

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Handbook for National Human Rights Institutions



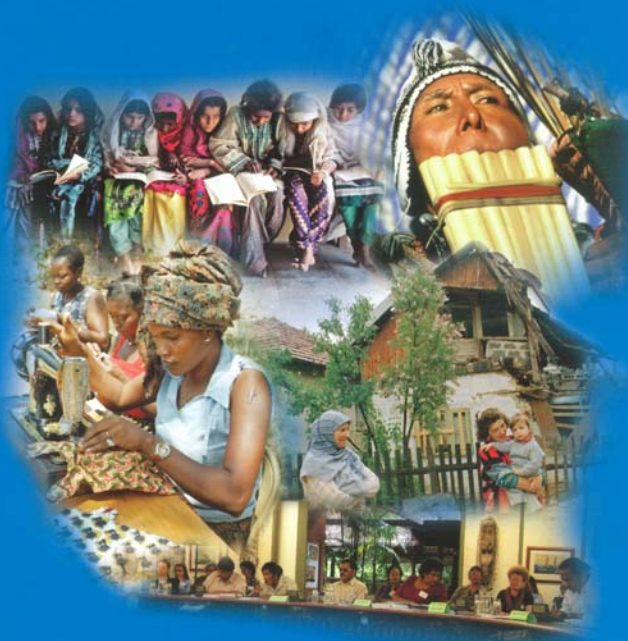
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Professional Training
Series No.

12





OFFICE OF THE
UNITED NATIONS
HIGH COMMISSIONER
FOR HUMAN RIGHTS

H u m a n R i g h t s



UNITED NATIONS

Economic, Social and Cultural Rights

Handbook for National Human Rights Institutions

Professional Training
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12

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INTRODUCTION

Human rights are a legal statement of what human beings require to live fully human lives. Collectively they are a comprehensive, holistic statement. All human rights—civil, cultural, economic, political and social—are recognized as a universal, indivisible and interdependent body of rights, as originally foreseen in the 1948 Universal Declaration of Human Rights.¹ A comprehensive approach to the promotion and protection of human rights, which include economic, social and cultural rights, ensures that people are treated as full persons and that they may enjoy simultaneously all rights and freedoms, and social justice.

The promotion and protection of economic, social and cultural rights

After an extended period of relative neglect, there have been important advances in the field of economic, social and cultural rights in recent years. The Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in 1993, was an important milestone in this process, urging that “there must be a concerted effort to ensure recognition of economic, social and cultural rights at the national, regional and international levels”.² Attention to economic, social and cultural rights has increased considerably, both within the United Nations and as a result of the incorporation of economic, social and cultural rights as legal norms in many national constitutions and legal systems.

However, when “a fifth of the developing world’s population goes hungry every night, a quarter lacks access to even a basic necessity like safe drinking water, and a third lives in abject poverty—at such a margin of human existence that words simply fail to describe it” renewed attention and commitment to the full realization of economic, social and cultural rights are vital.³

National human rights institutions can play an important role in a concerted effort to address economic, social and cultural rights. In parallel with the increased importance attached to these rights over the past decade, the numbers and effectiveness of national human rights institutions have also increased. In 1991, the first United Nations international workshop of national human rights institutions was held in Paris. There, the institutions present drafted and adopted international minimum standards for effective national human rights institutions, the Principles relating to the Status of National Institutions, known as the “Paris Principles” (see annex). These standards were endorsed in 1992 by the Commission on Human Rights and in 1993 by the General Assembly of the United Nations. In the Vienna Declaration and Programme of Action, the World Conference on Human Rights also reaffirmed the importance of national human rights institutions, encouraging the enhancement of United Nations activities to assist States at their request in the establishment and strengthening of national human rights institutions, and cooperation among national human rights institutions, regional organizations and the United Nations. The Office of the United Nations High Commissioner for Human Rights has responded to that recommendation and undertaken an extensive programme of technical assistance and cooperation. The United Nations Development Programme, the Commonwealth Secretariat, the International Organisation of the

¹ The Universal Declaration of Human Rights enshrines civil and political rights and economic, social and cultural rights and was intended to be the precursor to a single human rights covenant. Political, ideological and other factors, however, precluded this and two International Covenants were eventually adopted—nearly two decades after the promulgation of the Universal Declaration.

² Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, Vienna, 25 June 1993 (A/CONF.157/23), Part II, para. 98.

³ *Human Development Report 1994*, UNDP, New York, p. 2.

Francophonie, the Inter-American Institute of Human Rights, the African Commission on Human and Peoples' Rights, the International Ombudsman Institute and international and regional civil society organizations have also become more active in promoting national human rights institutions.

The increase in attention to economic, social and cultural rights by national human rights institutions, however, has been uneven and sporadic. In many instances, national human rights institutions have been less active than many other institutions and organizations in relation to economic, social and cultural rights.⁴ Persistent false distinctions between civil and political rights, and economic, social and cultural rights, and lack of understanding of the legal nature and content of economic, social and cultural rights have undermined effective action on economic, social and cultural rights.⁵

To a certain degree, the difficulty in fully realizing economic, social and cultural rights in the face of endemic poverty in many countries and increasing inequality in wealth and income between and within States discourages action on economic, social and cultural rights when other challenges confront organizations. However, greater attention is now being given to developing the capacity of national human rights institutions to increase their activities for the promotion and protection of economic, social and cultural rights. This handbook has been produced to assist those efforts.

The role of national human rights institutions

Various international bodies and mechanisms have identified the important role national human rights institutions can play in protecting and promoting economic, social and cultural rights.⁶ Most notably, the Committee on Economic, Social and Cultural Rights, in its General Comment No.10 on the role of national human rights institutions in the protection of economic, social and cultural rights (see annex), stressed that national human rights institutions:

⁴ In a recent report, the International Council on Human Rights Policy, for instance, was quite explicit in pointing out the need for national human rights institutions to do more on economic, social and cultural rights. In this report, the Council recommended that national human rights institutions should address economic, social and cultural rights. Poverty and unequal access to educational, housing and health provisions increasingly determine social progress and quality of life. National human rights institutions cannot meet the needs of vulnerable groups without addressing economic, social and cultural rights. Some do so already, but many have yet to put resources into the implementation of these rights or take them seriously. New national human rights institutions should include economic, social and cultural rights in their mandate. National institutions whose mandate does not already include economic, social and cultural rights should consider redrafting their mandate to do so. Practical strategies might include: identifying areas of exclusion and developing policy proposals to deal with them; monitoring government policies in relation to economic, social and cultural rights; taking up cases that extend access to economic, social and cultural rights; and identifying ways of making economic, social and cultural rights justiciable. (International Council on Human Rights Policy, *Performance and Legitimacy: National Human Rights Institutions*, Versoix, Switzerland, 2000).

⁵ These fallacies often centred on distinctions such as the purportedly positive versus the negative nature of the rights concerned, the allegedly cost-free nature of civil and political rights compared to the invariably resource-intensive content of economic, social and cultural rights, the capacity of civil and political rights to be implemented immediately and the purely progressive characteristics of economic, social and cultural rights, or the debate concerning the justiciable versus the non-justiciable nature of economic, social and cultural rights. Overcoming the falsehood of these arbitrary distinctions has been a major task of economic, social and cultural rights advocates for the past few decades—a task that has now in many respects been overtaken by the need to improve measures of enforcement and implementation of these rights.

⁶ The Committee on the Elimination of Racial Discrimination, in its General Recommendation XVII on the establishment of national institutions to facilitate implementation of the [International] Convention [on the Elimination of All Forms of Racial Discrimination], recommended that States Parties to that Convention "establish national commissions or other appropriate bodies, taking into account, *mutatis mutandis*, the principles relating to the status of national institutions annexed to Commission on Human Rights resolution 1992/54 of 3 March 1992, to serve, inter alia, the following purposes: (a) to promote respect for the enjoyment of human rights without any discrimination, as expressly set out in article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination". Article 5 of that Convention reaffirms a range of economic, social and cultural rights.

have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights. Unfortunately, this role has too often either not been accorded to the institution or has been neglected or given a low priority by it. It is therefore essential that full attention be given to economic, social and cultural rights in all of the relevant activities of these institutions.

Similarly, the 1998 Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (see annex) emphasize:

Promotional and monitoring bodies, such as national ombudsman institutions and human rights commissions, should address violations of economic, social and cultural rights as vigorously as they address violations of civil and political rights. (Guideline 25)

Many national human rights institutions are increasingly aware of the need to protect and promote economic, social and cultural rights.⁷ Many human rights non-governmental organizations and academic writers have urged that this protection and promotion be continued and furthered.⁸ The International Council on Human Rights Policy, for example, in a March 2000 report on the performance and legitimacy of national human rights institutions, recommended that "national human rights institutions should address economic, social and cultural rights" and suggested that they identify areas of exclusion and develop policy proposals to deal with those rights.⁹

In July 2000, the Commonwealth Conference on National Human Rights Institutions recommended that:

national institutions, whether or not their enabling statutes and national constitutions recognise economic, social and cultural rights as justiciable, should employ all available means to deal with the questions related to the advancement of economic, social and cultural rights.¹⁰

National human rights institutions have many functions in relation to the protection and promotion of human rights, including handling complaints, undertaking investigations, monitoring the performance of obligations under human rights treaties, advising the State on the domestic application of international treaty obligations, recommending policy changes and providing training and public education. They can exercise these functions as effectively for the protection and promotion of economic, social and cultural rights as for civil and political rights. To give proper attention to economic, social and cultural rights, however, national human rights institutions need a comprehensive understanding of the legal nature of these rights and relevant State obligations under international and domestic law. They also need to explore the breadth of their mandates, review their internal and external resources and address the challenges of implementing economic, social and cultural rights.

⁷ The Committee on Economic, Social and Cultural Rights in its concluding observations (E/C.12/1/Add.31 of 10 December 1998) on the third periodic report of Canada submitted under the International Covenant on Economic, Social and Cultural Rights welcomed the Canadian Human Rights Commission's statement about the inadequate protection and enjoyment of economic and social rights in Canada and its proposal for the inclusion of those rights in human rights legislation, as recommended by the Committee. The Committee also expressed concern that in both Ontario and Quebec, governments had adopted legislation to redirect social assistance payments directly to landlords without the consent of recipients, despite the fact that the Quebec Human Rights Commission and an Ontario human rights tribunal had found that treatment of social assistance recipients to be discriminatory. See also *National Human Rights Institutions: Articles and Working Papers: Input into the Discussions on the Establishment and Development of the Functions of National Human Rights Institutions*, Lindsnaes, Lindholt and Yigen, eds. (Copenhagen, Danish Centre for Human Rights, 2000).

⁸ See "National human rights commissions and economic, social and cultural rights" (Module 23), in *Circle of Rights: Economic, Social and Cultural Rights Activism: A Training Resource* (International Human Rights Internship Program and Asian Forum for Human Rights and Development, 2000). See also Mario Gomez, "Social economic rights and human rights commissions" in *Human Rights Quarterly*, vol. 17, No. 1 (February, 1995), pp. 155-169.

⁹ International Council on Human Rights Policy, *Performance and Legitimacy: National Human Rights Institutions* (Versoix, Switzerland, March 2000) (www.ichrp.org).

¹⁰ *Protecting Human Rights: The Role of National Institutions*, Commonwealth Conference of National Human Rights Institutions, 4-6 July 2000 (Cambridge, Commonwealth Secretariat), p. 20.

The aim of the handbook

This handbook is intended to help national human rights institutions maximize the effectiveness of their functions and powers in addressing economic, social and cultural rights. Its aim is to assist national human rights institutions in the development of policies, processes and skills to integrate economic, social and cultural rights further into their work, thereby enabling them to address poverty and development, for example, through an economic, social and cultural rights framework.

This handbook will discuss ways in which national human rights institutions can become more effective in protecting and promoting economic, social and cultural rights. It will examine how national institutions' legal mandates can be interpreted to incorporate economic, social and cultural rights within their jurisdictions, how their functions and powers can be exercised more appropriately in regard to these rights, how they can use their resources most efficiently and effectively and how they can implement economic, social and cultural rights in the political and social contexts in which they operate.

Although the handbook is directed specifically at the protection and promotion of economic, social and cultural rights, many of its approaches are equally applicable to the work of national human rights institutions in relation to civil and political rights.

The intended audience for the handbook

The handbook is intended primarily for the members and staff of national human rights institutions. However, it can also serve as a resource for those involved in the establishment of new national human rights institutions and for partners of existing national human rights institutions that wish to support the incorporation of economic, social and cultural rights in the mandate and activities of these institutions.

How to use the handbook

The handbook is designed to be informative, widely applicable, globally relevant and easy to use. Where possible, case studies and examples illustrate how national human rights institutions have addressed economic, social and cultural rights. Key international instruments are annexed to the handbook and a bibliography is also provided. The handbook could be adapted into a trainer's guide for national human rights institutions.

The handbook has three main sections.

SECTION 1 seeks to deepen understanding of the legal nature of economic, social and cultural rights and of State obligations to promote and protect them under international and domestic law.

SECTION 2 examines the important role national human rights institutions can play in protecting and promoting economic, social and cultural rights through a fuller understanding and interpretation of their mandate, powers and functions. It also outlines challenges in addressing economic, social and cultural rights.

SECTION 3 focuses on practical strategies for national human rights institutions to work effectively in the promotion and protection of economic, social and cultural rights.

I. THE NATURE OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Economic, social and cultural rights are fully recognized in international human rights law. Historically, these rights have received less attention than civil and political rights, but they are now being focused on increasingly. This section of the handbook discusses the legal nature of these rights and of the obligations they impose on States.

As will be discussed in the next section of the handbook, national human rights institutions have important roles to play in protecting and promoting economic, social and cultural rights. To do so effectively, members and staff of national human rights institutions need to have a comprehensive understanding of the legal foundations of and State obligations with regard to economic, social and cultural rights, as well as other features of these rights. This section introduces these issues, briefly examining the normative framework of economic, social and cultural rights and the legal obligations of States that have recognized these rights.

A. THE NORMATIVE FRAMEWORK

International human rights law recognizes economic, social and cultural rights as integral parts of the human rights framework. The key international texts explicitly referring to economic, social and cultural rights are:

- Universal Declaration of Human Rights (1948);
- International Convention on the Elimination of All Forms of Racial Discrimination (1965);
- International Covenant on Economic, Social and Cultural Rights (1966);
- Declaration on Social Progress and Development (1969);
- Convention on the Elimination of All Forms of Discrimination against Women (1979);
- Declaration on the Right to Development (1986);
- Convention on the Rights of the Child (1989);
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).¹¹

In addition, many regional human rights instruments address economic, social and cultural rights, most notably:

- African Charter on Human and Peoples' Rights (1981);
- Additional Protocol in the Area of Economic, Social and Cultural Rights to the American Convention on Human Rights (Protocol of San Salvador) (1988);
- European Social Charter (revised 1996) and the Additional Protocol thereto.

Economic, social and cultural rights are also widely recognized in domestic legal systems, although not to the same extent as civil and political rights. Dozens of national constitutions, including those of South Africa, Finland and Portugal, explicitly recognize economic, social and cultural rights as fully justiciable rights. Their protection and promotion are included as general State duties within the legal and policy spheres in many other national constitutions, including those of India, the Netherlands and Mexico. Virtually all States have domestic statutes of one form or another that incorporate elements of economic, social and cultural rights. The legal status of these rights, therefore, is not in doubt. Although few domestic legal systems incorporate all elements of every economic, social and cultural right, the great majority of States have ratified international treaties recognizing these rights and have adopted national and local laws to give effect to them.

Human rights as a single body of law

Civil and political rights and economic, social and cultural rights are not fundamentally different from one another, either in law or in practice. All rights are indivisible and interdependent.

¹¹ In addition, a large number of conventions and recommendations adopted by the International Labour Organization (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Food and Agriculture Organization of the United Nations (FAO) and other inter-governmental organizations have established specific standards recognizing various economic, social and cultural rights. The 1951 Convention relating to the Status of Refugees also contains specific economic, social and cultural rights for refugees.

ECONOMIC SOCIAL AND CULTURAL RIGHTS STANDARDS

1. The indivisibility and interdependence of all rights

The indivisibility and interdependence of all human rights – civil, cultural, economic, political and social – are fundamental tenets of international human rights law, repeatedly reaffirmed, perhaps most notably at the 1993 World Conference on Human Rights.¹²

This has not always been the case. Indeed, human rights advocates had to devote immense efforts to achieve the normative and the practical recognition of the interdependence of rights. Indivisibility and interdependence are central principles of human rights, as are the inherent dignity of the human being, participation and gender equity.

The indivisible and interdependent nature of all human rights means that economic, social and cultural rights apply to all individuals on the basis of equality and without discrimination, that they create specific governmental obligations, that they are justiciable and that they can and should be claimed.

All rights need to be treated as equal by national human rights institutions in their efforts to promote and protect human rights.

All human rights treaties contain provisions of direct relevance to economic, social and cultural rights. Even the International Covenant on Civil and Political Rights and other treaties apparently dealing exclusively with civil and political rights, in recognizing the rights to life, equal protection of the law and freedom of association, indirectly recognize components of economic, social and cultural rights. Courts in many jurisdictions have acknowledged this.¹³ For example, many courts have held that the right to life must include other rights that are essential to a basic quality of life, such as education and health care. The continued categorization of rights into these two traditional groups is becoming increasingly meaningless and irrelevant, the product of a flawed approach to understanding and interpreting human rights law and human rights violations. Many human rights are essentially permeable. Civil and political rights and economic, social and cultural rights should be merged, not divorced.¹⁴ In this way,

¹² One of the central reaffirmations of the equal nature of these two sets of rights is to be found in United Nations General Assembly resolution 32/130 of 16 December 1977, which asserts that (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; (c) 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.

¹³ Under the European Convention on Human Rights, the *Airey* case is perhaps most often cited in this respect: "Whilst the Convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature. The [European] Court [of Human Rights] therefore considers, like the Commission, that the mere fact that an interpretation of the Convention may extend into the sphere of social and economic rights should not be a decisive factor against such an interpretation; there is no watertight division separating that sphere from the field covered by the Convention". (Eur. Ct. H.R., *Airey* judgement (9 October 1979), Series A, No. 32, p. 15, para. 26). See also, the 1986 cases of *Feldbrugge v. the Netherlands* (Eur. Ct. H.R. Series A, No. 99, 8 EHRR 425) and *Deumeland v. Germany* (Eur. Ct. H.R. Series A, No. 100, 8 EHRR 448) that determined that certain forms of social security benefits are covered by the civil rights and obligations clause of article 6 (1) and are thus justiciable at the domestic level. With respect to the application of such doctrines to the International Covenant on Civil and Political Rights, see the cases of *Broeks v the Netherlands* (Comm. No. 172/1984), United Nations document CCPR/C/29/D/172/1984 of 16 April 1987; *L.G. Danning v. the Netherlands* (Comm. No. 180/1984) United Nations document CCPR/C/29/D/180/1984 of 16 April 1987; and *Zwaan de Vries v. the Netherlands* (Comm. No. 182/1984), United Nations document CCPR/C/29/D/182/1984 of 16 April 1987, as considered by the Human Rights Committee.

¹⁴ Craig Scott, "The interdependence and permeability of human rights norms: towards a partial fusion of the International Covenants on Human Rights" in *Osgoode Hall Law Journal*, vol. 27, No. 4, 1989; see in particular pp. 851-878.

all human rights standards can be used to bolster economic, social and cultural rights claims.

This unified approach to human rights encompasses the principles of equality and non-discrimination, which form the basis of human rights law. These principles include equal treatment, equal protection of the law, equal opportunity and substantive equality. Although generally associated with civil and political rights, these principles apply equally to economic, social and cultural rights. Their significance will continue to expand, particularly as forms of substantive equality gain greater recognition and as equality rights are recognized as entailing positive obligations to act, and not merely obligations of governmental restraint.¹⁵

International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (1966) remains the foundational treaty on economic, social and cultural rights. It recognizes the rights to:

- Self-determination (art. 1);
- Equality for men and women (art. 3);
- Work and favourable conditions of work (arts. 6 and 7);
- Form and join trade unions (art. 8);
- Social security (art. 9);
- Protection of the family, mothers and children (art. 10);
- An adequate standard of living, including adequate food, clothing and housing (art. 11);
- The highest attainable level of health and health care (art. 12);
- Education (art. 13);
- Free and compulsory primary education (art. 14);
- Take part in cultural life; benefit from scientific progress: and benefit from the protection of scientific, literary or artistic production of which one is the author (art. 15).¹⁶

As of April 2004, 149 States had become parties to the Covenant and so had voluntarily undertaken to implement and give effect to the norms and provisions it establishes. Another six States had signed but not yet ratified the Covenant, indicating their acceptance of the rights it recognizes, but not yet their acceptance of obligations in relation to them. The Committee on Economic, Social and Cultural Rights monitors States' compliance with their obligations under the Covenant. It has issued numerous concluding observations on the periodic reports submitted by States on their implementation of the Covenant. It has also adopted a series of general comments on the interpretation and application of various provisions of the Covenant.

¹⁵ See, for instance, *Schacter v. Canada* (1990), Federal Court of Appeal of Canada, 2 F.C. 129 (Ct. App.). See also Paul Hunt, *Reclaiming Social Rights: International and Comparative Perspectives* (Aldershot, Dartmouth Publishing Company, 1996), pp. 95-106.

¹⁶ In addition to the rights contained in the Covenant, national human rights institutions will also need to be aware of international legal rules relating to derogations, restrictions and limitations which Governments may attempt to invoke, and should have well-prepared strategies for confronting any spurious attempts by States to use these principles as a justification for abrogating obligations to promote the enjoyment of these rights. National human rights institutions should ensure that any derogations, restrictions or limitations sought by States parties to the International Covenant on Economic, Social and Cultural Rights under articles 4 and 5 satisfy the following criteria: they are in conformity with law; they are necessary in a democratic society; they are carried out to protect the rights of others; the measures are proportionate to the objectives sought; the measures proposed are the least intrusive and restrictive option; there is no arbitrary discrimination against any individual or group; and the measures are both reasonable and justifiable.

In 1993, the World Conference on Human Rights recommended the elaboration and adoption of an optional protocol to the Covenant that would grant individuals and groups the right to submit communications (complaints) concerning non-compliance with the Covenant. At its fifteenth session, in Geneva in 1996, the Committee concluded its consideration of a draft protocol¹⁷ and submitted it to the Commission on Human Rights at its fifty-third session, in Geneva in 1997. The proposed optional protocol has yet to be adopted by the relevant United Nations organs.

General comments

The Committee on Economic, Social and Cultural Rights adopts general comments to provide guidance on the interpretation and application of the provisions of the Covenant. Its comments give further substance to the norms and provisions found in the Covenant. These general comments and those adopted by other human rights bodies are valuable statements, outlining the content, intent and legal meaning of the subjects they address.

The Committee on Economic, Social and Cultural Rights has adopted the following general comments:¹⁸

- General Comment No. 1: Reporting by States parties (1989);
- General Comment No. 2: International technical assistance measures (art. 22 of the Covenant) (1990);
- General Comment No. 3: The nature of States parties' obligations (art. 2, para.1 of the Covenant) (1990);
- General Comment No. 4: The right to adequate housing (art.11, para.1 of the Covenant) (1991);
- General Comment No. 5: Persons with disabilities (1994);
- General Comment No. 6: The economic, social and cultural rights of older persons (1995);
- General Comment No. 7: The right to adequate housing (art.11, para.1 of the Covenant): forced evictions (1997);
- General Comment No. 8: The relationship between economic sanctions and respect for economic, social and cultural rights (1997);
- General Comment No. 9: The domestic application of the Covenant (1998);
- General Comment No. 10: The role of national human rights institutions in the protection of economic, social and cultural rights (1998);
- General Comment No. 11: Plans of action for primary education (art.14 of the Covenant) (1999);
- General Comment No. 12: The right to adequate food (art.11 of the Covenant) (1999);
- General Comment No. 13: The right to education (art.13 of the Covenant) (1999);
- General Comment No. 14: The right to the highest attainable standard of health (art.12 of the Covenant) (2000);
- General Comment No.15: The right to water (2002).

¹⁷ E/CN.4/1997/105, annex.

¹⁸ The general comments of the Committee on Economic, Social and Cultural Rights and of other United Nations human rights treaty bodies are to be found in United Nations document HRI/GEN/1/Rev. 6.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS STANDARDS

2. The main human rights bodies

Many international and regional human rights bodies focus on economic, social and cultural rights. They provide insight into the nature and content of economic, social and cultural rights, and have developed substantial bodies of jurisprudence on these rights. The most significant of the institutions dealing with economic, social and cultural rights are:

- The Committee on Economic, Social and Cultural Rights, which monitors implementation of the International Covenant on Economic, Social and Cultural Rights;
- The European Committee of Social Rights, which monitors implementation of the European Social Charter¹⁹ and examines complaints under a collective complaints procedure;
- The European Court of Human Rights, which monitors the European Convention on Human Rights and Fundamental Freedoms;
- The (United Nations) Commission on Human Rights and its Sub-Commission on the Promotion and Protection of Human Rights, and the special rapporteurs appointed by them to study various issues concerning economic, social and cultural rights.

Other sources of guidance on State obligations relating to economic, social and cultural rights

Several other authoritative statements provide further guidance on the nature and substance of State obligations relating to economic, social and cultural rights.

In 1986, a group of distinguished international experts in international law, meeting at the University of Limburg at Maastricht, the Netherlands, developed a set of principles on obligations in relation to economic, social and cultural rights, the *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*. These principles set out views on the interpretation of key provisions of the Covenant. They provide a comprehensive framework for understanding the legal nature of the norms found in the Covenant and are widely used as a means of interpreting those norms. They preceded General Comment No. 3 of 1990 of the Committee on Economic, Social and Cultural Rights on the nature of States parties' obligations under the Covenant and were very influential when the Committee came to prepare that general comment. The Limburg Principles also deal with reporting by States on their compliance with the Covenant. The Limburg Principles are included in the annex to this handbook.

In 1992, Danilo Türk, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (now the Sub-Commission on the Promotion and Protection of Human Rights) on the realization of economic, social and cultural rights, developed some basic postulates to guide any approach to economic, social and cultural rights. His postulates relate mainly to the nature of State obligations with respect to these rights.

¹⁹ Under the Social Charter, for instance, a methodology labelled a "decency threshold" has been developed and applied. In determining compliance by States parties with the right established under article 4.1 of the Charter ("the right of workers to a remuneration such as will give them and their families a decent standard of living"), the European Committee of Social Rights, while recognizing the diversity of social and economic conditions in States parties, has determined that any wage which is less than 68 per cent of the average national wage, combined with compensatory measures, would fail to attain the "decency threshold" and would not fulfil the norms of the Charter. This measurement of compliance demonstrates clearly that justiciable precision can be generated by adjudicating bodies from relatively imprecise norms and that violations can be derived, even if based on what may be perceived as relatively vague provisions.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS STANDARDS

3. Basic postulates proposed by Danilo Türk²⁰

- a) All States possess varying degrees of legal obligations to fulfil economic, social and cultural rights. These obligations have local, national, regional and international dimensions.
- b) Economic, social and cultural rights are interdependent with, and are as legal in nature as, civil and political rights. They are non-temporal in nature; their application and relevance should be consistent and sustainable, notwithstanding the frequent ebb and flow of both the internal and external economic environment. Constant attention must be paid to utilizing “all available resources” towards the fulfilment of these human rights.
- c) While specific State obligations may differ, all human rights must be applied on a basis of equality of access and opportunity, in fact and in law, for all persons. Due priority must be placed on those who are most vulnerable and disadvantaged and consequently least able to achieve these rights for themselves.
- d) States with specific legal obligations to fulfil economic, social and cultural rights are obliged, regardless of their level of economic development, to ensure respect for minimum subsistence rights for all.
- e) Legal obligations towards the realization of economic, social and cultural rights are multidimensional. At the macro-level they affect: (i) national and local governments and agencies, as well as third parties capable of breaching these norms; (ii) the international community of States; and (iii) intergovernmental organizations and agencies.
- f) Stemming from point (e), all actors with either implicit or explicit mandates vis-à-vis the realization of economic, social and cultural rights should recognize the direct applicability of their work to the issue of economic, social and cultural rights, as well as ensuring that the policies, projects, perspectives and programmes pursued by them do not harm the prospects of these rights being realized nor the capability of a State to fulfil its own legal responsibilities.
- g) Human rights do not exist in a vacuum. The fulfilment of all rights, including those of a socio-economic nature, is contingent upon a wide variety of economic, social, political, historical, philosophical and legal choices and forces. Each of them, in addition to others, will play a role in the realization of these rights. None should be over-emphasized and none should be forgotten.
- h) The increasing integration and internationalization of the global economy, as well as of political and social structures and processes, increase the importance of international cooperation and responsibility.

In 1997, the Limburg Principles were supplemented by guidelines prepared at another meeting of international law experts, at Maastricht. The *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* discuss the significance of economic, social and cultural rights, violations of these rights through acts of commission and omission, responsibility for violations and the entitlement of victims to effective remedies. The Maastricht Guidelines are also included in the annex to this handbook.

²⁰ E/CN.4/Sub.2/1991/17, para. 52.

B. STATE OBLIGATIONS

Article 2 of the International Covenant on Economic, Social and Cultural Rights outlines the basic obligations of States parties in relation to each of the rights found in the Covenant.²¹ National human rights institutions will need to become familiar with the terms of article 2, how these terms have been interpreted and how this article can be used to strengthen the enjoyment of economic, social and cultural rights at the domestic level.

Article 2 provides

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.

Several key principles of article 2, as well as the general obligations created by the recognition of economic, social and cultural rights, require further elaboration. These are:

- “undertakes to take steps ... by all appropriate means, including particularly the adoption of legislative measures”;
- “with a view to achieving progressively the full realization of the rights”
- “to the maximum of its available resources”;
- “without discrimination”;
- “through international assistance and cooperation”;
- The obligation to respect;
- The obligation to protect;
- The obligation to fulfil.

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

Article 2.1 requires States parties to begin immediately to take measures towards the full enjoyment of all the rights in the Covenant by everyone. In many cases, the adoption of legislation will be indispensable if economic, social and cultural rights are to be enforceable. But laws alone are not a sufficient response to the Covenant obligations. Administrative, judicial, policy, economic, social and educational measures and all other necessary steps will be required of Governments to ensure these rights to all. As important as it is, the law alone is rarely enough to ensure the widespread enjoyment of economic, social and cultural rights.

²¹ One of the more influential works towards defining State obligations is Philip Alston and Gerard Quinn, “The nature and scope of States Parties’ obligations under the International Covenant on Economic, Social and Cultural Rights”, in *Human Rights Quarterly*, vol. 9, No. 2 (May, 1987), pp. 156-229.

Under article 2.1 States parties may be 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, for instance, when a law is patently discriminatory or has the express effect of preventing the enjoyment of any of the rights contained in the Covenant, or when legislation allows the violation of rights, especially in terms of the negative duties of States. For example, laws allowing Governments to remove people violently from their homes, or their eviction without due process of law, would require amendment so that domestic legislation conforms with the Covenant. According to the Limburg Principles, this means:

17. At the national level States Parties shall use all appropriate means, including legislative, administrative, judicial, economic, social and educational measures, consistent with the nature of the rights in order to fulfil their obligations under the Covenant.
18. Legislative measures alone are not sufficient to fulfil the obligations of the Covenant. It should be noted, however, that article 2 (1) would often require legislative action to be taken in cases where existing legislation is in violation of the obligations assumed under the Covenant.
19. States Parties shall provide for effective remedies including, where appropriate, judicial remedies.
20. The appropriateness of the means to be applied in a particular State shall be determined by that State Party, and shall be subject to review by the United Nations Economic and Social Council, with the assistance of the Committee [on Economic, Social and Cultural Rights]. Such review shall be without prejudice to the competence of the other organs established pursuant to the Charter of the United Nations.

“with a view to achieving progressively the full realization of the rights”

The progressive realization component of the Covenant is often mistakenly taken to imply that economic, social and cultural rights can be realized only when a country reaches a certain level of economic development. This is neither the intent nor the legal interpretation of this provision. Rather, this duty obliges all States parties, notwithstanding the level of national wealth, to move as quickly as possible towards the realization of economic, social and cultural rights.²² The Covenant requires the effective and equitable use of resources immediately.

According to General Comment No. 3 of the Committee on Economic, Social and Cultural Rights on the nature of States parties’ obligations (see annex), 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 a State party. Therefore, a State’s failure to take steps is a violation of the Covenant. The obligation to protect economic, social and cultural rights also requires States to develop targeted, legally consistent and sufficiently progressive policies to secure the rights contained in the Covenant. The use of indicators as a means of monitoring and evaluating specific aspects of economic, social and cultural rights appears to be increasingly accepted as a “step” towards the implementation of the Covenant.²³

²² See General Comment No. 3 of the Committee on Economic, Social and Cultural Rights on the nature of States parties’ obligations, para. 9.

²³ See, for instance, preliminary work on the possible use of indicators with respect to these rights in the progress report prepared by Danilo Türk, Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights on the realization of economic, social and cultural rights (E/CN.4/Sub.2/1990/19), chapter I, “Social and economic indicators and their role in the realization of economic, social and cultural rights”, paras. 1-105.

The Limburg Principles *highlight that*:

16. All States Parties have an obligation to begin immediately to take steps towards full realization of the rights contained in the Covenant.

The phrase “to achieve progressively” does not mean or imply that States have the right to defer indefinitely efforts to ensure the enjoyment of the rights contained in the Covenant. That kind of deferral would be inconsistent with international law.

Although certain rights, by their nature, may be more closely linked to the progressive implementation rule, many obligations under the Covenant are clearly required to be implemented immediately. This applies especially to the non-discrimination provisions and the obligation of States parties to refrain from actively violating economic, social and cultural rights or from withdrawing legal and other protections relating to these rights.

The Committee on Economic, Social and Cultural Rights has asserted that this obligation exists independently of an increase in available resources. It recognizes that all available resources must be devoted in the most effective way possible towards the realization of the rights enshrined in the Covenant. The Limburg Principles address the issue of progressivity in the following terms:

21. The obligation “to achieve progressively the full realization of the rights” requires States Parties to move as expeditiously as possible towards the realization of the rights. Under no circumstances shall this be interpreted as implying for States the right to defer indefinitely efforts to ensure full realization. On the contrary all States Parties have the obligation to begin immediately to take steps to fulfil their obligations under the Covenant.
22. Some obligations under the Covenant require immediate implementation in full by all States Parties, such as the prohibition of discrimination in article 2 (2) of the Covenant.
23. The obligation of progressive achievement exists independently of the increase in resources; it requires effective use of resources available.
24. Progressive implementation can be effected not only by increasing resources, but also by the development of societal resources necessary for the realization by everyone of the rights recognized in the Covenant.

Acceptance of the progressive realization of rights is not restricted to economic, social and cultural rights.²⁴ However, the International Covenant on Economic, Social and Cultural Rights alone uses the term “progressive” in relation to obligations. This does not affect the legal nature of the rights and does not imply that no immediate obligations exist with regard to the Covenant. The obligation requires States to show discernible progress towards the enjoyment by everyone of the rights contained in the Covenant. States cannot use the notion of progress as a pretext for failing to comply with the Covenant, nor can they justify limitations of or derogation from economic, social and cultural rights on that basis. National human rights institutions and others, however, will need to guard against the progressive realization clause being used as an escape hatch by States seeking to avoid their obligations under the Covenant.

²⁴ "The HRC [Human Rights Committee] has interpreted article 6 [of the International Covenant on Civil and Political Rights, the right to life] as encompassing wide-ranging positive obligations, some of which are clearly of a progressive nature. For example, matters such as infant mortality, malnutrition, and public health schemes have been raised. This approach was echoed in the collective opinion of the HRC as expressed in its first General Comment on article 6. Views under the Optional Protocol have also suggested that there is a preventative or positive aspect to article 6." (Dominic McGoldrick, *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights* (Oxford, Clarendon Press, 1994), p. 346).

New interpretations of the principle of progressive realization may need to be developed in order to ensure that public officials and courts understand that States must move as expeditiously as possible towards the full realization of the rights found in the Covenant. This standard must be viewed, used and acted upon by States in a positive way to prevent or reverse any regressive policies, laws or practices negatively affecting the full enjoyment of economic, social and cultural rights. It implies, by necessity, an obligation on States to improve the overall enjoyment of particular rights and presumes a constantly expanding web of legal protection for all rights holders.

The obligation of progressive realization includes an obligation not to take or permit regressive measures. An economic or social right that cannot be ensured in full must be ensured to the maximum extent possible. This partial realization does not violate the Covenant. But regression from a higher level of enjoyment, partial or full, to a lower level of enjoyment may constitute a violation of the Covenant.

Any deliberately regressive measures, such as rescinding legislation affecting the enjoyment of economic, social and cultural rights, can only be justified by reference to the totality of the rights provided for in the Covenant and in the context of the full utilization of a State's maximum available resources. Similarly, the Committee on Economic, Social and Cultural Rights has emphasized that "policies and legislation should ... not be designed to benefit already advantaged social groups at the expense of others".²⁵

"to the maximum of its available resources"

The term "available resources" includes both domestic resources and any international economic or technical assistance or cooperation available to a State. The term covers both public expenditure and all other resources that can be applied towards the full realization of economic, social and cultural rights.²⁶

Like the progressive realization provision, the "available resources" standard is also often used to justify the non-enjoyment or violation of economic, social and cultural rights. However, as recognized in the Limburg Principles, this requirement obliges a State to ensure minimum subsistence rights for everyone, regardless of the level of its economic development, and is by no means intended as a method of non-compliance for poor States.²⁷

According to the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, "as established by Limburg Principles 25-28, and confirmed by the developing jurisprudence of the Committee on Economic, Social and Cultural Rights, resource scarcity does not relieve States of certain minimum obligations in respect of the implementation of economic, social and cultural rights".²⁸

²⁵ General Comment No. 4 on the right to adequate housing, para. 11.

²⁶ According to one author, "resources" can be divided into the following five categories: 1. human resources; 2. technological resources; 3. information resources; 4. natural resources; and 5. financial resources. Referring to the phrase "maximum of available resources", he asserts: "It is a difficult one—two warring adjectives describing an undefined noun. 'Maximum' stands for idealism; 'available' stands for reality. 'Maximum' is the sword of human rights rhetoric; 'available' is the wiggle room for the State". (Robert E. Robertson, "Measuring State compliance with the obligation to devote the 'maximum available resources' to realising economic, social and cultural rights" in *Human Rights Quarterly*, vol. 16, No. 4 (November, 1994), pp. 693- 694).

²⁷ Principles 25 to 28 of the Limburg Principles state: "25. States parties are obligated, regardless of the level of economic development, to ensure respect for minimum subsistence rights for all; 26. 'Its available resources' refers to both the resources within a State and those available from the international community through international cooperation and assistance; 27. In determining whether adequate measures have been taken for the realization of the rights recognized in the Covenant attention shall be paid to equitable and effective use of and access to the available resources; 28. In the use of the available resources due priority shall be given to the realization of rights recognized in the Covenant, mindful of the need to assure to everyone the satisfaction of subsistence requirements as well as the provision of essential services."

²⁸ Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (guideline 10).

The Committee on Economic, Social and Cultural Rights in its General Comment No. 4 on the right to adequate housing says:

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 is 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 concerning 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. (para. 14)

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 ... (para. 15)

The requirement to devote the maximum of available resources to the full realization of economic, social and cultural rights affects government decisions about budgets and expenditure. In making decisions about the expenditure of public money, States are required to give priority to meeting their treaty obligations before funding discretionary activities. Similarly, in making decisions about the level of taxation to impose, States must ensure that they raise sufficient revenue to be able to assure to everyone the satisfaction of subsistence requirements and the provision of essential services.

The Committee on Economic, Social and Cultural Rights has implied that where there is no apparent justification for a reduction in public expenditure on programmes related to economic, social and cultural rights the State might be considered to have violated its obligations under the Covenant. In determining, in the framework of "the maximum of available resources", whether public expenditure towards securing the norms of the Covenant is sufficient in relation to overall expenditure, the Committee has found it difficult to make unequivocal statements. However, it has implied that, in the absence of a reasonable justification for a reduction in public expenditure, a State could be construed as having violated the Covenant. Additionally, on many occasions it has issued detailed requests that would require positive State intervention.²⁹

"without discrimination"

Article 2.2 of the Covenant provides for the realization of economic, social and cultural rights without discrimination. This article obliges States to desist from discriminatory behaviour and to alter laws and practices which allow discrimination. States must also prohibit private persons and bodies (third parties) from discriminating in any field of public life. States parties should ensure judicial and other recourse procedures where discrimination occurs. The article lists many prohibited grounds of discrimination: "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". This list is not exhaustive. Discrimination on any other ground that impairs the enjoyment of economic, social and cultural rights must be eliminated. So discrimination based on age, wealth, income level or sexual orientation would also be prohibited.

²⁹ In the case of the Dominican Republic, the Committee asserted: "All persons residing in extremely precarious conditions such as those residing under bridges, on cliff sides, in homes dangerously close to rivers, ravine dwellers, residents of Barrancones and Puente Duarte, and the more than 3,000 families evicted between 1986-1994 who have yet to receive relocation sites (from Villa Juana, Villa Consuelo, Los Frailes, San Carlos, Guachupita, La Fuente, Zona Colonial, Maquiteria, Cristo Rey, La Cuarenta, Los Rios and La Zurza), should all be ensured, in a rapid manner, the provision of adequate housing in full conformity with the provisions of the Covenant". *Official Records of the Economic and Social Council, 1995, Supplement No.3 (E/1995/22-E/C.12/1994/20)*, para. 327.

The Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination provide that special measures taken to ensure equal enjoyment of economic, social and cultural rights for those protected by the respective convention are not discriminatory. The Limburg Principles extend that approach to marginalized and disadvantaged groups and individuals generally.³⁰ Special measures must not lead to the maintenance of separate rights for different groups and must be discontinued after their intended objectives have been achieved. This principle applies to affirmative action programmes, for example.

“through international assistance and cooperation”

State obligations under article 2 are to be performed “individually and through international assistance and cooperation”. The Covenant recognizes that many States will be unable to meet their obligations acting alone and that they will require international support. This provision has two dimensions: an obligation to receive and an obligation to provide.

Often States which are in the course of development or transition do not have the resources to ensure the full realization of economic, social and cultural rights for all their citizens immediately or within a short period. For that reason, the Covenant requires not immediate implementation in full, but progressive realization to the maximum of available resources. But the Covenant also requires that, where necessary, States should accept external assistance for their programme of progressive realization. External assistance must be considered part of the available resources. A State cannot adopt an isolationist stance or an ideology of immediate self-sufficiency when it is unable to meet its obligations in relation to economic, social and cultural rights and external assistance is available.

States which have adequate means to provide support have an obligation to provide it to States which cannot financially meet their obligations to assure economic, social and cultural rights to all within their jurisdiction. The requirement concerning international assistance and cooperation applies both ways. States able to provide assistance should be accountable for their actions and omissions if they do so inadequately or not at all.

³⁰ Principles 35 to 41 of the Limburg Principles provide: "35. Article 2 (2) calls for immediate application and involves an explicit guarantee on behalf of the States parties. It should, therefore, be made subject to judicial review and other recourse procedures; 36. The grounds of discrimination mentioned in article 2 (2) are not exhaustive; 37. Upon becoming a party to the Covenant States shall eliminate *de jure* discrimination by abolishing without delay any discriminatory laws, regulations and practices (including acts of omission as well as commission) affecting the enjoyment of economic, social and cultural rights; 38. *De facto* discrimination occurring as a result of the unequal enjoyment of economic, social and cultural rights, on account of a lack of resources or otherwise, should be brought to an end as speedily as possible; 39. Special measures taken for the sole purpose of securing adequate advancement of certain groups or individuals requiring such protection as may be necessary in order to ensure to such groups or individuals equal enjoyment of economic, social and cultural rights shall not be deemed discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different groups and that such measures shall not be continued after their intended objectives have been achieved; 40. Article 2 (2) demands from States parties that they prohibit private persons and bodies from practising discrimination in any field of public life; 41. "In the application of article 2 (2) due regard should be paid to all relevant international instruments, including the Declaration and the International Convention on the Elimination of All Forms of Racial Discrimination, as well as to the activities of the supervisory committee (CERD) under the said Convention."

The obligation to respect

In addition to the various specific obligations under article 2.1 of the Covenant, there are three general obligations within the legal framework of economic, social and cultural rights: the obligations to respect, to protect and to fulfil these rights.³¹

The obligation to respect economic, social and cultural rights requires States to abstain from performing, sponsoring or tolerating any practice, policy or legal measure violating the integrity of individuals or infringing upon their freedom to use those material or other resources available to them in ways they find most appropriate to satisfy economic, social and cultural rights.³² This obligation protects citizens from arbitrary interference with the enjoyment of economic, social and cultural rights. For instance, the arbitrary forced eviction of members of a community from their homes would violate this obligation (see box, Economic, Social and Cultural Rights Standards: 4. General Comments and forced evictions). The obligation to respect relates to:

- The right to be free from all forms of discrimination;
- The right of participation, including the right of citizens to seek to influence relevant laws or policies;
- The rights of organization, assembly and association, particularly in community-based and non-governmental organizations;
- The right to equality of treatment, particularly in the allocation of resources and access to credit;
- The right to be free to enjoy rights already attained, without arbitrary interference by the State;
- The right not to be arbitrarily excluded from access to a school or hospital or other service related to economic, social and cultural rights.

31 According to guideline 6 of the Maastricht Guidelines, "Like civil and political rights, economic, social and cultural rights impose three different types of obligations on States: the obligations to respect, protect and fulfil. Failure to perform any one of these three obligations constitutes a violation of such rights. The obligation to *respect* requires States to refrain from interfering with the enjoyment of economic, social and cultural rights. Thus, the right to housing is violated if the State engages in arbitrary forced evictions. The obligation to *protect* requires States to prevent violations of such rights by third parties. Thus, the failure to ensure that private employers comply with basic labour standards may amount to a violation of the right to work or the right to just and favourable conditions of work. The obligation to *fulfil* requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights. Thus, the failure of States to provide essential primary health care to those in need may amount to a violation."

32 In this context, Governments should desist from restricting the right to popular participation and must accept the corresponding commitment to facilitate and create economic, social and political conditions conducive to self-help initiatives by the beneficiaries of economic, social and cultural rights, as well as to respect the rights to organize and assemble freely, which are essential for the assertion of demands by those entitled to economic, social and cultural rights.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS STANDARDS

4. General comments and forced evictions

Of the acts of commission and omission considered by the Committee on Economic, Social and Cultural Rights as constituting violations of the International Covenant on Economic, Social and Cultural Rights, none has received more prominence than the practice of forced eviction. The Committee's General Comment No. 4 on the right to adequate housing (1991) stipulates that "instances of forced evictions 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".³³

In May 1997, the Committee adopted General Comment No. 7, on forced evictions, which significantly expands the protection afforded against eviction. It goes considerably further than most previous pronouncements in detailing what Governments, landlords and institutions such as the World Bank must do to preclude forced evictions and, by inference, to prevent violations of human rights. This is the first general comment issued by the Committee to address a specific violation of the Covenant.

General Comment No. 7 deals with the obligation to respect. It asserts that "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".

The general comment also deals with the obligation to protect. It urges States to "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". Therefore, private landlords, developers and international institutions such as the World Bank and any other third parties or non-State actors are subject to the relevant legal obligations and can anticipate the enforcement of the law against them if they carry out forced evictions. Governments are required to implement protective domestic laws to punish persons responsible for forced evictions carried out without proper safeguards.

Lastly, General Comment No. 7 provides for the obligation to fulfil. It breaks new ground by declaring that "evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights". As a result, Governments must guarantee that people who are evicted—whether illegally or in accordance with the law—have alternative housing.³⁴

According to the former Special Rapporteur on the realization of economic, social and cultural rights, all actors with either implicit or explicit mandates vis-à-vis the realization of economic, social and cultural rights should recognize the direct applicability of their work to the issue of economic, social and cultural rights, as well as ensuring that the policies, projects, perspectives and programmes pursued by them do not harm the prospects of these rights being realized nor the capacity of the State to fulfil its own legal duties (see box, Economic, Social and Cultural Rights Standards: 3. Some basic postulates proposed by Danilo Türk).

³³ Paragraph 18 of General Comment No. 4 of the Committee on Economic, Social and Cultural Rights on the right to adequate housing. Similar sentiments can be found in paragraph 6 of the Committee's General Comment No. 2 on international technical assistance measures, in which the international agencies are urged to scrupulously avoid involvement in projects which involve large-scale evictions.

³⁴ Scott Leckie, "New United Nations regulations on forced evictions: General Comment No. 7 strengthens right not to be evicted", in *Third World Planning Review*, vol. 21, No. 1 (February, 1999), pp. 41-61.

Therefore, there is a role not only for States vis-à-vis the realization of economic, social and cultural rights but also for non-State actors such as international financial institutions and transnational corporations, which have a great impact on the enjoyment of these rights. The policies of transnational corporations and international financial institutions may lead to violations of economic, social and cultural rights in developing countries, particularly the poorest countries with the least economic or political leverage.³⁵ Indirect violations of civil and political rights also may occur in the context of structural adjustment programmes or large-scale project financing, and transnational corporations may encourage certain employment environments which run counter to the enjoyment of economic, social cultural rights.³⁶

While international financial institutions and transnational corporations share the obligation to respect economic, social and cultural rights, there is no international mechanism to hold them specifically accountable for their actions and omissions. Unlike States, they do not submit periodic reports to the Committee on Economic, Social and Cultural Rights and they are not required to attend meetings of the Committee to respond to questions from Committee members. However, States that are members of international financial institutions submit periodic reports to, and appear before, the Committee. Their activities as members of the international financial institutions can therefore be monitored to ensure that they are consistent with the States' obligations under the Covenant.³⁷ Vigilance by national human rights institutions in this process is also important.

The obligation to protect

The obligation to protect economic, social and cultural rights requires the State and its agents to prevent the violation of any individual's rights by any other individual or non-State actor. Where a third party infringes economic, social and cultural rights, the public authorities should act to preclude further violations and to guarantee access to legal remedies for any victims of the infringement. The State must also establish effective measures to protect persons from racial or other forms of discrimination, harassment, withdrawal of services, or other threats.

The obligation to protect entails:

- Immediate steps to ensure that violations of economic, social and cultural rights by the State and its agents are prevented;
- Immediate steps to ensure that violations of economic, social and cultural rights by third parties are prevented;
- Ensuring access to impartial legal remedies in cases of alleged violation of economic, social and cultural rights by State or non-State actors;

³⁵ Hence the reference in General Comment No. 2 on international technical assistance measures to the effect that the international agencies should "scrupulously avoid involvement in projects which...involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation" (para. 6). See also Women's International League for Peace and Freedom (WILPF) and INHURED International, *Justice Denied: Human Rights and the International Financial Institutions* (Kathmandu, 1994).

³⁶ Sigrun Skogly, "Structural adjustment and development: human rights—an agenda for change" in *Human Rights Quarterly*, vol. 15, No. 4, 1993, p. 751.

³⁷ The Committee on Economic, Social and Cultural Rights already regularly raises this issue under article 2.1 of the Covenant.

- Active measures to protect all persons from racial or other forms of discrimination, harassment and the withdrawal of services.³⁸

Private actors can also violate economic, social and cultural rights and be held liable for their violations.³⁹ Human rights law is no longer merely a public law matter but includes the private domain as well.⁴⁰ Private actors have duties to observe human rights and the State has correlative duties to ensure the protection of individuals' rights from violation by third parties not generally linked to the State.⁴¹

Similarly, employers, corporations, landlords, teachers, doctors and any other citizen capable of violating an individual's rights as a consequence of encouragement to do so or neglect by the State are increasingly being held accountable as notions of State responsibility expand beyond traditional confines.⁴² For example, in its General Comment No.12 on the right to adequate food, the Committee on Economic, Social and Cultural Rights stated: "the obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food".

The obligation to fulfil

The obligation to fulfil economic, social and cultural rights requires positive measures by the State when other measures have not succeeded in ensuring the full realization of these rights. This obligation can entail issues such as public expenditure, governmental regulation of the economy, the provision of basic public services and infrastructure, taxation and other redistributive economic measures.

³⁸ The Maastricht Guidelines add the following perspectives: State *responsibility* 16. The violations referred to in section II are in principle imputable to the State within whose jurisdiction they occur. As a consequence, the State responsible must establish mechanisms to correct such violations, including monitoring, investigation, prosecution, and remedies for victims. *Acts by non-State entities* 18. The obligation to protect includes the State's responsibility to ensure that private entities or individuals, including transnational corporations over which they exercise jurisdiction, do not deprive individuals of their economic, social and cultural rights. States are responsible for violations of economic, social and cultural rights that result from their failure to exercise due diligence in controlling the behaviour of such non-State actors. *Acts by international organizations* 19. The obligations of States to protect economic, social and cultural rights extend also to their participation in international organizations, where they act collectively. It is particularly important for States to use their influence to ensure that violations do not result from the programmes and policies of the organizations of which they are members. It is crucial for the elimination of violations of economic, social and cultural rights for international organizations, including international financial institutions, to correct their policies and practices so that they do not result in deprivation of economic, social and cultural rights. Member States of such organizations, individually or through the governing bodies, as well as the secretariat and non-governmental organizations should encourage and generalize the trend of several such organizations to revise their policies and programmes to take into account issues of economic, social and cultural rights, especially when these policies and programmes are implemented in countries that lack the resources to resist the pressure brought by international institutions on their decision-making affecting economic, social and cultural rights.

³⁹ Chris Jochnick, "Confronting the impunity of non-State actors: new fields for the promotion of human rights" in *Human Rights Quarterly*, vol. 21, No. 1 (February, 1999), pp. 56-79.

The Special Rapporteur of the Sub-Commission on the question of the impunity of perpetrators of human rights violations stressed in 1996: "Violations of economic, social and cultural rights can also be perpetuated by private individuals. In the vast majority of States, such violations are punishable offences or are, at any rate, subject to a procedure of civil compensation. It is for the State to devise an adequate legal framework." (E/CN.4/Sub.2/1996/15, para. 135).

⁴⁰ Andrew Clapham, *Human Rights in the Private Sphere* (Oxford, Clarendon Press, 1993).

⁴¹ Evert Albert Alkema, "The third-party applicability or 'Drittwirkung' of the European Convention on Human Rights", in *Protecting Human Rights: The European Dimension (Studies in honour of Gerard J. Wiarda)*, F. Matscher and H. Petzold, eds., (Koln, Carl HeymansVerlag, 1988). The Limburg Principles provide support by suggesting that States parties must prohibit private persons and bodies from practising discrimination in any field of public life (principle 40).

⁴² For instance, in General Comment No. 5 on persons with disabilities, the Committee on Economic, Social and Cultural Rights appeals to States parties 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 ... it is essential that private employers, private suppliers of goods and services and other non-public entities should be subject to both non-discrimination and equality norms in relation to persons with disabilities". (para. 11).

In General Comment No.12 on the right to adequate food and General Comment No.13 on the right to education, the Committee declares that the “obligation to *fulfil* incorporates both an obligation to *facilitate* and an obligation to *provide*”. Facilitating involves positive initiatives to enable the full enjoyment of economic, social and cultural rights. Providing involves direct or indirect State services when individuals or groups are unable, for reasons beyond their control, to realize the right themselves by the means at their disposal. In General Comment No.14 on the right to the highest attainable standard of health, the Committee states that the obligation to fulfil includes the obligation to *promote*, in recognition of the critical importance of health promotion in the work of the World Health Organization and other organizations.

The Committee has also given examples of the content of the obligation to fulfil in relation to specific economic, social and cultural rights. In General Comment No.12, it states: “The obligation to *fulfil (facilitate)* means the State must proactively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security.” In General Comment No.13, the Committee states: “The obligation to fulfil (*facilitate*) requires States to take positive measures that enable and assist individuals and communities to enjoy the right to education” while also abiding by their “obligation to fulfil (*provide*) the right to education”.

Ultimately, the obligation to fulfil comprises those active measures by a Government necessary to guarantee each person within its jurisdiction opportunities to have full access to all entitlements to economic, social and cultural rights that cannot be secured through exclusively personal efforts.

Examples of the obligation to fulfil include:

- Allocating an adequate proportion of public expenditure to the progressive realization of economic, social and cultural rights;
- State provision of public services, including infrastructure, water, electricity, sanitation, heating, sewerage, drainage, roads, health care facilities and emergency services;
- Developing targeted plans of action and strategies on economic, social and cultural rights, with specific time frames and financial requirements, with a view to the full realization of these rights;
- Establishing benchmarks for monitoring economic, social and cultural rights, including the use of appropriate indicators to this end;
- Undertaking without delay comprehensive legislative and policy review of all laws, regulations or other directives having any negative bearing on the fulfilment of economic, social and cultural rights;
- Establishing both legislative and policy recognition of economic, social and cultural rights;
- Giving priority attention to and targeting strategies towards satisfying the economic, social and cultural rights of disadvantaged groups, including the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters and people living in disaster prone areas;
- While these are State obligations, they can be monitored and encouraged by national human rights institutions in the domestic context and in some instances the national institutions can facilitate the fulfilment of these obligations. For reasons of both relevance and effectiveness, as well as in order to ensure respect for other human rights, such strategies should reflect extensive genuine consultation with, and participation by, all those affected – including national human rights

institutions. Subsequent steps must be taken by Governments to ensure coordination between ministries and regional and local authorities in order to reconcile related policies with the obligations arising from the Covenant, including assessing the degree to which economic, social and cultural rights remain unfulfilled. In this regard, appropriate consultation with national human rights institutions may be sought, given many of their mandates in relation to international human rights instruments as provided for in the Paris Principles (see annex).

ECONOMIC, SOCIAL AND CULTURAL RIGHTS STANDARDS

5. Disaggregating State obligations—housing rights

The right to adequate housing is one of the more developed economic, social and cultural rights. The United Nations Housing Rights Programme (UNHRP), a joint initiative of the United Nations Human Settlements Programme (UN-HABITAT) and the Office of the United Nations High Commissioner for Human Rights, is the most important international activity concerning housing rights. In this context, UN-HABITAT developed the following matrix of responsibilities of States for the full and progressive realization of the right to adequate housing and possible actions at the national and local levels (HS/C/17/INF.6, table 2). Similar exercises could be undertaken by national human rights institutions in relation to other economic, social and cultural rights.⁴³

<i>Respect</i>	<i>Protect</i>	<i>Promote</i>	<i>Fulfil</i>
Prevention of illegal evictions and forced evictions	Prevention of violations of housing rights	Security of tenure	Combating, preventing and ending homelessness
Prevention of all forms of discrimination	Domestic remedies and the domestic application of international law	Legislative review and recognition of housing rights	Increasing and properly targeting public expenditure on housing
Prevention of any measures of retrogressivity	Ensuring equality rights for all groups	Development of benchmarks of full realization	Adequate and habitable housing for all
Housing-based freedoms	Access for all to affordable housing and the development of an affordability benchmark	Development of national housing rights strategies	Development of minimum physical housing standards
Right to privacy and respect for the home	Accessibility of housing for disadvantaged groups requiring special measures	Focus on the rights of vulnerable groups	Provision of all necessary services and infrastructure
Popular participation in housing	Democratic residential control of housing	Access to housing information	Popular housing finance and saving schemes
Respect for the cultural attributes of housing	Regulation of rent levels and activities in the private housing sector	Ensuring a sufficient supply of affordable land	Social housing construction

⁴³ UNHRP differentiates between the obligation to promote and that to fulfil, although in the present handbook the two obligations are seen as one: the obligation to fulfil.

C. SOME CENTRAL CONCEPTS

In this section of the handbook, three core concepts in regard to economic, social and cultural rights are discussed:

- Minimum core obligations;
- Justiciability and the domestic application of economic, social and cultural rights;
- Avoiding regressive measures.

Minimum core obligations

In its General Comment No. 3, the Committee on Economic, Social and Cultural Rights argues that States have "minimum core obligations" under the Covenant to ensure a basic level of enjoyment of each economic, social and cultural right.

... 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*.⁴⁴

There is widespread support for this principle.⁴⁵ According to the former Special Rapporteur on the realization of economic, social and cultural rights, Danilo Türk, "States are obliged, regardless of the level of economic development, to ensure respect for minimum subsistence rights for all".⁴⁶ The Commission on Human Rights has urged States to "consider identifying specific national benchmarks designed to give effect to the minimum core obligation to ensure the satisfaction of minimum essential levels of each of the [economic, social and cultural] rights".⁴⁷ The Inter-American Commission on Human Rights has declared that "the obligation of member States to observe and defend the human rights of individuals within their jurisdictions, as set forth in both the American Declaration and the American Convention, obligates them, regardless of the level of economic development, to guarantee a minimum threshold of these rights".⁴⁸ The Maastricht Guidelines on Violations of Economic, Social and Cultural rights also reaffirm this principle.⁴⁹

Do these minimum core obligations apply primarily to the individual enjoyment of a right or to society-wide levels of enjoyment? Proponents of a "minimal threshold approach" have favoured the latter position, asserting "the scope of violation of socio-economic rights would then refer to the percentage of the population not assured of

⁴⁴ General Comment No. 3, para. 10. This general comment also requires States to move "as expeditiously and effectively as possible" towards the full realization of the rights in the Covenant (para. 9).

⁴⁵ One of the first articulations of this principle was: "Each right must therefore give rise to an absolute minimum entitlement in the absence of which a State Party is to be considered to be in violation of its obligations." (Philip Alston, "Out of the abyss: the challenges confronting the new U.N. Committee on Economic, Social and Cultural Rights" in *Human Rights Quarterly*, vol. 9, No. 3 (August, 1987), p. 353)

⁴⁶ Second progress report (E/CN.4/Sub.2/1991/17), para. 10.

⁴⁷ Commission on Human Rights resolution 1993/14.

⁴⁸ *Annual Report of the Inter-American Commission on Human Rights, 1994* (Organization of American States, Washington D.C.).

⁴⁹ "Every state that has accepted legal obligations ... agrees that under all circumstances, including periods characterized by resource scarcity, basic minimum obligations and corresponding essential rights remain in place" (Victor Dankwa, Cees Flinterman and Scott Leckie, "Commentary to the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights" (guidelines 9 and 10: minimum core obligations and availability of resources) in *Human Rights Quarterly*, vol. 20, No. 3 (August, 1998), p. 717.

this minimal threshold".⁵⁰ Others, however, have sought to address the question from the perspective of the people possessing the rights, rather than from that of the State obliged to ensure them. One author asserts, "each right must therefore give rise to an absolute minimum entitlement, in the absence of which a State Party is to be in violation of its obligations".⁵¹

Minimum core obligations must be seen as a first step, not the conclusion of a process of realizing economic, social and cultural rights. The principle must not be seen as involving a minimalist approach. In particular, it should not be used to imply that only the minimum core of an economic, social or cultural right is justiciable. Definitions of the content of civil and political rights are being expanded continually; the search for similar clarity with respect to economic, social and cultural rights will continue and should not be viewed as an obstacle to addressing violations of these rights. Already, much work has been done to identify the basic components of each economic, social and cultural right in terms of both obligation and entitlement.

⁵⁰ Bart-Anders Andreassen and others, "Assessing human rights performance in developing countries: the case for a minimal threshold approach to the economic and social rights" in *Yearbook of Human Rights in Developing Countries 1987/1988* (Copenhagen), p. 341. See also Asbjorn Eide, "Realization of social and economic rights and the minimum threshold approach", in *Human Rights Law Journal*, vol. 10, Nos. 1-2 (1989), pp. 35-51.

⁵¹ "There would be no justification for elevating a 'claim' to the status of a right (with all the connotations that concept is generally assumed to have) if its normative content could be so indeterminate as to allow for the possibility that the right holders possess no particular entitlement to anything." (Philip Alston, "Out of the abyss: the challenges confronting the new U.N. Committee on Economic, Social and Cultural Rights" in *Human Rights Quarterly*, vol. 9, No. 3 (August, 1987), pp. 352-353).

ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN PRACTICE

1. Affordable measures to promote and protect economic, social and cultural rights

One argument against economic, social and cultural rights is that fiscal considerations will always prevent their enjoyment from becoming a reality for all persons entitled to them. However, many of the obligations associated with economic, social and cultural rights do not require regular, large budgetary expenditure.

State duties to ensure the full realization of economic, social and cultural rights and of all other human rights cover the full spectrum of obligations—from measures that are essentially cost-free to those clearly requiring significant public expenditure. Securing economic, social and cultural rights (and civil and political rights) for the most disadvantaged sectors of society will cost the State money. However, not all elements of economic, social and cultural rights necessarily require substantial financial allocations. Where funding is required, targeting public funds wisely and efficiently to areas of most need can achieve a great deal. This spending need not bankrupt delicate economies. International law does not indicate that a particular sum or portion of public spending should be devoted to economic, social and cultural rights, but it does oblige Governments to devote the “maximum of available resources” to securing them.

In relation to the right to housing, for example, many of the core components of the right are effectively cost-free to the State and require few positive interventions other than a commitment to implementing human rights and the necessary political will. Such measures as providing security of tenure and land title, measures of land reform, revising national legislation, instituting systems of tax credits, enforcing non-discrimination provisions, supporting appropriate incentives to the private sector and allowing community-based and non-governmental organizations to operate and organize freely may involve a reallocation of resources, but at a level that would not stifle economic progress.

Above all, effective structures must be established to ensure that funds are allocated consistent with need. This will require positive State involvement to develop policy, legislation and programmes fully consistent with economic, social and cultural rights. Even when a State’s “available resources” are verifiably inadequate, international law requires the Government to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances and to demonstrate that every effort has been made to use all resources that are at its disposal in an effort to satisfy, as a matter of priority, these minimum responsibilities.⁵²

⁵² General Comment No. 3 of the Committee on Economic, Social and Cultural Rights on the nature of States parties' obligations (art. 2, para. 1 of the Covenant).

Justiciability and the domestic application of economic, social and cultural rights

Domestic justiciability and the domestic application of the Covenant and other international standards that recognize economic, social and cultural rights remain two significant issues in debates about the core concepts of these rights.⁵³ They relate closely to the right to effective remedies for persons alleging violations of economic, social and cultural rights.⁵⁴

Remedies may be either legal or administrative; in many instances administrative remedies may suffice. However, as the Committee on Economic, Social and Cultural Rights notes in paragraph 9 of General Comment No. 9 on the domestic application of the Covenant, where a Covenant right cannot be made fully effective without some role for the judiciary, judicial remedies are necessary.

The justiciability of economic, social and cultural rights has long been subject to argument. In many respects, this has kept these rights from attaining their true legal stature. Some of the legal issues surrounding justiciability are complex, but international acceptance of the justiciability of economic, social and cultural rights is increasing greatly and rapidly, based particularly on the frequent consideration of matters affecting economic, social and cultural rights by domestic courts in many States. In General Comment No. 3, the Committee on Economic, Social and Cultural Rights asserts that "among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to the rights which may, in accordance with the national legal system, be justiciable".

The Committee has indicated that a number of articles of the Covenant are capable of immediate judicial protection and enforcement, including those on non-discrimination (art. 2.2), equal rights of men and women (art. 3), pay equity (art. 7 (a) (i)), trade unions (art. 8), economic and social exploitation of children and young people (art. 10.3), free and compulsory primary education (art. 13.2 (a)), religious and private schools (art. 13.3 and 4), and freedom of scientific research and creative activity (art. 15.3).

In paragraph 3 of General Comment No. 9, the Committee notes:

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, 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. 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".

However, a State's failure to provide a judicial or other remedy is not evidence of the non-justiciable nature of a particular norm.⁵⁵ Rather, it indicates at best an incomplete view of human rights. "Denying an individual or group the ability to make constitutional claims against the State with respect to nutrition, housing, health and education excludes those interests from a process of reasoned interchange and discussion, and

⁵³ Matthew C.R. Craven, "The domestic application of the International Covenant on Economic, Social and Cultural Rights" in *Netherlands International Law Review*, vol. XL, issue 3 (1993), pp. 367-404.

⁵⁴ The Limburg Principles emphasize that "States parties shall provide for effective remedies including, where appropriate, judicial remedies" (principle 9). Because there does not yet exist an individual complaints procedure under the Covenant, the full implementation of the rights this text contains is all the more dependent upon the provision of appropriate laws and remedies at the national level.

⁵⁵ Michael Addo, "The justiciability of economic, social and cultural rights" in *Commonwealth Law Bulletin*, vol. 14, No. 4 (October, 1988), pp. 1425-1432.

forecloses a useful forum for the recognition and redressing of injustices".⁵⁶ It is not primarily the nature of economic, social and cultural rights that denies judicial enforcement of these rights, but the lack of competence or willingness of the adjudicating body to entertain, examine and pronounce on claims affecting these rights.⁵⁷ For example, virtually all central components of the right to adequate housing are fully susceptible to judicial review.⁵⁸

Also in paragraph 3 of General Comment No. 9, the Committee notes:

...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, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights 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.

Both the Universal Declaration of Human Rights (art. 8) and the International Covenant on Civil and Political Rights (art. 2) recognize that any person whose rights have been violated has a right to an effective remedy. The International Covenant on Economic, Social and Cultural Rights does not contain a similar provision and does not at present have a complaints procedure. However, the Committee has submitted to the Commission on Human Rights a draft optional protocol to the Covenant that would enable individuals and groups to submit complaints concerning non-compliance with the Covenant. In addition, an increasing number of States have developed judicial and non-judicial remedies for violations of economic, social and cultural rights.

Where the norms found in the International Covenant on Economic, Social and Cultural Rights are not directly subject to a domestic complaints procedure, the Covenant should still play a significant role in the application and interpretation of domestic law. At a minimum, the domestic courts should consider international human rights law as an aid to the interpretation of domestic law and ensure that domestic law is interpreted and applied consistently with the human rights treaties to which a State is bound. Wherever possible, courts should avoid decisions that place their State in the position of violating the terms of a treaty it has ratified. Indeed, many national constitutions require legislatures not to legislate or accept policies manifestly inconsistent with guarantees of economic, social and cultural rights.⁵⁹

⁵⁶ Craig Scott and Patrick Macklem, "Constitutional ropes of sand or justiciable guarantees? Social rights in a new South African Constitution", in *University of Pennsylvania Law Review*, vol. 141, No. 1 (1992), p. 28.

⁵⁷ While with regard to the European Convention on Human Rights, "[t]he crucial test in this respect for the inclusion of a particular right in the Convention system does not lie in the subject-matter of that right, but rather in whether it is capable of protection by the Convention machinery, that is by the system of adjudication" (F.G. Jacobs, "The extension of the European Convention on Human Rights to include economic, social and cultural rights" in *Human Rights Review*, vol. III, No. 3 (1978), pp. 168-169). See also, Alexandre Berenstein, "Economic and social rights: their inclusion in the European Convention on Human Rights—problems of formulation and interpretation" in *Human Rights Law Journal*, vol. 2, Parts 3-4 (December, 1981), pp. 257-280.

⁵⁸ Scott Leckie, "The justiciability of housing rights", in *The Right to Complain about Economic, Social and Cultural Rights*, Coomans and van Hoof, eds., (Utrecht, SIM, 1995), p. 35.

⁵⁹ Moreover, at present complaints alleging violations of economic, social and cultural rights can be submitted to and adjudicated under numerous international and regional procedures, including within the International Labour Organization and UNESCO, and under the San Salvador Protocol to the American Convention on Human Rights, the African Charter on Human and Peoples' Rights and the European Social Charter. Similarly, the European Union and the Organization for Security and Co-operation in Europe are also responsible for securing some economic and social rights and have certain remedial mechanisms in place. Additional petition procedures under the International Convention on the Elimination of Racial Discrimination and the International Covenant on Civil and Political Rights have been invoked in defence of economic, social and cultural rights. The Convention on the Elimination of All Forms of Discrimination against Women has an optional protocol authorizing the Committee on the Elimination of Discrimination against Women to receive individual complaints. A draft protocol to the International Covenant on Economic, Social and Cultural Rights to this effect is under consideration.

ECONOMIC SOCIAL AND CULTURAL RIGHTS IN PRACTICE

2. The courts and economic, social and cultural rights in South Africa: the national human rights institution as a judicial monitor

In its judgement in the case of *Government of the Republic of South Africa and others v Grootboom and others* 2000 (11) BCLR 1169 (CC), the Constitutional Court of South Africa made far-reaching decisions concerning economic, social and cultural rights under the South African Constitution.

Irene Grootboom and 900 other displaced individuals had been living in intolerable conditions in an informal squatter settlement called Wallacedene. They decided to move and put up their shacks and shelters on vacant land they called "New Rust". The land was privately owned and had been earmarked for low-cost housing. In May 1999, the occupants at New Rust were forcibly evicted under a magistrates' court order. Their homes were bulldozed and burnt and their possessions destroyed. The occupants sheltered on the Wallacedene sports field under whatever temporary structures they could put together. They launched an urgent application in the High Court, which ordered the State to provide the occupants with shelter. The State challenged the order before the Constitutional Court.

The South African Human Rights Commission and the Community Law Centre of the University of the Western Cape applied to be and were admitted as intervenors in this case and presented written and oral argument before the Court. The Constitutional Court expressed its appreciation to the Human Rights Commission and the Community Law Centre for their detailed, helpful and creative approach to the difficult and sensitive issues involved in this case.

The Constitutional Court ordered the State to act to meet its constitutional obligation to devise, fund, implement and supervise measures to provide relief to those in desperate need.

The Court also commented that the Constitution placed a duty on the South African Human Rights Commission to "monitor and assess the observance of human rights in the Republic". The Court ruled that the Commission should monitor and report on the State's compliance with its constitutional obligations in accordance with the Court's judgement in this case.

Global norms are important precisely because of the difficulties with regard to the domestic applicability or direct validity of international human rights texts in national legal systems. However, violations of economic, social and cultural rights can be effectively combated only through increased incorporation of international norms in national legal structures and enhanced justiciability and enforcement of economic, social and cultural rights at the local level. Indeed, it would be impossible for every human rights violation to be adjudicated in an international forum. The primary arena for the judicial enforcement of human rights remains that of domestic law. International human rights law, therefore, places emphasis on the establishment of domestic enforcement mechanisms for the protection of human rights.

The following principles may be useful to ensure that all beneficiaries of economic, social and cultural rights have access to effective remedies.⁶⁰

1. The right to effective remedies must be real, practical and non-illusory.
2. The progressive enhancement of domestic legal protections of economic, social and cultural rights should be seen as a component of the progressive realization of these rights.
3. Regressive measures with respect to domestic legal protections are not permitted except under extreme circumstances.
4. The judicial duty to interpret consistently extends to legislative omission and is not satisfied by a formal reliance on the ambiguity rule.
5. Domestic remedies for violations of certain economic, social and cultural rights are implicit in domestic protections of civil and political rights.

Avoiding retrogressive measures

The Committee on Economic, Social and Cultural Rights has sought to discourage what it calls “deliberately retrogressive measures” by States parties to the Covenant. It has said that such measures “would need to be 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”.⁶¹ A “retrogressive measure” is one that, directly or indirectly, leads to backward steps being taken with respect to the rights recognized in the Covenant. A deliberately retrogressive measure would be a new law that makes primary education voluntary rather than compulsory, as required by the Covenant, or cuts public expenditure on maternal health care, resulting in considerable increases in maternal and child mortality.

The Committee limited its criticism to deliberate measures. This does not restrict the prohibition to measures intended to reduce the level of enjoyment of economic, social and cultural rights. Rather, the prohibition applies to any measure taken consciously that reduces the enjoyment of economic, social and cultural rights, whether or not the regression was an intended and wanted consequence of the measure.

States are expected to act with care and deliberation in taking action that might violate human rights, directly or indirectly. The prohibition therefore extends to measures taken negligently that reduce the enjoyment of human rights.

A measure that unintentionally reduces the enjoyment of human rights may not itself be a deliberately retrogressive measure. The measure, therefore, would not itself violate the Covenant. However, when the regression becomes apparent, the State is obliged, under its general obligations under the Covenant, to take immediate steps to correct the measure. The obligation of progressively realizing economic, social and cultural rights implies that there should be no regression by act or omission to a lower level of enjoyment of these rights.

⁶⁰ The Maastricht Guidelines also provide: “*Access to remedies* 22. Any person or group who is a victim of a violation of an economic, social or cultural right should have access to effective judicial or other appropriate remedies at both national and international levels. *Adequate reparation* 23. All victims of violations of economic, social and cultural rights are entitled to adequate reparation, which may take the form of restitution, compensation, rehabilitation and satisfaction or guarantees of non-repetition. *No official sanctioning of violations* 24. National judicial and other organs must ensure that any pronouncements they may make do not result in the official sanctioning of a violation of an international obligation of the State concerned. At a minimum, national judiciaries should consider the relevant provisions of international and regional human rights law as an interpretive aid in formulating any decisions relating to violations of economic, social and cultural rights.”

⁶¹ General Comment No. 3, para. 9.

II. THE NATURE OF NATIONAL HUMAN RIGHTS INSTITUTIONS

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A. THE IMPORTANCE OF A BROAD AND CLEARLY DEFINED MANDATE BASED ON INTERNATIONAL INSTRUMENTS

The Paris Principles

A national human rights institution is a “body which is established by a Government under the constitution, or by law or decree, the functions of which are specifically defined in terms of the promotion and protection of human rights”.⁶²

The Principles relating to the status of national institutions, known as the “Paris Principles” (see annex), provide international minimum standards for an effective national human rights institution.⁶³

These Principles require that national human rights institutions have:

- Independence;
- Competence to promote and protect human rights;
- A broad-based mandate clearly set forth in a constitutional or legislative text;
- Pluralism in membership and staff;
- Members appointed through an official act, for a specific duration established in the act;
- Sufficient resources to fulfil their mandates and perform their functions;
- Accessibility to victims and potential victims of human rights violators;
- A methodology of cooperation with government, non-governmental and private-sector organizations and individuals, nationally and internationally.

In terms of activities, the Principles call for national institutions:

- To submit reports concerning the promotion and protection of human rights;
- To promote and ensure the harmonization of national legislation, regulation and practices with international human rights instruments to which a State is a party – and their effective implementation;
- To encourage the ratification of international human rights instruments;
- To contribute to the reports which a State is required to submit to United Nations bodies and committees, and where necessary express an opinion on the subject, with due respect for the institutions’ independence;
- To cooperate with the United Nations and other organizations in the United Nations system, the regional institutions and the national institutions of other countries;
- To assist in the formulation of human rights education programmes and to take part in their execution;
- To publicize human rights.

⁶² United Nations, *A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights*, Professional Training Series No. 4, 1995, para. 39.

⁶³ For a fuller discussion of the Paris Principles and the various elements of the international minimum standards they elaborate, see United Nations, *A Handbook on the Establishment and Strengthening of National Institutions ...*

ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN PRACTICE

3. Mandate of the Fiji Human Rights Commission

The Fiji Human Rights Commission is a statutory body established to administer the Human Rights Commission Act 1999. The functions of the Fiji Human Rights Commission are outlined in the country's Constitution and the Human Rights Act 1999 and include:

- ◆ To educate the public about the nature and content of the Bill of Rights, including its origins in international conventions and other international instruments, and the responsibilities of the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and other organs of the General Assembly of the United Nations for promoting respect for human rights
- ◆ To make recommendations to the Government about matters affecting compliance with human rights, including the making of a recommendation that a particular question about the legal effect of a provision of the Bill of Rights be referred to the Supreme Court for its opinion.

Fiji's constitutional Bill of Rights contains provisions addressing economic, social and cultural rights, among them labour rights, the right to be free from discrimination on several enumerated grounds, including economic status, and the right to education. The Constitution requires Parliament to develop programmes to enable disadvantaged groups to achieve equality of access to education and training, land and housing and participation in commerce and the civil service.

Fiji's Human Rights Act acknowledges the importance of the Commission complying with the Paris Principles.

In addition, national institutions may be authorized to hear and consider complaints and petitions concerning individual situations. They may also encourage and facilitate mediation and dispute resolution and determine or recommend appropriate remedies.

Beyond these minimum standards, an effective national human rights institution requires a supportive external environment in which to work. There must be political will within the government to see the national human rights institution carry out its mandate. There must be an effective and independent judiciary and other democratic institutions, an engaged civil society and a sensitized bureaucracy and military and police forces. Equally importantly, the national institution must have determined and capable personnel. The members of the institution and its staff must be committed to human rights values and experienced in working for human rights. They must be credible human rights advocates in the eyes of civil society, particularly human rights non-governmental organizations. They must be well qualified and appropriately skilled for the work they are to do. Strong leadership and good management of the institution are critical.

Lastly, an effective national human rights institution requires general understanding and acceptance of its unique mandate in relation to other democratic mechanisms, including the Government, the legislature, the judiciary and civil society organizations—all of which are part of a national system of protecting and promoting human rights.

B. ELEMENTS FOR EFFECTIVE IMPLEMENTATION OF A MANDATE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The Committee on Economic, Social and Cultural Rights has recognized that national human rights institutions have a “potentially crucial role” to play in promoting and protecting economic, social and cultural rights. National human rights institutions established in conformity with the Paris Principles have a unique mandate to work in the area of human rights. They are official independent organizations established by law, with specified powers and functions. This gives them status and consequently credibility not enjoyed by either governmental or non-governmental organizations. National human rights institutions can be catalysts for action and positive change in relation to all human rights, including economic, social and cultural rights.

In its General Comment No.10, the Committee on Economic, Social and Cultural Rights calls upon States parties to ensure that the mandates of national human rights institutions include economic, social and cultural rights. It requests States parties to include details of the mandate and relevant activities of national human rights institutions when preparing and submitting their periodic reports under the International Covenant on Economic, Social and Cultural Rights.

General Comment No. 10 sets out the types of activities a national human rights institution can undertake to protect and promote economic, social and cultural rights:

- Conducting promotional, educational and information programmes;
- Scrutinizing existing laws, draft bills, administrative acts and other proposals for consistency with economic, social and cultural rights;
- Providing technical advice;
- Identifying national benchmarks for measuring the progressive realization of economic, social and cultural rights;
- Conducting research and inquiries;
- Monitoring compliance with regard to specific rights;
- Examining specific complaints.

Interpreting the mandate

Under the Paris Principles, a national human rights institution must be “vested with competence to promote and protect human rights”.⁶⁴ The mandate of a national human rights institution is typically expressed in very general terms. It may refer specifically to certain rights or certain categories of rights but it may also refer to human rights generally. However it is expressed, the mandate must be interpreted by the national human rights institution as it undertakes its work. Interpreting its mandate gives the national institution the opportunity to elaborate its jurisdiction and responsibilities and its understanding of its role and functions. Its understanding and interpretation of its jurisdiction will inform all its work – its investigations and recommendations, research, monitoring, policy development and advisory roles.

To deal with economic, social and cultural rights, a national human rights institution will need to consider whether and how its mandate includes those rights and whether and how its mandate extends to all types of perpetrators of violations of economic, social and cultural rights.⁶⁵

⁶⁴ Principle 1.

⁶⁵ Support for national human rights institutions having a broad mandate to address economic, social and cultural rights comes from civil society as well. Organizations such as Forum Asia and, in Canada, the Centre for Equality Rights in Accommodation are challenging national human rights institutions to find ways to interpret their mandates creatively.

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4. Mandate of the National Human Rights Commission of India

The National Human Rights Commission of India was created under The Protection of Human Rights Act 1993. Its mandate is to protect and promote rights guaranteed by the Indian Constitution or embodied in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and enforceable in Indian courts.

The Human Rights Commission's functions include inquiring into alleged violations of rights, intervening in proceedings before a court, visiting jails, reviewing and commenting on domestic laws and international instruments, conducting research, reviewing and commenting on the status of human rights, promoting awareness and education and encouraging the involvement of non-governmental organizations and other institutions.

The Commission has undertaken many inquiries into issues of economic, social and cultural rights, including in relation to degrading labour, education and mental health facilities. In April 2000, the Commission held a Regional Consultation on Public Health and Human Rights in New Delhi.

According to general principles of interpretation, human rights should be interpreted as broadly as possible and restrictions on rights should be interpreted as narrowly as possible. A national human rights institution should interpret its mandate as widely and comprehensively as possible, subject to its establishing law and to domestic and international law. In particular, to the extent that the words of the establishing law permit, references to human rights should be interpreted as including all human rights—civil, cultural, economic, political and social.

Economic, social and cultural rights may also come within the mandate of a national human rights institution through the principle of the indivisibility and interdependence of all rights. Human rights law is integrated and holistic. Rights relate to each other. The right to life, for example, has implications for the right to health and the right to education, and the right to freedom of movement has implications for the right to livelihood. Even though a national human rights institution's mandate may refer only to civil and political rights, it will have jurisdiction to deal with many issues of economic, social and cultural rights through the rights to life, equality and non-discrimination.

A national human rights institution's mandate may also limit its jurisdiction to violations of rights by certain categories of organization or individual. Most commonly, it might be limited to public sector perpetrators, that is, Governments and their officials and agents. The national human rights institution might be able to interpret its jurisdiction to investigate complaints against the State as including any acts by organizations that are substantially funded, subsidized or regulated by the State. National institutions are encouraged to include in their remit a mandate for the private sector, which is increasingly a provider of essential services.

A national human rights institution's interpretation of its mandate and jurisdiction is generally subject to judicial review. This should encourage the institution to interpret its mandate as broadly as possible. It need not and should not be cautious. It can be confident that, if it exceeds its legal authority, a court can review its decision and give a definitive ruling on the scope of its establishing law.

A national human rights institution's understanding and interpretation of its jurisdiction should be communicated clearly, internally and externally, through mission statements, strategic and operational plans, policy guidelines, newsletters, annual and other reports and other publications, and on its web site. This assists the national institution to act consistently and in accordance with its developed policy and jurisprudence. It assists the public to know how the institution might deal with particular matters. Lastly, it encourages the accountability of the national human rights institution for its work

Independence

Independence of a national institution can be assured through legal, operational and financial means, democratic and open appointment and dismissal procedures, and well defined, agreed to and consistent processes in the setting of annual financial allocations.

A national institution must be able to set its priorities according to a legislatively defined mandate which could include powers to independently, free from direction by the Government, investigate violations of human rights, monitor the observance of human rights, adopt policies and undertake promotional work. It must also be able to manage its own finances through agreed to budgetary allocations without interference from various government ministries. The ability to set its financial priorities will provide for greater independence of the institution.

However, this does not mean that a national institution cannot be entirely divorced from the Government in its operations. Unlike a non-governmental organization, it works within a mandate prescribed by law. The Government, through the legislature, has a central role in determining the nature and scope of that mandate. In many instances – though a more open and transparent selection process is encouraged—the Government may have a role in appointing members of the institution. A number of more established national human rights institutions typically have all their members appointed by the Government, with little or no outside involvement and little transparency.

Recently, however, building on the Paris Principles, the newer generation of institutions often have far more innovative establishing laws that reduce the Government's control over appointments and budgetary allocations, taking into account the importance of broad public consultation and the need for financial autonomy of the institution. Similarly institutions are empowered to set their own agendas within broad mandates to promote and protect human rights.

Functions

A national human rights institution's functions as enumerated above should not be seen as discrete areas of activity but as the elements of an integrated methodology where the functions support and inform each other. For example, functions such as research, monitoring and policy development can often provide critical information and an analytical framework for the investigation of complaints. At the same time, the results of investigations, including settlements, remedies and any resulting quasi-judicial or judicial decisions, can offer valuable direction for new research and policy development, legislative reform, and advisory, public education and communication activities.

Powers

A national human rights institution requires the powers necessary to perform its mandate and functions. This is to be accomplished through either a constitutional or a legislative text (generally the legislative text is more comprehensive). The national human

rights institution's establishing law may give it powers in relation to access to public and private institutions. It may also provide for investigation of human rights violations. The powers may include power to require the production of documents and other evidence, power to compel witnesses to give testimony and power to enter and search premises. The law may also provide for penalties that may be imposed on those who do not comply with orders made by the national institution pursuant to these powers.

A national human rights institution will also be given powers of a more administrative kind relating to its internal management, such as powers to employ staff, to receive and expend funds, and to acquire premises and other property. These powers are necessary for the proper management and functioning of the institution, and also to ensure its independence, and so are indirectly necessary for the operations of the institution to be effective.

Accessibility

An effective national human rights institution is readily accessible to the individuals and groups whose rights it is established to protect and promote. Accessibility requires that people know of the national institution and its role, that they are able physically to make contact with it and that they are treated appropriately when they are in contact with its officers.

A national human rights institution cannot be accessible to a constituency that is ignorant of, or ill-informed about, its existence and functions. It should consider creative means of making itself visible, including outreach to those most vulnerable groups who are often difficult to reach and reluctant to voice their concerns to an official body.

Physical accessibility must include access by people living in rural and remote areas. It may require local offices or regular visits by field officers to ensure a full range of services and good communications. Accessible facilities, services and information for persons with disabilities are also critical and must not be overlooked.

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5. Uganda Human Rights Commission

The Uganda Human Rights Commission is a statutory body established to protect and promote human rights. The functions of the Commission are outlined in the country's Constitution and the Human Rights Commission Act No.4 of 1997 and include those of:

- ◆ Establishing a continuing programme of research, education and information to enhance respect for human rights;
- ◆ Recommending to Parliament effective measures to promote human rights, including the provision of compensation to victims of violations of human rights, or their families;
- ◆ Formulating, implementing and overseeing programmes intended to inculcate in the citizens of Uganda awareness of their civic responsibilities and an appreciation of their rights and obligations as free people.

The Constitution of Uganda contains provisions addressing economic, social and cultural rights, including the right to education, the right to culture, the right to a clean and healthy environment, and the right to work. The Constitution requires the Human Rights Commission to develop programmes and activities to promote and protect those rights.

Appropriate treatment is the third element of accessibility. A national human rights institution will not be accessible if those whose rights are violated find it unapproachable, unfriendly or difficult to deal with. Working methods and procedures must be appropriate for victims and potential victims of violations. Services and documents should be provided in a range of relevant languages. Members and staff of the institution should include persons drawn from historically marginalized groups, such as women, ethnic and racial minority groups, persons with disabilities and groups whose rights are violated or at risk.

Cooperation

The Paris Principles recognize that an effective national human rights institution will not function alone but will establish and strengthen cooperative relationships with a wide range of organizations and groups.

National human rights institutions have unique mandates and functions, but they should exercise them collaboratively in association with other democratic mechanisms with responsibility for the protection and promotion of human rights, including the Government, the legislature, the judiciary, the police and the military, and non-governmental and civil society organizations, and with individual citizens.

Establishing and maintaining close contact with non-governmental organizations and civil society is crucial as these groups are involved directly and indirectly in the promotion and protection of human rights.

A national human rights institution should also be concerned to work cooperatively, wherever possible, with local communities and marginalized groups. It should see its role as empowering those at most risk of human rights violations with the means to protect and promote their own rights. Victims and potential victims have the right to participate and so should be essential participants in developing and implementing the strategies, programme and activities of the national human rights institution.

Operational efficiency and capacity

A national human rights institution, it seems, will always have to meet great needs and demands with limited resources. Like any other organization, it will need to ensure that its methods of work are as efficient and effective as possible.

Managing limited resources effectively may require strict setting of priorities and adherence to fixed and approved strategic plans and budgets. A national human rights institution may need to seek external financial and technical support. It will find that electronic information and communications technology and resources are essential to operational efficiency and capacity and so should seek to acquire the best available.

A national human rights institution will need defined working methods and rules of procedures for matters such as the establishment of working groups, procedures to be followed for investigating complaints, inquiry and research methodology and the timing and frequency of staff meetings and training. Developing and promoting adherence to certain methods and procedures will help to maximize operational efficiency. They will also ensure that the most urgent situations receive the speedy attention they require.

Staff must be committed to human rights, knowledgeable, sensitive and skilful in performing their functions. They should be efficient and objective in their work. They will require clear job descriptions and fair and effective recruitment, assessment and promotion procedures. Both new and established staff will require, and be entitled to, good training.

A national human rights institution should review and evaluate regularly not only its overall performance but also its structure, management, processes and procedures, specific activities and programmes.

Accountability

Institutional effectiveness requires the development of a system of accountability based on specific, ascertainable goals. Besides legal and financial accountability to the Government and/or Parliament, a national human rights institution also needs to find ways to be accountable to those groups and individuals whose rights it is established to promote and protect. Its procedures and processes, for example, should be visible and transparent. Its decision-making processes should be open, rational, consistent and shared. Developing mission and values statements, strategic objectives and plans, staff codes of ethics, quality service standards and procedural handbooks can be an important tool for the national human rights institution to ensure, communicate and be accountable for high standards of achievement.

Self and public evaluations of a national human rights institution's performance, including annual reporting on its activities, results and use of its resources, will further contribute to the institution's public accountability. These evaluations should be subject to open scrutiny, comment and debate.

C. CHALLENGES FOR NATIONAL HUMAN RIGHTS INSTITUTIONS IN ADDRESSING ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A national human rights institution is likely to encounter a number of challenges in addressing economic, social and cultural rights. It will need to look internally and externally to anticipate and address the obstacles and challenges that may arise.

Internal factors⁶⁶

The first challenge facing a national human rights institution may be that of increasing the level of *understanding and acceptance* of economic, social and cultural rights among its members and staff. They may recognize the importance of the indivisibility and interdependence of all human rights, but be more familiar and experienced in dealing with civil and political rights. The national institution will need to develop appropriate methodologies and approaches for addressing economic, social and cultural rights, and to allocate priority to their implementation.

Understanding of and commitment to economic, social and cultural rights of themselves will be insufficient. A national human rights institution will also require the *institutional capacity* to deal with economic, social and cultural rights, and that will be dependent on the availability of financial resources and staff time. The national institution is likely to have a heavy existing workload and case backlog. Its staff may be insufficiently experienced and trained in the area of economic, social and cultural rights. The institution's networking with external stakeholders may be undeveloped or ineffective. It may lack management coordination and planning. These are all factors that will challenge the institution's ability to protect and promote economic, social and cultural rights.

A national human rights institution will need to *define standards*, including indicators, benchmarks and targets, relating to economic, social and cultural rights. To monitor these rights, its staff will require a fuller understanding of the dimensions and parameters of each right and the related State obligations.⁶⁷ International standards, particularly those contained in the International Covenant on Economic, Social and Cultural Rights, will assist them in this. They will need to supplement their skills in investigating individual violations with competency in fact-finding, the collection and analysis of primary and secondary data and the analysis of economic, including budgetary, information.⁶⁸

External factors

No national human rights institution can solve all of its country's human rights problems on its own. The effectiveness of its work on economic, social and cultural rights will require an *external environment* that is supportive and enabling—an effective judiciary, accountable democratic institutions and an engaged and effective civil society. Few, if

⁶⁶ Text adapted from *National Human Rights Institutions at Work: The Role of National Human Rights Commissions in the Promotion and Protection of Economic, Social and Cultural Rights*, proceedings of the National Human Rights Institutions at Work Asia Regional Training Programme, organized by the Canadian Human Rights Foundation and the Philippine Commission on Human Rights, Antipolo City, Philippines, 9-14 May, 1999, p.47.

⁶⁷ "Monitoring and assessing the enjoyment of economic, social and cultural rights" (Module 19), in *Circle of Rights: Economic, Social and Cultural Rights Activism: A Training Resource* (International Human Rights Internship Program and Asian Forum for Development, 2000), p. 366.

⁶⁸ See *Handbook on Fact-finding and Documentation of Human Rights Violations*, D.J. Ravindran, Manuel Guzman and Babes Ignacio, eds., (Bangkok, Asian Forum for Human Rights and Development (Forum Asia), 1994).

any, national human rights institutions will encounter these ideal conditions. A national institution must therefore remain conscious that the political, economic, social and cultural environment can inhibit its operating independently and effectively, and obstruct its work for economic, social and cultural rights. The national human rights institution should consider:

- The level of judicial capacity and independence and their impact on its ability to function;
- The domestic legislative framework for and international treaty obligations relating to the enforcement of remedies;
- Strategies to reduce risks that it will be drawn into party political conflicts;
- Steps to educate the public and civil society about its mandate;
- How to sensitize the Government, the military and the police to its role and authority.

Societies with recent histories of gross violations of human rights, or where societal transformation is occurring, may also be struggling with a culture of impunity in which individuals consider themselves to be above the law.⁶⁹ A national human rights institution in this kind of society will need to advocate respect by all individuals for the country's democratic institutions, including the national institution itself.

A national human rights institution may also face conflicting interpretations of human rights, and challenges to the notion of the universality of all rights. In a State that has not yet ratified the key international human rights treaties, the national institution will give priority to promoting the ratification of treaties and their incorporation in domestic law. Indeed, a restrictive interpretation of human rights may also affect the Government's interpretation of the national institution's mandate, excluding the institution from addressing economic, social and cultural rights issues.

A national human rights institution may also need to address in its promotional activities *misconceptions*, lack of awareness and shared misunderstanding among the public, government officials and even the judiciary about the specific nature of economic, social and cultural rights and the State's obligation to respect, protect and fulfil these rights. It may encounter a public and institutional attitude that access to food, housing, employment and education are welfare issues rather than human rights issues, or that economic, social and cultural issues are aspirational rather than legal. The realization of economic, social and cultural rights may be viewed as unrealistically expensive.

Public opinion may not accept that there is any deficiency in a country's performance of its obligations relating to economic, social and cultural rights. The relatively well off segment of society, whether the majority of the population or not, may lack interest in or be prejudiced against marginalized individuals and groups. This segment of society has a disproportionate effect on the public expression of views and disproportionate influence on Governments. Business competition, consumerism and the mass media can contribute to public apathy concerning economic, social and cultural rights.

Even where there is good government and public appreciation of economic, social and cultural rights and obligations, the national human rights institution may encounter difficulty in promoting and protecting them. For example, the State may *lack resources* to address economic, social and cultural rights issues. The national human rights institution will need to understand the legal nature of the progressive realization of economic,

⁶⁹ Lullessa Nega Girmachew, "Using national human rights commissions in augmenting the international and regional mechanisms for the promotion and protection of human rights", a dissertation submitted in partial fulfilment of the requirements for the award of the degree of Master of Laws (Human Rights and Democratization in Africa) at the Faculty of Law, Makerere University, Kampala, November 2000.

social and cultural rights and the implications of obligations concerning these rights for government decision-making about budgets, revenue raising and public expenditure, and inform itself of the Government's available resources and be in a position to discuss this subject with it.

In addition, *legal and judicial gaps* may still inhibit the full realization of economic, social and cultural rights.⁷⁰ Courts may not consider economic, social and cultural rights and social conditions relevant to cases before them. Even when these rights are considered justiciable, the courts may be unwilling to uphold the spirit and intent of the law in addition to the letter. Moreover, courts are often physically far from the people who need them the most, and where they are not, access to the legal system is usually more successful for the wealthy than the poor. The system may fail to deliver justice because of corruption. Low expectations and poor actual results from the courts will affect the public's confidence in and use of the system, particularly those whose economic, social and cultural rights are being violated and who are in need of protection.

⁷⁰ Jefferson R. Plantilla, "Promoting economic, social and cultural rights", paper presented to the National Human Rights Institutions at Work: Regional Workshop on Economic, Social and Cultural Rights, 5-10 November 2000, Manila, Philippines.

III. THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS IN PROTECTING AND PROMOTING ECONOMIC, SOCIAL AND CULTURAL RIGHTS

To work effectively in the area of economic, social and cultural rights, a national human rights institution must have a comprehensive understanding of:

- The international and domestic legal framework for economic, social and cultural rights;
- The issues affecting economic, social and cultural rights in its own country;
- The work of others involved in protecting and promoting economic, social and cultural rights in the country.

Given the complexity of economic, social and cultural rights, the activities undertaken should also be based on a strategic approach that takes into consideration both the opportunities and constraints facing the institution.

Many of the strategies and approaches a national human rights institution uses to promote and protect civil and political rights will be equally applicable to promoting and protecting economic, social and cultural rights. Indeed, work in these areas should not take place in isolation, but should be complementary and integrated. The national institution should strive to develop an integrated approach in its work on all human rights, including economic, social and cultural rights, ensuring that its strategies reflect the indivisibility and interdependence of human rights and that work in one area is coordinated with and informed by what is taking place in others.

A national human rights institution need not develop entirely new procedures for economic, social and cultural rights. The functions it performs and the strategies it employs should be mutually supporting. The results of investigations should be incorporated in monitoring activities and monitoring should identify new issues and cases that require intensive investigation. Similarly, the results of investigations and monitoring may influence the content of promotional campaigns, community outreach and education programmes. Promotional and outreach activities, in turn, will identify cases and issues for investigation and monitoring.

A. DEALING WITH VIOLATIONS OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

In this section of the handbook, ways in which a national human rights institution can protect and promote economic, social and cultural rights are discussed. Why a national human rights institution should deal with violations of economic, social and cultural rights is briefly explored, essential principles to guide the institution's work are examined and elements of a framework for the investigation of violations of economic, social and cultural rights are elaborated.

Why deal with violations of economic, social and cultural rights?

Human rights are indivisible and interdependent. If a national human rights institution is to affirm through its operations this fundamental principle of international human rights law, then it must find ways to protect and promote economic, social and cultural rights, and not only civil and political rights.⁷¹ It should reflect the totality of human rights in its work.

Violations of human rights can be either individually based or system based. The two types of violation require different remedial approaches. An individual violation affects one person or a small number of persons and is often perpetrated by one or a small number of individuals. Economic, social and cultural rights are generally more often the subject of systemic violations. Systemic violations have broad causes and effects, often arising from the ways in which society is organized politically, socially and economically. It is often difficult to identify individual perpetrators who bear individual responsibility for systemic violations. The State as a whole will be responsible.

Economic, social and cultural rights are violated in all States, at least to some degree. Where these violations occur, they are often on a large scale and committed with a high degree and expectation of impunity.⁷² General Comment No.10 of the Committee on Economic, Social and Cultural Rights sets out activities that a national human rights institution can undertake to protect and promote economic, social and cultural rights, including conducting inquiries and examining specific complaints. An effective mechanism for investigating economic, social and cultural rights complaints can both hold perpetrators accountable for their actions and deter potential violators from initiating new violations.⁷³

Courts are the basic mechanism for the protection of human rights. They act judicially, according to fixed rules of procedure and evidence, make binding decisions on cases and impose enforceable remedies and sanctions. But there are limitations on courts' ability to protect human rights. Their powers and roles vary from one judicial system to another. Courts generally have no, or only limited, powers of investigation, depend upon matters being brought before them, have no independent research capacity and can provide remedies only within a limited range. National human rights institutions,

⁷¹ Diane F. Orentlicher, "Addressing gross human rights abuses: punishment and victim compensation", in *Human Rights: An Agenda for the Next Century*, J. Henkin and J.L. Hargrove, eds. (American Society of International Law, Washington, D.C., 1994), p. 427.

⁷² Maastricht guideline 27 asserts: "Impunity. States should develop effective measures to preclude the possibility of impunity of any violation of economic, social and cultural rights and to ensure that no person who may be responsible for violations of such rights has immunity from liability for their actions."

⁷³ See United Nations, *A Handbook on the Establishment and Strengthening of National Human Rights Institutions ...*, paras. 216-297.

therefore, can supplement the role of the courts and play a significant role in removing impunity and deterring violations.

Because all human rights are interdependent, effective investigative responses to violations of economic, social and cultural rights will also prevent many violations of civil and political rights. The investigation of alleged human rights violations is an important function of many national human rights institutions.⁷⁴ The Paris Principles do not require that a national human rights institution have this function, but they contain special provisions dealing with investigation for those institutions that do. This function will usually carry with it discretion to determine the admissibility of complaints, formal powers of investigation, including search for and production of evidence and summoning of witnesses, and power to make recommendations, including as to remedies, and to follow up and monitor the implementation of the recommendations. It will generally include the receipt of complaints concerning individual violations and will often also include the investigation of systemic violations.

A national human rights institution has a distinctive role which complements that of the courts in dealing with human rights violations. It can deal with complaints, as well as initiating action on its own motion. It can recommend innovative and far-reaching remedies to address not only the particular circumstances of individual victims of human rights violations but also the broader systemic causes and consequences of the violations, acting to prevent further violations and not only to rectify past violations. Moreover, a national human rights institution has a particular focus on human rights and develops expertise in this area that most courts do not and cannot acquire. The complementary role of a national human rights institution is particularly important for economic, social and cultural rights because most courts traditionally have been unable to offer effective protection against, and remedies for, violations of these kinds of human rights.

Unlike a non-governmental organization, a national human rights institution is subject to the law that establishes it and is therefore restricted by its establishing legislation. Sometimes this law does not give it jurisdiction to handle cases of violation of rights. Sometimes it restricts the case-handling jurisdiction to certain specified rights or certain specified groups of rights, such as civil and political rights. However, most national human rights institutions have some discretion in interpreting and implementing their mandate and most deal with economic, social and cultural rights in one way or another. Where certain provisions of a national human rights institution's statute appear to limit its ability to investigate economic, social and cultural rights, the institution has often interpreted other provisions to allow this work. Some institutions have sought amendments to their legislation to include economic, social and cultural rights specifically within their mandates. In these ways, national human rights institutions have shown their commitment to dealing with human rights holistically.

The experiences of many national human rights institutions demonstrate that dealing with complaints is a very time-consuming and resource-intensive activity. Often the complaint load will stretch the capacity of a national institution to respond, even if it is well resourced. The National Human Rights Commission of India, for example, is one of the larger institutions, with almost 300 staff positions, but it received 40,724 new complaints in 1998/99, the latest year publicly reported upon. If it is to deal successfully with heavy complaint loads, a national human rights institution must develop mechanisms and strategies that will enable it to respond in a timely and effective manner to the full range of human rights complaints. It should offer accessible, rapid, effective and inexpensive resolution of a matter.

⁷⁴ Ibid., para. 216.

Investigative principles

All investigations of human rights violations should be based on firm principles for sound practice.⁷⁵ This relates to investigations into violations of economic, social and cultural rights, as well as violations of civil and political rights. It requires strong institutional commitment. These principles are:⁷⁶

Accuracy and objectivity. Investigations must be objective, thorough and accurate. The reliability and credibility of information collected and disseminated should be ensured by seeking direct evidence and corroboration.

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6. Investigative monitoring in the Philippines

The 1987 Philippines Constitution stipulates that the Philippine Commission on Human Rights shall function "to investigate ... all forms of human rights violations involving civil and political rights" and shall "monitor the Philippine Government's compliance with international treaty obligations on human rights". A Supreme Court ruling of 5 January 1994⁷⁷ confirmed that the Philippine Commission on Human Rights could only investigate civil and political rights violations. This decision led the Commission to look for other ways to include economic, social and cultural rights within the framework and limits of its jurisdiction.

Because of the large number of complaints received by the Commission concerning alleged violations of economic, social and cultural rights, the Commission developed a system of "investigative monitoring" of economic, social and cultural rights based on the constitutional requirement that it monitor government compliance with international treaty obligations. The Philippines ratified the International Covenant on Economic, Social and Cultural Rights in 1974 and so obligations under that treaty were included in the Commission's constitutional mandate. The Commission has attempted to implement its investigative monitoring function through the development of the Philippine Human Rights Plan, which identifies administrative, programme and legislative measures to address the needs of 16 vulnerable sectors in Philippine society. The Commission has also placed considerable emphasis on monitoring forced evictions and the violations of human rights resulting from that practice.⁷⁸

Timeliness. Investigations should be carried out in a timely manner. Long delays may result in a complainant or respondent being denied justice.

Diversity of information. Attempts should be made to use as many sources of information as possible in investigations. All the available evidence should be collected and evaluated.

⁷⁵ *Ibid.*, paras. 216-297.

⁷⁶ *Handbook on Fact-Finding and Documentation of Human Rights Violations*, D.J. Ravindran, Manuel Guzman and Babes Ignacio, eds., (Bangkok, Asian Forum for Human Rights and Development (Asian Forum), 1994).

⁷⁷ *Brigido R. Simon, Jr., Carlos Quimpo, Carlito Abelardo, and Generoso Ocampo, petitioners vs. Commission on Human Rights, Roque Ferma, and Others as John Does, respondents* (G.R. No. 100150).

⁷⁸ "Finding our way with economic, social and cultural rights: the Philippine Commission on Human Rights" (notes from a presentation by Commissioner Mercy V. Contreras, Philippine Commission on Human Rights), in *The Role of National Human Rights Commissions in the Promotion and Protection of Economic, Social and Cultural Rights* (Canadian Human Rights Foundation and the Philippine Commission on Human Rights, 1999).

Adherence to human rights standards. Human rights investigations require that the relevant international and domestic human rights standards be used as points of reference when collecting and analysing the information available. When investigating cases involving economic, social and cultural rights, national human rights institution staff and members will need to develop a thorough understanding of the relevant State obligations.

Respect for all parties. Investigations should be carried out in an atmosphere of the utmost respect for all those concerned. Additional special consideration may be required when dealing with victims of a traumatic experience. Persons accused of violating human rights are entitled to the presumption of innocence.

A complaints-based framework for dealing with violations of economic, social and cultural rights

Implementing these principles requires the development and consistent application of procedures to deal effectively and fairly with complaints involving economic, social and cultural rights.

The procedures should ensure accurate, accessible public *information* about the national human rights institution's jurisdiction and processes:

- What types of complaints it can investigate and what limits it may have under its jurisdiction?
- What is required to file a complaint?
- What to expect once a complaint has been made, including what procedures will be followed in processing complaints and undertaking investigations and how decisions and recommendations will be made?
- What is required to respond to a complaint?
- What criteria are applied to determine priority in handling emergency cases where, for example, a complainant's life may be in danger?
- What the possible remedies are if a violation is established.

A national human rights institution should be prepared to use *investigative powers*, in particular to compel the presence of witnesses and the production of evidence, if necessary to obtain all the relevant information. Transparent and impartial investigation mechanisms and the judicious use of its powers will help a national human rights institution comply with the principles for investigation. They will also increase the prospects of an effective resolution of the complaint by increasing the confidence in, and respect for, the institution and its processes of all parties concerned—the Government, the public, the victims and the violators.

Public reporting on the results of investigations ensures that perpetrators are made accountable, victims are recognized and supported, and the transparency of the process is maintained. It allows others to see that the investigations are thorough and impartial. This does not mean that the public need know all the details of every case. In some situations, the complainant's right to privacy may require that names and other identifying details not be disclosed.

Different investigative approaches may be necessary in handling violations that are systemic rather than individual. In these cases, investigations and recommendations should encompass more than the particulars of specific cases. They should focus on the root causes of a situation. The national human rights institution will seek to identify ways in which past violations can be remedied and new violations of a similar kind prevented. It may make recommendations that affect government legislation, policy and

programmes and, as a result, budgetary priorities. Dealing with complaints on a systemic basis also assists the national institution in handling its complaint load, as complaints raising similar issues are dealt with jointly. The same principles apply in this broader investigation, but the procedures used may be quite different.

The steps in investigating individual violations

Generally speaking, the investigation of alleged individual violations of economic, social and cultural rights can begin in one of two ways. First and most commonly, the national human rights institution receives a complaint alleging a human rights violation. The complaint may come from a victim or victims. It may also be made by a third party, such as a family member or neighbour or a human rights defender—either an individual activist or a non-governmental organization. Sometimes the law establishing the national human rights institution may restrict its jurisdiction to complaints made by victims. Victims are often unable to lodge complaints themselves. They may be unable physically to do so, for example because they have been detained or even killed. They may be frightened to do so because of threats and intimidation by perpetrators or others. They may lack the confidence to do so and be generally disadvantaged because of poverty or poor education. The power to accept third party complaints, therefore, is important in order to ensure that serious violations do not fall outside the jurisdiction of the national human rights institution.

Secondly, a national human rights institution may have the power to initiate an investigation itself (*suo moto*) into a matter within its jurisdiction that comes to its attention. This power provides an excellent opportunity for national institutions to promote economic, social and cultural rights. Victims of violations of economic, social and cultural rights tend, on the whole, to be economically and socially disadvantaged and so the least likely to seek redress for violations of their rights. The power to initiate investigations can help the national institution meet the needs of individuals or communities who may not otherwise be heard.

Each national human rights institution must develop its own procedures for receiving and handling complaints that are consistent with its statute, reflect its mandate and its context and conform to international human rights standards. The practices of national institutions generally reveal a few steps that constitute a common framework for investigation once an institution has received a complaint:

1. Determine the admissibility of the complaint
 - Identify the issues raised by the allegation;
 - Assess whether the allegation falls within the jurisdiction of the national human rights institution;
 - Assess whether the allegation, if proven, would constitute a violation of domestic and international human rights standards.
2. Investigate
 - Develop a plan, or terms of reference, to conduct an investigation;
 - Conduct an investigation following established procedures and principles;
 - Record the findings.
3. Conciliate
 - Where appropriate, assist the complainant and respondent to reach a private settlement of the issue acceptable to both.

4. Make a determination on the complaint
 - Analyse the information obtained during the course of the investigation;
 - Make findings and recommendations.
5. Follow up
 - Inform all parties of the findings and recommendations;
 - Monitor implementation of recommendations.

Determining the admissibility of a complaint

In most ways, the investigation of alleged violations of economic, social and cultural rights will follow the same pattern as in cases involving civil and political rights. However, a national human rights institution may confront particular challenges when it comes to determining the admissibility of a complaint concerning economic, social and cultural rights.

One of those challenges relates to the jurisdiction of the particular national human rights institution. The first admissibility issue is whether the allegations fall within the institution's jurisdiction under its establishing legislation. As already discussed, a national human rights institution may have to use its discretion in interpreting and implementing its legislative mandate to accept a complaint of a violation of economic, social and cultural rights. The legal issue may not be as clear as in the case of civil and political rights, where there may be a specific legislative mandate. One way to address the issue is through the *permeability principle*, by which civil and political rights are used as the basis for admitting complaints concerning economic, social and cultural rights. For example, an allegation based on the inaccessibility of health care might be admitted as a possible infringement of the right to life. The Supreme Court of India has made many decisions about the content of the right to life similar to this.

The second admissibility issue is whether the allegations, if proved, would constitute a violation of domestic and international human rights standards. In addressing this issue, national human rights institutions can use instructive tools, such as the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights and the general comments prepared by the Committee on Economic, Social and Cultural Rights. Maastricht guidelines 14 and 15, for example, outline specific acts of commission, such as the adoption of deliberately regressive measures (14 (e)), and omission, such as the failure to reform or repeal legislation manifestly inconsistent with an obligation of the Covenant (15 (b)), that would constitute violations of economic, social and cultural rights by the State or other entities.⁷⁹ Formulating allegations in the language of the Maastricht Guidelines or of the Committee's general comments helps to determine admissibility and later to establish the investigation plan, case analysis and recommendations on a solid basis of legal jurisprudence and interpretative policy.

There are also a number of technical requirements for admissibility. The complaint must either identify the alleged perpetrator or perpetrators and the victims or victims or provide sufficient information to assist the national human rights institution to make the necessary identification in the course of its investigation. It must contain particulars of when, where and how the alleged violation occurred. It must permit identification of the human rights obligation alleged to have been violated, at least in general terms, if the exact nature of an allegedly unmet obligation is not articulated. For example, a rural community that does not have access to safe and potable water alleges that the

⁷⁹ See annex for the full text of the Maastricht Guidelines.

State failed to take steps to ensure access (General Comment No.14 on the right to health, para.11). When determining admissibility the national human rights institution might not know what particular steps the State allegedly failed to take or what acts of commission or omission the State might have engaged in. Investigation and analysis would be required for this. Here the national human rights institution could determine admissibility on the basis of the fact that water is not available and the allegation that the State is responsible.

Investigating

All investigations should proceed on the basis of a developed plan or terms of reference. The plan should identify the critical human rights issues raised by the allegations. These will be the issues that need to be addressed in the process of investigation and later determination of the complaint.

The initial complaint should be examined carefully to identify:

- What issues require verification and how that verification will be effected?
- What information needs to be obtained and how that will be done?
- What gaps there are in the evidence and how they will be addressed?
- What witnesses need to be interviewed and where they are.

In investigating violations of economic, social and cultural rights, the national human rights institution might need to identify benchmarks for the observance of these rights and for the performance of State obligations. It may also need to collect data about situations within the State at the national and regional levels. Comparative data may be important in determining whether rights have been violated. These issues are further discussed below.

The investigation process should proceed in accordance with the principles of investigation already outlined. It should conform to relevant international human rights standards, including those for the investigation of criminal offences.

The course of the investigation and the information obtained during the investigation should be carefully recorded. National human rights institutions should perform their functions transparently and accountably. Care must be taken to ensure that material evidence is collected and protected and that witnesses are safe from intimidation and harm.

Conciliating

Some national human rights institutions are required by their establishing legislation to attempt to conciliate complaints of human rights violations. Even when not so required, a national institution might seek to conciliate complaints. There are many good reasons for attempting conciliation. Conciliation may provide a remedy for the victim more easily and less traumatically than a court procedure. With their rules, procedures and formality, court processes may be intimidating to many people. They may also be expensive—beyond the resources of the poor who are the principal victims of violations of economic, social and cultural rights. The national human rights institution offers a more flexible, less expensive and less formal alternative, which can achieve a good result for a victim through conciliation.

It is important that a national human rights institution ensures that the effects of any inequality in power or resources between the parties are minimized in the conciliation process and that the victim is not disadvantaged because of her or his inequality. This may require the institution to provide legal and other support to the complainant or at

least to ensure that the complainant has access to such support. The national institution has a particular responsibility to ensure that the complainant is not subjected to physical or other improper pressure to force acceptance of a settlement that she or he considers unjust or otherwise does not want.

Conciliation is not always appropriate. Some allegations of human rights violation are so serious that nothing short of a full criminal trial is appropriate. Victims are entitled to redress, including compensation, for the violation of their rights and the injury done them, but perpetrators should not escape accountability for their actions. Conciliation must not be used as a means to impunity.

Conciliation with one or a small number of victims will also be inappropriate as a full resolution of a complaint that raises wide systemic issues. Again, national human rights institutions must be careful to avoid being used by perpetrators to avoid their responsibilities. In assisting with the conciliation of complaints, a national institution should look to promote not only justice for individual victims but also systemic change that will both assist other victims not party to the complaint and prevent further violations. Many national human rights institutions have excellent experience in achieving conciliated settlements that both provide redress for the individual complainant and address systemic issues raised by the complaint.

Making a determination on the complaint

In preparing the case analysis and their recommendations, national human rights institutions must establish precisely which acts or failures to act by the State or other relevant actors actually constitute violations of economic, social and cultural rights. National human rights institutions must have a firm understanding of the national context in which the complaint arises, the nature of the State's obligations relating to economic, social and cultural rights and the benchmarks attributed to the enjoyment of the right in the particular country. They must be able to apply these standards to real cases. Again, tools such as the Maastricht Guidelines and general comments of the Committee on Economic, Social and Cultural Rights are particularly valuable.

In determining the nature of State obligations, national human rights institutions will need to assess whether a situation is a result of the State's unwillingness to comply with its obligations rather than its inability to do so. The Maastricht Guidelines concede that a State has a certain "margin of discretion" to determine the best manner of implementing its obligations relating to economic, social and cultural rights, depending on local conditions.⁸⁰ However, when accounting for its performance, the State must establish that its failure to comply with its obligations immediately and in full is due to inability rather than its unwillingness to do so. For instance, Maastricht guideline 13 asserts:

⁸⁰ *Margin of discretion*: As in the case of civil and political rights, States enjoy a margin of discretion in selecting the means for implementing their respective obligations. State practice and the application of legal norms to concrete cases and situations by international treaty monitoring bodies as well as by domestic courts have contributed to the development of universal minimum standards and the common understanding of the scope, nature and limitation of economic, social and cultural rights. The fact that the full realization of most economic, social and cultural rights can only be achieved progressively, which in fact also applies to most civil and political rights, does not alter the nature of the legal obligation of States, which requires that certain steps be taken immediately and others as soon as possible. Therefore, the burden is on the State to demonstrate that it is making measurable progress toward the full realization of the rights in question. The State cannot use the "progressive realization" provisions in article 2 of the Covenant as a pretext for non-compliance. Nor can the State justify derogations or limitations of rights recognized in the Covenant because of different social, religious and cultural backgrounds. (Maastricht guideline 8)

In determining which actions or omissions amount to a violation of an economic, social or cultural right, it is important to distinguish the inability from the unwillingness of a State to comply with its treaty obligations. A State claiming that it is unable to carry out its obligation for reasons beyond its control has the burden of proving that this is the case. A temporary closure of an educational institution due to an earthquake, for instance, would be a circumstance beyond the control of the State, while the elimination of a social security scheme without an adequate replacement programme could be an example of unwillingness by the State to fulfil its obligations.

Once a national human rights institution has determined that there has been a violation of economic, social and cultural rights, it should consider the range of remedies available both to redress the violation and to prevent future violations. These might include recommending compensation for identified victims, changes to government laws, policies and programmes or the development and implementation of new laws, policies and programmes, and alterations to or the provision of public facilities and infrastructure. The national institution can pursue appropriate remedies through a variety of quite different means. It can offer or arrange mediation and dispute resolution between the parties to seek an individual settlement. It can organize or facilitate class action suits in the courts. It can consider exercising any power it may have to issue enforceable orders. It can make recommendations or referrals to other authorities, such as a tribunal or court. It can also undertake its own process of further monitoring or investigation. Whatever course it takes, the national institution should seek remedies that have both individual and systemic elements, in order to protect both personal and public interests.

Follow-up

National human rights institutions should make public the findings and recommendations that result from their investigations, with appropriate safeguards for the privacy of victims. They should pursue the implementation of the recommendations, keeping the parties informed of their efforts. National human rights institutions are continuing bodies. They are not appointed for a specific investigation and then cease to exist, as many commissions of inquiry do. They do not lose jurisdiction when they have disposed of a complaint, as courts do. As continuing bodies, they have the ability and power to monitor the implementation of recommendations arising from their investigations. They might choose to do this formally over time and report publicly again on the result. Public reporting will strengthen recommendations and encourage future cooperation with the institution by establishing its determination to pursue implementation and enhancing its credibility. It will also communicate a strong message that the institution is willing and able to address economic, social and cultural rights, that individuals and groups are encouraged to bring forward complaints and that there are consequences for those who violate these rights.

A national human rights institution can make use of its investigations of alleged violations of economic, social and cultural rights in its programmes to promote awareness of and respect for these rights. It can use them to promote understanding of the interdependence and indivisibility of all human rights. A successful resolution of a case, particularly one that has resulted in a judicial order or an appropriate settlement by the parties, can be used to raise awareness and educate the community generally.

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7. Ontario Human Rights Commission, Canada

The Ontario Human Rights Commission in Canada received a complaint from a woman who alleged she was refused service in a restaurant while breastfeeding her child and ordered to leave the premises. The Commission sent the case to a tribunal, where it was settled in favour of the complainant.

As a result of the complaint and the settlement, in October 2000 the Commission launched a province-wide campaign in partnership with the Infant Feeding Action Coalition Canada and the Toronto Public Health Unit to mark World Breastfeeding Week. The campaign featured an advertisement that was placed on municipal transit vehicles across the province, promoting a woman's right to breastfeed her child in public.

The advertising campaign was part of the Commission's work to protect women from discrimination in services and employment during pregnancy and breastfeeding. It affirmed the work of other international organizations, such as UNICEF and the World Health Organization that have repeatedly promoted the health and social benefits of breastfeeding.

The Commission also revised its Policy on Discrimination because of Pregnancy to include the right to breastfeed in public and in the work environment.

Although the complaint concerned discrimination rather than economic, social and cultural rights, this is a good example of how complaint handling can influence other national human rights institution functions, such as policy development, awareness raising and public education.

Investigating systemic violations

Systemic violations affect whole groups of people, sometimes within one region or locality, or even across a whole State or many States. Although it may be possible to identify those who share responsibility for the violations and hold them accountable, the causes of the violations are embedded in broader social, economic and political structures and systems. The investigation of these kinds of complaints is difficult because it must go beyond the experiences of victims to an analysis of the structures and functioning of the society as a whole in order to identify what is producing the violations and how they can be addressed and prevented.

Hearing the experiences of victims is an essential part of the investigation process. Victims must be able to tell their stories, have them acknowledged and receive the necessary affirmation. Systemic violations, however, by their very nature also require systemic responses. Here the work of the national human rights institution must be of a high professional quality. The national institution has the responsibility to identify causes and to propose solutions. It should not expect that it will possess all the necessary expertise. Rather it should seek to tap the best available expertise, advice and assistance from government agencies, universities, non-governmental organizations and the private sector. In the end, however, it must make its own findings and recommendations. Therefore, in dealing with systemic violations, a institution must ensure that people are at the centre of its concern, while assessing the underpinning structural, social and economic factors which permit systemic violations.

The various steps in investigating individual complaints may also be relevant to the investigation of systemic violations, although other more effective strategies with regard

to systemic violations have also been developed. Some national human rights institutions have adopted a process of public inquiry as an effective means of undertaking wide-ranging investigations into systemic violations of economic, social and cultural rights. Issues for inquiry may have arisen out of investigation, monitoring, research or other consultation activities of the national institution. The inquiry process, which can be lengthy and requires strong and concerted commitment, includes extensive research and private consultation. Its most distinctive element is the conducting of public hearings.

At these hearings victims are invited to speak publicly about their experiences. It may be necessary to take steps to ensure that witnesses are protected both from any possibility of retribution and from public embarrassment, for example by suppressing their names and other identifying information. The legislation establishing a national human rights institution will often give it power to make orders concerning confidentiality or any other matter in relation to witnesses and information provided during the course of investigation. The legislation may also provide criminal penalties for breaches of such orders. These powers should where necessary be used appropriately in order to ensure that witnesses are protected and are not discouraged from giving their evidence through fear of the consequences.

In public hearings, the national human rights institution will also take evidence from government officials, academic experts, non-governmental organizations and other human rights advocates, and any other organizations and individuals with information that can assist the inquiry. The national institution can examine these witnesses, testing their evidence and opinions. This in itself is an important step in promoting and protecting human rights. It makes government officials and others publicly accountable for their actions, opinions and proposals. It demonstrates to the community that these officials are not above the law, but answerable at least to those charged under the law with responsibility for human rights.

The community education dimension of public hearings is important. This approach to investigating systemic violations is an opportunity for public education and awareness building. By presenting real situations of human rights violations in public forums, the national human rights institution gives substance and content to human rights law in the specific context of the particular State. The community becomes more aware of what human rights are and what the human rights situation in the country is. The process not only uncovers facts about violations, it also builds a public demand for and expectation of change that will support implementation of the recommendations made at the conclusion of the investigation.

The final steps in this process are the development of the report of the investigation and the recommendations of the national human rights institution and their presentation to the Government, the legislature and the public. Because systemic violations of economic, social and cultural rights can be affected by both public and private agencies and by both organizations and individuals, the national institution should be able to direct its recommendations to any appropriate organization or person. It should not be restricted to addressing only the Government or other State institutions. The report and recommendations should deal comprehensively with the issues raised in the investigation and address them as effectively as possible.

If the public inquiry process is to be fully effective, its results should be publicly available, with appropriate safeguards for witnesses where necessary. This not only ensures transparency in the work of the national human rights institution, but also promotes the public accountability of the Government and others to whom recommendations are directed. When the recommendations are known, those to whom they are directed will be expected to respond publicly and report publicly on steps they have taken in re-

sponse. In this way, the implementation of the recommendations becomes a public concern. The national human rights institution should monitor implementation of the recommendations and report regularly on them.

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8. Australian Human Rights and Equal Opportunity Commission

The Australian Human Rights and Equal Opportunity Commission has a well developed practice of public inquiry into systemic violations of human rights, especially economic, social and cultural rights. These inquiries began soon after the Commission was established in 1986. They have employed the various components discussed in this section

The first such public inquiry concerned the rights of homeless children. In its 1989 report *Our Homeless Children: Report of the National Inquiry into Homeless Children*, the Commission made a series of detailed recommendations to the national and state governments of Australia and to private and community sector organizations. The Commission recommended that "where children and young people leave or ought to leave home because of serious neglect or abuse, the Commonwealth should meet the obligation to support them, regardless of their age, in conditions where they are protected and can develop as required by the Declaration of the Rights of the Child". The report raised community awareness of child homelessness as a human rights issue and raised public expectations of more effective government action to address the needs of the children concerned. It resulted in fundamental changes in policy and increases in public expenditure on children's rights issues.⁸¹

The Australian Commission has conducted many other public inquiries, including inquiries into human rights and mental illness, access to safe and reliable water in remote indigenous communities, health services for remote indigenous communities, racist violence, rural and remote school education, and the employment of pregnant women. These inquiries are good examples of the usefulness of this approach to investigating systemic violations of economic, social and cultural rights.

⁸¹ For a brief analysis of the significance of the report, see Paul Hunt, *Reclaiming Social Rights: International and Comparative Perspectives*, (Aldershot, Dartmouth Publishing Company, 1996), pp.190-195.

B. MONITORING ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Monitoring is the process of systematically tracking and assessing State performance against clear benchmarks and targets. It requires, first and foremost, data collection and analysis, involving not only official statistics, but possibly also field observation and investigations or even fact-finding delegations. It needs to draw on diverse sources of information, including studies and standards, both domestic and international, relating to violations or progressive change in the status of economic, social and cultural rights.⁸² Monitoring these rights requires looking at qualitative and quantitative measures or indicators to assess what movement there has been from key benchmarks established at the start the monitoring period and whether targets set at that time have been met.

Why monitor economic, social and cultural rights?

A State's performance of its human rights obligations must be monitored to ensure that the obligations are met. This is recognized by each of the key human rights treaties, which have established treaty committees for this purpose and require States to report periodically to these committees. Monitoring performance with regard to obligations relating to economic, social and cultural rights is especially important. International law recognizes that, because of resource limitations, States may not be able to ensure immediately that all their citizens fully enjoy all their economic, social and cultural rights. The International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child both provide for progressive realization of economic, social and cultural rights. If the obligation of progressive realization is to be taken seriously, each State's performance must be monitored.

Monitoring the performance of obligations relating to economic, social and cultural rights achieves many important results:

- It indicates whether a State is meeting its obligations and provides a basis for holding the State accountable.
- It shows where the State is meeting its obligations and where it falls short.
- It can identify the source and nature of violations, and problems in realizing economic, social and cultural rights.
- It can identify priorities for action and suggest where resources need to be allocated.
- It can support legislative advocacy and policy formulation, as well as public awareness and education campaigns.
- It can promote principled policy-making that incorporates a human rights perspective, and processes that facilitate public accountability.
- It can also be used to pursue actions to obtain remedies.
- It provides the basis for reports and submissions to national or international bodies.

A national human rights institution, as an official human rights organization, is well equipped to undertake this monitoring. In its General Comment No. 10 on the role of national human rights institutions, the Committee on Economic, Social and Cultural Rights emphasizes that monitoring States' compliance with their obligations in relation to spe-

⁸² Manuel Guzman and Bert Verstappen, *What is Monitoring? Human Rights Monitoring and Documentation Series*, vol. 1 (Versoix, Switzerland, Human Rights Information and Documentation Systems International, 2001) (www.huridocs.org).

cific rights is an important activity of national institutions in the protection and promotion of economic, social and cultural rights. Monitoring can be at the core of a comprehensive approach to addressing economic, social, cultural and other rights that involves a variety of functions, activities and strategies. The results of monitoring can provide crucial information and analysis to support the other functions of the national human rights institution, particularly systemic investigations, advisory statements or recommendations, and educational activities promoting economic, social, cultural and other rights. Monitoring economic, social and cultural rights is a promotional activity in itself.

Principles

A number of key principles should form the basis for monitoring effectively the performance of State obligations relating to economic, social and cultural rights. These principles should guide a national human rights institution when it is collecting and assessing information.

As with investigations of human rights complaints, the process of monitoring must be *thorough, accurate and impartial* and must be perceived as such. Because the results must be credible and reliable, the national human rights institution should draw information for corroboration from as many sources as possible, including statistical data, research studies and reports by the Government, non-governmental organizations, academics and international bodies. The scope of the information to be collected and the categories and terminology to be used should be defined. Systematic recording methods and sound data storage and retrieval are also important.⁸³

A *gender perspective* should be an integral part of the design and implementation of monitoring activities in order to recognize and address the different experiences of women and men in relation to economic, social and cultural rights.

⁸³ D.J. Ravindran, Manuel Guzman and Babes Ignacio, eds., *Handbook on Fact-finding and Documentation of Human Rights Violations* (Bangkok, Asian Forum for Human Rights and Development (Forum Asia), 1994), pp. 66-80.

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9. South African Human Rights Commission⁸⁴

The South African Human Rights Commission was established in 1995 in accordance with the provisions of the 1993 Interim Constitution and the Human Rights Commission Act 1994. Section 184 (3) of the Constitution places a duty on the Human Rights Commission to require State organs to report on "measures they have taken towards the realization of the rights ... concerning housing, health care, food, water, social security, education and the environment". This obligation suggests that the information the Commission receives should form the basis of a report.

In preparing its six-volume 1997-1998 *Economic and Social Rights Report*,⁸⁵ the Commission joined in partnership with research institutions, which provided invaluable expertise and assisted the Commission to popularize social and economic rights. The Commission arranged training workshops for its staff and other partners, including relevant government departments, to ensure informed assistance. Letters of inquiry or protocols were then drafted and distributed to the departments relating to each of the rights set forth in the Constitution. The analysis of the information was assigned to one of the research centres. In addition, a reputable research agency was commissioned to undertake a survey of popular perceptions of the delivery of social and economic rights. In the course of the inquiry, the Commission learned the importance of investing time in training and providing information to all participating government departments so that the information received can be focused and will readily serve the intended purposes; it also learned that this has to be a continuing process.

Because of the importance the Commission attaches to social and economic rights in South Africa, the Commission teamed up with the South African National NGO Coalition (SANGOCO) to conduct national public hearings on poverty in all nine provinces of the country. The hearings were important. They underlined the significance of social and economic rights for a human rights culture. They provided a forum for ordinary people to speak with dignity about their experiences of struggling against poverty, and to share their ideas with others. People's participation made it possible to develop a policy framework that was both relevant to the needs of the people and informed.

Monitoring economic, social and cultural rights can be difficult and challenging. State obligations in relation to these rights include obligations of both conduct and result, and each must be monitored. The requirement of progressive realization of economic, social and cultural rights means that monitoring must continue over time. Rights violations involving large groups will require analysis of complex data.⁸⁶ And, underlying all other difficulties, often the relevant standards are not yet fully developed. A national human rights institution can enhance its ability to conduct accurate and effective mon-

⁸⁴ Text adapted from a paper by N. Barney Pitso, Attorney of the High Court of South Africa and Chairperson, South African Human Rights Commission, originally prepared for the international seminar, "Human rights: their protection at national level", Belfast, Northern Ireland, 10-14 May 1998. Later it was presented to the international conference on the establishment of the Ethiopian Human Rights Commission and the Office of the Ombudsman, Addis Ababa, 17-22 May 1998.

⁸⁵ The South African Human Rights Commission's 1997-1998 *Economic and Social Rights Report* is available on the Commission's web site at www.sahrc.org.za.

⁸⁶ "Monitoring and assessing the enjoyment of economic, social and cultural rights" (Module 19), *Circle of Rights: Economic, Social and Cultural Rights Activism: A Training Resource*, (International Human Rights Internship Program and Asian Forum for Human Rights and Development, 2000), p. 366.

itoring by building internal capacity and by soliciting the active participation of affected sectors, either directly or through representative civil society organizations.⁸⁷ Monitoring mechanisms may need to be developed for the local, regional and national levels.

A national human rights institution should also make use of general comments and the reporting guidelines for States parties prepared by the Committee on Economic, Social and Cultural Rights. The Committee's comments are vital to establishing indicators and national-level benchmarks for monitoring, as they provide interpretative understanding of particular economic, social and cultural rights and corresponding State obligations under the Covenant.

A framework for monitoring

Developing an overall framework or plan for monitoring economic, social and cultural rights will help ensure that sound principles and methodological approaches are implemented and that clear and effective analysis results. The framework will support a coordinated and focused approach to addressing economic, social and cultural rights. Under the framework, a national human rights institution should develop, for each monitoring project, clear terms of reference, a detailed process and a monitoring cycle to ensure regular review over time.

The terms of reference should set out:

- The purpose or rationale for monitoring economic, social and cultural rights;
- The scope of monitoring (for example, violations and/or progressive realization of economic, social and cultural rights);
- The methodological approaches to be used in data collection, documentation and analysis, for example, benchmarks, indicators and budget analysis;
- The various sources from which information is to be gathered;
- The assumptions and limitations of the project;
- The time frames for monitoring, analysis and reporting;
- Reporting plans, including format, communications and promotion;
- Activities to be undertaken in following up the report, including in relation to other functions of the national human rights institution;
- Resources (human, technical and financial) required to carry out monitoring;⁸⁸
- Management requirements, including a multidisciplinary project team (with staff of varying skills and qualifications drawn from a number of relevant sections within the national institution and outside expert advisers) and its terms of reference.

The process should involve:

1. Identifying appropriate indicators, compatible with the State's obligations in relation to economic, social and cultural rights, for monitoring these rights at the national and international levels.
2. Establishing appropriate national benchmarks and targets in relation to each indicator and asking:
 - What movement there has been from the benchmark and, if there has not been positive movement, why not?

⁸⁷ Maria Socorro I. Diokno, "Monitoring the progressive realization of housing rights", in *Focus Asia-Pacific*, Newsletter of the Asia-Pacific Human Rights Information Center (HURIGHTS Osaka), No. 16, June 1999.

⁸⁸ *Ibid.*

- Has the State set targets and, if not, why not?
 - Have they been met and, if not, why not?
3. Collecting data during the monitoring period which can be disaggregated according to the grounds of prohibited discrimination (such as gender, race, ethnic origin or disability) and which are comparable, accurate, impartial and provided over time.
 4. Analysing results, drawing conclusions, making recommendations and reporting on findings for the monitoring period by:
 - Considering data from indicators with established benchmarks (national and international) to give the current status of economic, social and cultural rights and help in developing targets to be met;
 - Gauging trends by comparing results over time with previous monitoring periods (multi-year analysis) to determine whether and what progress has been made and national benchmarks achieved;
 - Comparing results with international benchmarks also.

Identifying indicators

The indicators selected by a national human rights institution should relate to the legal obligations of the State under international law, such as under the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, and under domestic law. They should relate to the State's obligation of result and the State's obligation of conduct.

The obligation of result requires that States ensure in fact the realization of all human rights. In relation to economic, social and cultural rights, this includes the obligation to realize progressively the rights in full and the obligation to provide immediately the minimum core levels of rights.

The obligation of conduct relates to the manner in which human rights are realized. Monitoring acts of commission or omission by the State in meeting its duty to respect, protect, and fulfil economic, social and cultural rights and its specific obligations not to discriminate and to "take steps" towards progressive realization is a role for national institutions.⁸⁹

Indicators to assess economic, social and cultural rights need not be direct and full measures of performance of these obligations. They may be collected for other purposes but provide indirect or incomplete but relevant measures of performance. Some social development indicators, for example, do not relate directly to human rights but they can still be meaningful indicators of the enjoyment of economic, social and cultural rights.⁹⁰

Indicators of a State's performance of its obligations relating to economic, social and cultural rights can be either quantitative or qualitative measurements.

⁸⁹ Clarence Dias, "Towards effective monitoring—elements of a monitoring system", paper presented at the National Human Rights Institutions at Work Asia Regional Training Programme, organized by the Canadian Human Rights Foundation and the Philippine Commission on Human Rights, Antipolo City, Philippines, 9-14 May 1999.

⁹⁰ Danilo Türk, Special Rapporteur on the realization of economic, social and cultural rights, progress report (E/CN.4/Sub.2/1990/19).

ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN PRACTICE

10. Quantitative health indicators⁹¹

Indicators relating to the right to health may be subdivided into five classes:

1. Information on physical infrastructure, by geographic location, such as the number and type of hospitals, the number and type of health clinics and the use rate for hospitals and clinics;
2. Information on human resources, by age, gender, social class, ethnicity and geographic location, such as the number and type of doctors, the doctor-patient ratio, the number and type of nurses, the number of midwives, the number and type of other health professionals, the doctor-nurse ratio, shifts and working hours, standards for professional development, recruitment and promotion and wage levels and benefits provided to health workers;
3. Information on the population, by age, gender, social class, ethnicity and geographic location, such as the infant mortality rate, the under-five mortality rate, the incidence of drug abuse and de-addiction, the incidence of alcohol and other substance abuse and de-addiction, the proportion of the youth population already immunized and the type of immunization, the mortality rate, the morbidity rate, life expectancy, causes of mortality and morbidity, the prevalence of HIV/AIDS, the prevalence of mental health problems in the population, the prevalence of teen and youth pregnancy, and population growth;
4. Information on materials and equipment, such as the number and type of facilities by geographic location, the patient-bed ratio, the affordability of drugs, medicines and laboratory examinations, and the number and type of drugs and medicines;
5. Information on the extent of access to natural resources, by geographic location, such as the proportion of households with access to safe and clean potable water, types of access to safe and clean potable water, the proportion of households with access to sanitation facilities and types of access to sanitation facilities.

Quantitative indicators are relevant statistical or numerical data showing or explaining prevailing circumstances at a given place at a given point in time.⁹² Some examples of quantitative indicators of economic, social and cultural rights are the participation rates of school-age children in the primary education system and the income levels of ethnic minority groups compared to those of other groups. Many quantitative indicators of economic, social and cultural rights have already been identified and are used by agencies such as the World Health Organization and the United Nations Development Programme.

Qualitative indicators also attempt to show or explain prevailing circumstances with regard to economic, social and cultural rights, but they are not numerical in nature. Rather, qualitative indicators reflect more intensive but more subjective assessments of situations. They are produced, for example, through in-depth interviews of key experts, direct field observation of processes and practices, or a content review of written studies or reports.

⁹¹ Extrapolated from Maria Socorro I. Diokno, "Monitoring the progressive realization of housing rights".

⁹² Ibid.

Qualitative indicators entail assumptions that require careful examination and testing before use.⁹³ They cannot simply be taken at face value. Despite their limitations, however, qualitative indicators are valuable tools that can adequately and accurately measure not only the degree of enjoyment or violation of economic, social and cultural rights but also any advances in their realization.⁹⁴

Making use of both quantitative and qualitative indicators will provide a better range of information for analysing State obligations and State performance and will diminish the limitations of using either type alone.

Take the right to health as an example. Immunization rates could be one quantitative indicator or measure of the status of the right to health linked to the State's obligation of result. A budget analysis of health spending for the past 10 years could also be a quantitative measure, but would be linked to the State's obligation of conduct, the obligation to "take steps" to realize progressively better health for its citizens. A qualitative approach to this issue could take the form of a series of interviews with parents and health care providers across urban and rural areas concerning access to immunization and other health care services.

Other examples of the use of qualitative indicators include undertaking document content analysis of existing laws, policies, regulations, national action plans, proposed bills and court and quasi-judiciary rulings for compatibility and compliance with or impact on economic, social and cultural rights and obligations. In addition to analysing the content of laws, policies, plans and decisions, their enforcement should also be monitored. Monitoring both the State's ability and its willingness to address economic, social and cultural rights will result in a more comprehensive and defined analysis.

National human rights institutions can be guided in identifying appropriate indicators by the Covenant itself, the Committee's general comments and other documents relating to the Covenant. General comments that will be particularly helpful are General Comment No. 4 on the right to adequate housing, General Comment No. 12 on the right to adequate food, General Comment No. 13 on the right to education and General Comment No. 14 on the right to the highest attainable standard of health. These documents all relate to the obligation of result.

Other documents, such as General Comment No. 3 on the nature of States parties' obligations, General Comment No. 9 on the domestic application of the Covenant and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, address the State's obligation of conduct.

Articles 16 and 17 of the Covenant, General Comment No.1 and the Committee's reporting guidelines all outline each State's obligation to submit periodic reports to the Committee on measures adopted and progress made in achieving economic, social and cultural rights. This provides another basis for a national human rights institution to monitor the conduct of a State. The Committee's reporting guidelines require States parties to:

- Monitor the status of economic, social and cultural rights in the country;
- Comprehensively review national legislation, administrative rules, procedures and practices;
- Report on priorities set and policies adopted;

⁹³ McGranahan, Pizarro and Richard, *Measurement and Analysis of Socio-Economic Development: An Enquiry into International Indicators of Development and Quantitative Interrelations of Social and Economic Components of Development* (Geneva, United Nations Institute for Research and Development, 1985).

⁹⁴ Maria Socorro I. Diokno, "Working with indicators to monitor economic, social and cultural rights", paper presented at the National Human Rights Institutions at Work Asia Regional Training Programme, Antipolo City, Philippines, May 1999.

- Prepare and publicly consider country reports at the national level before submitting them to the Committee;
- Make use of international technical assistance.

The Committee's reporting guidelines also provide a series of questions concerning each right enumerated in the Covenant to facilitate a State party's preparation of its country reports (see box, Economic, Social and Cultural Rights Standards: 6. International Covenant on Economic, Social and Cultural Rights—reporting guidelines). These same questions can also help a national human rights institution decide what to monitor.

A national human rights institution should also refer to the Committee's concluding observations on States' periodic reports for the Committee's views on how particular rights are to be interpreted and implemented. The specific concluding observations on the periodic report of the State in which the national human rights institution is located will be particularly important for that institution's work in monitoring the State's performance of its obligations relating to economic, social and cultural rights.

A national human rights institution might also turn to other treaties, such as the Convention on the Elimination of All Forms of Discrimination against Women or the Convention on the Rights of the Child, and comments and observations of the committees established under those treaties, as other sources for informing the monitoring of economic, social and cultural rights.

A national human rights institution can monitor its own relations with the State as one measure of the State's willingness to address economic, social and cultural rights. This can be done by looking at the degree to which the Government ensures that the national human rights institution is sufficiently resourced to carry out its mandate effectively, and the nature and level of cooperation the institution has received when undertaking protection and promotion activities.

Lastly, if a national human rights institution is to take a thorough approach to addressing economic, social and cultural rights, it will also be important for it to monitor the conduct of non-State actors, including corporations. They have great effects, both positive and negative, on the enjoyment of economic, social and cultural rights. The examination of the role of non-State actors should take into account the State's obligation to protect its citizens through the regulation of non-State actors.⁹⁵

Establishing benchmarks and targets

Once indicators to measure economic, social and cultural rights have been determined, the next step is to establish appropriate national-level benchmarks and targets for each indicator.

Benchmarks are base-line measurements. They measure performance at the start of the period in question. Movement from the benchmark indicates whether a State is meeting its obligation of progressive realization of the rights concerned. Repeated measurements can be examined over a period to track performance.

Targets are goals. They indicate the level of realization of economic, social and cultural rights considered attainable, and therefore obligatory, within a determined period. They should be realistic, neither merely aspirational and therefore unattainable in fact, nor excessively modest and therefore attainable without effort or commitment. If realistic

⁹⁵ "Monitoring and assessing the enjoyment of economic, social and cultural rights" (Module 19), *Circle of Rights: Economic, Social and Cultural Rights Activism: A Training Resource*; International Human Rights Internship Program and Asian Forum for Development, 2000, p. 170.

targets are set and then not met, the onus should be on the State to establish that it has met its obligations relating to economic, social and cultural rights nonetheless.

Each indicator selected should be measured at the start of the period to be monitored and a target set for that indicator for attainment by the end of the period. Benchmarks and targets should be established at the national level and chosen in relation to State obligations under the Covenant and in accordance with the interpretative general comments of the Committee on Economic, Social and Cultural Rights. They should be compared with and informed by other relevant international standards, such as those set by the United Nations Development Programme and the World Health Organization. They should be reviewed regularly and revised as necessary to take into account progress towards the full realization of economic, social and cultural rights.

In its General Comment No.1, the Committee on Economic, Social and Cultural Rights endorsed this approach to monitoring using benchmarks and targets. The Committee stressed the importance of providing

a basis on which the State party itself, as well as the Committee, can effectively evaluate the extent to which progress has been made towards the realization of the obligations contained in the Covenant. For this purpose, it may be useful for States to identify specific benchmarks or goals against which their performance in a given area can be assessed. Thus, for example, it is generally agreed that it is important to set specific goals with respect to the reduction of infant mortality, the extent of vaccination of children, the intake of calories per person, the number of persons per health-care provider, etc. In many of these areas, global benchmarks are of limited use, whereas national or other more specific benchmarks can provide an extremely valuable indication of progress.⁹⁶

The Committee has gone on to elaborate its own "basis" or benchmarks for evaluating the realization of Covenant obligations in a series of subsequent general comments. General Comment No. 14 on the right to the highest attainable standard of health, for example, sets a measurable benchmark in stating that the right to prevention, treatment and control of diseases (art. 12.2 (c)) requires, as a priority, State "implementation or enhancement of immunization programmes" against the major infectious diseases.

A national human rights institution might also use the Committee's concluding observations on its Government's periodic report as another source for establishing benchmarks and targets for future monitoring.⁹⁷ If, for example, the Committee recommends that the State take particular steps to increase access to elementary education for girl children in rural areas, the national human rights institution can monitor the State's conduct in this regard over the next reporting period.

A national human rights institution should also make use of the concept of the minimum core content of economic, social and cultural rights as another basis or benchmark against which to monitor and assess compliance. The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights contend that under international law "States Parties are obliged, regardless of the level of economic development, to ensure respect for minimum subsistence rights for all".⁹⁸

Furthermore, in its General Comment No. 3, the Committee on Economic, Social and Cultural Rights holds that the State has an immediate obligation to meet at least the

⁹⁶ General Comment No. 1 of the Committee on Economic, Social and Cultural Rights on reporting by States parties, para. 6.

⁹⁷ Clarence Dias, "Towards effective monitoring—elements of a monitoring system", paper presented at the National Human Rights Institutions at Work Asia Regional Training Programme, Antipolo City, Philippines, May 1999.

⁹⁸ Principle 25.

minimum standards associated with the rights contained in the Covenant. The Committee maintains:

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.⁹⁹

Another example of a minimum core requirement is found in General Comment No. 14, which establishes a core obligation for States:

to adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population; the strategy and plan of action shall be devised, and periodically reviewed, on the basis of a participatory and transparent process; they shall include methods, such as right to health indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all vulnerable or marginalized groups.

The appropriateness of defining the minimum core content of a right is greatly debated. Arguments put forward include the difficulty of setting universally applicable standards and that doing so will serve to limit the overall guarantee of rights to only those aspects that are easily justiciable.¹⁰⁰ In any case, a national human rights institution should still ensure that the content of and national benchmarks for economic, social and cultural rights are being defined and established in accordance with the full range of obligations, including the obligation to apply “the maximum of available resources”. For example, even a country that easily surpasses minimum requirements of basic levels of education and provides free secondary education to the vast majority of its school-age children will still be expected to “take steps” towards the “progressive introduction of free [higher] education”, in accordance with article 13.2 (c) of the Covenant.

It is important, therefore, to find out whether the State has adopted action plans and specific benchmarks and targets, and if so what they are, and to determine whether the State has improved its performance from the first of the benchmarks and met the targets it has set for itself.¹⁰¹

Regardless of whether the State has set benchmarks and targets, however, there is a role for a national human rights institution in determining and assessing what are appropriate national benchmarks and targets. Other international resources, such as the UNDP Human Development Report¹⁰² and the Human Development Index, and specific national-level human development reports can help in setting appropriate national benchmarks and targets for economic, social and cultural rights. International standards also provide a basis against which national benchmarks and targets can be assessed over time.

⁹⁹ General Comment No. 3 of the Committee on Economic, Social and Cultural Rights on the nature of States parties' obligations, para. 10.

¹⁰⁰ "Defining the content of economic, social and cultural rights" (Module 8), *Circle of Rights—Economic, Social and Cultural Activism: A Training Resource*, International Human Rights Internship Program and Asian Forum for Human Rights and Development, 2000, pp. 151-157.

¹⁰¹ Adapted from Maria Socorro I. Diokno, "Monitoring the progressive realization of housing rights", in Focus Asia-Pacific, Newsletter of the Asia-Pacific Human Rights Information Center (HURIGHTS Osaka), No. 16, June 1999.

¹⁰² The annual reports are available on the UNDP web site (<http://www.undp.org/hdro>).

Collecting data

Data for indicators, benchmarks and targets can come from a variety of sources. Many government publications contain important quantitative data. Annual government budget reports provide information on the overall mix and proportion of public spending in areas that are more directly related to economic, social and cultural rights, such as education and health care, and in other areas, such as the military. Programme and annual reports of specific government departments, such as those responsible for education, health, housing, labour and culture, can provide detailed breakdowns of exactly where public funds are being spent in these areas. State planning instruments, such as a national human rights action plan, and country reports to treaty committees also provide important data for monitoring and evaluation.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS STANDARDS

6. International Covenant on Economic, Social and Cultural Rights — reporting guidelines¹⁰³

The Committee on Economic, Social and Cultural Rights has prepared reporting guidelines to help States parties to the International Covenant on Economic, Social and Cultural Rights prepare their submissions and meet their reporting obligations under the Covenant. Similar guidelines are provided for each right and can be summarized as follows.

Status

- Provide detailed information on the extent to which the right has been realized. Identify any groups which do not enjoy the right 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? Give details of such non-enjoyment of rights.
- Describe the sources of information that exist in this regard, including statistical data, surveys and other monitoring arrangements. In particular, provide information on indicators pertaining to the right (e.g. health indicator of life expectancy rate as defined by the World Health Organization) and disaggregate by sex, urban/rural division, socio-economic or ethnic group and geographical area.

Conduct

- Describe all measures taken by the Government, to the maximum of its available resources, to provide for the right or prevent obstacles to its fulfilment, particularly for vulnerable and disadvantaged groups. Include financial measures and indicate what percentage of gross national product (GNP) as well as of the national and/or regional budget(s) is spent on the particular right. How does this compare with the situation 10 years ago? What reasons are there for any changes?
- Describe any supportive legal provisions regarding the exercise of the right. Include reference to any legislation prohibiting any and all forms of discrimination.
- What were the effects of these measures or provisions on fulfilling the right, particularly for vulnerable groups? Report the successes, problems and shortcomings of such measures or provisions.
- What time-related goals and benchmarks has the Government set for measuring achievements in regard to fulfilling the right.

Challenges

- What difficulties/shortcomings have been encountered in the realization of the right?
- Describe any legal restrictions placed on the exercise of the right.
- Describe any changes during the reporting period in court decisions, national laws, policies, regulations and practices affecting the right, particularly for vulnerable groups, and evaluate their impact. Include any legislative repeal or reform of existing laws which detracts from the fulfilment of the right.
- What were the effects of these difficulties, provisions or changes on the rights of vulnerable and disadvantaged groups?

¹⁰³ This is a summary of the 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" (E/C.12/1991/1).

- What time-related goals and benchmarks has the Government set and what measures have been taken to remedy these situations?

Participation

- How are vulnerable groups informed of their respective rights?
- What measures have been taken to maximize community participation in the planning, organization, operation and control of a right?
- Describe the role, if any, of international assistance in the full realization of the right.

National census data, where available, can be a particularly good source of quantitative indicators, such as labour force participation rates or levels of education, for measuring and assessing the status of economic, social and cultural rights. The census may have been designed and conducted in a way that allows for disaggregation of data, for example, by marginalized group status, such as women or ethnic minorities, or by geographic regions and urban and rural areas.

All this presupposes a conducive political climate in which the State collects data, prepares reports and makes them available publicly in the first place. If this is not the case, it will be necessary for a national human rights institution to call for the State to be publicly accountable and engage in human rights monitoring and reporting activity. In any case, monitoring efforts should rely on diverse sources of information.

Apart from the State, civil society organizations, including non-governmental organizations, and academic institutions can be valuable sources of both quantitative and qualitative data on economic, social and cultural rights. International data resources, such as the UNDP Human Development Report, and the Statistical Yearbook or World Education Report of UNESCO, can also provide objective and comparable data over time.

A national human rights institution should not forget to look to itself as a potential source of data for measuring the status of economic, social and cultural rights. It can collect and track data on inquiries and complaints it has received, and cases it has investigated. These data on inquiries and complaints could be broken down by:

- Number of cases and their median age;
- Ratio of new cases to cases closed;
- Nature of the alleged rights violations;
- Complainants' marginalized group status;
- Respondents' public or private sector sphere of responsibility;
- Disposition and expediency.

Where there is lack of reported information or focus on particular economic, social and cultural rights issues, the national human rights institution might choose to conduct or commission a survey and the collection of new data.

Analysing the information

The key requirement for a national human rights institution and other organizations monitoring human rights is good analysis of the information and then use of the information for better protection and promotion of rights. The analysis must relate both the quantitative and qualitative data for the identified indicators to the established bench-

marks and targets in order to determine whether the State is meeting its obligations with respect to economic, social and cultural rights.

The analysis should address the terms of reference for the monitoring project. It should identify those aspects of the International Covenant on Economic, Social and Cultural Rights or domestic law that are at issue, and ultimately address the following questions:

- Has the State met its obligations to respect, protect and fulfil economic, social and cultural rights?
- Has the State met the minimum core requirements of each right?
- Has there been “progressive realization” of economic, social and cultural rights over time?
- Has the State met its immediate obligations to “take steps”, as well as not to discriminate? If not, in what ways? Which groups have been affected?
- Has the State condoned non-State violators of economic, social and cultural rights or has it taken action to protect the public?
- Can the State justify a claim of competing rights, policy priorities and/or limited resources as a defence for any failure to meet its obligations?

The analysis should detail how the State has met or has not meet its obligations and what groups have been affected.

Because the obligation to realize economic, social and cultural rights is “to the maximum of its available resources”, analysis of the State budget and the State’s revenue and expenditure patterns is a means of assessing whether the State is meeting its obligations. This can involve examining expenditure, revenue and macro-economic policies. A national human rights institution can play an important role in budget analysis as part of its function of monitoring economic, social and cultural rights.¹⁰⁴ It will require expert assistance in doing so, either from qualified staff or external consultants. In approaching this task, the national institution can learn from experiences in a number of countries where official and non-governmental organizations undertake this kind of work. It can draw also on other innovative approaches to budget development and analysis. Groups in South Africa have suggested developing a “socio-economic rights budget” to indicate the extent to which these rights are being advanced through the budget. Others have suggested including a gender dimension in budgetary analysis. In the Brazilian city of Porto Alegre, 25 per cent of the city budget is allocated by neighbourhood-level political groupings on the basis of local needs expressed by citizens.¹⁰⁵

¹⁰⁴ Concerning the role of civil society in budget analysis, see *Budget Analysis and Policy Priority: DISHA's Experience* (Ahmedabad, DISHA, 1995).

¹⁰⁵ The Covenant also includes an obligation to implement the Covenant “individually and through international assistance and cooperation especially economic and technical”. On this point, the Limburg Principles state: “29. International cooperation and assistance pursuant to the Charter of the United Nations (arts. 55 and 56) and the Covenant shall have in view as a matter of priority the realization of all human rights and fundamental freedoms, economic, social and cultural as well as civil and political; 30. International cooperation and assistance must be directed towards the establishment of a social and international order in which the rights and freedoms set forth in the Covenant can be fully realized (cf. article 28 of the Universal Declaration of Human Rights); 31. Irrespective of differences in their political, economic and social systems, States shall cooperate with one another to promote international social, economic and cultural progress, in particular the economic growth of developing countries, free from discrimination based on such differences; 32. States parties shall take steps by international means to assist and cooperate in the realization of the rights recognized by the Covenant; 33. International cooperation and assistance shall be based on the sovereign equality of States and be aimed at the realization of the rights contained in the Covenant; 34. In undertaking international cooperation and assistance pursuant to article 2.1 the role of international organizations and the contribution of non-governmental organizations shall be kept in mind.”

The quality of the analysis of data in any monitoring programme will depend on information drawn from many sources and information of many different types. Examining quantitative and qualitative indicators together will be particularly important.

Once again, take the right to health as an example. Quantitative data showing an increase in mortality rates from infectious diseases for 80 per cent of a country's population over a 10-year period might indicate the State's failure to meet its obligation of result and to realize progressively the right to health under the International Covenant on Economic, Social and Cultural Rights. Diminishing immunization rates for the same period might be a further quantitative indicator, this time of the State failing to meet its obligation of conduct to take steps to fulfil the right. And quantitative data showing that immunization rates only meet national and international standards for that part of the State's population living in urban areas would be a strong indicator of discrimination against rural poor populations and of an immediate violation of the Covenant.

State expenditure patterns, both over time and among the various governmental functions, would be another source of important quantitative data. Budgetary allocations shed light on a State's values, priorities, actions and intent. In the case of the right to health, they could explain the causes of changes in mortality and immunization rates. If expenditure patterns show that sufficient funds were actually made available for immunization services in both urban and rural areas, and that total health funding has been steadily increasing, quantitative data alone will not allow any firm conclusions to be drawn.

A qualitative study of parents and health services in different geographic areas, including typical urban and rural areas, would supplement the quantitative data. Respondents might say that lack of local health clinics, affordable public transport and public education on the importance of immunization are the main factors impeding access to this service. The results of the qualitative analysis could point to other useful quantitative and qualitative indicators for verification and follow-up, such as a national public health strategy or other policy on access to health clinics, health education and public transport. Analysing all this data together enables some well-founded conclusions to be drawn about the status of the right to health and the adequacy of the State's performance of its obligations relating to this right.

Monitoring efforts should also seek information that supplements external indicators and provides a better understanding of economic, social and cultural rights. Complaints provide a very useful source of information about deficiencies in the protection of human rights. The national human rights institution should analyse data resulting from its own inquiries and the complaints that it and government departments, the judiciary and even civil society organizations receive. An analysis of individual complaints might reveal a systemic pattern of discrimination in access to health services for marginalized groups. It could also indicate the effectiveness of those organizations with a mandate or responsibility to protect and promote economic, social and cultural rights. Specifically, the analysis of complaints can provide information on:

- Types of economic, social and cultural rights violations alleged, for example past violations, violations in progress or anticipated violations;
- Which marginalized groups are being affected or at least which groups are making allegations and have access to the national human rights institution or other complaints mechanism;
- The willingness, capability, timeliness and success rate of a particular organization in dealing with economic, social and cultural rights.

Developing conclusions and recommendations

If monitoring is to be as useful as possible, the national human rights institution should move beyond analysis to develop its own conclusions and recommendations. It should express its views on what needs to be done to close any gap between the current status of economic, social and cultural rights and identified national targets. Recommendations might deal with both individual and broader public interest remedies, in order to address immediate violations and the progressive realization of rights.

Individual remedies are considered appropriate if they restore victims, as far as possible, to the position they would have been in had their rights not been violated, and ensure that their rights are no longer violated. They might include the award of specific damages, such as compensation for lost property or livelihood, or general damages, such as compensation for pain and suffering. Public interest remedies are considered appropriate if they set out to prevent future violation of rights. They might include changes in laws, policies and programmes, and public education initiatives. The Maastricht Guidelines and the revised draft Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Humanitarian Law,¹⁰⁶ provide guidance to national human rights institutions in developing recommendations on remedies.

Reporting

The principal purpose of monitoring is to improve future performance in protecting and promoting human rights. This purpose is best achieved when the results of monitoring are the subject of a thorough, appropriate public report. Reports should be accurate and reflect the objectivity of the investigation and analysis undertaken. They should avoid jargon, rhetoric or exaggeration.¹⁰⁷ They should be informative as to past performance and directive as to future strategies.

Reports should include the terms of reference for the project in question, discussion of the nature and content of the rights addressed, a description of indicators, the data collection methodologies and sources of information used, a summary of the benchmark data, arguments to justify the targets adopted, a fair and balanced analysis of the data, and recommendations.

Sources of information used for the reports should be evaluated for validity and reliability. Any information or evidence that was disregarded should be acknowledged in general terms. Government positions and responses on matters raised in the reports, and efforts to obtain such comment, should also be documented. Allegations made should be separated from the national human rights institution's conclusions, and analysis of the facts from any recommendations the national institution may wish to make.

How reports are to be formulated, used and disseminated should be considered at the outset when monitoring activities are being planned and terms of reference set. A national human rights institution might choose to structure its reports to match the frameworks established by other reporting mechanisms, such as the reporting guidelines of the Committee on Economic, Social and Cultural Rights for the periodic reports submitted by States under the Covenant.

Monitoring reports can and should be used to support the other functions of the national human rights institution, such as investigation and litigation of cases, and public

¹⁰⁶ E/CN.4/2000/62, annex.

¹⁰⁷ D.J. Ravindran, Manuel Guzman and Babes Ignacio, eds., *Handbook on Fact-finding and Documentation of Human Rights Violations* (Bangkok, Asian Forum for Human Rights and Development (Forum Asia), 1994), p. 60.

promotional activities involving economic, social and cultural rights. They should also be useful to non-governmental organizations in their work.

Developing a communications strategy for the promotion of the report should be an early part of the planning process for a monitoring project. A proper communications strategy can increase the impact of a monitoring report by bringing it to public and political attention through the media, conferences, seminars, public addresses and other activities, including release to coincide with relevant anniversaries. The communications strategy should also include reporting in alternative formats. The full report may be inaccessible for many people who would be interested in it. The production of abridged, simplified audio and video versions of the report can increase awareness of its findings and recommendations, and build support for its implementation.

C. PROMOTING ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Why promote economic, social and cultural rights?

Human rights promotion encompasses creating awareness and imparting knowledge about human rights so that they may be better enjoyed.¹⁰⁸ The protection of rights depends on people knowing about the rights they have and about mechanisms to enforce them.¹⁰⁹ It also depends on people knowing and accepting their obligations to uphold those rights. Human rights promotion supports the prevention of violations, discourages impunity, encourages a culture of human rights and ultimately empowers individuals and groups.¹¹⁰

Virtually without exception, the mandates of national human rights institutions give them the important responsibility of promoting human rights. Because all human rights are interdependent and indivisible, human rights promotion must include the promotion of economic, social and cultural rights. The promotion of economic, social and cultural rights should, however, complement, not replace, the investigation and monitoring of these rights.

Promotion of human rights is encompassed in the national human rights institution goals and functions of:

- Informing and educating about human rights;
- Fostering the development of values and attitudes which uphold human rights;
- Encouraging action aimed at defending human rights from violation.¹¹¹

Activities and actions for economic, social and cultural rights promotion should be diverse and could include:

- Advancing and promoting national human rights institution policy positions;
- Providing advice (solicited or otherwise) to and assisting the State or other organizations;
- Responding to external requests for comment on initiatives, consultations, documents and reports;
- Participating in meetings, conferences, workshops and consultations;
- Preparing print and electronic publications;
- Disseminating information;
- Releasing reports and issuing media releases on a range of national human rights institution activities, including the results of investigations or monitoring;
- Conducting public campaigns, such as radio or television promotions;

¹⁰⁸ United Nations, *Handbook on the Establishment and Strengthening of National Human Rights Institutions ...*, para. 141.

¹⁰⁹ *Ibid.*

¹¹⁰ See "Enhancing economic, social and cultural rights through domestic legal systems" (Module 22), *Circle of Rights: Economic, Social and Cultural Rights Activism: A Training Resource* (International Human Rights Internship Program and Asian Forum for Development, 2000).

¹¹¹ United Nations, *Handbook on the Establishment and Strengthening of National Human Rights Institutions ...*, para. 140.

- Developing and/or delivering professional training and education programmes or seminars.

Education and other promotional activities can help address the low level of awareness and understanding of economic, social and cultural rights and foster people's involvement, allowing them to understand their own situations within a larger human rights context. Promotion can encourage individuals and groups to set goals and to plan and implement action, including further promotion and advocacy, to advance economic, social, cultural and other rights. Placing economic and social conditions within a rights framework will also encourage a broader human rights approach to development generally.

Promotional activities also give a national human rights institution the opportunity to publicize its own mandates, including not only human rights promotion but also investigation and monitoring functions. The national human rights institution's unique role as a catalyst in reaching State actors and bringing the State and civil society together falls within its promotional mandate as well. Engaging in effective human rights promotion activities should also assist the national institution to increase its accountability and credibility in the eyes of the public.

Principles

The promotion of economic, social and cultural rights should be an element in all the functions and activities of a national human rights institution and should address the full range of human rights.

A gender perspective should be an integral part of the design and implementation of promotional activities. It will recognize and address the different impact economic, social and cultural rights have for women and for men, and their difference experiences with regard to these rights.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN PRACTICE

11. Promoting the independence and indivisibility of rights

The interdependence and indivisibility of all human rights are important concepts that should be promoted to a variety of audiences. At the national level, for example, promotional activities might focus on helping the State meet its obligations to uphold both civil and political rights and economic, social and cultural rights through better access and coordination among public organizations, programmes and services. At the local level, promotional activities might focus on helping community members understand and address rights and obligations, for example, concerning the impact of environmental practices on agriculture and access to food and livelihood.

A rural perspective is also important. Minority groups often live in remote rural areas where their living conditions are far below those of urban dwellers. Rights are more easily violated in remote areas away from the gaze of human rights monitors and the media. People in these areas need to know their rights in order to be able to exercise them.

Promotional activities are more effective and more significant where they focus on the concrete implications and experience of human rights in practice rather than merely on abstract concepts or legal texts. Promotional activities may often focus only on the dissemination of information on human rights standards as an end in itself. But this means

that the underlying structural factors that are at the root of human rights problems are avoided and the educational and promotional activities themselves are not assessed for their effectiveness.

The process of developing, delivering and participating in economic, social and cultural rights promotion should itself reflect human rights by being participatory in nature, promoting dialogue and showing respect for the dignity of those involved. Promotional activities are of greatest benefit when they are participatory, progressive, creative and flexible in reaching and meeting the needs of varying audiences.¹¹² Their content and implementation should be timely and relevant, to ensure interest and maximize effect for the target audience. They should influence and convince audiences and mobilize them towards concrete action and change, both in the short and the long term. They should move audiences to transfer acquired knowledge and skills to others and to undertake integrated and sustainable action on economic, social and cultural rights. And whenever possible, they should be programme-based and part of a broader plan.

When designing promotional activities, a national human rights institution can benefit from existing resources, experiences and initiatives such as the United Nation's Decade for Human Rights Education. Through professional networking with other national human rights institutions, civil society and international organizations, a national institution can share information about and access to available resources, potential partners and success stories. And because many non-governmental organizations and community-based organizations have had years of experience developing and delivering human rights education, they can help a national human rights institution reach affected communities.

The unique role of national human rights institutions in establishing and strengthening cooperative relationships with Governments, non-governmental organizations and civil society makes them well placed to manage the process of developing, delivering and evaluating promotional activities. Managing the process can be made easier through the use of a multidisciplinary project or programme team. A multidisciplinary team should consist of staff and members from across departments and mandates of the national institution, as well as external partners, resource persons and target group representatives, who have expertise in the subject content, curriculum design, publications development, communications, facilitation or logistics. National human rights institutions should look to civil society, and non-governmental organizations in particular, as partners in developing promotional activities.

The project or programme team will need to assess at the outset the human, technical and financial resources required for the activities. Development and delivery responsibilities and time frames will need to be assigned to team members. Logistical arrangements before, during and after events, such as arrangements for meeting rooms and technical equipment, also require careful planning. A national human rights institution will be more successful in promoting economic, social and cultural rights if initiatives are carefully designed and derive from a strategic plan or framework.

A framework for promotion

As with monitoring, promoting economic, social and cultural rights is most effective when undertaken according to a well-developed framework or plan. The framework should identify the purpose or rationale for economic, social and cultural rights promotion, based on the mandate of the national human rights institution. It should also set out the methodologies, resources, responsibilities, time frames and processes for developing, delivering and evaluating promotional activities.

¹¹² See "Education for empowerment: some reflections" (Module 20), *Circle of Rights: Economic, Social and Cultural Rights Activism: A Training Resource*.

Within this framework, the national human rights institution should:

1. Identify participants, issues and needs.
2. Set goals and objectives.
3. Determine content and formulate programmes.
4. Prepare materials.
5. Conduct the promotional activities.
6. Evaluate and follow-up.

These steps are not strictly chronological and do not stand alone. Rather, developing and working through one part of the process will affect other parts and result in changes to previous thinking. For example, attempts at translating an objective into concrete promotional activities may result in revisions or a complete change to the initial objective. Or it may be discovered only while conducting and evaluating an activity that its formulation was flawed and ineffective.

Flexibility in developing activities and in implementing them will assist a national human rights institution to benefit from the contributions of others and meet the needs of all involved. Lessons learned through the development, implementation and evaluation of promotional initiatives can be applied to later stages of the process, encouraging dynamic and progressive thinking for current and future initiatives.

Identifying participants, issues and needs

Participants, audiences or groups that might be targeted for economic, social and cultural rights promotion, and the nature and degree of their interest and participation, can vary widely. The promotional strategies required if, for example, the goal is to reach a middle-class population would be quite different from those required to reach poor people or to train government officials.

Target audiences are quite diverse and could include:

- Vulnerable and marginalized groups, such as indigenous communities, women and children;
- Local, regional and national levels of the State, including the executive, ministries, sectoral agencies, the legislature and the judiciary;
- Professional groups, such as lawyers and medical practitioners;
- Formal and informal educational systems, and other public institutions and services, such as hospitals;
- Private-sector business, including national and multinational corporations;
- Non-governmental organizations (local, national and international), including:
 - Social development agencies;
 - Human rights organizations;
 - Social action groups;
 - Sectoral organizations;
 - Law groups;
 - Arts and cultural groups;
- Other civil society organizations and groups;
- The general public.

There are other individuals and groups who may not be identified as a target audience but whose roles and needs might also be considered when promotional activities relating to economic, social and cultural rights are being planned. The national human rights institution might look first at the role and needs of its own members and staff and of personnel from potential partners in the programme. The national institution should also look to others with particular expertise, including specialist trainers, facilitators, resource persons, expert consultants and other external partners, who can provide useful assistance in the development, delivery and sponsorship of promotional activities.

Different target audiences will require different approaches. The existing knowledge, attitudes, skills and needs of the target audience for each promotional activity must be identified and addressed in the programme development. Possible differences in understanding and awareness among the public, government officials and even the judiciary about the specific nature of economic, social and cultural rights and the State's obligation to respect, protect and fulfil these rights must also be taken into account.

In developing promotional activities a national human rights institution should not assume that it knows what is needed and by whom. It must be open to independent assessment of needs. A review of recent national and local incidents and events, along with quantifiable indicators of the current status of enjoyment and violation of human rights, will help to identify and verify key target groups, issues and needs relevant to economic, social and cultural rights promotion. The national institution can also use information resulting from monitoring or investigations. It could meet with representatives of target groups to discuss needs more directly. Ensuring that a gender perspective is taken into account, for example, will be critical if promotional activities are to be successful in addressing the issues and needs of women. In addition, pre-training assignments or questionnaires sent to targeted participants and surveys of general audiences can provide valuable material for setting goals and objectives and for focusing content and learning methodologies.

After having identified emerging problems and issues, and the characteristics and needs of those whom promotional activities might concern, the national human rights institution can begin to set goals and objectives for economic, social and cultural rights promotion.

Setting goals and objectives

In developing promotional activities, whether as a comprehensive strategy or a single activity, a national human rights institution should first establish clear goals and objectives.

Setting goals and formulating objectives help to clarify what is to be accomplished by an initiative. Generally speaking, goals are typically broad and cover the whole event, whereas objectives are more specific and are expressed in observable and measurable terms. Goals and objectives should be clearly stated and communicated so that people know what the national human rights institution or other trainers and facilitators intend to do and what the expected outcomes are. They should be realistic for the time available, be appropriate and supported by the target group, flow logically from one to the next, promote action as a response to the programme and address what the national human rights institution wants people to know, do and feel.¹¹³

A national human rights institution could develop and adopt a comprehensive strategy for the promotion of economic, social and cultural rights. Under a broad strategy, the goals and objectives could include capacity building, disseminating information to the

¹¹³ See *Training for Human Rights Trainers*, Canadian Human Rights Foundation training programme handbook., Kiev, November 1996.

general public or advising or assisting the State. The strategy might cover a variety of target audiences and different means for reaching them and include a number of programme components, each with its own goals and objectives. The goals and objectives could be broken down by short- or long-term needs or whether a particular national, regional or local geographic focus is required.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN PRACTICE

12. Setting goals and formulating objectives

A possible goal for an economic, social and cultural rights initiative is to strengthen the capacity of State agencies to promote and protect the economic, social and cultural rights of its citizens through a legislative framework. Three specific objectives to accomplish this goal could involve:

- Examining the role of different groups involved in economic, social and cultural rights protection and promotion;
- Exploring the State's obligations to respect, protect, promote and fulfil economic, social and cultural rights;
- Developing practical strategies for State agencies to employ in the promotion and protection of economic, social and cultural rights.

Is the goal to change values and attitudes among the target audience or simply to prevent behaviour that violates human rights, or both? These are quite different goals. A government agency might be persuaded to adopt new, rights-sensitive policies, for example, but that is of little benefit unless the new policies are implemented. A transnational corporation might not be swayed by a promotional campaign that focuses on human rights values and attitudes, but it might change its behaviour if it fears prosecution or a loss of profit. One target audience may need to have a better understanding of its rights and how to exercise them and another a better understanding of the obligations it has to uphold those rights.

A national human rights institution might choose to focus plans and initiatives on particular economic, social and cultural rights, such as the right to housing, or on a particular obligation, such as "progressive realization". Alternatively, promotional initiatives could focus on identified problems with or obstacles to the advancement of rights, such as lack of policy priority, enabling legislation, administrative regulations, enforcement mechanisms or available resources.

Programmes should also include, as part of their objectives and design, opportunities during and following activities for networking and collaboration among target groups and other partners, with national human rights institutions as catalysts.

As goals and objectives are elaborated, overall themes for initiatives or plans should begin to emerge. Five such economic, social and cultural rights themes, which will be addressed later in this section of the handbook, are:

- Promoting government recognition of economic, social and cultural rights and obligations;
- Promoting judicial recognition of the justiciability of economic, social and cultural rights;
- Promoting awareness, understanding and empowerment of economic, social and cultural rights through public education;

- Promoting observance of economic, social and cultural rights by non-State actors;
- Training small groups in economic, social and cultural rights.

Determining content and formulating programmes

The nature and content of a promotional programme should be based on the identified target audience and its needs, learning goals and objectives, and on the time and resources available. They should take account of lessons learned from past experience. The content to be covered in the activities or actions should be specified in some detail, along with related issues, themes, key messages and other information.

A national human rights institution will need to decide what type of activity will be most effective for delivering the content. Activities and actions for promoting economic, social and cultural rights can vary widely, depending on the target audience. When seeking to influence the Government and the legislature, the institution might advance policy positions, provide assistance or unsolicited advice, respond to written requests for comment and participate in meetings or workshops. When seeking to influence and train individuals, whether from government bodies, non-governmental organizations or community groups, it might run training and education programmes or use existing activities, such as staff development and continuing education or training programmes, annual conferences or regularly scheduled meetings. When seeking to reach, influence and inform a broader public, it might conduct public education campaigns, media campaigns and media events, and disseminate information.¹¹⁴

A national human rights institution could pursue one particular approach to economic, social and cultural rights promotion, such as training workshops for public officials, or media advertising. This certainly establishes a well recognized area of activity for the national institution, permits a clearly focused programme and encourages the development of expertise within the institution. It is far better, however, for a national human rights institution to adopt a broader and longer-term strategic plan with many programme and activity components. This approach takes account of the diversity of interests and needs within a State, the number of different groups that influence the enjoyment of economic, social and cultural rights and the broad responsibilities a national human rights institution has as an official human rights organization. It enables the national institution to address many different target groups over time. It also enables it to use its resources to best effect through a combination of methodologies and activities.

However, whether large or small, effective promotional initiatives require sound educational methodologies, must be concrete and centred on the identified participants or target audiences as much as possible, and incorporate evaluation and follow-up as part of their design.

Media campaigns offer the best possibility of reaching large numbers of people. For that reason alone, they are very attractive to a national human rights institution wishing to communicate a human rights message broadly, quickly and efficiently. However, they also raise particular difficulties. They require specific expertise that a national human rights institution might not have among its own staff. They will be very expensive to conduct unless media organizations donate time and space for the campaign. They can only communicate simple messages and do so in a very broad, unfocused way. They are not good at changing attitudes and developing values. They are difficult to evalu-

¹¹⁴ Jefferson R. Plantilla, "Promoting economic, social and cultural rights", paper presented to the National Human Rights Institutions at Work: Regional Workshop on Economic, Social and Cultural Rights, 5-10 November 2000, Manila, Philippines.

ate and to follow up. Because the media can influence people subconsciously and indirectly, a media campaign must be very carefully designed so as not to communicate a different message from the one intended. A national institution cannot avoid using the media for mass communication of information and views; the media provide opportunities for communication far beyond any other mechanism at its disposal. But the media must be used strategically and skilfully.

Many national human rights institutions conduct human rights training courses or workshops for groups of participants. Although such training courses or workshops reach relatively small numbers of people, they can be useful elements in a broader promotional strategy. They can provide an intensive learning experience for key people from particular organizations or from particular community or population groups. Because the numbers able to participate are small, national human rights institutions should be careful to ensure that those they train are key individuals able either to effect significant change in the enjoyment of economic, social and cultural rights or to train others in economic, social and cultural rights and responsibilities. The training of small groups is discussed later in this section of the handbook, which itself may be a source for such training.

Preparing promotional materials

Promotional activities require good promotional materials. Of course, the nature of the materials will vary according to the nature of the programme.

Materials for a broad and diverse audience must be appropriately designed to take account of differences in language, culture and ethnic background. Public education material should be available in a variety of formats, including print, electronic text file, website, e-mail and possibly audio or captioned video. This will ensure that those who receive it can understand the message it contains. It will also provide access for a wider audience, including persons with disabilities, who may require alternative formats for receiving information. Plain-language versions of some materials may also be required in order to reach those with low literacy skills. Care should be taken to ensure consistency of terminology and message content among different materials that have similar promotional objectives.

Materials for small group workshops can be more narrowly focused because the characteristics and needs of the recipients will be known. Handbooks for participants and supplementary handbooks for trainers can be invaluable tools, especially when the workshops are comprehensive in scope and relatively lengthy. The handbooks can also help with the transfer of learning after the programme and can be adapted for future training. Handbooks should include clearly stated objectives, methodologies and expected outcomes and indicate how the content was selected and who was involved. Handbooks might be organized by module themes and provide a detailed schedule of activities and events, including speakers, the purpose and nature of the workshop activities, reference information and worksheets. Other learning materials might include checklists, charts, case summaries, overhead presentations, videos and CD ROM or Internet resources. Handbooks and other materials should always be user-friendly in their layout and format.

When economic, social and cultural rights promotion takes the form of providing advice and assistance to the State or other organizations, national human rights institutions will find it helpful to prepare support materials, which could range from an advisory letter, briefing notes, a summary of meeting discussions or a speech to more lengthy policy and/or background papers.

Conducting promotional activities

Many factors should be considered when carrying out promotional activities or events. They will vary according to the nature of the activity or event, whether broad public education programmes, advice or assistance to the State or other organizations, participation in meetings or consultations, training and education workshops, or courses on economic, social and cultural rights.

In each case, good organization is critical to the effectiveness of the activities or events. They must be well planned, because logistical problems can affect the ability to achieve objectives. In general, the larger the programme, the more complex the organizational task will be. Arranging a public education programme can involve not only preparing material but ensuring adequate resources for the campaign, booking media time and space, developing and conducting parallel activities and events, briefing relevant government agencies and human rights non-governmental organizations on the campaign and assisting them to prepare for any increased demand as a result of it, arranging for staff or other personnel to receive and respond to enquiries generated by the campaign, preparing for an increase in complaints as a result of increased awareness and knowledge produced by the campaign, and so on.

Even small workshops can generate significant organizational requirements. The logistical tasks include setting of dates, choosing appropriate facilities, clear communication with invitees, facilitators or resource persons, travel and accommodation arrangements, on-site registration, distribution of materials, posting signs and instructions, setting up rooms and equipment, recording events and checking everything again and again.

The actual conduct of the programme or activity will raise other issues, depending on the nature of the programme or activity. Again, a national human rights institution can draw on the knowledge and experience of many organizations that have developed and conducted these kinds of programmes.¹¹⁵

Evaluating and following up

All promotional activities should be evaluated to determine if their goals and objectives have been achieved. Evaluation is important not only to determine the effectiveness of the activity but also to help a national human rights institution develop its future activities and programmes. The plan for the activity should include a clear idea of what will constitute successful promotion and how success will be measured. It should establish key evaluation measures that can be applied after the activity has been completed.

Evaluation should incorporate the views of the target audience. If the activity is a broad public education campaign, these views might be collected through survey of a sample of the larger target population. If it is a small workshop or group activity, then all participants could be encouraged to contribute their personal views to the evaluation, through informal discussion or the completion of an evaluation questionnaire, or both. The views of those involved in conducting the programme or activity should also be sought. Questions might include:

- Was the purpose or objective of the activity clear?
- Was the information provided also clear?
- Did the activity meet the objective?
- Did the activity respond to the needs of the target audience?
- Was the approach used (that is, the technique, activity type and design) appropriate to the content, the context and the target group?

¹¹⁵ For group training programmes, for example, see Julius E. Eittington, *The Winning Trainer: Winning Ways to Involve People in Learning*, 3rd edition, (Houston Texas, Gulf Publishing Company, 1996); and *Training for Human Rights Trainers* (note 113).

The evaluation should also consider the effectiveness of the process used to develop the initiative, the logistics of its implementation and the capabilities of those involved in the preparation and presentation of material.

Promoting State recognition of obligations relating to economic, social and cultural rights

National human rights institutions must make concerted efforts to promote government recognition of economic, social and cultural rights obligations. Many government officials, including ministers and other political leaders, often lack understanding of economic, social and cultural rights issues or are unwilling to address them appropriately. Because of its unique status and mandate, a national human rights institution is well placed to engage the State on human rights matters.

Most national human rights institutions are empowered to advise the State on human rights issues and to assist various branches of Government in promoting and protecting human rights through legislation, regulations, policies, programmes and administrative practices. A national human rights institution may be entrusted with responsibility for drawing the Government's attention to human rights violations and making concrete proposals for initiatives to end violations. It may be able to submit opinions on proposed or existing legislation directly to the legislature, to initiate or assist in drafting new legislation and to intervene in legal proceedings involving human rights questions. Many national human rights institutions are playing an increasingly important role in overseeing the national implementation of international human rights standards and in assisting Governments to fulfil their reporting obligations under international treaties.¹¹⁶ A national human rights institution can also help to ensure that policies and programmes of the State are developed from a perspective, or through a "lens", that addresses the rights of women and other marginalized groups.

Another promotional strategy might be for a national human rights institution to accentuate and reinforce the economic, social and cultural rights components of existing government programmes or agencies, such as those dealing with rural and urban development or the environment and natural resources, or those that focus on disadvantaged groups, such as women, children and indigenous people.

National budget review and analysis are also very important and effective ways of monitoring and promoting adherence to economic, social and cultural rights. Similarly, assisting and advising the State on the development of national action plans can help ensure a coherent and coordinated institutional framework for addressing economic, social and cultural rights. Action plans can serve to clarify the precise nature of State obligations and to develop standards and benchmarks for measuring compliance. They can be effective tools for holding Governments accountable for their performance with respect to their obligations relating to economic, social and cultural rights.¹¹⁷

Another starting point for a national human rights institution could be to promote the ratification and domestic implementation of international human rights instruments, such as the International Covenant on Economic, Social and Cultural Rights, that the State has not already ratified. Most States have ratified most human rights treaties, but implementation is generally lacking. The failure to integrate international standards into domestic legislation would provide a pertinent focus for promotional activities. The Covenant itself requires that "all appropriate means, including particularly the adoption of legislative measures," should be taken to satisfy the State's obligations to "take steps" to achieve the realization of economic, social and cultural rights (art. 2.1).

¹¹⁶ Paragraph 76 of the Lindburg Principles and paragraph 5 of General Comment No. 1 emphasize that reporting should facilitate public scrutiny of the State and encourage involvement of non-governmental and civil society organizations in the formulation, implementation and review of relevant policies.

¹¹⁷ See "Development of policies, plans and legislation" (Module 21), *Circle of Rights: Economic, Social and Cultural Rights Activism: A Training Resource*.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN PRACTICE

13. The National Human Rights Commission of India promotes health rights¹¹⁸

Recognizing that the persistence of maternal anaemia, infant mortality, maternal mortality and morbidity is the antithesis of any notion of human development, the National Human Rights Commission of India, in cooperation with UNICEF and the Department of Women and Child Development, decided to address itself to these issues in a two-day national workshop on human rights and health, with special reference to maternal anaemia.

The workshop, held in April 2000, brought together eminent scientists, policy makers, civil servants, legal experts and social activists, as well as the Minister of State for Information and Broadcasting, the Minister of State for Health and Family Welfare and the Minister of State for Women and Child Development.

Delivering the keynote address at the inaugural function, the Chairperson of the National Human Rights Commission said that positive recommendations were necessary for formulating a proper health policy and implementing it as early as possible to improve the status of health in the nation. Explaining why the Commission was involved in the prevention of maternal anaemia, the Chairperson said that health was a very significant human right. The right to life, guaranteed in article 21 of the Indian Constitution, was to be read as a right to life with dignity. That made every aspect of human dignity equally sacrosanct and each one of them a human right.

Quoting Amartya Sen on the “three unfreedoms” that afflict Indian society, the Chairperson said that improved care was imperative to the achievement of a better society. Lamenting the existing deficiencies in that area, he said that every section of society should come together to provide an answer to the problem. The Commission’s role in that sphere was to bring together all policy makers, decision takers and implementers. The right to good health was embodied in the Constitution and it was a duty of every citizen to ensure it. The Chairperson called upon the media to create more awareness about the problem. Safe motherhood and healthy children, he stressed, would ensure a better future for the country.

A national human rights institution may better assist and advise the State if the policy-making process of the State is open, transparent and participatory. In this regard, the national institution might consider taking advantage of existing mechanisms, such as parliamentary standing committees, public hearings or other consultative forums, as another means of assisting and advising the State when economic, social and cultural rights matters are at issue. In addition, the national human rights institution could submit comment to assist the State in meeting its reporting obligations under the Covenant. Such comment should be a scrutiny of State policy and action and might also be submitted directly to the Committee on Economic, Social and Cultural Rights. The national human rights institution can encourage an open and participatory policy-making and reporting process where none exists.

To use its advisory capacity and undertake other promotional activities effectively, national human rights institutions may need to build internal capacity and acquire or develop certain skills, including legislative analysis, negotiation, report writing and oral presentation.

¹¹⁸ Text adapted from National Human Rights Commission of India, *Newsletter*, May 2000 (available at www.nhrc.nic.in).

Promotional strategies directed towards the State are not limited to advice and assistance. A national human rights institution might also use education and training initiatives or information dissemination to persuade the Government and its officials to address economic, social and cultural rights. Government leaders, legislators and officials need appropriate knowledge about economic, social and cultural rights to incorporate a human rights perspective in planning, formulation and implementation processes, as well as to establish progress indicators and evaluate results. Education and training of State officials could also be directed towards assisting the State to meet its international obligations. The strategies chosen will depend on the national context, the human rights issues at stake and the resources available to the national human rights institution. Using a variety of strategies and activities will better promote State recognition of and compliance with economic, social and cultural rights.

The general comments of the Committee on Economic, Social and Cultural Rights provide an outline or guide to national human rights institutions for the content of economic, social and cultural rights promotional initiatives with the State. General Comment No. 3, for example, re-emphasizes the importance and appropriateness of the State taking steps to address economic, social and cultural rights through legislative and other measures and interprets State obligations under the Covenant as including “minimum core” obligations. General Comment No. 9 addresses the State’s obligation to ensure that the Covenant is appropriately recognized in domestic law, that means of redress and remedies are available and that the State is held accountable. Several other general comments will also be relevant to a national human rights institution if its promotional activities are focused on specific rights, such as health or education, or concern particularly marginalized groups, such as older persons or persons with disabilities.

A national human rights institution must target the State in its promotional activities, but it can do so in conjunction with other agencies and groups that promote and protect human rights, including the judiciary, non-governmental organizations and civil society groups, the private sector, affected marginalized groups and the general public. The national institution should find ways to encourage and facilitate the involvement of others with the State on economic, social and cultural rights, particularly in the formulation, implementation and monitoring of social policy and legislation.¹¹⁹ In addition, more encompassing promotional strategies, such as awareness and mobilization campaigns through the public media, might be used to ensure that a broad range of organizations and individuals engage the State on these issues.

¹¹⁹ See “Development of policies, plans and legislation” (Module 21), *Circle of Rights: Economic, Social and Cultural Rights Activism: A Training Resource*.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN PRACTICE

14. Promoting the integration of economic, social and cultural rights into the educational curriculum

The Northern Ireland Human Rights Commission has developed a productive working relationship with the Department of Education in Northern Ireland. It is contributing to the development of the human rights elements of the school curriculum by commenting on draft proposals in that regard. In addition, the Commission has entered into a partnership with the Department of Education and the five Education and Library Boards in Northern Ireland to promote teaching in post-primary schools on the proposed Bill of Rights. This work supplements an extensive consultation process undertaken with children and young people outside the formal education sector on the Bill of Rights proposals.

The Department has also jointly published with the Commission advice for school managers on the Human Rights Act 1998, introducing the European Convention on Human Rights into educational policies and practice. Education, in particular under article 2 of Protocol 1 to the European Convention, has been prioritized by the Commission in its Strategic Plan for 2003-2006, and has been a key feature of its work to date. The Commission facilitated a visit, and then a formal mission, to Northern Ireland by the Special Rapporteur of the (United Nations) Commission on Human Rights on the right to education, Katarina Tomasevski.

Promoting judicial recognition of the justiciability of economic, social and cultural rights

Rights are justiciable when they can be invoked before, and adjudicated upon by, the courts. Historically, courts around the world have been reluctant to deal with economic, social and cultural rights, deferring to policy makers and politicians as the rightful decision takers. However, economic, social and cultural rights, like civil and political rights, are now generally considered to be justiciable.¹²⁰ The Committee on Economic, Social and Cultural Rights stresses that economic, social and cultural rights are justiciable. In General Comment No. 9, the Committee states, "the need to ensure justiciability is relevant when determining the best way to give domestic legal effect to the Covenant rights".¹²¹

Because of its unique status as an official but independent institution, a national human rights institution is in a good position to promote the justiciability of economic, social and cultural rights with the judiciary and the legal profession. Promotional activities, such as workshops, should sensitize government officials, the judiciary and the legal profession to the justiciability of economic, social and cultural rights. They might also focus on how the paralegal system, which offers a wider range of options for enforcement and remedy, might incorporate economic, social and cultural rights in mediation, alternative dispute resolution, meta-legal tactics and court action.

A national human rights institution should develop and promote mechanisms by which the courts might adjudicate directly upon economic, social and cultural rights. Strategies could include:

¹²⁰ "Strategies for enforcing economic, social and cultural rights through domestic legal systems" (Module 22), *Circle of Rights: Economic Social and Cultural Rights Activism: A Training Resource*, p. 421.

¹²¹ General Comment No. 9 on the domestic application of the Covenant, para. 7.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN PRACTICE

15. Justiciability of economic, social and cultural rights

The justiciability of economic, social and cultural rights has long been recognized in many countries. Courts in countries as diverse as Argentina, Canada, Finland, France, the Philippines, South Africa and many others have issued judgments in cases concerning economic, social and cultural rights. In many instances, direct reference was made to the International Covenant on Economic, Social and Cultural Rights in both the arguments put forward by the petitioners and in the final decisions issued by the courts. In addition to national-level actions, a body of regional jurisprudence on economic, social and cultural rights is developing, based on decisions of regional human rights bodies, such as the European Committee on Social Rights.

- Highlighting existing human rights laws that are not being effectively enforced;
- Using information on the status of economic, social and cultural rights as a basis for filing a court action;
- Deriving State obligations in relation to economic, social and cultural rights from civil and political rights, especially the right to life;
- Establishing economic, social and cultural rights obligations based on the principle of non-discrimination under article 2 of the International Covenant on Economic, Social and Cultural Rights and article 26 of the International Covenant on Civil and Political Rights;
- Establishing economic, social and cultural rights obligations based on the principle of the indivisibility of rights;
- Using the concept of ensuring non-regression of enjoyment of economic, social and cultural rights;
- Using judicial protection and the guarantee of due process of law to protect economic, social and cultural rights, for example through judicial review of administrative decisions and through equal procedural guarantees;
- Using international standards and jurisprudence from other countries to interpret vague national constitutional guarantees and laws;
- Having a national human rights institution promote “test cases” or seek direct intervention in human rights cases before the courts;
- Promoting an exchange of judges and other professionals who have experience with economic, social and cultural rights.

A national human rights institution can also make important contributions to strengthening the justiciability of economic, social and cultural rights by initiating, intervening in or providing amicus briefs in court cases involving economic, social and cultural rights. Many national human rights institutions have among their functions participation in significant cases involving human rights issues. This function can be important in promoting better recognition and enforcement of economic, social and cultural rights by the courts.

Promoting awareness and empowerment through public education

Not all situations of human rights abuse can be traced back to legislative inadequacies, unfair administrative practices or flagrant violations by the State. Violations of economic, social and cultural rights also occur through the actions of private organizations and individuals, in the workplace, in the local community and in the family, often away from public scrutiny. For that reason all members of society should be made aware of their own personal rights and responsibilities under international and domestic law. They should be alerted to their own potential both for violating and for protecting and promoting human rights. They should be made aware of the duties they have to others.¹²²

A national human rights institution can play an important role in identifying and highlighting economic, social and cultural rights issues in all sectors of society. It can call attention to or directly address the need for public education or other initiatives aimed at developing a culture of human rights in which violations will not occur or at least will not be ignored¹²³ and where respect for the inherent dignity and worth of every person is paramount. Human rights education "can and should be an empowering process, one that enables those who have been marginalized in the economic, social, political and cultural spheres to claim their status as full participating members of a community".¹²⁴

Public education on human rights should involve the affected people. It should help a community discover and use all its potential for creative and constructive teamwork. It should facilitate individuals and communities to identify their own needs and problems and to understand the link between the problems they face and larger systems, such as national economic and social policies and budget allocations. Public education can also help affected people and communities develop strategies for realizing the enjoyment of economic, social and cultural rights by setting goals, planning and implementing actions.¹²⁵

A national human rights institution must take account of the diversity of its audience and use a variety of techniques in promoting economic, social and cultural rights with the public. Both large and small groups will benefit from education and training initiatives that employ creative and participatory activities, such as making use of stories, fables or simulation exercises.¹²⁶ Identifying and using local notions of justice and rights will help individuals and communities relate their current and historical experiences to modern universal human rights standards and the national context.¹²⁷

On a broader scale, popularization initiatives can be targeted at the general public using television, radio, advertisements, photo/art exhibits and other artistic activities such as puppetry or theatre. A national human rights institution might also support and collaborate with non-governmental organizations and other civil society groups to integrate human rights education into community mobilization programmes. Promoting the integration of economic, social and cultural rights into the school curriculum is a vital and effective approach for reaching a broad section of society through children and young people. This will have both an immediate and a longer-term impact on fostering a culture of respect for human rights.

¹²² Adapted from United Nations, *Handbook on the Establishment and Strengthening of National Human Rights Institutions ...*, para.141.

¹²³ United Nations, *Handbook on the Establishment and Strengthening of National Human Rights Institutions ...*, para. 203.

¹²⁴ See "Education for empowerment: some reflections" (Module 20), *Circle of Rights: Economic, Social and Cultural Rights Activism: A Training Resource*, p.397.

¹²⁵ *Ibid.*, p. 402.

¹²⁶ *Ibid.*, p. 403.

¹²⁷ Jefferson R. Plantilla, "Promoting economic, social and cultural rights" (note 113).

Promoting observance of economic, social and cultural rights by non-State actors

A national human rights institution should also promote the observance of economic, social and cultural rights by non-State actors. Non-State actors, such as small-scale employers and business people, national and transnational corporations and international financial institutions, have great effects on the enjoyment of economic, social and cultural rights. Some non-State actors are more important than national Governments to these rights. A national human rights institution cannot avoid concern for their activities.

The first and most immediate way to promote observance of economic, social and cultural rights by non-State actors is the enactment and implementation of national laws to prevent violations of these rights by such actors. Through its work in investigating violations of economic, social and cultural rights and monitoring their observance, a national human rights institution is able to identify those areas of public life where new laws, policies and programmes are required or existing ones need change. Its promotional role in advising the State extends to advising on these matters.

Developing effective regulatory mechanisms for transnational corporations remains a difficult challenge. The wealth and power of many transnational corporations eclipse those of many States. They exercise such immense influence that they are unaccountable in many circumstances for many of their actions and States may be unwilling or unable to attempt to regulate their activities in binding and enforceable ways. International institutions and national organizations have developed codes of conduct for transnational corporations and many industry associations have also developed voluntary codes for their members. However, these codes remain limited, non-binding and unenforceable.

On the basis of information obtained in its investigations and monitoring work, a national human rights institution might propose and promote the adoption of legal standards capable of ensuring, at least in legal terms, that transnational corporations refrain from violating economic, social and cultural rights.¹²⁸ Indeed, to be an effective advocate for economic, social and cultural rights, the national human rights institution will need to develop capacity to monitor the impact of non-State actors on the full realization of these rights. Human rights promotional activities should also address transnational corporations directly and encourage Governments to ensure that their citizens are adequately protected from non-State actors.

Training small groups in economic, social and cultural rights

Many national human rights institutions conduct training workshops for key persons from the Government, the military and the police, non-governmental organizations and civil society as one of their principal forms of human rights promotion. These workshops have the potential to inform participants about economic, social and cultural rights, to challenge them to reflect on their own and their organization's past performance and to encourage them to develop plans or programmes for better implementation of obligations relating to economic, social and cultural rights. They also equip participants to inform others, whether by sharing the experiences and materials from the workshop or by organizing similar workshops for other staff in their organization or area.

¹²⁸ The Charter of Economic Rights and Duties of States, adopted by the General Assembly of the United Nations in resolution 3281 (XXIX) of 12 December 1974, states clearly in article 2.2 (b) that every State should cooperate with other States in the exercise of the right of every State to regulate and supervise the activities of transnational corporations within its jurisdiction. The Special Rapporteur of the Sub-Commission on the question of the impunity of violators of human rights asserted in 1996 that "States and the international community should combine their efforts so as to contain such activities by the establishment of legal standards capable of achieving that objective" (E/CN.4/Sub.2/1996/15, para. 132).

Training workshops for small groups should use the best available methodologies to ensure learning. A national human rights institution can draw on the knowledge and experience of many organizations that have developed and conducted these kinds of programmes. Some have produced handbooks for small group training workshops on human rights.¹²⁹

Participant-centred adult education has been found to be a particularly successful methodology. It is based on six principal elements:

1. Learning begins with the experience or knowledge of the participants.
2. After participants share experience, they look for patterns and analyse what they have learned and discussed.
3. To avoid being limited by the knowledge and experience of participants, new information and theory are added from outside sources (readings, resource persons and the media).
4. Participants need to practise what they have learned, exercise new skills and develop strategies and plans for action.
5. Participants then need to retransmit and apply what they have learned back in their organizations and in their daily work.
6. Reflection and evaluation are built into programme design and are carried out throughout the entire initiative, not only at the end.

Consideration might be given to grouping participants by different knowledge levels, opinions or perspectives, to encourage participation and learning. Where an activity is placed in a session, what comes before and after it, what is required by the facilitator and the participant and what learning materials will be needed are also important considerations.¹³⁰

Allowing time for synthesis and reflection might be helpful. Asking participants the same questions at the beginning and end of a segment to see if their positions have altered might be one way of observing changes in knowledge or attitude. Discussion among participants and facilitators at the end of an event or the day also provides information on whether the programme design was effective.¹³¹

As specific activities are identified and formulated, challenges or obstacles to their implementation should also be identified and accounted for. Successful initiatives will understand and incorporate the needs of the target audience and respond to their expectations. They will also take account of evaluations of past initiatives and encourage creativity, experimentation and evolution in design.

Organizers of training workshops must consider a number of key issues for effective interaction.¹³² The workshop participants may need ground rules to address attendance and punctuality, assign leaders or reporters and ensure everyone has an opportunity to speak. Warm-up activities, including formal introductions, friendly and informal conversation or “icebreakers” and “energizers”, can open up individuals to be receptive to more serious discussion or messages. Seating arrangements (for example, in a circle, a rectangle or rows) and group composition (that is, diverse or with similar skills and knowledge) can affect the degree and nature of participation. Where groups are in-

¹²⁹ See, for example, *Training for Human Rights Trainers*, Canadian Human Rights Foundation training programme handbook, Kiev, November 1996.

¹³⁰ *Ibid.*, p. 55.

¹³¹ *Ibid.*, p. 23.

¹³² Julius E. Eittington, *The Winning Trainer: Winning Ways to Involve People in Training*, 3rd edition (Houston, Texas, Gulf Publishing Company, 1996).

volved, facilitators will be required to implement programme agendas and guide discussion. Resource persons can provide new information and theory through formal presentations, as well as responding to questions in their area of expertise.

The diversity of individuals in a group can pose challenges. Spokespersons, facilitators and resource persons should consider and take account of differences, including cultural and ethnic backgrounds, diverse knowledge levels, desire and need for detail, motivation and commitment, willingness to participate, conflicting “agendas”, thinking patterns, learning style preferences, occupational backgrounds and levels of responsibility and influence.¹³³ A good knowledge of and sincere respect for all the individuals in the group will help in meeting their varied needs.

The climate or atmosphere of a promotional activity or programme has a direct effect on the level of sharing, learning and satisfaction with the event. The physical facilities should be comfortable and suited to the nature of the activity. The communications style of the spokesperson, presenter or facilitator is a key factor in setting the climate; these persons should be clear, or seek guidance, about their roles and expectations in relation to the needs and expectations of the audience. A supportive atmosphere should be created in which participants feel free to take risks and engage in candid discussion. The time allotted for the activity needs to be well managed to ensure that all the items on the agenda are covered. Spokespersons, presenters or facilitators should be energetic, ensure everyone has an opportunity to participate, solicit feedback during and at the end of activities, make themselves available for questions and learn along with others.¹³⁴ Discussion should be monitored to ensure that it is on track and that participants are engaging and not merely attending.

Getting participants started with warm-up activities can lead to more intense discussions by encouraging physical movement and quick thinking. Discussions in smaller groups increase involvement and learning. Brainstorming activities and interactive presentations challenge participants’ thinking. Case studies and simulation exercises, in particular, provide a practical hands-on approach for testing new knowledge and skills. More traditional formats, such as lectures or panel discussions, might still be used, but opportunity should be built in for questions and comments from the audience. The content of a presentation should have continuity with more participatory-type activities that precede or follow it.

Effective training initiatives should include, as part of their objectives and design, follow-up activities for both the national human rights institution and the target audiences, in order to enhance the learning process begun during the workshop. A concrete follow-up plan will help ensure participants and organizations retain and put into practice concepts and skills acquired during the activity. Knowledge, skills and values need to be transferred to other colleagues and stakeholders as well.

Participants may need encouragement to develop and implement follow-up activities, but they can also provide valuable information on how to enhance the short- and long-term impact of their learning. Follow-up activities for the national human rights institution might include:

- Regular communication with participants by mail, e-mail, fax or telephone;
- Distributing a programme evaluation report to participants, facilitators and resource persons;
- Providing networking mechanisms or facilitating further meetings or training programmes;

¹³³ *Training for Human Rights Trainers* (note 129), p. 61.

¹³⁴ *Ibid.*, pp. 66-67.

- Distributing a follow-up questionnaire to evaluate success in integrating and applying acquired concepts and skills.

Follow-up activities for target groups and individuals might include:

- Informally sharing the new knowledge, skills and values with colleagues, friends and family;
- Formal presentations to or training of organization staff and members, community groups, schools and other public and private sector organizations;
- Integrating acquired knowledge, skills and values into existing planning and policy development mechanisms, such as staff and public meetings, strategic planning sessions, consultation, research and policy positions;
- Applying acquired knowledge, skills and values to other functions, such as monitoring, fact finding, teaching and education, other promotional activities and programme and service delivery.

CONCLUSION

National human rights institutions recognize the need to develop their capacity to address economic, social and cultural rights. This handbook has discussed:

- Key concepts relating to the legal framework of economic, social and cultural rights.
- The important role of national human rights institutions in the protection and promotion of economic, social and cultural rights.
- The bases for effective strategies for national human rights institutions in working with economic, social and cultural rights.

The international community has reached consensus on the key concepts relating to the legal framework of economic, social and cultural rights:

- All human rights – civil, cultural, economic, political and social – are indivisible and interdependent.
- Economic, social and cultural rights are fully recognized throughout international human rights law, including in the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the International Convention on the Elimination of all Forms of Racial Discrimination and the Convention on the Elimination of all Forms of Discrimination against Women, and to some extent in most domestic legal systems.
- Under the International Covenant on Economic, Social and Cultural Rights, States are obliged to ensure the full realization of economic, social and cultural rights, but can do so progressively. However, each State has immediate obligations to “take steps” towards achieving the progressive realization of rights “to the maximum of its available resources” and to protect against discrimination.
- States also have general obligations to respect, protect and fulfil economic, social and cultural rights.
- States have minimum core obligations to ensure the immediate satisfaction of, at the very least, essential levels of each economic, social and cultural right.
- There is growing international acceptance of the justiciability of economic, social and cultural rights, including effective remedies, evident in the frequent consideration of issues involving economic, social and cultural rights by domestic courts in many States.
- Regressive measures by States are violations of economic, social and cultural rights, especially if they are taken deliberately or intentionally or if they are not rectified when identified.

The important role of national human rights institutions in the promotion and protection of economic, social and cultural rights is based on several premises:

- Economic, social and cultural rights are violated in all States, at least to some degree.
- Each State is required to take further measures towards the greater enforcement and implementation of economic, social and cultural rights.
- Each State should have an effective independent national human rights institution, established and functioning on the basis of minimum international standards.

- To address economic, social and cultural rights effectively and with credibility, a national human rights institution must be independent, accountable and pluralistic in membership and staff, with a broad and clearly defined mandate, appropriate powers and functions, adequate resources and competent members and staff who seek to work cooperatively with like-minded organizations and individuals in carrying out their responsibilities.
- In accordance with General Comment No. 10 of the Committee on Economic, Social and Cultural Rights, national human rights institutions “have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights”.

A national human rights institution’s work in the area of economic, social and cultural rights requires a strategic approach if it is to be effective.

- A national human rights institution can integrate work for economic, social and cultural rights into its organizational processes and practices through strategic planning, evaluation and other activities that flow from mandated functions such as investigations, monitoring and promotion. Integration of training across different sections and functions of the organization can help to promote a multidisciplinary approach to addressing economic, social and cultural rights.
- A national human rights institution needs a comprehensive understanding of State obligations in relation to economic, social and cultural rights to assist in defining entitlements and ensure compliance with the obligations. The national human rights institution will be particularly challenged to find ways to hold non-State actors accountable for violations of economic, social and cultural rights. In addition, the national institution will require competency and willingness to deal with economic, social and cultural rights complaints within its jurisdiction and the necessary skills and resources to undertake related monitoring and promotional activities.
- A national human rights institution might consider encouraging or even developing national plans of action for the full realization of economic, social and cultural rights. The plans could include ratification of relevant treaties, reporting processes, measures to ensure national legislative consistency with international obligations, education and outreach programmes and training. The national human rights institution should identify groups whose economic, social and cultural rights are violated or at risk, benchmarks from which movement can be measured and targets for performance.
- In mobilizing the energy and resources of others, a national human rights institution can play a catalytic role in creating conditions conducive to the successful promotion, protection and enjoyment of economic, social and cultural rights. Networking and collaboration between the national human rights institution and non-governmental organizations, civil society and government organizations at the local, national, regional and international levels will be indispensable to the support of economic, social and cultural rights.
- A national human rights institution might identify potential partners and even promote or coordinate coalitions among organizations dealing with economic, social and cultural rights. It can make joint use with them of United Nations and other international mechanisms. It can generate stronger public and political support for initiatives to address economic, social and cultural rights. Potential partners could include ministries with relevant responsibilities, such as for education and health, public institutions such as hospitals and school boards, national law commissions, bar associations, civil society and community-based organizations, non-governmental organizations and particularly vulnerable groups, including the poor, children, women, refugees and indigenous people.

- Other democratic institutions have responsibility for and important roles in the protection and promotion of economic, social and cultural rights, including the Government, the legislature, the judiciary, the police and military, civil society organizations, private corporations and individuals.
- A national human rights institution can advocate for the promotion and protection of economic, social and cultural rights domestically and internationally.
 - At the national level, the national human rights institution could conduct regular education programmes and information campaigns, scrutinize existing laws and draft bills and propose amendments and new laws, provide technical advice, identify national and local benchmarks and targets for measuring the realization of rights, conduct research and inquiries, monitor compliance, investigate specific complaints and provide reports to public authorities and civil society.
 - At the international level, a national human rights institution could support a variety of initiatives, such as the adoption of an optional protocol to the International Covenant on Economic, Social and Cultural Rights to enable individuals to submit complaints concerning violations of the Covenant, and the provision of information or “parallel reports” to the Committee on Economic, Social and Cultural Rights on the implementation of the Covenant.
- Participating in and delivering training on economic, social and cultural rights can help a national human rights institution further develop the knowledge and skills of its members and staff, as well as of external groups and individuals. National-level training, for example, could train other trainers, encourage various organizations and institutions to work together, allow a national perspective to emerge and promote the integration of an economic, social and cultural rights perspective into national and local plans and initiatives of both government bodies and non-governmental organizations. Local-level training can broaden the knowledge and skills of grass-roots organizations and marginalized groups and individuals. At the same time, regional-level training among neighbouring countries continues to be important for strengthening partnerships and sharing and learning from the experience of others.

The purpose of this handbook has been to assist and encourage national human rights institutions in their work of investigating violations of economic, social and cultural rights, monitoring the performance of obligations relating to these rights and promoting these rights, and to seek to make their work more effective so that all people can fully enjoy all the human rights to which they are entitled.

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Annexes

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Annex 1: 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, entered into force on 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 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 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 Organization 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 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 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 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.

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.

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 thereof, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts thereof, 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 1 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.

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Annex 2: Principles relating to the status of national institutions

(General Assembly resolution 48/134 of 20 December 1993, annex)

Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, *inter alia*, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

- (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
- (ii) Any situation of violation of human rights which it decides to take up;
- (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
- (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

(b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty

obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliament;

(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

(a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;

(b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

(c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

(d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;

(e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

(f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);

(g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional principles concerning the status of commissions with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

(a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

(b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

(c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

(d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

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Annex 3: General Comment No. 10 of the Committee on Economic, Social and Cultural Rights: The role of national human rights institutions in the protection of economic, social and cultural rights

1. Article 2, paragraph 1, of the Covenant obligates each State party “to take steps ... with a view to achieving progressively the full realization of the [Covenant] rights ... by all appropriate means”. The Committee notes that one such means, through which important steps can be taken, is the work of national institutions for the promotion and protection of human rights. In recent years there has been a proliferation of these institutions and the trend has been strongly encouraged by the General Assembly and the Commission on Human Rights. The Office of the United Nations High Commissioner for Human Rights has established a major programme to assist and encourage States in relation to national institutions.

2. These institutions range from national human rights commissions through Ombudsman offices, public interest or other human rights “advocates”, to “defensores del pueblo”. In many cases, the institution has been established by the Government, enjoys an important degree of autonomy from the executive and the legislature, takes full account of international human rights standards which are applicable to the country concerned, and is mandated to perform various activities designed to promote and protect human rights. Such institutions have been established in States with widely differing legal cultures and regardless of their economic situation.

3. The Committee notes that national institutions have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights. Unfortunately, this role has too often either not been accorded to the institution or has been neglected or given a low priority by it. It is therefore essential that full attention be given to economic, social and cultural rights in all of the relevant activities of these institutions. The following list is indicative of the types of activities that can be, and in some instances already have been, undertaken by national institutions in relation to these rights:

(a) The promotion of educational and information programmes designed to enhance awareness and understanding of economic, social and cultural rights, both within the population at large and among particular groups such as the public service, the judiciary, the private sector and the labour movement;

(b) The scrutinizing of existing laws and administrative acts, as well as draft bills and other proposals, to ensure that they are consistent with the requirements of the International Covenant on Economic, Social and Cultural Rights;

(c) Providing technical advice, or undertaking surveys in relation to economic, social and cultural rights, including at the request of the public authorities or other appropriate agencies;

(d) The identification of national-level benchmarks against which the realization of Covenant obligations can be measured;

(e) Conducting research and inquiries designed to ascertain the extent to which particular economic, social and cultural rights are being realized, either within the State as a whole or in areas or in relation to communities of particular vulnerability;

(f) Monitoring compliance with specific rights recognized under the Covenant and providing reports thereon to the public authorities and civil society; and

(g) Examining complaints alleging infringements of applicable economic, social and cultural rights standards within the State.

4. The Committee calls upon States parties to ensure that the mandates accorded to all national human rights institutions include appropriate attention to economic, social and cultural rights and requests States parties to include details of both the mandates and the principal relevant activities of such institutions in their reports submitted to the Committee.

Annex 4: General Comment No. 3 of the Committee on Economic, Social and Cultural Rights: The nature of states parties' obligations

General Comment No. 3 (1990) outlines a range of principles relating to the legal obligations established under the Covenant. Some of the most important clauses are:

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.

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 flexible 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 No.1 (1989).

12. Similarly, the Committee underlines the fact that even in times of severe resource 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. ...

Annex 5: The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights

I. The significance of economic, social and cultural rights

1. Since the Limburg Principles were adopted in 1986, the economic and social conditions have declined at alarming rates for over 1.6 billion people, while they have advanced also at a dramatic pace for more than a quarter of the world's population. The gap between rich and poor has doubled in the last three decades, with the poorest fifth of the world's population receiving 1.4 per cent of the global income and the richest fifth 85 per cent. The impact of these disparities on the lives of people—especially the poor—is dramatic and renders the enjoyment of economic, social and cultural rights illusory for a significant portion of humanity.

2. Since the end of the Cold War, there has been a trend in all regions of the world to reduce the role of the State and to rely on the market to resolve problems of human welfare, often in response to conditions generated by international and national financial markets and institutions and in an effort to attract investments from the multinational enterprises whose wealth and power exceed that of many States. It is no longer taken for granted that the realization of economic, social and cultural rights depends significantly on action by the State, although, as a matter of international law, the State remains ultimately responsible for guaranteeing the realization of these rights. While the challenge of addressing violations of economic, social and cultural rights is rendered more complicated by these trends, it is more urgent than ever to take these rights seriously and, therefore, to deal with the accountability of Governments for failure to meet their obligations in this area.

3. There have also been significant legal developments enhancing economic, social and cultural rights since 1986, including the emerging jurisprudence of the Committee on Economic, Social and Cultural Rights and the adoption of instruments, such as the revised European Social Charter of 1996 and the Additional Protocol to the European Charter Providing for a System of Collective Complaints, and the San Salvador Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988. Governments have made firm commitments to address more effectively economic, social and cultural rights within the framework of seven United Nations world summit conferences (1992-1996). Moreover, the potential exists for improved accountability for violations of economic, social and cultural rights through the proposed optional protocols to the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women. Significant developments within national civil society movements and regional and international NGOs in the field of economic, social and cultural rights have taken place.

4. It is now undisputed that all human rights are indivisible, interdependent, inter-related and of equal importance for human dignity. Therefore, States are as responsible for violations of economic, social and cultural rights as they are for violations of civil and political rights.

5. As in the case of civil and political rights, the failure by a State party to comply with a treaty obligation concerning economic, social and cultural rights is, under international law, a violation of that treaty. Building upon the Limburg Principles, the considerations below relate primarily to the International Covenant on Economic, Social and Cultural Rights (hereinafter "the Covenant"). They are equally relevant, however, to the interpretation and application of other norms of international and domestic law in the field of economic, social and cultural rights.

II. The meaning of violations of economic, social and cultural rights

Obligations to respect, protect and fulfil

6. Like civil and political rights, economic, social and cultural rights impose three different types of obligations on States: the obligations to respect, protect and fulfil. Failure to perform any one of these three obligations constitutes a violation of such rights. The obligation to respect requires States to refrain from interfering with the enjoyment of economic, social and cultural rights. Thus, the right to housing is violated if the State engages in arbitrary forced evictions. The obligation to protect requires States to prevent violations of such rights by third parties. Thus, the failure to ensure that private employers comply with basic labour standards may amount to a violation of the right to work or the right to just and favourable conditions of work. The obligation to fulfil requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights. Thus, the failure of States to provide essential primary health care to those in need may amount to a violation.

Obligations of conduct and of result

7. The obligations to respect, protect and fulfil each contain elements of obligation of conduct and obligation of result. The obligation of conduct requires action reasonably calculated to realize the enjoyment of a particular right. In the case of the right to health, for example, the obligation of conduct could involve the adoption and implementation of a plan of action to reduce maternal mortality. The obligation of result requires States to achieve specific targets to satisfy a detailed substantive standard. With respect to the right to health, for example, the obligation of result requires the reduction of maternal mortality to levels agreed at the 1994 Cairo International Conference on Population and Development and the 1995 Beijing Fourth World Conference on Women.

Margin of discretion

8. As in the case of civil and political rights, States enjoy a margin of discretion in selecting the means for implementing their respective obligations. State practice and the application of legal norms to concrete cases and situations by international treaty monitoring bodies as well as by domestic courts have contributed to the development of universal minimum standards and the common understanding of the scope, nature and limitation of economic, social and cultural rights. The fact that the full realization of most economic, social and cultural rights can only be achieved progressively, which in fact also applies to most civil and political rights, does not alter the nature of the legal obligation of States which requires that certain steps be taken immediately and others as soon as possible. Therefore, the burden is on the State to demonstrate that it is making measurable progress toward the full realization of the rights in question. The State cannot use the "progressive realization" provisions in article 2 of the Covenant as a pretext for non-compliance. Nor can the State justify derogations or limitations of rights recognized in the Covenant because of different social, religious and cultural backgrounds.

Minimum core obligations

9. Violations of the Covenant occur when a State fails to satisfy what the Committee on Economic, Social and Cultural Rights has referred to as "a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights [...]. 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 shel-

ter and housing, or of the most basic forms of education is, prima facie, violating the Covenant.”¹³⁵ Such minimum core obligations apply irrespective of the availability of resources of the country concerned or any other factors and difficulties.

Availability of resources

10. In many cases, compliance with such obligations may be undertaken by most States with relative ease, and without significant resource implications. In other cases, however, full realization of the rights may depend upon the availability of adequate financial and material resources. Nonetheless, as established by Limburg Principles 25-28, and confirmed by the developing jurisprudence of the Committee on Economic, Social and Cultural Rights, resource scarcity does not relieve States of certain minimum obligations in respect of the implementation of economic, social and cultural rights.

State policies

11. A violation of economic, social and cultural rights occurs when a State pursues, by action or omission, a policy or practice which deliberately contravenes or ignores obligations of the Covenant, or fails to achieve the required standard of conduct or result. Furthermore, any discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of economic, social and cultural rights constitutes a violation of the Covenant.

Gender discrimination

12. Discrimination against women in relation to the rights recognized in the Covenant is understood in light of the standard of equality for women under the Convention on the Elimination of All Forms of Discrimination against Women. That standard requires the elimination of all forms of discrimination against women including gender discrimination arising out of social, cultural and other structural disadvantages.

Inability to comply

13. In determining which actions or omissions amount to a violation of an economic, social or cultural right, it is important to distinguish the inability from the unwillingness of a State to comply with its treaty obligations. A State claiming that it is unable to carry out its obligation for reasons beyond its control has the burden of proving that this is the case. A temporary closure of an educational institution due to an earthquake, for instance, would be a circumstance beyond the control of the State, while the elimination of a social security scheme without an adequate replacement programme could be an example of unwillingness by the State to fulfil its obligations.

Violations through acts of commission

14. Violations of economic, social and cultural rights can occur through the direct action of States or other entities insufficiently regulated by States. Examples of such violations include:

- (a) The formal removal or suspension of legislation necessary for the continued enjoyment of an economic, social and cultural right that is currently enjoyed;
- (b) The active denial of such rights to particular individuals or groups, whether through legislated or enforced discrimination;

- (c) The active support for measures adopted by third parties which are inconsistent with economic, social and cultural rights;
- (d) The adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations relating to these rights, unless it is done with the purpose and effect of increasing equality and improving the realization of economic, social and cultural rights for the most vulnerable groups;
- (e) The adoption of any deliberately retrogressive measure that reduces the extent to which any such right is guaranteed;
- (f) The calculated obstruction of, or halt to, the progressive realization of a right protected by the Covenant, unless the State is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or force majeure;
- (g) The reduction or diversion of specific public expenditure, when such reduction or diversion results in the non-enjoyment of such rights and is not accompanied by adequate measures to ensure minimum subsistence rights for everyone.

Violations through acts of omission

15. Violations of economic, social, cultural rights can also occur through the omission or failure of States to take necessary measures stemming from legal obligations. Examples of such violations include:

- (a) The failure to take appropriate steps as required under the Covenant;
- (b) The failure to reform or repeal legislation which is manifestly inconsistent with an obligation of the Covenant;
- (c) The failure to enforce legislation or put into effect policies designed to implement provisions of the Covenant;
- (d) The failure to regulate activities of individuals or groups so as to prevent them from violating economic, social and cultural rights;
- (e) The failure to utilize the maximum of available resources towards the full realization of the Covenant;
- (f) The failure to monitor the realization of economic, social and cultural rights, including the development and application of criteria and indicators for assessing compliance;
- (g) The failure to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfilment of a right guaranteed by the Covenant;
- (h) The failure to implement without delay a right which it is required by the Covenant to provide immediately;
- (i) The failure to meet a generally accepted international minimum standard of achievement, which is within its powers to meet;
- (j) The failure of a State to take into account its international legal obligations in the field of economic, social and cultural rights when entering into bilateral or multilateral agreements with other States, international organizations or multinational corporations.

III. Responsibility for violations

State responsibility

16. The violations referred to in section II are in principle imputable to the State within whose jurisdiction they occur. As a consequence, the State responsible must establish mechanisms to correct such violations, including monitoring, investigation, prosecution, and remedies for victims.

Alien domination or occupation

17. Under circumstances of alien domination, deprivations of economic, social and cultural rights may be imputable to the conduct of the State exercising effective control over the territory in question. This is true under conditions of colonialism, other forms of alien domination and military occupation. The dominating or occupying power bears responsibility for violations of economic, social and cultural rights. There are also circumstances in which States acting in concert violate economic, social and cultural rights.

Acts by non-State entities

18. The obligation to protect includes the State's responsibility to ensure that private entities or individuals, including transnational corporations over which they exercise jurisdiction, do not deprive individuals of their economic, social and cultural rights. States are responsible for violations of economic, social and cultural rights that result from their failure to exercise due diligence in controlling the behaviour of such non-State actors.

Acts by international organizations

19. The obligations of States to protect economic, social and cultural rights extend also to their participation in international organizations, where they act collectively. It is particularly important for States to use their influence to ensure that violations do not result from the programmes and policies of the organizations of which they are members. It is crucial for the elimination of violations of economic, social and cultural rights for international organizations, including international financial institutions, to correct their policies and practices so that they do not result in deprivation of economic, social and cultural rights. Member States of such organizations, individually or through the governing bodies, as well as the secretariat and non-governmental organizations should encourage and generalize the trend of several such organizations to revise their policies and programmes to take into account issues of economic, social and cultural rights, especially when these policies and programmes are implemented in countries that lack the resources to resist the pressure brought by international institutions on their decision-making affecting economic, social and cultural rights.

IV. Victims of violations

Individuals and groups

20. As is the case with civil and political rights, both individuals and groups can be victims of violations of economic, social and cultural rights. Certain groups suffer disproportionate harm in this respect, such as lower-income groups, women, indigenous and tribal peoples, occupied populations, asylum seekers, refugees and internally displaced persons, minorities, the elderly, children, landless peasants, persons with disabilities and the homeless.

Criminal sanctions

21. Victims of violations of economic, social and cultural rights should not face criminal sanctions purely because of their status as victims, for example, through laws criminalizing persons for being homeless. Nor should anyone be penalized for claiming their economic, social and cultural rights.

V. Remedies and other responses to violations

Access to remedies

22. Any person or group who is a victim of a violation of an economic, social or cultural right should have access to effective judicial or other appropriate remedies at both national and international levels.

Adequate reparation

23. All victims of violations of economic, social and cultural rights are entitled to adequate reparation, which may take the form of restitution, compensation, rehabilitation and satisfaction or guarantees of non-repetition.

No official sanctioning of violations

24. National judicial and other organs must ensure that any pronouncements they may make do not result in the official sanctioning of a violation of an international obligation of the State concerned. At a minimum, national judiciaries should consider the relevant provisions of international and regional human rights law as an interpretive aid in formulating any decisions relating to violations of economic, social and cultural rights.

National institutions

25. Promotional and monitoring bodies, such as national ombudsman institutions and human rights commissions, should address violations of economic, social and cultural rights as vigorously as they address violations of civil and political rights.

Domestic application of international instruments

26. The direct incorporation or application of international instruments recognizing economic, social and cultural rights within the domestic legal order can significantly enhance the scope and effectiveness of remedial measures and should be encouraged in all cases.

Impunity

27. States should develop effective measures to preclude the possibility of impunity of any violation of economic, social and cultural rights and to ensure that no person who may be responsible for violations of such rights has immunity from liability for their actions.

Role of the legal professions

28. In order to achieve effective judicial and other remedies for victims of violations of economic, social and cultural rights, lawyers, judges, adjudicators, bar associations and the legal community generally should pay far greater attention to these violations

in the exercise of their professions, as recommended by the International Commission of Jurists in the Bangalore Declaration and Plan of Action of 1995.

Special rapporteurs

29. In order to further strengthen international mechanisms with respect to preventing, early warning, monitoring and redressing violations of economic, social and cultural rights, the United Nations Commission on Human Rights should appoint thematic special rapporteurs in this field.

New standards

30. In order to further clarify the contents of States obligations to respect, protect and fulfil economic, social and cultural rights, States and appropriate international bodies should actively pursue the adoption of new standards on specific economic, social and cultural rights, in particular the right to work, to food, to housing and to health.

Optional protocols

31. The optional protocol providing for individual and group complaints in relation to the rights recognized in the Covenant should be adopted and ratified without delay. The proposed optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women should ensure that equal attention is paid to violations of economic, social and cultural rights. In addition, consideration should be given to the drafting of an optional complaints procedure under the Convention on the Rights of the Child.

Documenting and monitoring

32. Documenting and monitoring violations of economic, social and cultural rights should be carried out by all relevant actors, including NGOs, national Governments and international organizations. It is indispensable that the relevant international organizations provide the support necessary for the implementation of international instruments in this field. The mandate of the United Nations High Commissioner for Human Rights includes the promotion of economic, social and cultural rights and it is essential that effective steps be taken urgently and that adequate staff and financial resources be devoted to this objective. Specialized agencies and other international organizations working in the economic and social spheres should also place appropriate emphasis upon economic, social and cultural rights as rights and, where they do not already do so, should contribute to efforts to respond to violations of these rights.

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Annex 6: The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights

Introduction

(i) A group of distinguished experts in international law, convened by the International Commission of Jurists, the Faculty of Law of the University of Limburg (Maastricht, the Netherlands) and the Urban Morgan Institute for Human Rights, University of Cincinnati (Ohio, United States of America), met in Maastricht from 2 to 6 June 1986 to consider the nature and scope of the obligations of States parties to the International Covenant on Economic, Social and Cultural Rights, the consideration of States party reports by the newly constituted ECOSOC Committee on Economic, Social and Cultural Rights, and international cooperation under Part IV of the Covenant.

(ii) The 29 participants came from Australia, the Federal Republic of Germany, Hungary, Ireland, Mexico, Netherlands, Norway, Senegal, Spain, the United Kingdom, the United States of America, Yugoslavia, the United Nations Centre for Human Rights, the International Labour Organization (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the Commonwealth Secretariat, and the sponsoring organizations. Four of the participants were members of the ECOSOC Committee on Economic, Social and Cultural Rights.

(iii) The participants agreed unanimously upon the following principles which they believe reflect the present state of international law, with the exception of certain recommendations indicated by the use of the verb "should" instead of "shall".

Part I. THE NATURE AND SCOPE OF STATES PARTY OBLIGATIONS

A. General observations

1. Economic, social and cultural rights are an integral part of international human rights law. They are the subject of specific treaty obligations in various international instruments, notably the International Covenant on Economic, Social and Cultural Rights.
2. The International Covenant on Economic, Social and Cultural Rights, together with the International Covenant on Civil and Political Rights and the Optional Protocol, entered into force in 1976. The Covenants serve to elaborate the Universal Declaration of Human Rights: these instruments constitute the International Bill of Human Rights.
3. As 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.
4. The International Covenant on Economic, Social and Cultural Rights (hereafter the Covenant) should, in accordance with the Vienna Convention on the Law of Treaties (Vienna 1969), be interpreted in good faith, taking into account the object and purpose, the ordinary meaning, the preparatory work and the relevant practice.
5. The experience of the relevant specialized agencies as well as of United Nations bodies and intergovernmental organizations, including the United Nations working groups and special rapporteurs in the field of human rights, should be taken into account in the implementation of the Covenant and in monitoring States party achievements.

6. The achievement of economic, social and cultural rights may be realized in a variety of political settings. There is no single road to their full realization. Successes and failures have been registered in both market and non-market economies, in both centralized and decentralized political structures.

7. States parties must at all times act in good faith to fulfil the obligations they have accepted under the Covenant.

8. Although the full realization of the rights recognized in the Covenant is to be attained progressively, the application of some rights can be made justiciable immediately while other rights can become justiciable over time.

9. Non-governmental organizations can play an important role in promoting the implementation of the Covenant. This role should accordingly be facilitated at the national as well as the international level.

10. States parties are accountable both to the international community and to their own people for their compliance with the obligations under the Covenant.

11. A concerted national effort to invoke the full participation of all sectors of society is, therefore, indispensable to achieving progress in realizing economic, social and cultural rights. Popular participation is required at all stages, including the formulation, application and review of national policies.

12. The supervision of compliance with the Covenant should be approached in a spirit of cooperation and dialogue. To this end, in considering the reports of States parties, the Committee on Economic, Social and Cultural Rights, hereinafter called "the Committee", should analyse the causes and factors impeding the realization of the rights covered under the Covenant and, where possible, indicate solutions. This approach should not preclude a finding, where the information available warrants such a conclusion, that a State party has failed to comply with its obligations under the Covenant.

13. All organs monitoring the Covenant should pay special attention to the principles of non-discrimination and equality before the law when assessing States party compliance with the Covenant.

14. Given the significance for development of the progressive realization of the rights set forth in the Covenant, particular attention should be given to measures to improve the standard of living of the poor and other disadvantaged groups, taking into account that special measures may be required to protect cultural rights of indigenous peoples and minorities.

15. Trends in international economic relations should be taken into account in assessing the efforts of the international community to achieve the Covenant's objectives.

B. Interpretative principles specifically relating to Part II of the Covenant

Article 2 (1): "to take steps ... by all appropriate means, including particularly the adoption of legislation"

16. All States parties have an obligation to begin immediately to take steps towards full realization of the rights contained in the Covenant.

17. At the national level States parties shall use all appropriate means, including legislative, administrative, judicial, economic, social and educational measures, consistent with the nature of the rights in order to fulfil their obligations under the Covenant.

18. Legislative measures alone are not sufficient to fulfil the obligations of the Covenant. It should be noted, however, that article 2 (1) would often require legislative action to be taken in cases where existing legislation is in violation of the obligations assumed under the Covenant.

19. States parties shall provide for effective remedies including, where appropriate, judicial remedies.

20. The appropriateness of the means to be applied in a particular State shall be determined by that State party, and shall be subject to review by the United Nations Economic and Social Council, with the assistance of the Committee. Such review shall be without prejudice to the competence of the other organs established pursuant to the Charter of the United Nations.

“to achieve progressively the full realization of the rights”

21. The obligation “to achieve progressively the full realization of the rights” requires States parties to move as expeditiously as possible towards the realization of the rights. Under no circumstances shall this be interpreted as implying for States the right to defer indefinitely efforts to ensure full realization. On the contrary all States parties have the obligation to begin immediately to take steps to fulfil their obligations under the Covenant.

22. Some obligations under the Covenant require immediate implementation in full by all States parties, such as the prohibition of discrimination in article 2 (2) of the Covenant.

23. The obligation of progressive achievement exists independently of the increase in resources; it requires effective use of resources available.

24. Progressive implementation can be effected not only by increasing resources, but also by the development of societal resources necessary for the realization by everyone of the rights recognized in the Covenant.

“to the maximum of its available resources”

25. States parties are obligated, regardless of the level of economic development, to ensure respect for minimum subsistence rights for all.

26. “Its available resources” refers to both the resources within a State and those available from the international community through international cooperation and assistance.

27. In determining whether adequate measures have been taken for the realization of the rights recognized in the Covenant attention shall be paid to equitable and effective use of and access to the available resources.

28. In the use of the available resources due priority shall be given to the realization of rights recognized in the Covenant, mindful of the need to assure to everyone the satisfaction of subsistence requirements as well as the provision of essential services.

“individually and through international assistance and cooperation especially economic and technical”

29. International cooperation and assistance pursuant to the Charter of the United Nations (arts. 55 and 56) and the Covenant shall have in view as a matter of priority the

realization of all human rights and fundamental freedoms, economic, social and cultural as well as civil and political.

30. International cooperation and assistance must be directed towards the establishment of a social and international order in which the rights and freedoms set forth in the Covenant can be fully realized (*cf.* art. 28, Universal Declaration of Human Rights).

31. Irrespective of differences in their political, economic and social systems, States shall cooperate with one another to promote international social, economic and cultural progress, in particular the economic growth of developing countries, free from discrimination based on such differences.

32. States parties shall take steps by international means to assist and cooperate in the realization of the rights recognized by the Covenant.

33. International cooperation and assistance shall be based on the sovereign equality of States and be aimed at the realization of the rights contained in the Covenant.

34. In undertaking international cooperation and assistance pursuant to article 2 (1) the role of international organizations and the contribution of non-governmental organizations shall be kept in mind.

Article 2 (2): Non-discrimination

35. Article 2 (2) calls for immediate application and involves an explicit guarantee on behalf of the States parties. It should, therefore, be made subject to judicial review and other recourse procedures.

36. The grounds of discrimination mentioned in article 2 (2) are not exhaustive.

37. Upon becoming a party to the Covenant States shall eliminate *de jure* discrimination by abolishing without delay any discriminatory laws, regulations and practices (including acts of omission as well as commission) affecting the enjoyment of economic, social and cultural rights.

38. *De facto* discrimination occurring as a result of the unequal enjoyment of economic, social and cultural rights, on account of a lack of resources or otherwise, should be brought to an end as speedily as possible.

39. Special measures taken for the sole purpose of securing adequate advancement of certain groups or individuals requiring such protection as may be necessary in order to ensure to such groups or individuals equal enjoyment of economic, social and cultural rights shall not be deemed discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different groups and that such measures shall not be continued after their intended objectives have been achieved.

40. Article 2 (2) demands from States parties that they prohibit private persons and bodies from practising discrimination in any field of public life.

41. In the application of article 2 (2) due regard should be paid to all relevant international instruments including the Declaration and International Convention on the Elimination of All Forms of Racial Discrimination as well as to the activities of the supervisory committee (CERD) under the said Convention.

Article 2 (3): Non-nationals in developing countries

42. As a general rule the Covenant applies equally to nationals and non-nationals.

43. The purpose of article 2 (3) was to end the domination of certain economic groups of non-nationals during colonial times. In the light of this the exception in article 2 (3) should be interpreted narrowly.

44. This narrow interpretation of article 2 (3) refers in particular to the notion of economic rights and to the notion of developing countries. The latter notion refers to those countries which have gained independence and which fall within the appropriate United Nations classifications of developing countries.

Article 3: Equal rights for men and women

45. In the application of article 3 due regard should be paid to the Declaration and Convention on the Elimination of All Forms of Discrimination against Women and other relevant instruments and the activities of the supervisory committee (CEDAW) under the said Convention.

Article 4: Limitations

46. Article 4 was primarily intended to be protective of the rights of individuals rather than permissive of the imposition of limitations by the State.

47. The article was not meant to introduce limitations on rights affecting the subsistence or survival of the individual or integrity of the person.

"determined by law"

48. No limitation on the exercise of economic, social and cultural rights shall be made unless provided for by national law of general application which is consistent with the Covenant and is in force at the time the limitation is applied.

49. Laws imposing limitations on the exercise of economic, social and cultural rights shall not be arbitrary or unreasonable or discriminatory.

50. Legal rules limiting the exercise of economic, social and cultural rights shall be clear and accessible to everyone.

51. Adequate safeguards and effective remedies shall be provided by law against illegal or abusive imposition on application of limitations on economic, social and cultural rights.

"promoting the general welfare"

52. This term shall be construed to mean furthering the well-being of the people as a whole.

"in a democratic society"

53. The expression "in a democratic society" shall be interpreted as imposing a further restriction on the application of limitations.

54. The burden is upon a State imposing limitations to demonstrate that the limitations do not impair the democratic functioning of the society.

55. While there is no single model of a democratic society, a society which recognizes and respects the human rights set forth in the Charter of the United Nations and the Universal Declaration of Human Rights may be viewed as meeting this definition.

“compatible with the nature of these rights”

56. The restriction “compatible with the nature of these rights” requires that a limitation shall not be interpreted or applied so as to jeopardize the essence of the right concerned.

57. Article 5 (1) underlines the fact that there is no general, implied or residual right for a State to impose limitations beyond those which are specifically provided for in the law.

None of the provisions in the law may be interpreted in such a way as to destroy “any of the rights or freedoms recognized”. In addition article 5 is intended to ensure that nothing in the Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

Article 5

58. The purpose of article 5 (2) is to ensure that no provision in the Covenant shall be interpreted to prejudice the provisions of domestic law or any bilateral or multilateral treaties, conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected. Neither shall article 5 (2) be interpreted to restrict the exercise of any human right protected to a greater extent by national or international obligations accepted by the State party.

C. Interpretative principles specifically relating to Part III of the Covenant

Article 8: “prescribed by law”

59. See the interpretative principles under the synonymous term “determined by law” in article 4.

“necessary in a democratic society”

60. In addition to the interpretative principles listed under article 4 concerning the phrase “in a democratic society”, article 8 imposes a greater restraint upon a State party which is exercising limitations on trade union rights. It requires that such a limitation is indeed necessary. The term “necessary” implies that the limitation:

- (a) responds to a pressing public or social need;
- (b) pursues a legitimate aim; and
- (c) is proportional to that aim.

61. Any assessment as to the necessity of a limitation shall be based upon objective considerations.

“national security”

62. National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.

63. National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order.

64. National security cannot be used as a pretext for imposing vague or arbitrary limitations and may be invoked only when there exist adequate safeguards and effective remedies against abuse.

65. 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.

“public order (ordre public)”

66. The expression “public order (ordre public)” as used in the Covenant may be defined as the sum of rules which ensures the functioning of society or the set of fundamental principles on which a society is founded. Respect for economic, social and cultural rights is part of public order (ordre public).

67. Public order (ordre public) shall be interpreted in the context of the purpose of the particular economic, social and cultural rights which are limited on this ground.

68. State organs or agents responsible for the maintenance of public order (ordre public) shall be subject to controls in the exercise of their power through the parliament, courts, or other competent independent bodies.

“rights and freedoms of others”

69. The scope of the rights and freedoms of others that may act as a limitation upon rights in the Covenant extends beyond the rights and freedoms recognized in the Covenant.

D. Violations of Economic, Social and Cultural Rights

70. A failure by a State party to comply with an obligation contained in the Covenant is, under international law, a violation of the Covenant.

71. In determining what amounts to a failure to comply, it must be borne in mind that the Covenant affords to a State party a margin of discretion in selecting the means for carrying out its objects, and that factors beyond its reasonable control may adversely affect its capacity to implement particular rights.

72. A State party will be in violation of the Covenant, inter alia, if:

- it fails to take a step which it is required to take by the Covenant;
- it fails to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfilment of a right;
- it fails to implement without delay a right which it is required by the Covenant to provide immediately;
- it wilfully fails to meet a generally accepted international minimum standard of achievement, which is within its powers to meet;
- it applies a limitation to a right recognized in the Covenant other than in accordance with the Covenant;
- 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 due to a lack of available resources or force majeure;
- it fails to submit reports as required under the Covenant.

73. In accordance with international law each State party to the Covenant has the right to express the view that another State party is not complying with its obligations under the Covenant and to bring this to the attention of that State party. Any dispute that may thus arise shall be settled in accordance with the relevant rules of international law relating to the peaceful settlement of disputes.

Part II. CONSIDERATION OF STATES PARTY REPORTS AND INTERNATIONAL COOPERATION UNDER PART IV OF THE COVENANT

A. Preparation and submission of reports by States parties

74. The effectiveness of the supervisory machinery provided in Part IV of the Covenant depends largely upon the quality and timeliness of reports by States parties. Governments are therefore urged to make their reports as meaningful as possible. For this purpose they should develop adequate internal procedures for consultations with the competent government departments and agencies, compilation of relevant data, training of staff, acquisition of background documentation, and consultation with relevant non-governmental and international institutions.

75. The preparation of reports under article 16 of the Covenant could be facilitated by the implementation of elements of the programme of advisory services and technical assistance as proposed by the chairmen of the main human rights supervisory organs in their 1984 report to the General Assembly (United Nations document A39/484).

76. States parties should view their reporting obligations as an opportunity for broad public discussion on goals and policies designed to realize economic, social and cultural rights. For this purpose wide publicity should be given to the reports, if possible in draft.

The preparation of reports should also be an occasion to review the extent to which relevant national policies adequately reflect the scope and content of each right, and to specify the means by which it is to be realized.

77. States parties are encouraged to examine the possibility of involving non-governmental organizations in the preparation of their reports.

78. In reporting on legal steps taken to give effect to the Covenant, States parties should not merely describe any relevant legislative provisions. They should specify, as appropriate, the judicial remedies, administrative procedures and other measures they have adopted for enforcing those rights and the practice under those remedies and procedures.

79. Quantitative information should be included in States party reports in order to indicate the extent to which the rights are protected in fact. Statistical information and information on budgetary allocations and expenditures should be presented in such a way as to facilitate the assessment of the compliance with Covenant obligations. States parties should, where possible, adopt clearly defined targets and indicators in implementing the Covenant. Such targets and indicators should, as appropriate, be based on criteria established through international cooperation in order to increase the relevance and comparability of data submitted by States parties in their reports.

80. Where necessary, Governments should conduct or commission studies to enable them to fill gaps in information regarding progress made and difficulties encountered in achieving the observance of the Covenant rights.

81. State party reports should indicate the areas where more progress could be achieved through international cooperation and suggest economic and technical cooperation programmes that might be helpful toward that end.

82. In order to ensure a meaningful dialogue between the States parties and the organs assessing their compliance with the provisions of the Covenant, States parties should designate representatives who are fully familiar with the issues raised in the report.

B. Role of the Committee on Economic, Social and Cultural Rights

83. The Committee has been entrusted with assisting the Economic and Social Council in the substantive tasks assigned to it by the Covenant. In particular, its role is to consider States party reports and to make suggestions and recommendations of a general nature, including suggestions and recommendations as to fuller compliance with the Covenant by States parties.

The decision of the Economic and Social Council to replace its sessional working group by a committee of independent experts should lead to a more effective supervision of the implementation by States parties.

84. In order to enable the Committee to discharge fully its responsibilities, the Economic and Social Council should ensure that sufficient sessions are provided to the Committee.

It is imperative that the necessary staff and facilities for the effective performance of the Committee's functions be provided, in accordance with Economic and Social Council resolution 1985/17.

85. In order to address the complexity of the substantive issues covered by the Covenant, the Committee might consider delegating certain tasks to its members. For example, drafting groups could be established to prepare preliminary formulations or recommendations of a general nature or summaries of the information received. Rapporteurs could be appointed to assist the work of the Committee, in particular to prepare reports on specific topics and for that purpose consult States parties, specialized agencies and relevant experts, and to draw up proposals regarding economic and technical assistance projects that could help overcome difficulties States parties have encountered in fulfilling their Covenant obligations.

86. The Committee should, pursuant to articles 22 and 23 of the Covenant, explore with other organs of the United Nations, specialized agencies and other concerned organizations, the possibilities of taking additional international measures likely to contribute to the progressive implementation of the Covenant.

87. The Committee should reconsider the current six-year cycle of reporting in view of the delays which have led to simultaneous consideration of reports submitted under different phases of the cycle. The Committee should also review the guidelines for States parties to assist them in preparing reports and propose any necessary modifications.

88. The Committee should consider inviting States parties to comment on selected topics leading to a direct and sustained dialogue with the Committee.

89. The Committee should devote adequate attention to the methodological issues involved in assessing compliance with the obligations contained in the Covenant. Reference to indicators, in so far as they may help measure progress made in the achievement of certain rights, may be useful in evaluating reports submitted under the Covenant. The Committee should take due account of the indicators selected by or in the framework of the specialized agencies and draw upon or promote additional research, in consultation with the specialized agencies concerned, where gaps have been identified.

90. Whenever the Committee is not satisfied that the information provided by a State party is adequate for a meaningful assessment of progress achieved and difficulties encountered it should request supplementary information, specifying as necessary the precise issues or questions it would like the State party to address.

91. In preparing its reports under Economic and Social Council resolution 1985/17, the Committee should consider, in addition to the "summary of its consideration of the reports", highlighting thematic issues raised during its deliberations.

C. Relations between the Committee and specialized agencies, and other international organs

92. The establishment of the Committee should be seen as an opportunity to develop a positive and mutually beneficial relationship between the Committee and the specialized agencies and other international organs.

93. New arrangements under article 18 of the Covenant should be considered where they could enhance the contribution of the specialized agencies to the work of the Committee. Given that the working methods with regard to the implementation of economic, social and cultural rights vary from one specialized agency to another, flexibility is appropriate in making such arrangements under article 18.

94. It is essential for the proper supervision of the implementation of the Covenant under Part IV that a dialogue be developed between the specialized agencies and the Committee with respect to matters of common interest. In particular, consultations should address the need for developing indicators for assessing compliance with the Covenant; drafting guidelines for the submission of reports by States parties; making arrangements for submission of reports by the specialized agencies under article 18. Consideration should also be given to any relevant procedures adopted in the agencies. Participation of their representatives in meetings of the Committee would be very valuable.

95. It would be useful if Committee members could visit specialized agencies concerned, learn through personal contact about programmes of the agencies relevant to the realization of the rights contained in the Covenant and discuss the possible areas of collaboration with those agencies.

96. Consultations should be initiated between the Committee and international financial institutions and development agencies to exchange information and share ideas on the distribution of available resources in relation to the realization of the rights recognized in the Covenant. These exchanges should consider the impact of international economic assistance on efforts by States parties to implement the Covenant and possibilities of technical and economic cooperation under article 22 of the Covenant.

97. The Commission on Human Rights, in addition to its responsibilities under article 19 of the Covenant, should take into account the work of the Committee in its consideration of items on its agenda relating to economic, social and cultural rights.

98. The International Covenant on Economic, Social and Cultural Rights is related to the International Covenant on Civil and Political Rights. Although most rights can clearly be delineated as falling within the framework of one or other Covenant, there are several rights and provisions referred to in both instruments which are not susceptible to clear differentiation. Both Covenants moreover share common provisions and articles. It is important that consultative arrangements be established between the Committee on Economic, Social and Cultural Rights and the Human Rights Committee.

99. Given the relevance of other international legal instruments to the Covenant, early consideration should be given by the Economic and Social Council to the need for

developing effective consultative arrangements between the various supervisory bodies.

100. International and regional intergovernmental organizations concerned with the realization of economic, social and cultural rights are urged to develop measures, as appropriate, to promote the implementation of the Covenant.

101. As the Committee is a subsidiary organ of the Economic and Social Council, non-governmental organizations enjoying consultative status with the Economic and Social Council are urged to attend and follow the meetings of the Committee and, when appropriate, to submit information in accordance with Economic and Social Council resolution 1296 (XLIV).

102. The Committee should develop, in cooperation with intergovernmental organizations and non-governmental organizations as well as research institutes an agreed system for recording, storing and making accessible case law and other interpretative material relating to international instruments on economic, social and cultural rights.

103. As one of the measures recommended in article 23 it is recommended that seminars be held periodically to review the work of the Committee and the progress made in the realization of economic, social and cultural rights by States parties.

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