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ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN PRACTICE: THE RIGHT TO HEALTH

REPORT OF THE 11 APRIL 2002 PARALLEL MEETING

Presented by the International Commission of Jurists
in co-operation with
The Federal Republic of Germany
and
The Republic of Chile

Geneva, Switzerland

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EXECUTIVE SUMMARY

The realisation of economic, social and cultural rights in relation to the right to health would benefit from the development of relevant national policies that could be evaluated and improved through the following four-step procedure:

a) the establishment of *indicators*, i.e. yardsticks capable of measuring State Party health system performance;
b) the setting of national *benchmarks*, i.e. State Party determined goals or targets that these nations wish to achieve or take into account in designing/implementing national health system policies;
c) the implementation of a CESCR/State Party *scoping* sub-procedure whereby national health system benchmarks would be evaluated to ensure that they were neither too modest nor unrealistically ambitious; and
d) the implementation of an *assessment* sub-procedure whereby, five years after the establishment of State Party benchmarks, the CESCR would evaluate the relative (non)attainment of national benchmarks through an examination of relevant indicators.

As discussed during the parallel meeting, realisation efforts concerning economic, social and cultural rights as a whole and the right to health in specific could greatly benefit from the State Party utilisation and mainstreaming of the aforementioned procedure. As confirmed through the recent experience of Chile, prioritising health related human rights through national policies and implementation programs may attract the positive attention of the international community. Through co-operative financing and technical assistance initiatives, efforts to concretely improve the level of health for national populations may be greatly enhanced.

INTRODUCTION

On 11 April 2002, the International Commission of Jurists, in co-operation with the Federal Republic of Germany and the Republic of Chile convened a parallel meeting to the Commission on Human Rights. Positioned to further clarify obligations emanating from the International Covenant on Economic, Social and Cultural Rights, (hereinafter ICESCR), the meeting provided a forum for the free exchange of views between State representatives, experts and international/non-governmental organisations on practical techniques relevant to the implementation of economic, social and cultural rights, (hereinafter ESC rights). Utilising the right to health as an illustrative example, participants investigated certain precepts of General Comment Fourteen as formulated by the Committee on Economic, Social and Cultural Rights, (hereinafter CESCR or the Committee). In particular, the Committee's proposed four-step procedure pertaining to the augmentation of the right to health through (1) human rights indicators, (2) nationally set benchmarks, (3) scoping, and (4) assessments, received priority attention.

I. FRAMEWORK FOR DISCUSSION

The meeting was opened by Louise Doswald-Beck, Secretary-General of the International Commission of Jurists.

Establishing the meeting framework, Ms. Doswald-Beck advised that ESC rights remain a controversial issue in comparison with the generally accepted norms concerning civil and political rights and that the purpose of the meeting was to further specify the legal content of ESC rights.

II. INTRODUCTORY REMARKS ON THE ACTUALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Ambassador Walter Lewalter of the Permanent Mission of the Federal Republic of Germany to the United Nations and Other Organisations in Geneva.

Affirming the indivisibility and interdependence of economic, social, cultural, political and civil rights, Ambassador Lewalter criticised the longstanding neglect of ICESCR rights and welcomed the renewed interest in these rights as generated through the combined efforts of the Committee, the United Nations High Commissioner for Human Rights, specialised agencies and non-governmental organisations. Ambassador Lewalter added that a current challenge facing the substantive realisation of ESC rights stemmed from the need to make existing international standards more tangible. Resolving practical problems, i.e. operationalizing ESC rights[1], was viewed as a necessary step in this process, one that Ambassador Lewalter hoped would be furthered through this meeting of State representatives, experts and international/non-governmental organisations.

[1] By defining quantifiable goals followed by the enactment of procedures to attain these goals.

Ambassador Juan Enrique Vega of the Permanent Mission of the Republic of Chile to the United Nations and Other Organisations in Geneva.

Ambassador Vega commenced his address by affirming provisions enshrined in the Constitution of the Republic of Chile that, following in the footsteps of numerous international instruments,[2] recognise the right to health as a fundamental entitlement. In this regard, Ambassador Vega noted that the formal recognition of the right to health dates back to the 1948 Constitution of the World Health Organisation, (hereinafter WHO), that enshrined a number of right to health provisions within its text.[3]

Despite the progression towards ESC rights realisation in general and the right to health in particular, Ambassador Vega warned of two major barriers threatening future advances:

a) The perception that, as opposed to civil and political rights,[4] the realisation of ESC rights requires a substantial commitment of State resources; and

b) The lack political will on the part of developing and developed nations to pursue an ESC rights realisation agenda.

Within this context, Ambassador Vega asserted that the right to health, as a public good, must be defended as a national and international political priority. To this end, article 19(9) of the Constitution of the Republic of Chile guarantees the right to health for all Chilean citizens, protecting "free and egalitarian access to, (the means)… for the promotion, protection and recovery of … health…." Ambassador Vega stressed that, despite the fact that Chile is a developing nation, the equal access to health care and its benefits has been given enormous political consideration and resources by the present government, the main objective being to transform the right to health into a substantive reality for the whole of the population.

[2] The Universal Declaration of Human Rights, the ICESCR, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women

[3] Preamble to the Constitution of the World Health Organisation as adopted by the International Health Conference, New York, 19-22 June, 1946; signed on 22 July 1946 by the representatives of 61 States, (Official Records of the World Health Organisation, no. 2, p. 100), and entered into force on 7 April 1948. Indeed, the preamble of the WHO Constitution decrees that, "(h)ealth is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity," that, "(t)he enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition," and that, "(t)he health of all peoples is fundamental to the attainment of peace and security and is dependent upon the fullest co-operation of individuals and States."

[4] As the realisation of ESC rights would require some degree of "positive" State action/resources, it is postulated that attendant realisation costs would far exceed those incurred for the implementation and maintenance of civil and political rights. The reality is that the full realisation of civil and political rights is heavily dependent both on the availability of resources and the development of necessary supportive State/societal structures. Here, for example, the right to a fair trial requires the establishment and maintenance of functioning judicial, law enforcement and penal systems. The European Court of Human Rights implicitly supported the contention that the implementation and maintenance of the rights enshrined in the International Covenant on Civil and Political Rights required positive State action and resources when it clarified a number of positive State obligations attendant on the civil and political rights guaranteed under the European Convention on Human Rights. Given this and the aforementioned examples, it is thus apparent that the difference in State obligations flowing from civil and political rights as opposed to ESC rights is more a matter of degree rather than a true difference in nature.

III. ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN PRACTICE: THE VALUE OF INDICATORS, BENCHMARKS, SCOPING AND ASSESSMENTS IN AUGMENTING THE RIGHT TO HEALTH

Presentation by Professor Eibe Riedel, Professor at the Faculty of Law, University of Mannheim, Germany.

a) Indicators

Professor Riedel commenced his address by acknowledging the general consensus which affirms that benchmarks and indicators are useful in the analysis of ESC rights realisation mechanisms. This said, it was recalled that disagreement exists as to the precise definition of "indicators", such confusion being rooted in the fact that these tools serve numerous functions. Within the human rights context, indicators are practically synonymous with statistics, denoting a numerical definition, however, the term may also encompass more thematic issues, i.e. information relevant to the observance or enjoyment of a specific right.

Regardless of the definition employed, for the purposes of his submissions, Professor Riedel considered that, in substance, indicators should be:

(1) *valid*, i.e. measure what they purport to measure;
(2) *objective*, i.e. achieve similar results when applied in comparable situations;
(3) *sensitive*, i.e. susceptible to social changes in certain situations;
(4) *specific*, i.e. accurately reflect social change only in relation to particular situations;
(5) *user friendly*; and
(6) *feasible*, i.e. they must acquire data without undue effort and/or expense.

In order to mitigate against indicators that may provide a distorted version of reality, Professor Riedel asserted that, in addition to satisfying the aforementioned prerequisites, indicators must be:

(7) *policy relevant*, i.e. capable of influencing policy decisions;
(8) *consistently measurable over time*, i.e. capable of demonstrating progress over time towards target realisation; and
(9) *capable of disaggregation*, i.e. allowing for a special focus on certain groups or issues, e.g. the effects of certain ESC rights realisation initiatives on vulnerable or marginalized populations.

Finally, Professor Riedel adopted the opinion that, if indicators referred to statistical data, they should not be:

(1) *overused*, i.e. the statistical data should allow for a broader political, social and contextual analysis to measure the rights in question;
(2) *underused*, i.e. incriminating results should not be ignored, e.g. when highly developed nations ignore data concerning domestic homeless populations;
(3) *misused*, *i.e*. collected data should not be biased towards institutions and formalised reporting; and
(4) *politically abused*, i.e. indicators should not be used to discredit other national efforts or relevant parties in the process.

Professor Riedel set the human rights indicator debate within the context of the right to the highest attainable standard of health by mentioning that the WHO has utilised indicators in numerous studies where it progressively became apparent that a comprehensive list of health indicators easily surpassed 100 in number. For CESCR purposes, 100 health indicators could not be examined within the State Party reporting dialogue, a process that spans only a limited number of hours and is intended to examine the entire spectrum of ICESCR State Party commitments. Adding to the complexity during this limited examination, it would be common practice for the Committee to request States Parties to disaggregate the said indicators.[5] It was therefore Professor Riedel's opinion that a comprehensive application of the right to health indicator approach would not work within the present State Party reporting system.[6] Within this context, Professor Riedel theorised that it would not be necessary for all material issues to receive immediate attention during Committee/State Party discussions, but rather, well in advance of such meetings, consensus could be built concerning a certain number of key indicators that would be emphasised during the discussion phase of the reporting process. Other indicators could be addressed in the State Party's written report.

b) Benchmarks

Professor Riedel postulated that right to health benchmarks may be defined as State Party determined goals or targets that States wish to achieve or take into account in designing/implementing national health policies. As a prominent author[7] cogently expressed, benchmarks are used as goals for measuring "progressive realisation" efforts under the Covenant. Here, benchmarks must take account of resource availability, the level of deprivation in the country, State policy options and should clearly identify rights that are neither subject to progressive realisation nor resource allocations.

c) Scoping

Professor Riedel asserted that, within the State Party benchmarking process, it would be desirable that a control mechanism existed to ensure that established goals were set neither too high nor too low. If national benchmarks were set too low, State Parties could avoid being held in violation of their ICESCR obligations and could go so far as to claim Committee praise for limited progress of little value. In order to avoid such undesirable situations, State Party proposed benchmarks should be *scoped*, an objective that could be engaged through a constructive State Party/Committee dialogue that would strive to build a consensus concerning said nationally set benchmarks. If projected benchmarks were found to be exceedingly modest, the Committee could ask for a State Party explanation and recommend benchmark reconsideration. As applied to the development of right to health benchmarks, the expertise of specialised agencies, such as the WHO, non-governmental organisations and or national human rights commissions or institutes with special health rights expertise could be engaged to assist in this process. While in most instances, a co-operative spirit would prevail between the Committee and the State Party, in extreme cases where benchmark consensus could not be reached, the treaty body could set an elevated benchmark more in line with State Party Covenant obligations and the capacities of that State.

[5] For example, the Committee could request that indicators be disaggregated into urban and rural sub-categories as health care expenditures are most often concentrated in urban centres at the expense of rural areas

[6] Professor Riedel asserted that right to health indicators must be considered in conjunction with benchmarking, a practice that is currently being supported by the Committee as outlined in paragraphs 57-58 of General Comment 14. Indeed, it is only through this combined focus that the *scoping* and *assessment* procedures may be effectively undertaken.

[7] S. Fukuda-Parr.

d) Assessment

Professor Riedel theorised that five years after the establishment of State Party benchmarks, the Committee would embark upon an *assessment* whereby the relative (non)attainment of benchmarks would be evaluated through an examination of human rights indicators. In cases where benchmarked targets were not met, the Committee could examine State Party reasons for non-fulfilment. In such circumstances, civil strife and/or natural catastrophes would act as mitigating factors. However, where State Party policy choices prevented benchmark target attainment, such behaviour would receive a more critical assessment.

Professor Riedel reinterated that as there are over 100 potentially disaggregated health indicators, Committee attempts to both monitor and evaluate national health systems within the limited reporting discussion period would meet with inevitable failure. Similarly, a Committee analysis of 10 to 12 key right to health indicators would also be unworkable as important information would be absent and would result in only a superficial analysis. Professor Riedel recommended that a feasible solution for the measurement of State Party ICESCR right to health realisation efforts would consist of the State Party submission of complete reports covering all available health indicators with a specific number of scoped indicators receiving detailed discussion during the Committee assessment stage.

Professor Riedel concluded that, in relation to the *ICESCR* right to health, distinctions between health indicators and human rights indicators would become less important within the proposed four step framework as the benchmarking, scoping and assessment procedure would be based on close co-operation between State Parties, specialised agencies, non-governmental organisations and the Committee. Most importantly, this new procedure would be based on a comprehensive as opposed to a simplistic solution that would pave the way for the development of a State Party related indicator tool kit. Here, key indicators, perhaps 20 to 30 in number, would be used by the Committee, as supplemented by disaggregated and more specific right to health sub-indicators. Ideally, within this process, the relevant State Party health ministry would consult the indicator tool kit and would employ this as a comprehensive checklist alongside the Committee's Revised Guidelines[8] in drafting its State Party report. Here, specialised agencies, in line with their Covenant obligations under ICESCR articles 2(1), 22 and 23 would be able to assist less developed countries in the drafting of periodic reports, efforts that could be supplemented by wealthier nations in line with their respective obligations under article 2(1) of the Covenant.

[8] It was Professor Riedel's opinion that the Guidelines also require a substantial overhaul.

IV. ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN PRACTICE: CHILE

Presentation by Nelly Alvarado, Deputy Director of the Republic of Chile Inter-Ministerial Commission on Health Sector Reform.

Ms Alvarado commenced her address by affirming that the present Chilean government has dedicated increased resources to and political consideration of health care. Indeed, in securing political office, President Ricardo Lagos pledged that substantively guaranteeing the right to health to all Chileans was a fundamental executive objective. To that end, comprehensive reforms have formally secured Chilean citizens equal access to the benefits that the right to health entails as supported through a soundly financed nation-wide infrastructure. In this, promoting the right to health has taken its place within the context of other central reforms aimed at protecting ESC rights within this developing nation. Indeed, Chile has implemented a series of measures and cross ministry programs that address not only health reform, but also education, the humanisation of urban areas, environmental protection and the condition of women. Further, facing an ageing population, the Republic of Chile has increased funding towards programs that address the health concerns of the elderly with an increased emphasis on the study and treatment of chronic diseases, cancer and infectious diseases.[9]

While acknowledging that a high level of inequality continues to exist between the standard of health that can be afforded by divergent domestic income groups in Chile, Ms. Alvarado advised that current health system reforms have and will continue to favour those individuals and groups most in need of health benefits. Here, progress has been made as reflected in an expanded immunisation program covering the whole of the infant population and the provision of rice and milk to infants, women and elderly citizens in need.

Ms Alvarado appraised meeting participants of an important Chilean health sector reform currently under consideration by the Parliament that concerns a draft Bill of Rights designed to guarantee the entire population certain health benefits. The Bill enshrines provisions that reaffirm health as an essential social requirement, a basic human right and a key factor central to human development. Recognising that health care is a sensitive issue and national priority the proposed Bill consolidates disparate health related legislation under one umbrella and expands the substantive content of the right to health. In doing so, the proposed legislation accords individual health concerns a central focus and positions the right to health as an important segment of Chile's broader policy on social development.[10]

The proposed Bill of Rights, in conjunction with other ministerial and civil society initiatives, will guarantee:

a) equal access to health care, (non-discrimination);
b) a certain standard of care in the provision of health care services, ensuring proper treatment, privacy rights/dignity and parental accompaniment in the case of child hospitalisation;
c) patient access to health information concerning clinical histories and treatment options;
d) culturally sensitive health services for indigenous populations;
e) health pensions; and
f) special health services related to the prevention, diagnosis and control of the infection produced by the HIV virus.

[9] Despite these efforts, Ms. Alvarado warned that the current reforms still left the health system unprepared to handle shifting demographic trends.

[10] The draft Bill of Rights utilised the Constitutions of the WHO and the Pan American Organisation for Health, the ICESCR and other international instruments to inform its content.

V. DISCUSSION

Bertie Ramcharan, Deputy High Commissioner for Human Rights, Office of the High Commissioner for Human Rights, acted as the moderator for the discussion section of the meeting.

a) Developing Nation Concerns

Panellists and participants made the following comments:

i) It is important to regard the right to health as an integral factor supporting sustainable development;

ii) Environmental deterioration, as it affects the right to health, merits greater attention by developing nations and the global community;

iii) A solution must be found for the inequality in health services available to individuals occupying different positions on the socio-economic spectrum; and

iv) Adequate resources must be invested in right to health realisation efforts.

b) Mainstreaming Economic, Social and Cultural Rights Through the Implementation of Human Rights

In responding to a question posed by Deputy High Commissioner Ramcharan concerning impediments to the actualisation of ESC rights and the right to health, *Kitty Arambulo*[11] advised that, within the context of other global human rights sufferings, small steps towards the progressive recognition of ESC rights must be recognised as large scale advancements are more difficult to achieve. Within this context, indicators and benchmarks play a vital role in making the right to health a reality as these tools provide States with a blueprint for the right's achievement.

Ms. Arambulo commented that indicators are inherent to the nature of economic, social, cultural, civil and political rights as the measure of these protections must be supported by quantitative data. Within this, indicators provide a well-rounded picture[12] of forward progress and assist in the benchmarking process, an area where the Committee can assist States Parties in determining promotional policies underscoring ESC rights realisation efforts. This said, Ms. Arambulo noted that responsibility for the indicators and benchmarking process ultimately rests in the hands of States Parties who have, thus far, inconsistently communicated their ESC rights realisation efforts to the CESCR, a circumstance that would impede future Committee assessment and assistance measures.

Ms. Arambulo advised that a matter of growing concern within the Committee Secretariat is that the 1997 call for human rights mainstreaming has not been heeded; compartmentalism still rules the day as layers upon layers of human rights initiatives and programs have not been integrated, a circumstance which may serve to stall the substantive augmentation of ESC rights. In this regard,

[11] Deputy Secretary of the Committee on Economic Social and Cultural Rights, Office of the High Commissioner for Human Rights.
[12] It was noted that the quality and reliability of this information varies greatly between States Parties.

Ms. Arambulo recommended that the Committee immediately establish a master set of indicators for ESC rights enumerated in the ICESCR and link these with other human rights instruments that utilise similar frameworks of analysis. These instruments would include relevant initiatives, declarations, plans, policies and the United Nations Millennium Declaration. Indicators found within these sources could assist in the creation of a key set of ESC rights indicators that the Committee could systematically employ in co-operation with all States Parties. As required under a United Nations initiative, States Parties could be further encouraged to provide the Committee with relevant information, a process that would contribute to the usefulness of the monitoring body's Concluding Observations. Overall, establishing a master ESC indicators list would send a powerful signal of the Committee's willingness to move away from a traditionally isolationist position which, in varying degrees, is a common trait of all treaty bodies.

c) The Mainstreaming of Human Rights: World Health Organisation Efforts

In responding to a question posed by Deputy High Commissioner Ramcharan concerning current efforts to mainstream health and human rights, *Helena Nygren-Krug*[13] advised that the WHO is currently undergoing an identity shift as reflected in a new organisational strategy that emphasises health and poverty alleviation as important components of human development. This shift, viewing health in the context of development, arose in part as the result of microeconomic evidence demonstrating that economic growth does not necessarily equate with a rise in the standard of health care but rather, investment in health care contributes to economic growth.[14] While acknowledging that efforts to augment the right to health need to be more thoroughly integrated, Ms. Nygren-Krug advised that the new millennium has witnessed an explosion of interest in ESC rights and the right to health as exemplified by:

a) The drafting of General Comment 14, created in close co-operation with the WHO to ensure that it possessed a normative framework that included both a legal and a public health perspective;

b) The WHO World Health Report 2000[15] which established a framework enabling the measurement of national health systems, setting out basic health system goals and the means by which these goals may be achieved. The framework spoke of fair financing, equality in health care and measured the level of health for all populations and groups around the globe in order that the WHO framework could be meshed with General Comment 14;

c) Various ICESCR State Party efforts to actualise the right to health as exemplified by over one hundred national Constitutions that enshrine this right; and

d) An International Commission of Jurists/World Health Organisation initiative focused on the development of a database containing the right to health and health-related rights at the international, regional and national levels. The database will constitute an important component

[13] World Health Organisation, Health and Human Rights Focal Point.

[14] Responding to a meeting participant question concerning the benefit of discussing health as a right for developing nations, Ms. Nygren-Krug advised that we should think of health as a legal entitlement, not a commodity. As such, the right to health should be viewed as a claim right, i.e. individuals can pursue this right as a legal entitlement, and this should be our fundamental starting point.

[15] The World Health Report 2000 was aimed at: (1) stimulating vigorous debate concerning better techniques for measuring health system performance; and (2) ascertaining a positive direction for health systems to follow.

in the effort to develop "basic building blocks" for a solid foundation upon which to understand and apply human rights in relation to health.

Ms. Nygren-Krug advised that the WHO now possesses the opportunity to move forward on the directives listed in its 1948 Constitution and such progress must be harnessed through co-operative efforts to ensure the full expression of the right to health.

d) Indicators, Benchmarks, Scoping and Assessments: Alternative Applications

In responding to a question posed by Deputy High Commissioner Ramcharan concerning the possible application of the indicator/benchmarking/scoping/assessment procedure in non right to health contexts, *Professor Stephen Marks*[16] advised of his recent attendance at a South Asian right to development project[17] meeting which made ample reference to a form of the procedure referred to by Professor Riedel. The development project explores the experiences of seven nations focused on the national policy implications associated with the right to development. Professor Marks asserted that, as witnessed by those involved in said development project, the indicator/benchmarking/scoping/assessment procedure is an invaluable tool for the measurement of a wide range of right(s) realisation efforts.[18]

e) International Obligations

A meeting participant commented that while the primary responsibility for the augmentation of the right to health rests on States, international and institutional[19] obligations should not be ignored in this process as reflected in the ICESCR and instruments pertaining to the right to development. Within this context, Professor Riedel was queried as to where international obligations would be highlighted in his four-step indicator/benchmarking/scoping/assessment framework.

In response, Professor Riedel's speculated that international obligations of co-operation and assistance would play a primary role in the scoping of benchmarks phase where, if it was found that State Party authored benchmarks were exceedingly modest, the Committee could ask for an explanation and recommend benchmark reconsideration. As applied to the development of right to health benchmarks, the expertise of specialised agencies, such as the WHO, non-governmental organisations and/or national human rights commissions/institutes with special health rights expertise could be engaged to assist in the process.

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[16] François-Xavier Bagnoud Professor of Health and Human Rights, Director François-Xavier Bagnoud Center for Health and Human Rights, Harvard University.

[17] This program, an undertaking of the François-Xavier Bagnoud Center for Health and Human Rights, Harvard University and the United Nations independent expert on the right to development, Dr. Arjun Sen Gupta, seeks to apply a human rights approach to development. It links the health and human rights paradigm to national policies of economic and social development, drawing upon various host country commitments undertaken at global conferences and through human rights treaties. The principal aim of this program is to work with host governments, as well as both non-governmental and private-sector actors in adjusting development policies and practices to incorporate a human rights-based approach to human development.

[18] For example, the procedure would be of use by United Nations thematic and country rapporteurs as these representatives are constantly faced with the need to measure and assess data.

[19] International bodies such as the WHO and international financial institutions.

Contributing to the discussion on this issue, Professor Marks added that the right to health is an essential component of the right to development and both working group discussions and independent expert reports on the right to development have witnessed a tenuous yet growing consensus around the concept of international co-operation that should simultaneously accommodate:

a) the wish of developing countries that view the right to development as enhancing a claim to resources; and

b) the wish of donor nations that view the right to development as taking on a meaningful implementation dimension.

Professor Marks advised that the independent expert on the right to development is currently working towards a development compact whereby countries who assert their willingness to implement the right to health, the right to education, the right to food and other human rights within a national policy framework will be better positioned to access increased resources as they would demonstrate to their development partners that the political rhetoric of the right to development could be transformed into substantive national implementation actions impacting individual lives.

CONCLUSION

As stated by one meeting participant, advancing the right to health as a human entitlement comes down to four words: “good co-ordination” and “political will”, factors that were highlighted throughout this conference. In this, the purpose of the parallel meeting, to provide a forum for the free exchange of views between State representatives, experts and international/non-governmental organisations on practical techniques relevant to the implementation of economic, social and cultural rights, was satisfied.

APPENDIX "A"

A G E N D A

Chair: **Louise Doswald-Beck**, Secretary General, ICJ

13:00-13:05 **OPENING OF THE MEETING AND INTRODUCTORY REMARKS**
Louise Doswald-Beck, Secretary General, ICJ

13:05-13:10 **Remarks of Ambassador Juan Enrique Vega,** Permanent Mission of the Republic of Chile to the United Nations and Other Organisations in Geneva

13:10-13:15 **Remarks of Ambassador Walter Lewalter,** Permanent Mission of the Federal Republic of Germany to the United Nations and Other Organisations in Geneva

13:15-13:30 **ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN PRACTICE: THE VALUE OF INDICATORS AND BENCHMARKS WITH REGARD TO AUGMENTING THE RIGHT TO HEALTH**
Remarks by Professor Eibe Riedel, Professor, Faculty of Law, University of Mannheim, Germany

13:30-13:45 **ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN PRACTICE: CHILE**
Remarks by Nelly Alvarado, Deputy Director, The Republic of Chile Inter-Ministerial Commission for Health Sector Reform

13:45-13:50 **ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN PRACTICE: FRAMEWORK FOR THE OPEN FLOOR PANEL DISCUSSION**
Remarks by Bertie Ramcharan, Deputy High Commissioner for Human Rights, Office of the High Commissioner for Human Rights

13:50-14:55 **OPEN FLOOR PANEL DISCUSSION**

Panel Commentary Provided By:

Nelly Alvarado;

Kitty Arambulo, Deputy Secretary of the Committee on Economic Social and Cultural Rights, Office of the High Commissioner for Human Rights;

Stephen Marks, François-Xavier Bagnoud Professor of Health and Human Rights, Director François-Xavier Bagnoud Center for Health and Human Rights, Harvard University;

Helena Nygren-Krug, World Health Organisation, Health and Human Rights Focal Point; and

Professor Eibe Riedel.

14:55-15:00 **FINAL REMARKS AND CLOSE OF MEETING**
Remarks by Bertie Ramcharan and Louise Doswald-Beck.

APPENDIX "B"

INTRODUCTORY MEMORANDUM

Human rights treaties have fundamentally changed the nature and scope of international law through the establishment of an objective regime whereby States Parties act as duty bearers guaranteeing individual and group protections as monitored within the United Nations framework. Through the ratification of human rights treaties, international accountability is set in motion, taking the form of either systematic and regular reporting duties or individual complaints procedures.

Under the *International Covenant on Economic, Social and Cultural Rights,* (hereinafter *ICESCR* or the *Covenant*), State accountability is currently restricted to regular assessments by the Committee on Economic, Social and Cultural Rights, (hereinafter CESCR), a body that examines individual State Party progress towards the implementation of *ICESCR* commitments.

The CESCR advocates the adoption of an Optional Protocol to the *Covenant*, an instrument that would bring the *ICESCR* in line with four of the six dominant human rights treaties through the provision of an international remedial mechanism directed at State violations of economic, social and cultural rights. While this initiative is currently generating increased attention, it is theorised that the effectiveness of the existing *ICESCR* State reporting system may be enhanced through the increased use of indicators and benchmarks.

Human rights indicators and benchmarks occupy a potentially important role in relation to shifting State obligations implicit in the *ICESCR* concepts of “progressive realisation” and “maximum available resources”. Here, the further utilisation of indicators and benchmarks would allow the aforementioned elusive concepts to be more effectively monitored, thus enabling the institution of a differentiated approach to the distinct circumstances faced by States Parties occupying different positions on the spectrum of development.

In relation to the *ICESCR* right to health, a topical heading chosen to exemplify the practical application of economic, social and cultural rights, right to health benchmarks may be defined as yardsticks, goals or targets, set by individual State Parties, that reflect the domestic health situations faced by same. Here, the utilisation of benchmarks would allow States to both measure resources available for the augmentation of the right to health and formulate a timeline for the right’s progressive realisation. Said benchmarks would take into account State Party resource availability, the level of deprivation, policy options and could be used to clearly identify rights not subject to progressive realisation and/or resource availability, their main focus being on the specific circumstances prevailing in particular State.

Indicators are quantitative or qualitative statistical statements that may be used to describe existing situations and to measure changes or trends over a period of time. Within the context of the *ICESCR* right to health, they may be seen as descriptors of situations that focus attention on States Parties formal and actual behaviour in relation to the substantive augmentation of the aforesaid economic, social and cultural right.

The advantages of employing benchmarks and indicators in relation to the augmentation of economic, social and cultural rights is self-evident: in utilising these tools, the role of States Parties in relation to variable obligations of conduct and process would be strengthened. This, in turn, would serve to further substantiate that the realisation of economic, social and cultural rights is universally possible within a system that fully takes into account the varying circumstances specific to participating *ICESCR* States.

APPENDIX "C"

The Committee for Economic, Social and Cultural Rights, Summary of General Comment Fourteen: The Right to the Highest Attainable Standard of Health, Article 12 of the International Covenant on Economic, Social and Cultural Rights

General Comment Fourteen advises that health is a fundamental human right indispensable for the exercise of other human rights. The realisation of the right to health may be pursued through numerous complementary approaches, such as the formulation of health policies, or the implementation of health programs developed by the World Health Organisation, (WHO), or the adoption of specific legal instruments. Here, the right to health is closely related to and dependent upon the realisation of other human rights. The notion of "the highest attainable standard of health takes into account both the individual's biological and socio-economic preconditions and a State's available resources.

General Comment Fourteen interprets the right to health as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and drinkable water, adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions and access to health-related education and information, including information on sexual and reproductive health. A further important aspect to the right to health is the participation of the population in all health-related decision-making at the community, national and international levels.

General Comment Fourteen advises that the right to health in all its forms and at all levels contains the following interrelated and essential elements, the precise application of which will depend on the conditions prevailing in particular States: availability; accessibility; acceptability; and quality. Here, State parties have immediate obligations in relation to the right to health, such as the guarantee that it will be exercised without discrimination of any kind and that steps will be progressively taken towards full right realisation. Such steps must be deliberate, concrete and targeted towards the full realisation of the right to health. Within this, States have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the *Covenant,* including essential primary health care.

APPENDIX "D"

The Committee on Economic, Social and Cultural Rights: Progressing With State Parties Towards the Recognition of Economic, Social and Cultural Rights

Introduction

The primary function of the Committee on Economic, Social and Cultural Rights, (hereinafter the Committee), is to monitor the implementation of *the International Covenant on Economic, Social and Cultural Rights*, (hereinafter *Covenant*) by States. Here, the Committee strives to maintain a constructive dialogue and seeks to determine, through a variety of means, whether or not the norms contained in the *Covenant* are being adequately applied by States and how the implementation and enforcement of this instrument may be improved in order that all people can enjoy *Covenant* enshrined rights.

Drawing on the legal and practical expertise of its members, the Committee examines reports and submissions of States parties and, through concluding observations, provides suggestions and recommendations such that economic, social and cultural rights may be more effectively secured.

The following non-exhaustive examples illustrate the positive effect that both the *Covenant* and Committee suggestions and recommendations may have in influencing various States parties to practically implement their *Covenant*-based obligations.

Canada

In keeping with Committee recommendations, the Federal Government reinstated the Court Challenges Program, which provides funding for Constitutional test cases promoting the rights of official language minorities and equality-seeking groups. See document no.: E/1994/104/Add.17, State Party Third Periodic Report: Canada, 20/01/98.

Cyprus

Most of the economic, social and cultural rights embodied in *Part II* of the *Covenant* are now safeguarded by the *Constitution of Cyprus*. Further, the *Covenant* forms part of the municipal law of Cyprus and has thus acquired superior force to any other municipal law. See document no.: E/1994/104/Add.12, State Party Third Periodic Report: Cyprus, 06/06/96.

Egypt

The Constitutional Court of Egypt invoked the provisions of the *Covenant* to acquit rail workers who were prosecuted for going on strike in 1986 and declared that the Penal Code should be amended to allow the right to strike. See document no.: E/C.12/1/Add.44, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Egypt, 23/05/2000.

Finland

In keeping with Committee recommendations, an important legislative initiative was introduced whereby provisions relating to principal economic, social and cultural rights were incorporated into the Constitution of Finland. In June 1999, these fundamental rights provisions were transferred nearly unaltered from the *Covenant* to the Constitution, becoming effective on 1 March 2000. See document no.: E/C.12/4/Add.1, State Party Fourth Periodic Report: Finland, 09/12/99.

Committee recommendations may have also assisted in ensuring that human rights issues are one of the standard subject matters in judges' further training courses which have included economic, social and cultural rights and the administration of justice. Further, in 1995, a separate fundamental rights and human rights section comprising the texts of the principal human rights agreements was included in the Laws of Finland. Prior to this innovation, international agreements ratified by Finland were published only in a separate Treaty Series of the Statute Book. Thanks to this change, it has become easier for both civil servants and lawyers to take note in their work of human rights agreements, which are a part of legislation applied in Finland. See document no.: E/C.12/4/Add.1, State Party Fourth Periodic Report: Finland, 09/12/99.

Also in keeping with Committee recommendations, The Ministry of Labour has undertaken to develop the principle of gender mainstreaming in its own branch of the administration, particularly in its employment policy. The gender perspective is taken into account, for example, in the development of labour legislation, vocational guidance and projects related to the European Union (EU) structural funds. See document no.: E/C.12/4/Add.1, State Party Fourth Periodic Report: Finland, 09/12/99.

Finally, the Committee recommended that Finland consider the introduction of a general minimum wage system, which would also cover employees who are not protected by collective agreements. In response, a Finish Tripartite Contracts of Employment Act Committee is currently preparing a proposal for a general reform of the *Contracts of Employment Act*. See document no.: E/C.12/4/Add.1, State Party Fourth Periodic Report: Finland, 09/12/99.

Germany

Germany is at present actively promoting economic, social and cultural rights both nationally and internationally through recent positive developments concerning said rights, such as: the March 2001 consultation organised by the State on the right to food; the State party's efforts at the United Nations Commission on Human Rights to establish the mandate of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living; and its revised and more favourable position on a draft Optional Protocol to the *Covenant*. See document no.: E/1994/104/Add.14, State Party Third Periodic Report: Germany, 17/10/96.

In keeping with Committee recommendations, departing from its previous practice, the Federal Government involved the NGO forum “World Summit for Social Development" in the preparation for its fourth periodic report to the Committee on the implementation of the *Covenant*. See document no.: E/1994/104/Add.14, State Party Third Periodic Report: Germany, 17/10/96.

Finally, the reintroduction of the continuation of full wage payments in the event of sickness announced in November 1998 is mentioned as a positive example of the new Federal Government’s policy to implement *Covenant* obligations. See document no.: E/1994/104/Add.14, State Party Third Periodic Report: Germany, 17/10/96.

Portugal

Portugal has extended efforts to implement Committee recommendations in particular through legislative measures to promote equality between men and women. See document no.: E/1990/6/Add.6, State Party Second Periodic Report: Portugal, 22/07/94.

Sweden

In its concluding observations the Committee expressed its concern over the problem of child pornography and the lack of information on this issue in Sweden. It urged the government to intensify its efforts to combat child pornography and increase measures for monitoring and the registration of all such cases. It also referred to the need to ensure that appropriate penalties are imposed for such offences. Further to Committee recommendations, on 1 January 1999, new Swedish legislation extending criminal liability for association with child pornography came into force. Here, virtually all association with child pornography images, including possession, constitutes a criminal offence. The legislation applies to media of all kinds including the electronic environment. See document no.: E/C.12/4/Add.4, State Party Fourth Periodic Report: Sweden, 08/08/2000.

Tunisia

Many new laws and modifications of existing laws were inspired by the obligations assumed under the *Covenant* as the enshrined rights form part of Tunisian law by virtue of the Constitutional provision that an international treaty ratified by Tunisia becomes part of domestic law. See document no.: E/C.12/1/Add.36, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Tunisia, 14/05/99.