key objectives. In its General Comment No. 1 (1989), the Committee stated these objectives as follows:

1. to ensure that a State party undertakes a comprehensive review of national legislation, administrative rules and procedures, and practices in order to assure the fullest possible conformity with the Covenant;
2. to ensure that the State party regularly monitors the actual situation with respect to each of the enumerated rights in order to assess the extent to which the various rights are being enjoyed by all individuals within the country;
3. to provide a basis for government elaboration of clearly stated and carefully targeted policies for implementing the Covenant;
4. to facilitate public scrutiny of government policies with respect to the Covenant's implementation, and to encourage the involvement of the various sectors of society in the formulation, implementation and review of relevant policies;
5. to provide a basis on which both the State party and the Committee can effectively evaluate progress towards the realization of the obligations contained in the Covenant;
6. to enable the State party to develop a better understanding of problems and shortcomings impeding the realization of economic, social and cultural rights;
7. to facilitate the exchange of information among States parties and to help develop a fuller appreciation of both common problems and possible solutions in the realization of each of the rights contained in the Covenant.¹¹²

The Committee typically considers some five or six reports of States parties during any given session. If a State party which has submitted a report that is scheduled for the Committee's consideration at a given session seeks to defer the presentation of the report at the last minute, the Committee does not grant such a request, and proceeds with its consideration, even in the absence of a State party representative.

The Committee has also had to grapple with problems relating to the non-submission of reports and reports which are considerably overdue. In response to such situations, the Committee has notified States parties whose reports are long overdue of its intention to consider these reports at specified future sessions. If no report is forthcoming, the Committee then proceeds to consider the status of economic, social and cultural rights in the States concerned in the light of all available information.

Submission of reports and the pre-sessional working group

When States parties submit their reports, a standard procedure of consideration is followed by the Committee. Once received, processed and translated by the Secretariat, States parties' reports are initially reviewed by the Committee's five-person pre-sessional working group, which meets six

111 P. Alston, "The purposes of reporting," in *Manual on Human Rights Reporting* (United Nations Centre for Human Rights/United Nations Institute for Training, and Research, 1991) (Sales No. E.91.XIV.1), pp. 14-16.

112 E/1989/22, annex III, General Comment No. I (1989), paras. 2-9

months prior to a report being considered by the full Committee. The pre-sessional working group gives a preliminary consideration to the report, appoints one member to give particular consideration to each report, and develops written lists of questions based on disparities found in the reports which are submitted to the States parties concerned. The States parties are then required to reply in writing to these questions prior to their appearance before the Committee.

Presentation of reports

Representatives of reporting States are strongly encouraged to be present at meetings when the Committee considers their reports. Such delegations are virtually always present during this process, which is generally carried out over a two-day period. Delegations first provide introductory comments and responses to the pre-sessional working group's written questions. This is followed by the provision of information by the United Nations specialized agencies relevant to the report under consideration. Committee members then put questions and observations to the State party appearing before it. A further period of time is then allowed for representatives of States parties to respond, generally not on the same day, to the questions and views put to them, as precisely as possible. If the questions cannot be adequately dealt with, the Committee often requests a State party to provide it with additional information for its consideration at forthcoming sessions.

Concluding observations: the Committee decides

Upon completion by the Committee of its analysis of reports and the appearance by States parties, the Committee concludes its consideration of States parties' reports by issuing "concluding observations", which constitute the decision of the Committee regarding the status of the Covenant in a given State party. Concluding observations are divided into five sections: (a) introduction; (b) positive aspects; (c) factors and difficulties impeding the implementation of the Covenant; (d) principal subjects of concern; (e) suggestions and recommendations. Concluding observations are adopted in private session, and are released to the public on the final day of each session.

On a number of occasions, the Committee has concluded that violations of the Covenant had taken place, and subsequently urged States parties to desist from any further infringements of the rights in question.

All human rights are subject to violation, and economic, social and cultural rights are no exception. The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights¹¹³ list the following circumstances amounting to violations of the Covenant by a State party (principle 72): (a) it fails to take a step which the Covenant requires it to take; (b) it fails to remove promptly obstacles which it is obligated to remove to permit the immediate fulfilment of a right; (c) it fails to implement without delay a right which the Covenant requires it to provide immediately; (d) it wilfully fails to meet a generally accepted international minimum standard of achievement, which is within its powers to meet; (e) it applies a limitation to a right recognized in the Covenant in a manner not in accordance with the Covenant; (f) it deliberately retards or halts the progressive realization of a right, unless it is acting within a limitation permitted by the Covenant or it does so because of a lack of available resources; (g) it fails to submit reports as required under the Covenant.

While the Committee's concluding observations, in particular suggestions and recommendations, may not carry legally binding status, they are indicative of the opinion of the only expert body entrusted with and capable of making such pronouncements. Consequently, for States parties to ignore or not act on such views would be to show bad faith in implementing their Covenant-based obligations. In a number of instances, changes in policy, practice and law have been registered at least partly in response to the Committee's concluding observations.

In addition to concluding observations, letters from the chairperson are occasionally addressed to States parties informing them of the Committee's concerns.

113 See footnote 99 above.

The Committee also adopts draft decisions for eventual adoption by ECOSOC, when such approval is required. This is generally the case when the Committee requests a State party to issue it with an invitation to visit the country and provide the Government with technical and other assistance which it may require in order to implement more fully and enforce the norms of the Covenant. The Committee has to date twice requested invitations to visit the territories of States parties (Dominican Republic and Panama). Only in one of these instances (Panama), however, did the State issue the requisite invitation, and a mission took place in April 1995.

Generating interpretative clarity

(a) General comments

The Committee decided in 1988 to begin preparing “general comments” on the rights and provisions contained in the Covenant with a view to assisting States parties in fulfilling their reporting obligations and to provide greater interpretative clarity as to the intent, meaning and content of the Covenant. The Committee further views the adoption of general comments as a means of promoting the implementation of the Covenant, by drawing the attention of States parties to insufficiencies disclosed by a large number of States parties’ reports, and by inducing renewed attention to particular provisions of the Covenant on the part of States parties, United Nations agencies and others with a view to achieving progressively the full realization of the rights established under the Covenant.

General comments are a crucial means of generating jurisprudence, providing a method by which members of the Committee may come to an agreement by consensus regarding the interpretation of norms embodied in the Covenant.

As of April 1996, the Committee has adopted six general comments. These are:

- General Comment No. 1 (1989) on reporting by States parties;
- General Comment No. 2 (1990) on international technical assistance measures (art. 22);
- General Comment No. 3 (1990) on the nature of States parties’ obligations (art. 2, para. 1, of the Covenant);
- General Comment No. 4 (1991) on the right to adequate housing (art. 11, para. 1, of the Covenant);
- General Comment No. 5 (1994) on persons with disabilities;
- General Comment No. 6 (1995) on the economic, social and cultural rights of older persons.

It is likely that the Committee will consider the adoption of additional general comments in the near future on issues such as the right to health; the domestic application of the Covenant; forced evictions and the Covenant; the non-discrimination clauses of the Covenant (art. 2, para. 2); the right to food; and others.

(b) General discussions

At each of its sessions, the Committee holds a “day of general discussion” on particular provisions of the Covenant, particular human rights or other themes of direct relevance to the Committee in order to develop its understanding of the issues concerned. The Committee has sought to draw on a wide range of expertise during these discussions and has, therefore, engaged in dialogue with United Nations special rapporteurs, experts from relevant non-governmental organizations and representatives of United Nations specialized agencies.

General discussions to date have been held on the right to food (1989); the right to housing (1990); economic and social indicators (1991); the right to take part in cultural life (1992); the rights of the ageing and elderly (1993); the right to health (1993); the role of social safety nets as a means of protecting economic, social and cultural rights, with particular reference to situations involving major structural adjustment and/or transition to a free market economy (1994); human

rights education (1994); the interpretation and practical application of the obligations incumbent on States parties (1995); and a draft optional protocol to the Covenant (1995).

7. Civil society and the work of the Committee

The World Conference on Human Rights affirms that extreme poverty and social exclusion constitute a violation of human dignity and that urgent steps are necessary to achieve better knowledge of extreme poverty and its causes, including those related to the problem of development, in order to promote the human rights of the poorest, and to put an end to extreme poverty and social exclusion and to promote the enjoyment of the fruits of social progress. It is essential for States to foster participation by the poorest people in the decision-making process b) the community in which they live, the promotion of human rights and efforts to combat extreme poverty.

VIENNA DECLARATION AND PROGRAMME OF ACTION¹¹⁴

(Part 1, para. 25)

The Committee has long recognized the important contribution which can be made by civil society in the provision of information concerning the status of the Covenant within States parties. The Committee was the first treaty body to provide non-governmental organizations (NGOs) with the opportunity to submit written statements and make oral submissions dealing with issues relating to the enjoyment or non-enjoyment of the rights contained in the Covenant in specific countries.

On the first day of each session of the Committee, the afternoon meeting is set aside to give international and national NGOs and community-based organizations (CBOs) an opportunity to express their views about how the Covenant is or is not implemented by States parties. The Committee will receive oral testimony from NGOs as long as the information focuses specifically on the provisions of the Covenant, is of direct relevance to matters under consideration by the Committee, is reliable and is not abusive. In recent years, NGOs and CBOs have taken increased advantage of this procedure and provided the Committee with written, audio and video materials alleging the non-enjoyment of economic, social and cultural rights in States parties.

The Committee has indicated that the purposes of the NGO procedure are to enable it to inform itself as fully as possible, to examine the accuracy and pertinence of information which would most probably be available to it anyway, and to put the process of receiving NGO information on a more transparent basis.

NGOs and CBOs wishing to provide reliable and new information to the Committee may write to the secretariat of the Committee several months prior to the beginning of a particular session, with a specific request to intervene during the NGO procedure. Groups with written materials may also send these to the secretariat, and may attend Committee sessions. NGOs in consultative status with the United Nations or other groups which have relations with such NGOs also may attend Committee sessions. NGOs with consultative status may, in accordance with the relevant ECOSOC resolutions, submit written submissions to the Committee at any time. Committee sessions are generally held in public, with the exception of meetings at which it prepares its concluding observations, which are held privately.

The active participation of NGOs in the work of the Committee has also proven fundamental in ensuring the wide distribution of information about the Covenant and the Committee at the national and local levels. In many instances, these organizations have generated substantial media attention in their countries following the adoption of concluding observations regarding the States in question.

8. Towards a formal complaints procedure (optional protocol)

At present it is not possible for individuals or groups who feel that their rights under the Covenant have been violated to submit formal complaints to the Committee. The absence of such procedure

114 See footnote 105 above.

places significant constraints on the ability of the Committee to develop jurisprudence or case-law and, of course, greatly limits the chances of victims of abuses of the Covenant obtaining international redress.

There are numerous arguments supporting the adoption of a complaints procedure under the Covenant. These include the improved enjoyment by people of economic, social and cultural rights; a strengthening of international accountability of States parties; increased congruence in the legal standing and seriousness accorded to both International Covenants; a refinement of the rights and duties emerging from the provisions of the International Covenant on Economic, Social and Cultural Rights; and a structural and concrete affirmation of the indivisibility and interdependence of all human rights. It is also argued that such a procedure would encourage States parties to provide similar remedies at the local and national levels.

The Committee has devoted increasing attention to the possibility of elaborating such an optional protocol since 1990 and has discussed the issue at length on several occasions.¹¹⁵ At its sixth session, in 1991, the Committee supported the drafting of an optional protocol “since that would enhance the practical implementation of the Covenant as well as the dialogue with States parties and would make it possible to focus the attention of public opinion to a greater extent on economic, social and cultural rights”.¹¹⁶

The World Conference on Human Rights, held at Vienna in June 1993, gave added impetus to this initiative by asserting, in the Vienna Declaration and Programme of Action which it adopted, that the Committee should continue its efforts towards this end. The Committee has prepared a draft optional protocol, but it has yet to be officially adopted by the relevant United Nations organs.

Many other initiatives have also addressed the desirability of including a complaints procedure under the International Covenant on economic, Social and Cultural Rights, and these have given added support to this means of strengthening this pivotal human rights treaty.¹¹⁷

Pending the addition of an optional protocol, beneficiaries of the rights contained in the Covenant may still have recourse to the general procedures of the Committee, and may utilize what has been called an unofficial petition procedure” based on the modalities of the Committee.¹¹⁸

[Updated information on the Optional Protocol]

ANNEX III

NGO participation in the activities of the Committee on Economic, Social and Cultural Rights

At its eighth session, in May 1993, the Committee adopted the following procedure regarding the participation of non-governmental organizations in its activities:^a

A. Written information

1. The Committee reiterates its long-standing invitation to NGOs to submit to it in writing, at any time, information regarding any aspect of its work.

115 See, for example, P. Alston, “Establishing a right to petition under the Covenant on Economic, Social and Cultural Rights”, *Collected Courses of the Academy of European Law: The Protection of Human rights in Europe* (Florence, European University Institute), Vol. IV, book 2 (1993), P.115.

116 E/ 1992/23, para. 362.

117 See F. Coomans and G. J. H. van Hoof, eds., *The Right to Complain about Economic, Social and Cultural Rights: Proceedings (of the Expert Meeting on the Adoption of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights* (Utrecht, 25-28 January 1995) (Utrecht, Netherlands Institute of Human Rights, 1995).

118 See M. Craven, “Towards an unofficial petition procedure: A review of the role of the UN Committee on Economic, Social and Cultural Rights”, *Social Rights as Human Rights: A European Challenge*, K. Drzewicki, C. Krause and A. Rosas, eds. (Abo/Turku (Finland), Abo Akademi University, Institute for Human Rights, 1994), p. 91.

B. Oral information

2. In addition to the receipt of written information, a short period of time will be made available at the beginning of each session of the pre-sessional working group to provide NGOs with an opportunity to submit relevant oral information to the members of the working group.
3. Furthermore, the Committee will set aside part of the first afternoon at each of its sessions to enable it to receive oral information provided by NGOs. Such information should: (a) focus specifically on the provisions of the International Covenant on Economic, Social and Cultural Rights; (b) be of direct relevance to matters under consideration by the Committee; (c) be reliable; (d) not be abusive. The relevant meeting, will be open and will be provided with interpretation services, but will not be covered by summary records. The purposes are: to enable the Committee to inform itself as fully as possible; to probe the accuracy and pertinence of information which would most probably be available to it anyway; and to put the process of receiving NGO information on a more transparent and open basis than is permitted by the current approach.
4. NGOs wishing to present oral information should inform the Committee in advance. In cases in which the Committee receives more expressions of interest than can be dealt with in the limited time available, the Chairperson of the Committee, in consultation with the Bureau, shall determine on an objective basis which NGOs will be invited to make an oral presentation.
5. To the extent that information provided to the Committee in writing, under these procedures is referred to by any member of the Committee in questions posed to the State party, the relevant information should be available for consultation by the Government concerned and all other interested parties.
6. The Committee requests its Chairperson, in conjunction with the secretariat, to make these procedures as widely known as possible.

The Committee agreed that this procedure would be reflected accordingly and in these terms in its rules of procedure.

a/ E/1994/23, para. 354.

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**REVISED GENERAL GUIDELINES REGARDING THE FORM AND CONTENTS OF REPORTS TO BE SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17 OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS***Note by the Secretary-General*

1. In accordance with article 17 of the International Covenant on Economic, Social and Cultural Rights, the Economic and Social Council, by its resolution 1988 (LX) of 11 May 1976, established a programme under which the States parties to the Covenant would furnish in stages the reports referred to in article 16 thereof and the Secretary-General, at the Council's request, subsequently drew up an appropriate set of general guidelines. In response to the recent introduction of an entirely new reporting cycle and in the light of various perceived inadequacies in the approach reflected in the original guidelines, the Committee on Economic, Social and Cultural Rights, at its fifth session held from 26 November to 14 December 1990, adopted new guidelines.
2. The guidelines are intended to facilitate the preparation of reports by States parties. By following them as closely as possible, reporting officers will minimize the risk that their reports are

deemed to be inadequate in scope and insufficient in detail. The guidelines also provide a uniformly applicable framework within which the Committee can work and enable it to demonstrate a consistency of approach from one report to another. They are also designed to reduce the amount of duplication of information requested by the various treaty bodies.

3. In adopting the revised general guidelines the Committee emphasized the importance of ensuring that the issues of principal concern were dealt with in a methodical and informative manner and strongly urged all States parties to adhere to them as closely as possible.
4. The text of the revised general guidelines is contained in the annex to the present document.

ANNEX

Revised guidelines regarding the form and contents of reports to be submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*

A. Part of the report relating to general provisions of the Covenant

Article 1 of the Covenant

In what manner has the right to self-determination been implemented?

Article 2 of the Covenant

1. To what extent and in what manner are non-nationals not guaranteed the rights recognized in the Covenant? What justification is there for any difference?
2. Which of the rights are specifically subject to non-discrimination provisions in national law? Attach the text of such provisions.
3. If your State participates in development cooperation, is any effort made to ensure that it is used, on a priority basis, to promote the realization of economic, social and cultural rights?

B. Part of the report relating to specific rights

Article 6 of the Covenant

1. If your State is a party to any of the following Conventions:
 - International Labour Organisation (ILO) Employment Policy Convention, 1964 (No. 122)
 - ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
 - International Convention on the Elimination of all Forms of Racial Discrimination
 - Convention on the Elimination of all Forms of Discrimination Against Women
 and has already submitted reports to the supervisory committee(s) concerned which are relevant to the provisions of article 6, you may wish to refer to the respective parts of those reports rather than repeat the information here. However, all matters which arise under the present Covenant and are not covered fully in those reports should be dealt with in the present report.
2. (a) Please supply information on the situation, level and trends of employment, unemployment and underemployment in your country, in respect of both the aggregate and particular categories of workers such as women, young persons, older workers and disabled workers. Please compare the respective situation 10 years ago and 5 years ago. Which persons, groups, regions or areas do you consider particularly vulnerable or disadvantaged with regard to employment?
 - (c) Please describe the principal policies pursued and measures taken with a view to ensuring that there is work for all who are available for and seeking work.

* It should be noted that the consolidated guidelines for the initial part of the reports of States parties to be submitted under the various international human rights instruments, including the Covenant, are contained in document HRI/1991/1, sent to States parties by note verbale G/SO 221 (1) of 26 April 1991.

- (d) Please indicate what measures have been adopted to ensure that work is as productive as possible.
- (e) Please indicate what provisions ensure that there is freedom of choice of employment and that conditions of employment do not infringe upon fundamental political and economic freedoms of the individual.
- (f) Please describe the technical and vocational training programmes that exist in your country, their effective mode of operation and their practical availability.
- (g) Please state whether particular difficulties have been encountered in attaining the objectives of full, productive and freely chosen employment, and indicate how far these difficulties have been overcome.
3. (a) Please indicate whether there exist in your country any distinctions, exclusions, restrictions or preferences, be it in law or in administrative practices or in practical relationships, between persons or groups of persons, made on the basis of race, colour, sex, religion, political opinion, nationality or social origin, which have the effect of nullifying or impairing the recognition, enjoyment or exercise of equality of opportunity or treatment in employment or occupation. What steps are taken to eliminate such discrimination?
- (c) Please supply information on the actual situation in your country regarding vocational guidance and training, employment and occupation of persons according to their race, colour, sex, religion, and national origin.
- (d) Please indicate the main cases in which a distinction, exclusion or preference based on any of the above-named conditions is not considered in your country as discrimination, owing to the inherent requirements of a particular job. Please indicate any difficulties in application, disputes or controversies which have arisen in relation to such conditions.
4. Please indicate what proportion of the working population of your country holds more than one full-time job in order to secure an adequate standard of living for themselves and their families. Describe this development over time.
5. In case of subsequent reports, give a short review of changes, if any, in national legislation, court decisions, as well as administrative rules, procedures and practices during the reporting period affecting the right to work.
6. Please indicate the role of international assistance in the full realization of the right enshrined in article 6.

Article 7 of the Covenant

1. If your State is a party to any of the following ILO Conventions:

- Minimum Wage-Fixing Convention, 1970 (No. 131)
- Equal Remuneration Convention, 1951 (No. 100)
- Weekly Rest (Industry) Convention, 1921 (No. 14)
- Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)
- Holidays with Pay Convention (Revised), 1970 (No. 132)
- Labour Inspection Convention, 1947 (No. 81)
- Labour Inspection (Agriculture) Convention, 1969 (No. 129)
- Occupational Safety and Health Convention, 1981 (No. 155)

and has already submitted reports to the ILO Committee of Experts on the Application of Conventions and Recommendations which are relevant to the provisions of article 7 you may wish to refer to the respective parts of those reports rather than repeat the information here. However, all matters which arise under the present Covenant and are not covered fully in those reports should be dealt within the present report.

2. (a) Please supply information on the principal methods used for fixing wages.

- (b) Please indicate whether a system of minimum wages has been established, and specify the groups of wage earners to which it applies, the number of persons covered by each group as well as the competent authority for determining these groups. Are there any wage earners remaining outside the protection of the system of minimum wages in law or in fact?
- (i) Do these minimum wages have the force of law and in which ways are they secured against erosion?
 - (ii) To what extent and by which methods are the needs of workers and their families as well as economic factors taken into consideration and reconciled with each other in determining the level of minimum wages? What standards, goals and bench-marks are relevant in this respect?
 - (iii) Please describe briefly the machinery set up for fixing, monitoring and adjusting minimum wages;
 - (iv) Please supply information on the development of average and minimum wages 10 years ago, 5 years ago and at present, set against the respective development of the cost of living;
 - (v) Please indicate whether, in practice, the system of minimum wages is supervised effectively.
- (c) Please indicate whether there exists in your country any inequality in remuneration for work of equal value, infringements of the principle of equal pay for equal work, or conditions of work for women which are inferior to those enjoyed by men.
- (i) What steps are taken to eliminate such discrimination? Please describe the successes and failures of these steps with regard to the various groups that are discriminated against;
 - (ii) Please indicate what methods, if any, have been adopted to promote an objective appraisal of jobs on the basis of the work to be performed.
- (d) Please indicate the income distribution of employees, both in the public and private sector taking into account both remuneration and non-monetary benefits. If available, give data on the remuneration of comparable jobs in the public and private sector.
3. What legal, administrative or other provisions exist that prescribe minimum conditions of occupational health and safety. How are these provisions enforced in practice and in which areas do they not apply?
- (a) Please indicate which categories of workers, if any, are excluded from existing schemes by law and what other categories benefit from such schemes only insufficiently or not at all.
 - (b) Please provide statistical or other information on how the number, nature and frequency of occupational accidents (particularly with fatal results) and diseases have developed over time (10 years ago, 5 years as compared with the present).
4. Please supply information on the actual realization in your country of the principle of equal opportunity for promotion.
- (a) Which groups of workers are currently deprived of such equal opportunity? In particular, what is the situation of women in this respect?
 - (b) What steps are taken to eliminate such inequality? Please describe the successes and failures of these steps with regard to the various disadvantaged groups.
5. Please describe the laws and practices in your country regarding rest, leisure, reasonable limitations of working hours, periodic holidays with pay and remuneration for public holidays.
- (a) Indicate the factors and difficulties affecting the degree of realization of these rights.
 - (b) Indicate which categories of workers are excluded by law or in practice, or both, from the enjoyment of which of these rights. What measures are contemplated or currently taken to remedy this situation?

6. In case of subsequent reports, give a short review of changes, if any, in national legislation, court decisions, or administrative rules, procedures and practices during the reporting period affecting the right to just and favourable conditions of work.
7. Please indicate the role of international assistance in the full realization of the right enshrined in article

Article 8 of the Covenant

1. If your State is a party to any of the following Conventions:
 - International Covenant on Civil and Political Rights
 - ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
 - ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
 - ILO Labour Relations (Public Service) Convention, 1978 (No. 151)

and has already submitted reports to the supervisory committee(s) concerned which are relevant to the provisions of article 8, you may wish to refer to the respective parts of those reports rather than repeat the information here. However, all matters which arise under the present Covenant and are not covered fully in those reports should be dealt with in the present report.
2. Please indicate what substantive or formal conditions, if any, must be fulfilled in order to join and form the trade union of one's choice.
 - (a) Please specify whether there exist any special legal provisions regarding the establishment of trade unions by certain categories of workers and, eventually, what these special provisions are, how they have been applied in practice, as well as the number of persons subjected to them.
 - (b) Are there any restrictions placed upon the exercise of the right to join and form trade unions by workers? Please provide a detailed account of the legal provisions prescribing such restrictions and their application in practice over time.
 - (c) Please supply information on how your Government secures the right of trade unions to federate and join international trade union organizations. What legal and practical restrictions are placed upon the exercise of this right?
 - (d) Please indicate in detail what conditions or limitations are placed upon the right of trade unions to function freely. Which trade unions have been adversely affected in practice by these conditions or limitations? What measures are being taken to promote free collective bargaining?
 - (e) Please supply data on the number and structure of trade unions established in your country, and on their respective membership.
3. Please indicate whether in your country workers are granted the possibility to strike as a matter of constitutional or legal right. If your answer is in the negative, what other legal or factual approach is used to guarantee the exercise of this right?
 - (a) What restrictions are placed upon the exercise of the right to strike? Please provide a detailed account of the legal provisions governing such restrictions and their application in practice over time.
 - (b) Please indicate whether there exist any special legal provisions regarding the exercise of the right to strike by certain categories of workers and what these special provisions are, how they have been applied in practice, as well as the number of workers subjected to them.
4. Please indicate whether any restrictions are placed upon the exercise of the rights mentioned in paragraphs 2 and 3 above by members of the armed forces, the police or the administration of the State. How have such restrictions been applied in actual practice?

5. In case of subsequent reports, give a short review of changes, if any, in national legislation, court decisions, as well as administrative rules, procedures and practices during the reporting period affecting the rights enshrined in article 8.

Article 9 of the Covenant

1. If your State is a party to the ILO Social Security (Minimum Standards) Convention, 1952 (No. 102) or to other relevant subsequent ILO Conventions (Nos. 121, 128, 130 and 168) and has already submitted reports to the supervisory committee(s) concerned which are relevant to the provisions of article 9, you may wish to refer to the respective parts of those reports rather than repeat the information here. However, all matters which arise under the present Covenant and are not covered fully in those reports should be dealt with in the present report.
2. Please indicate which of the following branches of social security exist in your country:
 - Medical care
 - Cash sickness benefits
 - Maternity benefits
 - Old-age benefits
 - Invalidity benefits
 - Survivors' benefits
 - Employment injury benefits
 - Unemployment benefits
 - Family benefits.
3. Please describe for each branch existing in your country the main features of the schemes in force, indicating the comprehensiveness of the coverage provided, both in the aggregate and with respect to different groups within the society, the nature and level of benefits, and the method of financing the schemes.
4. Please indicate what percentage of your GNP as well as of your national and/or regional budget(s) is spent on social security. How does this compare with the situation 10 years ago? What reasons are there for any changes?
5. Please indicate whether in your country the formal (public) social security schemes described are supplemented by any informal (private) arrangements. If such is the case, please describe these arrangements and the inter-relationships between them and the formal (public) schemes.
6. Please indicate whether in your country there are any groups which do not enjoy the right to social security at all or which do so to a significantly lesser degree than the majority of the population. In particular, what is the situation of women in that respect? Please give particulars of such non-enjoyment of social security.
 - (a) Please indicate what measures are regarded as necessary by your Government in order to realize the right to social security for the groups mentioned above.
 - (b) Please explain the policy measures your Government has taken, to the maximum of its available resources, to implement the right to social security for these groups. Give a calendar and time-related bench-marks for measuring your achievements in this regard.
 - (c) Please describe the effect of these measures on the situation of the vulnerable and disadvantaged groups in point, and report the successes, problems and shortcomings of such measures.
7. In case of subsequent reports, give a short review of changes, if any, in national legislation, court decisions, as well as administrative rules, procedures and practices during the reporting period affecting the right to social security.
8. Please indicate the role of international assistance in the full realization of the right enshrined in article 9.

Article 10 of the Covenant

1. If your State is a party to any of the following Conventions:

- International Covenant on Civil and Political Rights
- Convention on the Rights of the Child
- Convention on the Elimination of all Forms of Discrimination Against Women
- ILO Maternity Protection Convention (Revised) 1952 (No. 103)
- ILO Minimum Age Convention, 1973 (No. 138)

or to any other ILO convention on the protection of children and young persons in relation to employment and work, and if your Government has already submitted reports to the supervisory committee(s) concerned which are relevant to the provisions of article 10, you may wish to refer to the respective parts of those reports rather than repeat the information here. However, all matters which arise under the present Covenant and are not covered fully in these reports should be dealt with in the present report.

2. Please indicate what meaning is given in your society to the term “family”.

3. Please indicate the age at which in your country children are deemed to attain their majority for different purposes.

4. Please supply information on the ways and means, both formal and informal, employed in your country to grant assistance and protection to the family. In particular:

(a) How does your country guarantee the right of men and, particularly, women to enter into marriage with their full and free consent and to establish a family? Please indicate and eventually give particulars about cases where the measures taken were not successful in abolishing practices adversely affecting the enjoyment of this right.

(b) By what measures does your country facilitate the establishment of a family as well as maintain, strengthen and protect it, particularly while it is responsible for the care and education of dependent children? Despite these measures, are there families which do not enjoy the benefit of such protection and assistance at all or which do so to a significantly lesser degree than the majority of the population? Please give details of these situations. Are extended families or other forms of familial organization recognized in determining the availability or applicability of these measures, particularly with respect to government benefits?

(c) With regard to shortcomings visible under subparagraphs (a) or (b), what measures are contemplated to remedy the situation?

5. Please provide information on your system of maternity protection.

(a) In particular:

(i) Describe the scope of the scheme of protection;

(ii) Indicate the total length of the maternity leave and of the period of compulsory leave after confinement;

(iii) Describe the cash, medical and other social security benefits granted during these periods;

(iv) Indicate, how these benefits have been developed over time.

(b) Please indicate whether there are in your society groups of women who do not enjoy any maternity protection at all or which do so to a significantly lesser degree than the majority. Please give details of these situations. What measures are being taken or contemplated to remedy this situation? Please describe the effect of these measures on the situation of the vulnerable and disadvantaged groups in point, and report on successes, problems and shortcomings of such measures.

6. Please describe the special measures of protection and assistance on behalf of children and young persons, especially measures to protect them from economic and social exploitation or to

prevent their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development.

- (a) What are the age limits in your country below which the paid employment of child labour in different occupations is prohibited?
 - (b) Please specify how many children, and of which age groups, engage in paid employment, and to what extent.
 - (c) Please specify to what extent children are being employed in their families' households, farms or businesses.
 - (d) Please indicate whether there are in your country any groups of children and young persons which do not enjoy the measures of protection and assistance at all or which do so to a significantly lesser degree than the majority. In particular, what is the respective situation of orphans, children without living biological parents, young girls, children who are abandoned or deprived of their family environment, as well as physically or mentally handicapped children?
 - (e) How are the persons mentioned in the preceding paragraph informed of their respective rights?
 - (f) Please give details of any difficulties and shortcomings. How have such adverse situations developed over time? What measures are being taken to remedy these situations? Please describe the effect of these measures over time and report on successes, problems and shortcomings.
7. In case of subsequent reports, give a short review of changes, if any, in national legislation, court decisions as well as administrative rules, procedures and practices during the reporting period affecting the right enshrined in article 10.
8. Please describe the role of international assistance in the full realization of the right enshrined in article 10.

Article 11 of the Covenant

1. (a) Please supply information on the current standard of living of your population, in respect of both the aggregate and different socio-economic, cultural, and other groups within the society. How has the standard of living changed over time (e.g., compared with 10 years ago and 5 years ago) with regard to these different groups? Has there been a continuous improvement of living conditions for the entire population or for what groups?
 - (b) In case your Government has recently submitted reports relevant to the situation with respect to all or some of the rights contained in article 11 to the United Nations or a specialized agency, you may wish to refer to the relevant parts of those reports rather than repeat the information here.
 - (c) Please indicate the per capita GNP for the poorest 40 per cent of your population. Is there a "poverty line" in existence in your country and, if so, what is the basis for this line?
 - (d) Please indicate your country's Physical Quality of Life Index.
2. The right to adequate food
- (a) Please provide a general overview of the extent to which the right to adequate food has been realized in your country. Describe the sources of information that exist in this regard, including nutritional surveys and other monitoring arrangements.

- (b) Please provide detailed information (including statistical data broken down in terms of different geographical areas) on the extent to which hunger and/or malnutrition exists in your country. This information should deal in particular with the following issues:
- (i) The situation of especially vulnerable or disadvantaged groups, including:
- Landless peasants
 - Marginalized peasants
 - Rural workers
 - Rural unemployed
 - Urban unemployed
 - Urban poor
 - Migrant workers
 - Indigenous peoples
 - Children
 - Elderly people
 - Other especially affected groups;
- (ii) Any significant differences in the situation of men and women within each of the above groups;
- (iii) The changes that have taken place over the past five years with respect to the situation of each of the above groups.
- (c) During the reporting period, have there been any changes in national policies, laws and practices negatively affecting the access to adequate food by these groups or sectors or within the worse-off regions? If so, please describe these changes and evaluate their impact.
- (d) Please indicate what measures are considered necessary by your Government to guarantee access to adequate food for each of the vulnerable or disadvantaged groups mentioned above and for the worse-off areas, and for the full implementation of the right to food for both men and women. Indicate the measures taken and specify time-related goals and nutritional bench-marks for measuring achievements in this regard.
- (e) Please indicate in what ways measures taken to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge have contributed towards, or have impeded the realization of the right to adequate food. Please describe the impact of these measures in terms of ecological sustainability and the protection and conservation of food producing resources.
- (f) Please indicate what measures are taken to disseminate knowledge of the principles of nutrition and specify whether any significant groups or sectors within society seem to lack such knowledge.
- (g) Please describe any measures of agrarian reform taken by your Government to ensure that the agrarian system is efficiently utilized in order to promote food security at household level without negatively affecting human dignity both in the rural and urban settings taking into account articles 6 to 8 of the Covenant. Describe the measures taken:
- (i) To legislate to this effect;
- (ii) To enforce existing law to this effect;
- (iii) To facilitate monitoring through governmental and non-governmental organizations.
- (h) Please describe and evaluate the measures taken by your Government in order to ensure an equitable distribution, in terms of both production and trade, of world food supplies in relation to need, taking into account the problems of both food-importing and food-exporting countries.

3. The right to adequate housing

- (a) Please furnish detailed statistical information about the housing situation in your country.
- (b) Please provide detailed information about those groups within your society that are vulnerable and disadvantaged with regard to housing. Indicate, in particular:
 - (i) The number of homeless individuals and families;
 - (ii) The number of individuals and families currently inadequately housed and without ready access to basic amenities such as water, heating (if necessary), waste disposal, sanitation facilities, electricity, postal services, etc. (in so far as you consider these amenities relevant in your country). Include the number of people living in over-crowded, damp, structurally unsafe housing or other conditions which affect health;
 - (iii) The number of persons currently classified as living in “illegal” settlements or housing;
 - (iv) The number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction;
 - (v) The number of persons whose housing expenses are above any government-set limit of affordability, based upon ability to pay or as a ratio of income;
 - (vi) The number of persons on waiting lists for obtaining accommodation, the average length of waiting time and measures taken to decrease such lists as well as to assist those on such lists in finding temporary housing;
 - (vii) The number of persons in different types of housing tenure by: social or public housing; private rental sector; owner-occupiers; “illegal” sector; and other.
- (c) Please provide information on the existence of any laws affecting the realization of the right to housing, including:
 - (i) Legislation which gives substance to the right to housing in terms of defining the content of this right;
 - (ii) Legislation such as housing acts, homeless person acts, municipal corporation acts, etc;
 - (iii) Legislation relevant to land use, land distribution; land allocation, land zoning, land ceilings, expropriations including provisions for compensation; land planning, including procedures for community participation;
 - (iv) Legislation concerning the rights of tenants to security of tenure, to protection from eviction; to housing finance and rental control (or subsidy), housing affordability, etc;
 - (v) Legislation concerning building codes, building regulations and standards and the provision of infrastructure;
 - (vi) Legislation prohibiting any and all forms of discrimination in the housing sector, including groups not traditionally protected;
 - (vii) Legislation prohibiting any form of eviction;
 - (viii) Any legislative repeal or reform of existing laws which detracts from the fulfilment of the right to housing;
 - (ix) Legislation restricting speculation on housing or property, particularly when such speculation has a negative impact on the fulfilment of housing rights for all sectors of society;
 - (x) Legislative measures conferring legal title to those living in the “illegal” sector;
 - (xi) Legislation concerning environmental planning and health in housing and human settlements.

- (d) Please provide information on all other measures taken to fulfil the right to housing, including:
- (i) Measures taken to encourage “enabling strategies” whereby local community-based organizations and the “informal sector” can build housing and related services. Are such organizations free to operate? Do they receive Government funding?
 - (ii) Measures taken by the State to build housing units and to increase other construction of affordable, rental housing;
 - (iii) Measures taken to release unutilized, under-utilized or mis-utilized land;
 - (iv) Financial measures taken by the State including details of the budget of the Ministry of Housing or other relevant Ministry as a percentage of the national budget;
 - (v) Measures taken to ensure that international assistance for housing and human settlements is used to fulfil the needs of the most disadvantaged groups;
 - (vi) Measures taken to encourage the development of small and intermediate urban centres, especially at the rural level;
 - (vii) Measures taken during, *inter alia*, urban renewal programmes, redevelopment projects, site upgrading, preparation for international events (Olympics, expositions, conferences, etc.), “beautiful city campaigns”, etc., which guarantee protection from eviction or guaranteed rehousing based on mutual agreement, by any persons living on or near to affected sites;
- (e) During the reporting period, have there been any changes in national policies, laws and practices negatively affecting the right to adequate housing? If so, please describe the changes and evaluate their impact.
4. Please give details on any difficulties or shortcomings encountered in the fulfilment of the rights enshrined in article 11 and on the measures taken to remedy these situations (if not already described in the present report).
5. Please indicate the role of international assistance in the full realization of the rights enshrined in article 11.

Article 12 of the Covenant

1. Please supply information on the physical and mental health of your population, in respect of both the aggregate and the different groups within your society. How has the health situation changed over time with regard to these groups? In case your Government has recently submitted reports on the health situation in your country to the World Health Organization (WHO) you may wish to refer to the relevant parts of these reports rather than repeat the information here.
2. Please indicate whether your country has a national health policy. Please indicate whether a commitment to the WHO primary health care approach has been adopted as part of the health policy of your country. If so, what measures have been taken to implement primary health care?
3. Please indicate what percentage of your GNP as well as of your national and/or regional budget(s) is spent on health. What percentage of those resources is allocated to primary health care? How does this compare with 5 years ago and 10 years ago?
4. Please provide, where available, indicators as defined by the WHO, relating to the following issues:
 - (a) Infant mortality rate (in addition to the national value, please provide the rate by sex, urban/rural division, and also, if possible, by socio-economic or ethnic group and geographical area. Please include national definitions of urban/rural and other subdivisions);
 - (b) Population access to safe water (please disaggregate urban/rural);
 - (c) Population access to adequate excreta disposal facilities (please disaggregate urban/rural);

- (d) Infants immunized against diphtheria, pertussis, tetanus, measles, poliomyelitis and tuberculosis (please disaggregate urban/rural and by sex);
 - (e) Life expectancy (please disaggregate urban/rural, by socio-economic group and by sex);
 - (f) Proportion of the population having access to trained personnel for the treatment of common diseases and injuries, with regular supply of 20 essential drugs, within one hour's walk or travel;
 - (g) Proportion of pregnant women having access to trained personnel during pregnancy and proportion attended by such personnel for delivery. Please provide figures on the maternity mortality rate, both before and after childbirth;
 - (h) Proportion of infants having access to trained personnel for care.
- (Please provide breakdowns by urban/rural and socio-economic groups for indicators (f) to (h).)
5. Can it be discerned from the breakdowns of the indicators employed in paragraph 4, or by other means, that there are any groups in your country whose health situation is significantly worse than that of the majority of the population? Please define these groups as precisely as possible and give details. Which geographical areas in your country, if any, are worse off with regard to the health of their population?
- (a) During the reporting period, have there been any changes in national policies, laws and practices negatively affecting the health situation of these groups or areas? If so, please describe these changes and their impact.
 - (b) Please indicate what measures are considered necessary by your Government to improve the physical and mental health situation of such vulnerable and disadvantaged groups or in such worse-off areas.
 - (c) Please explain the policy measures your Government has taken, to the maximum of available resources, to realize such improvement. Indicate time-related goals and bench-marks for measuring your achievements in this regard.
 - (d) Please describe the effect of these measures on the health situation of the vulnerable and disadvantaged groups or worse-off areas under consideration, and report on the successes, problems and shortcomings of these measures.
 - (e) Please describe the measures taken by your Government in order to reduce the stillbirth-rate and infant mortality and to provide for the healthy development of the child.
 - (f) Please list the measures taken by your Government to improve all aspects of environmental and industrial hygiene.
 - (g) Please describe the measures taken by your Government to prevent, treat and control epidemic, endemic, occupational and other diseases.
 - (h) Please describe the measures taken by your Government to assure to all medical service and medical attention in the event of sickness.
 - (i) Please describe the effect of the measures listed in subparagraphs (e) to (h) on the situation of the vulnerable and disadvantaged groups in your society and in any worse-off areas. Report on difficulties and failures as well as on positive results.
6. Please indicate the measures taken by your Government to ensure that the rising costs of health care for the elderly do not lead to infringements of these persons right to health.
7. Please indicate what measures have been taken in your country to maximize community participation in the planning, organization, operation and control of primary health care.
8. Please indicate what measures have been taken in your country to provide education concerning prevailing health problems and the measures of preventing and controlling them.
9. Please indicate the role of international assistance in the full realization of the right enshrined in article 12.

Article 13 of the Covenant

1. With a view to achieving in your country the full realization of the right of everyone to education:
 - (a) How does your Government discharge its obligation to provide for primary education that is compulsory and available free to all? (If primary education is not compulsory and/or free of charge, see especially article 14.)
 - (b) Is secondary education, including technical and vocational secondary education, generally available and accessible to all? To what extent is such secondary education free of charge?
 - (c) To what extent is general access to higher education realized in your country? What are the costs of such higher education? Is free education established or being introduced progressively?
 - (d) What efforts have you made to establish a system of fundamental education for those persons who have not received or completed the whole period of their primary education?

In case your Government has recently submitted reports relevant to the situation with respect to the right contained in article 13 to the United Nations or a specialized agency, you may wish to refer to the relevant parts of those reports rather than repeat the information here.

2. What difficulties have you encountered in the realization of the right to education, as spelt out in paragraph 1? What time-related goals and bench-marks has your Government set in this respect?
3. Please provide statistics on literacy, enrolment in fundamental education with information on rural areas, adult and continuing education, drop-out rates at all levels of education as well as graduating rates at all levels (please disaggregate, if possible, according to sex, religion, etc.). Also provide information on measures taken to promote literacy, with data on the scope of the programmes, target population, financing and enrolment, as well as graduation statistics by age group, sex, etc. Please report on the positive results of these measures as well as on difficulties and failures.
4. Please provide information on the percentage of your budget (or, if necessary, regional budgets) spent on education. Describe your system of schools, your activity in building new schools, the vicinity of schools, particularly in rural areas, as well as the schooling schedules.
5. To what extent is equal access to the different levels of education and measures to promote literacy enjoyed in practice? For instance:
 - (a) What is the ratio of men and women making use of the different levels of education and taking part in these measures?
 - (b) With regard to practical enjoyment of the right to these levels of education and measures to promote literacy, are there any particularly vulnerable and disadvantaged groups? Indicate, for instance, to what extent young girls, children of low-income groups, children in rural areas, children who are physically or mentally disabled, children of immigrants and of migrant workers, children belonging to linguistic, racial, religious or other minorities, and children of indigenous people, enjoy the right to literacy and education spelt out in article 12.
 - (c) What actions is your Government taking or contemplating in order to introduce or guarantee equal access to all levels of education within your country, for instance in the form of anti-discriminatory measures, financial incentives, fellowships, positive or affirmative action? Please describe the effect of such measures.
 - (d) Please describe the language facilities provided to this effect, such as the availability of teaching in the mother tongue of the students.
6. Please describe the conditions of teaching staff at all levels in your country, having regard to the Recommendation concerning the Status of Teachers, adopted on 5 October 1966 by the Special Intergovernmental Conference on the Status of Teachers, convened by UNESCO. How do teachers' salaries compare to salaries of (other) civil servants? How has this ratio developed over

time? What measures does your country take or contemplate to improve the living conditions of teaching staff?

7. What proportion of schools at all levels in your country is not established and administered by the Government? Have any difficulties been encountered by those wishing to establish or to gain access to those schools?
8. During the reporting period, have there been any changes in national policies, laws and practices negatively affecting the right enshrined in article 13? If so, please describe these changes and evaluate their impact.
9. Please indicate the role of international assistance in the full realization of the right enshrined in article 13.

Article 14 of the Covenant

If compulsory and free primary education in your country is not currently enjoyed, please provide details on the required plan of action for the progressive implementation, within a reasonable number of years fixed in this plan, of this principle. What particular difficulties have you encountered in the realization of this plan of action? Please indicate the role of international assistance in this respect.

Article 15 of the Covenant

1. Please describe the legislative and other measures adopted by or in your State to realize the right of everyone to take part in the cultural life which he or she considers pertinent, and to manifest his or her own culture. In particular, provide information on the following:
 - (a) Availability of funds for the promotion of cultural development and popular participation in cultural life, including public support for private initiative.
 - (b) The institutional infrastructure established for the implementation of policies to promote popular participation in culture, such as cultural centres, museums, libraries, theatres, cinemas, and in traditional arts and crafts.
 - (c) Promotion of cultural identity as a factor of mutual appreciation among individuals, groups, nations and regions.
 - (d) Promotion of awareness and enjoyment of the cultural heritage of national ethnic groups and minorities and of indigenous peoples.
 - (e) Role of mass media and communications media in promoting participation in cultural life.
 - (f) Preservation and presentation of mankind's cultural heritage.
 - (g) Legislation protecting the freedom of artistic creation and performance, including the freedom to disseminate the results of such activities, as well as an indication of any restrictions or limits imposed on the freedom.
 - (h) Professional education in the field of culture and art.
 - (i) Any other measures taken for the conservation, development and diffusion of culture.

Please report on positive effects as well as on difficulties and failures, particularly concerning indigenous and other disadvantaged and particularly vulnerable groups.

2. Please describe the legislative and other measures taken to realize the right of everyone to enjoy the benefits of scientific progress and its applications, including those aimed at the conservation, development and diffusion of science. In particular, provide information on the following:
 - (a) Measures taken to ensure the application of scientific progress for the benefit of everyone, including measures aimed at the preservation of mankind's natural heritage and at promoting a healthy and pure environment and information on the institutional infrastructures established for that purpose.

- (b) Measures taken to promote the diffusion of information on scientific progress.
 - (c) Measures taken to prevent the use of scientific and technical progress for purposes which are contrary to the enjoyment of all human rights, including the rights to life, health, personal freedom, privacy and the like.
 - (d) Any restrictions which are placed upon the exercise of this right, with details of the legal provisions prescribing such restrictions.
3. Please describe the legislative and other measures taken to realize the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic work of which he or she is the author. In particular, supply information on the practical measures aimed at the full implementation of this right, including provision of the necessary conditions for scientific, literary and artistic activities, and the protection of intellectual property rights resulting from such activities. What difficulties have affected the degree of realization of this right?
4. What steps has your Government taken for the conservation, development and diffusion of science and culture? Please describe in particular:
 - (a) Measures at the constitutional level, within the national educational system and by means of the communications media.
 - (b) All other practical steps taken to promote such conservation, development and diffusion.
5. Please describe the legal, administrative and judicial system designed to respect and protect the freedom indispensable for scientific research and creative activity, in particular:
 - (a) Measures designed to promote enjoyment of this freedom including the creation of all necessary conditions and facilities for scientific research and creative activity.
 - (b) Measures taken to guarantee the freedom of exchange of scientific, technical and cultural information, views and experience between scientists, writers, creative workers, artists and other creative individuals and their respective institutions.
 - (c) Measures taken to support learned societies, academies of science, professional associations, unions of workers and other organizations and institutions engaged in scientific research and creative activities.

What difficulties have affected the degree of realization of this freedom?
6. Please describe the legislative and other measures by which your Government encourages and develops international contacts and co-operation in the scientific and cultural fields, including measures taken for:
 - (a) The fullest utilization, by all the States concerned, of the facilities afforded by their adherence to regional and international conventions, agreements and other instruments in the scientific and cultural fields.
 - (b) Participation by scientists, writers, artists and others involved in scientific research or creative activity, in international scientific and cultural conferences, seminars, symposiums, etc.

What factors and difficulties have affected the development of international co-operation in these fields?
7. During the reporting period, have there been any changes in national policies, laws and practices negatively affecting the rights enshrined in article 15? If so, please describe these changes and evaluate their impact.
8. In case your Government has recently submitted reports relevant to the situation with respect to the rights contained in article 15 to the United Nations or a specialized agency, you may wish to refer to the relevant parts of those reports rather than repeat the information here.

9. Please indicate the role of international assistance in the full realization of the rights enshrined in article 15.
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NGOs AND THE UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

DRAFT ONLY

The United Nations Committee on Economic, Social and Cultural Rights is responsible for monitoring the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) by all states which have ratified the Covenant. States Parties are required to submit a periodic report every five years to the Committee on the implementation of the Covenant in domestic law and policy. The reports must cover all rights in the Covenant including the right to an adequate standard of living (the right to adequate food, clothing and housing), the right to health care, education, just favourable conditions of work and the rights of workers to organize and bargain collectively. The Committee meets twice a year in May and November in Geneva, Switzerland. Each session is three weeks in duration. The first day of each session is devoted to NGO oral submissions.

NGOs play an important part in the United Nations review *process*, providing reliable and well-documented information to the UN Committee on which an objective assessment can be made of the Government's compliance with fundamental human rights.

NGOs can be involved in the Committee's process of review in a number of ways:

1. The Committee recommends that in drafting periodic reports, Government's should consult with non-governmental organizations (NGOs) to ensure a comprehensive and accurate assessment of its compliance with its obligations under the ICESCR. NGOs can correspond with the appropriate government officials – normally in the department of foreign or external – and request that they be included in the Government's process of drafting the periodic report.
2. The Government's periodic report should be made public and available to NGOs. NGOs can review the Government's report and submit an "Alternative" or "Parallel" report to the Committee. Drafting an Alternative or Parallel report provides NGOs with an opportunity to inform the Committee of inaccuracies and omissions in the Government report and also provides an opportunity for NGOs to highlight issues of particular concern to the community sector. These can be done collectively or individually, nationally or on a state by state basis. NGO Parallel Reports should be made available to the Committee well in advance of the review of the country and should also be provided to the Government. Transparency and cooperation with Government officials is essential in building a constructive dialogue with the Government.
3. NGOs can make oral and written submissions to the Committee *at any time* even if those submissions occur during a session when the country of concern is NOT being reviewed. These submissions are normally used to highlight a particularly pressing problem, to inform the Committee of this problem and to ask the Committee to take some action – prior to the review of the country – to help address the problem immediately. For example, although Australia is not scheduled for review until November 2000, advocates in Sydney could attend the Committee in May 1999 to provide oral and written submissions on the impact on Sydney residents of the lead-up to the 2000 Olympics. In this example, the Sydney advocates would hope to expose serious violations of economic, social and cultural rights and encourage the Committee to write a letter of concern to the relevant Governments (Commonwealth and State). These letters rarely state that a Government is in breach of the ICESCR, but can stipulate that the Government *MAY* be in violation of the Covenant if the NGO information is true and if no change occurs. Letters of this sort are useful as they send a message to the Government that the international community is monitoring their activities and that they ought to take seriously the Committee's upcoming review of Government compliance with the Covenant.

4. Following the submission of the Government report to the Committee, the Government is scheduled to appear before the Committee to respond to questions and concerns. At the session preceding the session where the country will be reviewed, a “Pre-Sessional Working Group” reviews the Government’s written report and prepares a “List of Issues” – questions or requests for further information – which are sent to the Government for a response. NGOs can attend the Pre-Sessional Working Group and make oral and written submissions to the Committee to assist it in preparing the List of Issues. This is an extremely important part of the process as the List of Issues more or less determines the content of the review of the Government for these Issues are focused upon during the review of the country.
5. After the Government receives the List of Issues it will respond in writing to the Committee. Their written response should be made accessible to civil society. Unfortunately, these written responses are often prepared and submitted to the Committee just prior (a few weeks) to the country review. This leaves little time for NGOs to respond to the Government’s answers to the List of Issues. Nevertheless, NGOs can prepare brief responses and submit these to the Committee. These submissions can include suggestions of oral questions which the Committee may wish to put to the Government during its actual review of the country.
6. It is strongly recommended that NGOs make short oral and written submissions to the Committee at the beginning of the session at which the country of concern will be reviewed. Oral submissions can include a brief statement (10 minutes), the presentation of a short video and/or slides. NGOs should note that some of the Committee members do not speak English. Though oral statements are simultaneously translated, videos are not. Therefore, if presenting a video, NGOs should include a written text of the video in Spanish and French.
7. Lobbying Committee members is also a central part of all NGO work at the Committee, and is particularly important at the session during which the country is under review. When NGOs attend the Committee, particularly during the review of the country, they should schedule meetings with Committee members to discuss pertinent issues that must be put to the Country under review. Meetings with Committee members are normally quite short, ½ an hour maximum, therefore, the ability to express major concerns succinctly and clearly is vital.
8. Once the Committee reviews the Australian government, at the end of the session the Committee will release its Concluding Observations on Australia’s compliance with the ICESCR. These Concluding Observations will highlight primary areas of concern and will provide suggestions and recommendations to the Australian government. These Concluding Observations can be brought back to Australia and used by lawyers, social activists, advocates etc. to pressure the government to fulfil its international legal obligations.
9. At every stage of the Committee process NGOs should be in contact with the media and should send out press releases as events warrant.

This overview of possible NGO activities at the UN, indicates that a lot of time and energy could be spent at the Committee. It is difficult to advise NGOs as to how much time and energy they should spend at the Committee.

On the positive side: Involvement with this Committee can be regarded as a long term, ongoing project, particularly given that countries are reviewed every 5 years. As such, spending a lot of time at the Committee is beneficial as this is how good working relationships are developed between the Committee and NGOs. Without building such a relationship, it is unlikely that the Committee will become particularly interested in the country under review – as there is no one around to spark their interest. It is much easier for the Committee to be galvanized into action when face to face with NGO representatives, rather than when faced with a stack of paper.

On the negative side: Unless NGOs are fully committed to working the process to their own ends, the process may yield small results. From an NGO perspective, you get from the Committee what you put in. You will not receive media attention unless you go after it. You will not get hard-hitting Concluding Observations with solid recommendations unless you work with the Committee and convince them with facts and information that such Concluding Observations are warranted in the case of Australia.

Be Aware. Attending at the Committee will not necessarily result in immediate change. The Committee rarely “orders” governments to change/revoke legislation or policies, it normally just recommends that such action occur. The Committee’s decisions are unenforceable (in a court of law). This means that your work cannot stop at the Committee, once you have the Concluding Observations in hand, you will have to use these as a tool for social change/action.

7 GOOD REASONS TO BECOME INVOLVED IN THE UN SYSTEM AND THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

1. International human rights law and mechanisms can provide another avenue to pursue social change and legal reform.
 2. Affluent countries such as Australia pride themselves on their human rights record as compared with neighbouring nations. Using the international, UN system to challenge that perception can prove a persuasive tool for change as affluent countries are quite weary of having their reputation tarnished especially in an international forum.
 3. Using the UN system can assist in putting neglected issues on the political agenda in Australia.
 4. Work at the UN should be seen as complementary to other domestic activities. As such, it can enhance or reinforce activities undertaken at home.
 5. Regardless of whether NGOs participate in the process, the Committee on Economic, Social and Cultural will review Australia’s compliance with the International Covenant on Economic, Social and Cultural Rights and they will also release a legal decision regarding Australia’s compliance with its international legal obligations under the ICESCR. If NGOs do participate, it is likely that the Committee will have a more complete understanding of the status of economic, social and cultural rights in Australia and the Committee will be able to reflect this better understanding in its legal decision on Australia.
 6. In Australia there are no legal avenues available to claim economic, social and cultural rights as human rights. The UN Committee provides this opportunity.
 7. Using the UN system and the Committee procedures provides an opportunity for the Australian social services and legal sectors to learn more about human rights and specifically economic, social and cultural rights.
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