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LIST OF ACRONYMS AND ABBREVIATIONS

Committee

United Nations Committee on Economic, Social and Cultural Rights

Covenant

International Covenant on Economic, Social and Cultural Rights

ECOSOC

United Nations Economic and Social Council

ESCR

Economic, Social and Cultural Rights

ICESCR

International Covenant on Economic, Social and Cultural Rights

ICJ

International Commission of Jurists

Limburg Principles

Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights

Maastricht Guidelines

Maastricht Guidelines on Violations of Economic, Social and Cultural Rights

NGOs

Non-Governmental Organizations

OHCHR

United Nations Office of the High Commissioner for Human Rights

ONUG

United Nations Office in Geneva

Secretariat

Secretariat for the Committee on Economic, Social, and Cultural Rights

FOREWORD

This manual was prepared by the International Commission of Jurists (hereinafter "ICJ") as a means of assisting a wide-range of non-governmental organisations in producing effective civil society reports for submission to the United Nations Committee on Economic, Social and Cultural Rights (hereinafter "Committee"), the body charged with monitoring State party compliance with the implementation of the International *Covenant* on Economic, Social and Cultural Rights (hereinafter "ICESCR" or "Covenant").

The manual was developed by *Edwin Berry*, ICJ Legal Officer, with the assistance of *Michelle Lee*, ICJ Assistant Lawyer. Information contained in this manual has been compiled from Committee procedures, reports and various doctrinal sources. The manual also builds on the best practices of a variety of non-governmental organisations (hereinafter "NGOs") that possess long-term "hands on" experience with *ICESCR* monitoring and civil society reporting.

The ICJ would like to express its gratitude to *Nathalie Mivelaz* of the Organisation Mondiale Contre la Torture, *Professor Eibe Riedel* of the Faculty of Law, University of Mannheim, Germany, member of the United Nations Committee on Economic, Social and Cultural Rights and *Natalia Taubina* of the Foundation for Civil Society, Moscow for their insights and suggestions concerning this manual.

The ICJ permits the free reproduction of this guide and extracts of this document provided that due acknowledgement is provided. Questions and comments on this manual are welcome and may be sent to:

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INTRODUCTION TO THE MANUAL

WHY WAS THIS MANUAL DEVELOPED?

While ample information exists concerning the scope and content of economic, social and cultural rights (hereinafter "ESCR"), guidance as to the preparation and submission of civil society reports is limited. This manual is thus designed to assist national, sub-regional, regional and/or international NGOs in:

- ▶ Understanding the qualities that make civil society reports effective;
- ▶ Identifying, gathering and analysing information that may be of importance to the Committee;
- ▶ The civil society report planning and writing process; and
- ▶ The conveyance of civil society reports in a way that will have a positive impact on the work of the Committee and, ultimately, on the behaviour of States parties.

As the form and content of civil society reports can vary according to the goals and resources of those involved, this manual provides general reporting guidance regardless of the nature and scope of the submissions. The manual does not exhaustively deal with the specific content of ESCR, nor does it address every possible issue that could arise in the preparation and submission of such reports.

WHAT IS A "CIVIL SOCIETY REPORT"?

Articles 16 and 17 of the *ICESCR* require States parties to submit reports on the national implementation of the *Covenant* within two years of ratification, and thereafter once every five years. The main aim of a civil society report is to present the Committee with an alternative view of the information contained in these State party reports. Civil society reports often highlight gaps between government ESCR policies and their realisation and concern the necessity and possibility of State party policy change. These reports can take many different forms, including long documents that "shadow" the content of State party reports, short comments that address only one right or simple letters that express a point of view on certain national ESCR issues.

WHY SUBMIT A CIVIL SOCIETY REPORT?

Civil society reports are an essential part of the *ICESCR* monitoring process as they:

- ▶ Ensure greater international and domestic scrutiny of State party efforts to realise *ICESCR* obligations. Such reports thus encourage national governments to further

support ESCR before their next scheduled review before the Committee;

- ▶ Enable NGOs and the public to influence national ESCR policies;
- ▶ Stimulate public debate and mobilisation around ESCR issues; and
- ▶ Strengthen the ability of NGOs to protect and promote national ESCR through international mechanisms. [1]

THE UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS: AN INTRODUCTION

Established in 1985 by the Economic and Social Council, the central purpose of the Committee is to oversee the implementation of the *Covenant* by States parties and to assist them in ensuring that their laws and policies are consistent with the obligations that they assumed in ratifying the *ICESCR*.

The Committee is composed of 18 independent experts elected by the Economic and Social Council for renewable four-year terms. It officially convenes twice per year in Geneva, Switzerland, for two, each lasting for three weeks, generally in April/May and November/December, each followed by a one-week pre-session working group. The Committee is administratively serviced by the Secretariat for the Committee on Economic, Social, and Cultural Rights (hereinafter "Secretariat") at the Office of the High Commissioner for Human Rights (hereinafter "OHCHR"). All relevant information concerning State party reports is available, free of charge, on the OHCHR United Nations Human Rights Treaty Bodies Database that may be accessed on the internet at www.unhchr.ch/tbs/doc.nsf. Alternatively, State party reports and other information may be obtained by contacting the Secretariat at:

Secretariat for the Committee on Economic, Social, and Cultural Rights,
Office for the High Commissioner for Human Rights (OHCHR),
Palais des Nations, 8-14 Avenue de la Paix,
CH-1211 Geneva 10, Switzerland,
Tel: +41 22 917 9321, Fax: +41 22 917 9022

THE PREPARATION OF CIVIL SOCIETY REPORTS

GETTING STARTED

In assessing whether to submit a civil society report to the Committee, NGOs should carefully consider their organisational goals in light of available resources and capacity.

(i) What are the Qualities of an Effective Civil Society Report?

The Committee is concerned with receiving sound and precise information, collected through varied, well-documented and verifiable sources. In particular, the Committee is interested in civil society reports that:

- ▶ Illustrate and explain the circumstances that have led to the current status of national *ICESCR* implementation efforts and/or non-efforts;
- ▶ Contain a "list of issues" or questions that the Committee may, at its discretion, place before the examined State party, which is then asked to respond; and
- ▶ Provide precise recommendations that enable the Committee to compile questions and observations for the State party under consideration.

(ii) Confidentiality of Submissions

As a general rule, all formal written and oral submissions made to the Committee are accessible by the public and States parties. Where submitted documentation contains sensitive information (e.g. information given by individuals or organisations that might be put at risk if their identity was known), it is essential that the Committee is notified of this fact accompanied by a request to keep such information confidential. [2]

STEP 1 : OBTAINING THE STATE PARTY REPORT

In preparing to write a civil society report, NGOs should obtain the current State party report, previous reports and subsequent Committee responses to State party reports as this documentation is useful in tracing patterns of State party compliance with the *Covenant*. It must be noted that civil society reports prove particularly valuable to the Committee when States do not fulfil their obligation to submit their reports to the Committee. In such cases, the Committee attaches heightened importance to the civil society reports in evaluating whether and to what extent, States are complying with their *ICESCR* obligations.

States parties usually submit their reports to the Committee one to three years in advance of their scheduled review. These reports are available in all UN languages (i.e. English, French, Spanish, Russian, Arabic and Chinese) either through the Committee Secretariat or by visiting the United Nations Treaty Bodies Database at www.unhchr.ch/tbs/doc.nsf. The database also contains information as to when States parties are scheduled for review by the Committee.

Committee General Comment No.1:

Under General Comment 1, the objectives of State party reports are to:

- ▶ Ensure that States parties undertake a comprehensive review of national legislation, administrative rules and procedures, and practices in order to assure the

fullest possible conformity with the *Covenant*;

- ▶ Ensure that States parties regularly monitor the actual situation with respect to each *ICESCR* right in order to assess the extent to which each right is being enjoyed by all individuals within the country;
- ▶ Provide a basis for the national government to elaborate clearly stated and carefully targeted policies designed to implement *Covenant* rights;
- ▶ Facilitate public scrutiny of government policies with respect to the *Covenant's* implementation, and to encourage the involvement of various sectors of society in the formulation, implementation and review of relevant policies;
- ▶ Provide a basis on which both the State party and the Committee can effectively evaluate progress towards the realization of the obligations contained in the *Covenant*;
- ▶ Enable the State party to develop a better understanding of problems and shortcomings impeding the realization of *ESCR*; and
- ▶ Facilitate the exchange of information among States parties and to help develop a fuller appreciation of both common problems and possible solutions in the realization of each of the rights contained in the *Covenant*.

UPDATED STATE PARTY AND CIVIL SOCIETY REPORTS

The formal Committee review of a State party report may not occur until a year or more after its initial submission. As a result of this time delay, the Committee often asks States parties to submit supplementary information in order to ensure that the Committee has the most current information at its disposal. If a substantial amount of time has passed since submitting its civil society report, or if recent national *ICESCR* violations, (breaches of State obligations under the *Covenant*), have come to light, NGO's may submit supplemental civil society report updates and supporting documentation. Such additional information should be sent approximately 3 months prior to the Committee review session. [3]

OVERDUE STATE PARTY REPORTS AND REVIEWING STATES "OUT OF TURN"

A continual dilemma faced by the Committee is that States parties are often late in submitting their reports. In such situations, the Committee notifies concerned States parties of its intention to proceed with the review session in light of all available information. In the absence of State party reports, civil society reports prove even more essential for the Committee to monitor the status of national *ICESCR* implementation.

Where a State party has not complied with previous Committee recommendations or requests for supplemental information, the Committee may also elect to review a State party "out of turn" (i.e. prior to its normally scheduled review period). Similarly, should NGOs become alarmed at the level of *ICESCR* violations within a country, they are encouraged to submit civil society reports that outline and document their concerns regardless of the fact that the State party has not been officially scheduled for consideration by the Committee.

In conceptualising civil society reports, NGOs must know:

Whether the State party has ratified the *ICESCR*;

Whether the State party has submitted any reports in the past, and if so, if the

Committee issued any documents pursuant to those reports (i.e. a list of issues, recommendations, concluding observations, etc.);
When the State party is scheduled for consideration before the Committee, and whether the submission of the State party report has been delayed; and
Whether the Committee has requested supplemental information.

OVERVIEW OF COMMITTEE PROCEDURES

Once a State party report has been submitted, it is given preliminary consideration by a Pre-Sessional Working Group that typically meets for one week immediately following the end of the regular three-week Committee session (i.e. 6 to 12 months prior to the consideration of the report by the Committee). The Pre-Sessional Working Group consists of five members of the Committee, with one member serving as the "Country Rapporteur". The Working Group is charged with compiling a "list of issues" containing Committee questions to which the State party is asked to respond. "Lists of issues" are available in English, French and Spanish on the United Nations Treaty Bodies Database at www.unhchr.ch/tbs/doc.nsf or by contacting the Secretariat.

In considering State party reports during the formal review session, the Committee engages States parties in what is often referred to as "constructive dialogue" concerning national measures undertaken to fulfil *ICESCR* obligations. It is at this stage that the Committee questions the State party on the basis of information contained in its report and information submitted by NGOs through civil society reports.

At the end of the designated State party review session, the Committee holds a private meeting in which it adopts concluding observations on the basis of a draft prepared by the Country Rapporteur. Concluding observations, which are publicly released on the last day of each review session, reflect the Committee's position with respect to the status of national *ICESCR* implementation and include specific suggestions and recommendations designed to assist States parties in realising *Covenant* obligations.

KEY STAGES OF NGO PARTICIPATION

NGOs are encouraged to make written submissions during each stage of the State party consideration process. Once the Committee receives such submissions, they are appended to that State party's official country file, which is continually updated by the Secretariat.

With regard to civil society reports made pursuant to the list of issues, the Committee has noted that such submissions should (i) be made directly to the Country Rapporteur, (ii) organised on an article-by-article basis, and (iii) contain a list of specific questions that the Pre-Sessional Working Group should consider for inclusion in the list of issues. NGOs are typically assigned 10-15 minutes each to speak, and are encouraged to distribute their speaking notes to the Pre-Sessional Working Group and its translators in advance of their presentations. Civil society submissions, to be distributed during the Pre-Sessional Working Group, should be sent to the Secretariat at least one week prior to the scheduled meeting.

On the first day of the full State party / Committee review session, NGOs are typically invited to present 10-15 minute oral presentations. These presentations are open to the public and are provided with translation services. Through their oral statements, NGOs are invited to:

- Discuss the central points of their civil society reports;
- Provide the Committee with new and/or updated information that has become available since the submission of their reports;
- Present the Committee with specific questions that could be raised during the "constructive dialogue" session; and
- Make recommendations as to the implementation of the *ICESCR* by that State party.

NGOs are invited to attend the Committee's plenary meeting, but are not entitled to give oral presentations during that time. NGOs are not permitted to be present during the drafting of the Committee's concluding observations although they are encouraged to submit information, at any time, concerning the implementation of the concluding observations by States parties.

In an effort to facilitate the quality of NGO submissions, the Committee has prepared a document entitled *NGO participation in the activities of the Committee on Economic, Social and Cultural Rights* (UN Doc. E/C.12/2000/6), which is available on the United Nations Treaty Bodies Database at www.unhchr.ch/tbs/doc.nsf or by contacting the Secretariat. It is strongly recommended that NGOs familiarise themselves with this document prior to the writing of civil society reports as it contains a detailed and concise overview of the possible stages of NGO participation in the work of the Committee.

OBTAINING ACCREDITATION AND/OR CONSULTATIVE STATUS

Accreditation

In order for NGOs to directly participate in Pre-Sessional Working Group and Committee review sessions of State party reports, they must obtain prior accreditation from the Committee's Secretariat. To facilitate this process it is recommended that NGO's establish contact with the Secretariat at least one year in advance of the planned civil society report submission. For further accreditation information, NGOs should contact the Secretariat directly and visit the United Nations website at www.un.org/esa/coordination/ngo/.

Consultative Status

On the basis of article 71 of the Charter of the United Nations, Non-Governmental Organizations concerned with matters falling within the competence of the United Nations Economic and Social Council ("ECOSOC") and its subsidiary bodies may be granted, if they so request, consultative status with this Council. Resolution 1996/31 of ECOSOC provides the principles to be applied in the establishment of consultative relations as well as those governing the nature and the practical functioning of consultative arrangements.

Requests for consultative status are handled by the Non-Governmental Organizations Section of the Department of Economic and Social Affairs in the

United Nations in New York (Room DC1-1480, United Nations, New York, N.Y. 10017 - Tel. (212) 963 4842, Fax. (212) 963 9248, http://www.unog.ch/ess_mission_services/ngo/ngo/note.htm). NGOs applying for consultative status must fill in a questionnaire which, when completed, is put before the Committee on Non-Governmental Organizations. This Committee makes its recommendations to ECOSOC which takes the final decision as to the granting of consultative status.

Security Badges

Identity cards necessary to enter United Nations buildings in Geneva during the Pre-Sessional Working Group and Committee review sessions can be obtained from the Security Section of the United Nations Office in Geneva ("ONUG") at the Villa "*Les Feuillantines*", 13 Avenue de la Paix, Geneva, Monday to Friday between 8:00 and 14:30. In this office, NGOs must present an accreditation letter as well as an identity document.

TYPES OF CIVIL SOCIETY REPORTS

NGOs may submit any form of civil society report to the Committee provided that such reports are "(i) specific to the *Covenant*; (ii) relevant to the matters under consideration by the Committee or the Pre-Sessional Working Group; (iii) based on documentary sources and properly referenced; (iv) concise and succinct; and (v) reliable and not abusive."

In the past, the terms "alternative reports", "shadow reports", "parallel reports" and "counter reports" have all been used somewhat interchangeably to describe civil society reports. The substantive aspects of these reports may:

(i) Follow the pattern and focus of State party reports in highlighting problematic areas that the Committee may wish to focus on;

(ii) Go further than investigating and following up on the information contained in State party reports by including independent information and argumentation on issues that States parties may not have raised in their reports.

(iii) Utilise the institutional knowledge of specialist NGOs in reporting on particular *Covenant* rights; and/or

(iv) Provide suggestions for specific questions that the Committee may wish to raise with the State party under examination.

Examples of civil society reports are available on the United Nations Treaty Bodies Database at www.unhchr.ch/tbs/doc.nsf.

Regardless of the exact title employed by civil society reports, the two most utilised types are:

(i) Joint civil society reports where a number of NGO's produce a comprehensive joint submission that raises a number of questions the Committee may wish to put before the State party under examination; and

(ii) Individual and/or specialist NGOs that submit civil society reports on one or more specific aspects of State party reports that concern particular *Covenant* articles within their area of expertise.

In recent years, NGOs have increasingly submitted comprehensive joint civil society reports that the Committee has found most useful in assessing where to focus the Committee/State party dialogue.

ORGANISING CIVIL SOCIETY REPORTS FOR MAXIMUM IMPACT

(i) Format

In order to facilitate a comparative analysis, the Committee has specified that civil society reports should follow the format contained in Committee document *Revised Directives relative to the form and content of the reports to be presented by the Member States in agreement with Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights* (E/C.12/1991/1). This document has been appended to this guide (Annex IV), and is also available on the United Nations Treaty Bodies Database at www.unhchr.ch/tbs/doc.nsf.

NGOs are free to determine whether civil society reports will be organised by consecutive right (e.g. Article 6, 7, 8, etc.) or by theme (e.g. the ESCR of children, the right to water, etc.). The ICJ recommends that NGOs organise civil society reports according to a "rights" format as this will enable the Committee to quickly locate information. NGOs are also free to decide which *ICESCR* rights, and indeed which aspect(s) of those rights, they will focus on in their reports.

(ii) Length

The Committee has not set a maximum page limit for civil society reports, however, it is recommended that they be no longer than 30 double-spaced pages (excluding any supplementary materials) as it is essential for the Committee to be able to access key information as efficiently as possible.

Where NGOs do not have consultative status with the ECOSOC, they may submit smaller written statements to the Committee provided that such statements are sponsored by an NGO with ECOSOC consultative status. In such situations, statements should be no longer than 2,000 words where the sponsoring NGO has general consultative status or 1,500 words where the sponsoring NGO has special consultative status.

(iii) Language

Civil society reports should be submitted in at least one of the working languages of the Committee (i.e. English, French, Spanish or Russian). It is recommended that an executive summary of the report should be submitted in more than one of these

languages where resources permit. For smaller reports submitted in only one of the Committee's languages, the Secretariat will attempt to translate the document into one of the other languages provided that the report is received at least three months prior to the beginning of the Committee session.

When determining which rights (or elements of these rights) a civil society report will target, NGOs may find it useful to examine:

- q Whether the State party has adequately detailed steps undertaken to fulfil *Covenant* obligations;
- q Whether some rights are more consistently/flagrantly violated than others;
- q Where the NGO can make a useful contribution and/or have the greatest impact on the domestic implementation of the *ICESCR* (e.g. the civil society report could highlight the needs of certain vulnerable groups not addressed by the State party report, etc.);
- q Whether the NGO has sufficient resources/expertise in this area; and
- q Whether other NGOs are engaged in this area (so as to avoid duplication/contradiction or to form coalitions etc.).

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Using **Committee Documents**

In addition to gathering the Committee information referred to in step 2 (i.e. current and previous State party reports and updates, concluding observations, lists of issues, etc), NGOs may also wish to obtain the following Committee documents:

(i) General Comments

General Comments reflect the Committee's interpretation of the *Covenant* rights and State party obligations under the *Covenant*, as based on State party reports and national *ICESCR* implementation experiences.

(ii) Committee Summary Records

Committee summary records are more detailed than the Committee's concluding observations and abridge many of the oral exchanges between State party representatives and the Committee.

(iii) "Discussion Day" Reports

Committee "discussion days" are usually held during the third week of each session for the purpose of assisting the Committee to explore and debate particular *ICESCR* provisions and themes. NGOs, scholars, and other experts in the field are invited to participate in discussion days through the submission of discussion papers and/or oral presentations.

OTHER SOURCES OF INFORMATION

Other sources of information that may prove useful in compiling civil society reports include:

- **The Recommendations/Jurisprudence of International and Regional Treaty Bodies** - For example, the concluding observations, recommendations and jurisprudence authored by the United Nations Human Rights Committee in

considering State Party reports claims under the *ICCPR*, have touched on ESCR issues. NGO's may also wish to view the recommendations and jurisprudence, (if any), of other international and regional bodies that deal with ESCR issues under the following instruments: The United Nations *Convention on the Elimination of All Forms of Discrimination against Women*; The United Nations *Convention on the Rights of the Child*; the *African Charter on Human and Peoples' Rights*; The *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador"*; The *European Social Charter*, its protocols and the *Charter of Fundamental Rights of the European Union*;

United Nations Security Council and General Assembly Resolutions - For example, resolutions such as the resolution on *Social development, including questions relating to world social situation and to youth, ageing, disabled persons and the family*, G.A. Res. 54/262. These resolutions are available through the United Nations Documents Research Guide at <http://www.un.org/Depts/dhl/resguide/>;

• **Regional/International Jurisprudence** - Sources for regional/international jurisprudence include: Project Diana at Yale University at <http://www.yale.edu/lawweb/avalon/diana/>; the University of Minnesota Human Rights Library at <http://www1.umn.edu/humanrts/>; Derechos Human Rights' human rights jurisprudence site at <http://www.derechos.net/links/law/jurisprudence.html>; Asia Pacific Forum's human rights jurisprudence dissemination project at www.asiapacificforum.net; and Interights' International Human Rights Case Law Database at <http://www.interights.org/icl/default.asp>;

Authoritative Documents Issued by Experts on ESCR - For example, *The Realization of Economic and Social Rights: The right to adequate food and to be free from hunger*, Commission on Human Rights, submitted by Mr. Asbjørn Eide, June 28, 1999, (E/CN.4/Sub.2/1999/12). Authoritative documents are available on the United Nations Treaty Bodies Database at www.unhchr.ch/tbs/doc.nsf;

• **Documents from Other Specialised Agencies** - For example, the United Nations Development Programme ("UNDP") at www.undp.org; the World Health Organisation ("WHO") at www.who.org; the United Nations Development Fund for Women ("UNIFEM") at www.unifem.org; the United Nations Children's Fund ("UNICEF") at www.unicef.org; the World Bank at www.worldbank.org; the International Monetary Fund ("IMF") at www.imf.org, the Asian Development Bank ("ADB") at www.adb.org, etc.;

• **National governmental Information** - For example, government surveys, statistics, census polls, impact analysis proposals and reports, existing laws and draft bills, etc. This information may be obtained from various Ministries, parliamentary or congressional bodies including human rights committees and/or ombudsmen, human rights chambers/tribunals, constitutional and/or supreme courts, etc.; and

• **Civil Society Sources** - For example, information from other reputable national, sub-regional, regional, and international NGOs and civil society bodies; first-hand testimony from individuals affected by *ICESCR* violations, etc).

EVALUATING SOURCES AND INFORMATION

NGOs should openly acknowledge any unavailability of data and state the reasons why the information could not be obtained (e.g. the information is not publicly available; there is no freedom of information legislation in place, etc.).

In evaluating whether information is suitable for inclusion in civil society reports,

NGOs should:

- q Assess the perspective of consulted sources (e.g. is the information unbiased?);
- q Evaluate whether the information is necessary or assists in illustrating a point (i.e. is it useful?); and
- q Determine whether the information has/can be independently verified or whether it is based on assumption.

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Citing Sources of Information

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 Sources used in compiling civil society reports may be cited according to whatever form NGOs choose provided that the citation format is consistent and is similar to that used in State party reports. This will assist the Committee in facilitating side-by-side comparisons between civil society reports and State party reports.

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EVALUATING STATE PARTY }} **ICESCR OBLIGATIONS AND COMPLIANCE**

The *ICESCR* does not require national governments to immediately ensure the full realisation of all *Covenant* rights, however, *Covenant* Article 2 requires States parties to "take steps" "with a view to achieving progressively the full realization of the rights recognised "to the "maximum of its available resources". In satisfying the obligation to "take steps", States parties must undertake "all appropriate means, including particularly the adoption of legislative measures" [Art. 2(1)]. Through General Comment No. 3 concerning the *Nature of States parties obligations* (Art. 2, para.1 of the *Covenant*), the Committee advised that "the phrase `by all appropriate means' must be given its full and natural meaning" and that States parties' reports should indicate not only the measures undertaken towards *Covenant* right realisation but also the basis on which these measures are considered to be the most `appropriate' under the circumstances. The ultimate determination as to whether States parties have undertaken all appropriate measures, however, rests with the Committee.

As States parties are required to take steps necessary to achieve the progressive realisation of *Covenant* rights, it follows that any deliberately regressive measures may indicate a breach of the *ICESCR*. The Committee has stated that such regressive measures "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."

Although the *ICESCR* provides for progressive realization of *Covenant* rights and acknowledges constraints placed on realisation efforts due to the limits of available resources, it also imposes obligations of immediate effect. *ICESCR* Article 2(2) obliges States parties to immediately desist from discriminatory behaviour, alter laws and practices which tolerate discrimination and prohibit private persons and bodies, (third parties), from practising discrimination in any field of public life. In this, non-discrimination stands as an obligation of immediate effect, (i.e. not subject to progressive realisation).

For a detailed review of the content and scope of State party obligations under the *ICESCR*, NGOs may find it useful to reference the ICJ's series of user friendly ESCR

fact sheets, which are available on the ICJ website at www.icj.org (click on "Legal Resource Centre" then click on "Economic, Social & Cultural Rights").

In measuring State party compliance with the *ICESCR*, regard should also be given to the Limburg Principles on the Implementation of the International *Covenant* on Economic, Social and Cultural Rights (hereinafter "Limburg Principles") and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (hereinafter "Maastricht Guidelines"). Although the Limburg Principles and the Maastricht Guidelines are not legally binding the Committee has repeatedly acknowledged these documents as persuasive references for *ICESCR* interpretation.

Adopting a Rights-Based Approach

As increasingly mainstreamed within the United Nations and human rights community and consistently practiced by the CESCR, a rights-based approach focuses on rights-holders (i.e. individuals and groups within the jurisdiction of States parties) and duty-bearers (i.e. States parties). As *ICESCR* duty-bearers, States parties have both a positive obligation (i.e. to protect, respect and fulfil *Covenant* rights) as well as a negative obligation (i.e. to refrain from adopting measures which violate individual or group *Covenant* rights). Under this approach to the *Covenant*, rights-holders are viewed as the central beneficiaries of State party policies that the national governments must expressly link to the fulfilment of *ICESCR* obligations. Further, States parties must respect the principles of non-discrimination and ensure that attention is paid to the impact of public policies on the well-being of vulnerable groups.

The value of adopting a rights-based approach in civil society reporting is twofold. First, the rights-based approach views individuals and groups as rights-holders who are empowered to make participatory decisions concerning issues that affect their lives. In this way, individuals and groups are not merely viewed as passive beneficiaries of political decisions made by bureaucrats. Perceived in this way, economic, social and cultural development moves from the realm of charity to that of State party obligation. Second, through the enhanced normative clarity and detail that a rights-based perspective provides, it is easier to identify specific duty-bearers and their respective obligations, which increases accountability and makes it easier to monitor progress. This is particularly important at the local level of government with regard to the delivery of basic services to vulnerable segments of society.

Effective civil society reports should be written so as to be easily understandable by the Committee. The central points of a civil society report should thus be as descriptive and targeted as possible.

In this regard, NGOs should:

- q Analyse, rather than merely describe, the status of *ICESCR* implementation in the nation under consideration. In this, NGOs should identify difficulties associated with the implementation of the *ICESCR* rights and explain obstacles to the realisation of these rights (e.g. legal or public policy concerns, the discriminatory application of policies, etc.);

- q Include disaggregated statistics and information (i.e. separate data by gender, age, race or ethnicity, etc.). For example, while a State party report may claim that 70 percent of all children within its borders receive primary education, have these

statistics been further broken-down to account for the number of girls, indigenous children, and poor children who benefit from access to education? As many State party reports do not include disaggregated statistics, the disparate experiences of particular groups within a country often go unreported to the Committee;

q Alert the Committee as to any major developments or trends regarding the implementation of the *ICESCR* within the State party under consideration. Where possible, NGOs should clearly state the reasons for these developments and/or trends and make recommendations as to the steps that the State party could undertake in realising *Covenant* rights (e.g. laws that should be amended; public programmes that should be undertaken; training for public officials, etc.);

q Highlight gaps or inconsistencies within the current State party report, as well as discrepancies between the current report and previous reports. This will encourage the Committee to question whether the State party has omitted or underplayed certain information in its report; and

q Where possible, include an analysis of the State party's reservations to the *ICESCR* and note any changes to the current situation that would allow for the State party to withdraw its reservation(s).

Please refer to Annex I, which contains a checklist that NGOs may find useful in compiling civil society reports.

The Committee should receive civil society reports at least one week, but preferably six weeks, in advance of the session in which the State party report will be reviewed. NGOs must deliver 25 copies of their reports to the Secretariat for distribution to the Committee (18 copies), Secretariat (3 copies), and translators (4 copies). While NGOs may send their reports by regular or electronic mail to the Secretariat, it is recommended that reports be sent by registered courier. NGOs should also consider submitting their civil society reports on computer diskettes/CD-ROM as this format makes it easier for the Secretariat to share information with Committee members and increases the likelihood that the report will be posted on the United Nations Treaty Bodies Database at www.unhchr.ch/tbs/doc.nsf.

Following the submission of a civil society report, NGOs may consider additional steps to further ensure the national implementation of *ICESCR* rights. Possible follow up actions include:

- The monitoring of measures undertaken by a State party in response to the Committee's recommendations and concluding observations;
- Appraising the Committee as to any new developments with regard to the status of national *Covenant* implementation/non-implementation;
- Advocating for a national-level review and debate of the Committee's concluding observations, civil society reports, etc., by the legislative and executive branches of government;
- Engaging in a campaign to publicise the results of Committee/State party review sessions (including the Committee's findings and recommendations);
- Making civil society reporting experiences available to other NGOs through informal roundtables and/or public workshops; and
- Ensuring media involvement in each stage of the civil society report writing process

(i.e. submission of the State party and civil society reports, questioning of State party representatives by the Committee, and the follow-up process).

----- ANNEX I -----

CIVIL SOCIETY REPORT CHECKLIST |

Preliminary Material

Title Page

The title page, which should include the following information, can also act as the letter of transmittal: q Title of the report q Name and address of the NGO/author(s) (if you are submitting the report on behalf of another NGO that does not have consultative status with the ECOSOC, include the name and address of that NGO) q The name of the *ICESCR* State party being reviewed in the civil society report, together with the scheduled date of its review before the Committee q The date that the civil society report was submitted and place of publication; and q Number of pages in the report (including appendices) The following table contains a checklist, based on Committee procedures and the experiences and best-practices of NGO's, with regard to the preparation and submission of civil society reports. Where appropriate, the checklist may be consulted for each right reviewed through a civil society report.

Executive Summary

(1 to 3 pages)

As Committee members may need to instantly access key information when questioning a State party, NGOs should include an executive summary that: q Contains an overview of the main points of the report (one sentence for each major point with one or two sentences of supporting evidence)

Executive Summary cont....

q Clearly states the report's recommendations worded in language that the Committee can easily use when: (i) consulting a State party; and (ii) formulating its concluding observations

Table of Contents

q Include an index of all headings and sub-headings listed in the civil society report (this will assist the Committee to quickly accessing information) q Include references to any supplementary materials, appendices, etc.

Illustrative Materials

If NGOs choose to include illustrative materials and/or abbreviations in their report, these materials should be referenced as follows: q List of figures/tables/charts (where applicable) q Key to abbreviations (where applicable) **BODY OF THE REPORT**

Introduction

q Include a brief introduction to the mandate and activities of the NGO q Include an "object statement" as to the scope and content of the report (e.g. examining all *ICESCR* rights or specific aspects of one or more rights) q Include an explanation of the methodology and sources used in compiling the report

Background Information

q List of information that should be kept confidential (optional) q Include a brief description of the historical and/or socio-political conditions of the country (i.e. information which contextualises the status of *ICESCR* implementation)

Domestic Legal Protection of the Right(s)

q Has the *ICESCR* right been incorporated into domestic law? Is it constitutionally protected? If so, are there any instances in which existing constitutional/legislative provisions relating to the right(s) have been weakened or significantly changed? If the right has been domestically incorporated: (i) Can the right be directly invoked before the Courts/Tribunals? (ii) Can legal claims be brought by individuals as well as groups? (iii) What remedies are available for the violation of the right? (iv) What restrictions are placed on the exercise of the right? (v) Have any international legal bodies previously ruled on the domestic application of the right? *Analysis since the*

Previous State Party Report

(where applicable)

q Where applicable, has the Government implemented the recommendations contained in the Committee's concluding observations to the last State party report? q Has there been a change since the last State party/Committee review period in terms of improved national legislation, Court decisions, administrative rules, procedures and/or practices, etc? q What positive actions has the Government taken towards *ICESCR* implementation? Has it made progress in the observance of these rights? q Have there been any regressions in the progressive realisation of the right? What difficulties have affected the realization of this right? q Have adverse situations developed over time (that would affect/explain State implementation/non-implementation efforts)?

Domestic Implementation of the ICESCR

q Has the Government sought to ensure the widest possible enjoyment of the right by all sectors of society regardless of State resource constraints? q Has the Government violated any *Covenant* rights? If so: (i) Describe how the right was/is being violated. Provide detailed examples (ii) Has the "minimum core" of the right been protected (i.e. have minimum levels of the right been extended to those most in need)? (iii) Has the Government substantively attempted to remedy the violation and to prevent it from reoccurring? (iv) Has the State party acknowledged *ICESCR* violations in its report? If so, how have these violations been presented? Are these realistic depictions? (v) What does the Government state are the obstacles to the realisation of the *ICESCR* rights? Do you agree? (vi) What factors contribute to the violation of the right - immediate, historical, systemic? (vii) Has the Government investigated the cause(s) of *ICESCR* rights violation? Has the Government sought the advice of NGOs, civil society groups or other experts with regard to the cessation of violations? (vi) Has the Government identified agencies and individuals responsible for *Covenant* rights violations? Have these persons been held responsible? Has this information been made public? q Are there any gaps between Government claims in the State party report and domestic reality with regard to *Covenant* rights realisation?

Account of Government Policies, Programmes & Directives Regarding the ICESCR

Account of Government Policies, Programmes & Directives Regarding the ICESCR cont...

q Has the Government established programmes, policies, or directives aimed at the protection and promotion of the *Covenant* rights? If so: q What is the publicly-stated basis upon which the Government considers its measures to be the most "appropriate" under the circumstances? q Describe the Government's *ICESCR* protection/promotion programmes and note what public sectors they address (e.g. administrative, financial, educational, social, etc.) and answer whether: (i) The programmes are established by law or pursuant to official Government directives, etc. (ii) The programmes are sufficiently focused and sustainably-funded. Do the programmes satisfy the stated policy goals? Do the programmes consider the needs of vulnerable groups (e.g. have such groups been contacted and/or impact

studies undertaken)? (iii) Do appropriate institutions exist to effectively administer the programmes? (iv) There is a monitoring mechanism in place. Are Government *ICESCR* programmes periodically evaluated for successes and/or shortfalls? Where possible, include an analysis of the effectiveness of these administrative/monitoring mechanisms (v) The public is aware of such programmes (e.g. has there been a public information campaign; media coverage, etc.) (vi) There is an even distribution of the programmes (i.e. the equal application of *ICESCR* programmes across geographic regions, socio-economic classes, gender, minority groups, etc.) (vii) Relevant actors for such programmes have been identified (i.e. have relevant state ministries and NGOs been included in the process?) (viii) The actions of the Government are effective and, if not, why? How can these be improved?

q In creating *ICESCR* protection/promotion programmes, has the Government set targets and timetables aimed at assisting interested parties to measure the progress of the implementation of the *Covenant* right? q Has the Government consulted experts, NGOs, and civil society groups in the design and implementation of these programmes? *Recommendations*

q Include clear and targeted recommendations directed at how States parties may improve the implementation of the *ICESCR* q Suggest questions and requests for supplementary information that the Committee can direct towards State party representatives

Reference Pages

Bibliography/ References q Include a list of source material referred to/consulted during the compilation of the civil society report q Include additional useful sources that the Committee may wish to reference **Appendices** q Include relevant material such as excerpts from national legislation, draft bills, statistics, press clippings, academic reports, audio-visual material, etc.

----- ANNEX II

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS THE UNITED NATIONS GENERAL ASSEMBLY RESOLUTION 2200 A(XXI) OF 16 DECEMBER 1966 Date of entry into force: 3 January 1976
PREAMBLE The States Parties to the present *Covenant*, Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Recognizing that these rights derive from the inherent dignity of the human person, Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights, Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms, Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present *Covenant*, Agree upon the following articles: PART I
Article 1 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social

and cultural development. 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

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

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

Article 3 The States Parties to the present *Covenant* undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present *Covenant*.

Article 4 The States Parties to the present *Covenant* recognize that, in the enjoyment of those rights provided by the State in conformity with the present *Covenant*, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5 1. Nothing in the present *Covenant* may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present *Covenant*. 2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present *Covenant* does not recognize such rights or that it recognizes them to a lesser extent.

PART III Article 6 1. The States Parties to the present *Covenant* recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. 2. The steps to be taken by a State Party to the present *Covenant* to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7 The States Parties to the present *Covenant* recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present *Covenant*; (b) Safe and

healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays. Article 8 1. The States Parties to the present *Covenant* undertake to ensure: (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country. 2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State. 3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention. Article 9 The States Parties to the present *Covenant* recognize the right of everyone to social security, including social insurance. Article 10 The States Parties to the present *Covenant* recognize that: 1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses. 2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits. 3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law. Article 11 1. The States Parties to the present *Covenant* recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present *Covenant*, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed: (a) To

improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12 1. The States Parties to the present *Covenant* recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present *Covenant* to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13 1. The States Parties to the present *Covenant* recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace. 2. The States Parties to the present *Covenant* recognize that, with a view to achieving the full realization of this right: (a) Primary education shall be compulsory and available free to all; (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education; (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education; (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved. 3. The States Parties to the present *Covenant* undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions. 4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 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 co-operation in the scientific and cultural fields. PART IV Article 16 1. The States Parties to the present *Covenant* undertake to submit in conformity with this part of the *Covenant* reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein. 2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present *Covenant*; (b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present *Covenant* which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments. Article 17 1. The States Parties to the present *Covenant* shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present *Covenant* after consultation with the States Parties and the specialized agencies concerned. 2. Reports may indicate factors and difficulties affecting the degree of fulfillment 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. -----

----- ANNEX III

THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS: STATUS OF NATIONAL RATIFICATIONS

Country Ratification Entry into force

Afghanistan 24 Jan 1983 24 Apr 1983 Albania 4 Oct 1991 4 Jan 1992 Algeria 12 Sep 1989 12 Dec 1989 Andorra Angola 10 Jan 1992 10 Apr 1992 Antigua & Barbuda Argentina 8 Aug 1986 8 Nov 1986 Armenia 13 Sep 1993 13 Dec 1993 Australia 10 Dec 1975 10 Mar 1976 Austria 10 Sep 1978 10 Dec 1978 Azerbaijan 13 Aug 1992 13 Nov 1992 Bahamas Bahrain Bangladesh 5 Oct 1998 5 Jan 1999 Barbados 5 Jan 1973 3 Jan 1976 Belarus 12 Nov 1973 3 Jan 1976 Belgium 21 Apr 1983 21 Jul 1983 Belize s: 6 Sep 2000 Benin 12 Mar 1992 12 Jun 1992 Bhutan Bolivia 12 Aug 1982 12 Nov 1982 Bosnia & Herzegovina 1 Sep 1993 6 Mar 19923 Botswana Brazil 24 Jan 1992 24 Apr 1992 Brunei Darussalam Bulgaria 21 Sep 1970 3 Jan 1976 Burkina Faso 4 Jan 1999 4 Apr 1999 Burundi 9 May 1990 9 Aug 1990 Cambodia 26 May 1992 26 Aug 1992 Cameroon 27 Jun 1984 27 Sep 1984 Canada 19 May 1976 19 Aug 1976 Cape Verde 6 Aug 1993 6 Nov 1993 Central African Republic 8 May 1981 8 Aug 1981 Chad 9 Jun 1995 9 Sep 1995 Chile 10 Feb 1972 3 Jan 1976 China 27 Mar 2001 27 Jun 2001 Colombia 29 Oct 1969 3 Jan 1976 Comoros Congo 5 Oct 1983 5 Jan 1984 Cook Islands Costa Rica 29 Nov 1968 3 Jan 1976 Côte d'Ivoire 26 Mar 1992 26 Jun 1992 Croatia 12 Oct 1992 8 Oct 19915 Cuba Cyprus 2 Apr 1969 3 Jan 1976 Czech Republic 22 Feb 1993 1 Jan 19936 DPR of Korea 14 Sep 1981 14 Dec 1981 DR of the Congo 1 Nov 1976 1 Feb 1977 Denmark 6 Jan 1972 3 Jan 1976 Djibouti 5 Nov 2002 5 Feb 2003 Dominica 17 Jun 1993 17 Sep 1993 Dominican Republic 4 Jan 1978 4 Apr 1978 Ecuador 6 Mar 1969 3 Jan 1976 Egypt 14 Jan 1982 14 Apr 1982 El Salvador 30 Nov 1979 29 Feb 1980 Equatorial Guinea 25 Sep 1987 25 Dec 1987 Eritrea 17 Apr 2001 17 Jul 2001 Estonia 21 Oct 1991 21 Jan 1992 Ethiopia 11 Jun 1993 11 Sep 1993 Fiji Finland 19 Aug 1975 3 Jan 1976 France 4 Nov 1980 4 Feb 1981 Gabon 21 Jan 1983 21 Apr 1983 Gambia 29 Dec 1978 29 Mar 1979 Georgia 3 May 1994 3 Aug 1994 Germany 17 Dec 1973 3 Jan 1976 Ghana 7 Sep 2000 7 Dec 2000 Greece 16 May 1985 16 Aug 1985 Grenada 6 Sep 1991 6 Dec 1991 Guatemala 19 May 1988 19 Aug 1988 Guinea 24 Jan 1978 24 Apr 1978 Guinea-Bissau 2 Jul 1992 2 Oct 1992 Guyana 15 Feb 1977 15 May 1977 Haiti Holy See Honduras 17 Feb 1981 17 May 1981 Hungary 17 Jan 1974 3 Jan 1976 Iceland 22 Aug 1979 22 Nov 1979 India 10 Apr 1979 10 Jul 1979 Indonesia Iran (Islamic Republic of) 24 Jun 1975 3 Jan 1976 Iraq 25 Jan 1971 3 Jan

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Original: ENGLISH 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* : . 17/06/91. **E/C.12/1991/1.**

(Basic Reference Document) Convention Abbreviation: CESCR
COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

REVISED GENERAL GUIDELINES REGARDING THE FORM AND CONTENTS OF
REPORTS TO BE SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17
OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND
CULTURAL RIGHTS

Note by the Secretary-General

1. In accordance with article 17 of the *International Covenant on Economic, Social and Cultural Rights*, the Economic and Social Council, by its resolution 1988 (LX) of 11 May 1976, established a programme under which the States parties to the *Covenant* would furnish in stages the reports referred to in article 16 thereof and the Secretary-General, at the Council's request, subsequently drew up an appropriate set of general guidelines. In response to the recent introduction of an entirely new reporting cycle and in the light of various perceived inadequacies in the approach reflected in the original guidelines, the Committee on Economic, Social and Cultural Rights, at its fifth session held from 26 November to 14 December 1990, adopted new guidelines.
2. The guidelines are intended to facilitate the preparation of reports by States parties. By following them as closely as possible, reporting officers will minimize the risk that their reports are deemed to be inadequate in scope and insufficient in detail. The guidelines also provide a uniformly applicable framework within which the Committee can work and enable it to demonstrate a consistency of approach from one report to another. They are also designed to reduce the amount of duplication of information requested by the various treaty bodies.
3. In adopting the revised general guidelines the Committee emphasized the importance of ensuring that the issues of principal concern were dealt with in a methodical and informative manner and strongly urged all States parties to adhere to them as closely as possible.
4. The text of the revised general guidelines is contained in the annex to the present document.

ANNEX

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

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

Article 1 of the *Covenant*

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

Article 2 of the *Covenant*

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

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

B. Part of the report relating to specific rights

Article 6 of the *Covenant*

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

International Labour Organisation (ILO) Employment Policy Convention, 1964 (No. 122)

ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

International Convention on the Elimination of all Forms of Racial Discrimination

Convention on the Elimination of all Forms of Discrimination Against Women

and has already submitted reports to the supervisory committee(s) concerned which are relevant to the provisions of article 6, you may wish to refer to the respective parts of those reports rather than repeat the information here. However, all matters which arise under the present *Covenant* and are not covered fully in those reports should be dealt with in the present report.

2. (a) Please supply information on the situation, level and trends of employment, unemployment and underemployment in your country, in respect of both the aggregate and particular categories of workers such as women, young persons, older workers and disabled workers. Please compare the respective situation 10 years ago and 5 years ago. Which persons, groups, regions or areas do you consider particularly vulnerable or disadvantaged with regard to employment?

(b) Please describe the principal policies pursued and measures taken with a view to ensuring that there is work for all who are available for and seeking work.

(c) Please indicate what measures have been adopted to ensure that work is as productive as possible.

(d) Please indicate what provisions ensure that there is freedom of choice of employment and that conditions of employment do not infringe upon fundamental political and economic freedoms of the individual.

(e) Please describe the technical and vocational training programmes that exist in your country, their effective mode of operation and their practical availability.

(f) Please state whether particular difficulties have been encountered in attaining the objectives of full, productive and freely chosen employment, and indicate how far these difficulties have been overcome.

3. (a) Please indicate whether there exist in your country any distinctions, exclusions, restrictions or preferences, be it in law or in administrative practices or in practical relationships, between persons or groups of persons, made on the basis of race, colour, sex, religion, political opinion, nationality or social origin, which have the effect of nullifying or impairing the recognition, enjoyment or exercise of equality of opportunity or treatment in employment or occupation. What steps are taken to eliminate such discrimination?

(b) Please supply information on the actual situation in your country regarding vocational guidance and training, employment and occupation of persons according to their race, colour, sex, religion, and national origin.

(c) Please indicate the main cases in which a distinction, exclusion or preference based on any of the above-named conditions is not considered in your country as discrimination, owing to the inherent requirements of a particular job. Please indicate any difficulties in application, disputes or controversies which have arisen in relation to such conditions.

4. Please indicate what proportion of the working population of your country holds more than one full-time job in order to secure an adequate standard of living for themselves and their families. Describe this development over time.

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

6. Please indicate the role of international assistance in the full realization of the right enshrined in article 6.

Article 7 of the *Covenant*

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

Minimum Wage-Fixing Convention, 1970 (No. 131)

Equal Remuneration Convention, 1951 (No. 100)

Weekly Rest (Industry) Convention, 1921 (No. 14)

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)

Holidays with Pay Convention (Revised), 1970 (No. 132)

Labour Inspection Convention, 1947 (No. 81)

Labour Inspection (Agriculture) Convention, 1969 (No. 129)

Occupational Safety and Health Convention, 1981 (No. 155)

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

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

(b) Please indicate whether a system of minimum wages has been established, and specify the groups of wage earners to which it applies, the number of persons covered by each group as well as the competent authority for determining these groups. Are there any wage earners remaining outside the protection of the system of minimum wages in law or in fact?

(i) Do these minimum wages have the force of law and in which ways are they secured against erosion?

(ii) To what extent and by which methods are the needs of workers and their families as well as economic factors taken into consideration and reconciled with each other in determining the level of minimum wages? What standards, goals and benchmarks are relevant in this respect?

(iii) Please describe briefly the machinery set up for fixing, monitoring and adjusting minimum wages;

(iv) Please supply information on the development of average and minimum wages 10 years ago, 5 years ago and at present, set against the respective development of the cost of living;

(v) Please indicate whether, in practice, the system of minimum wages is supervised effectively.

(c) Please indicate whether there exists in your country any inequality in remuneration for work of equal value, infringements of the principle of equal pay for equal work, or conditions of work for women which are inferior to those enjoyed by men.

(i) What steps are taken to eliminate such discrimination? Please describe the successes and failures of these steps with regard to the various groups that are discriminated against;

(ii) Please indicate what methods, if any, have been adopted to promote an objective appraisal of jobs on the basis of the work to be performed.

(d) Please indicate the income distribution of employees, both in the public and private sector taking into account both remuneration and non-monetary benefits. If available, give data on the remuneration of comparable jobs in the public and private sector.

3. What legal, administrative or other provisions exist that prescribe minimum conditions of occupational health and safety. How are these provisions enforced in practice and in which areas do they not apply?

(a) Please indicate which categories of workers, if any, are excluded from existing schemes by law and what other categories benefit from such schemes only insufficiently or not at all.

(b) Please provide statistical or other information on how the number, nature and frequency of occupational accidents (particularly with fatal results) and diseases have developed over time (10 years ago, 5 years as compared with the present).

4. Please supply information on the actual realization in your country of the principle of equal opportunity for promotion.

(a) Which groups of workers are currently deprived of such equal opportunity? In particular, what is the situation of women in this respect?

(b) What steps are taken to eliminate such inequality? Please describe the successes and failures of these steps with regard to the various disadvantaged groups.

5. Please describe the laws and practices in your country regarding rest, leisure, reasonable limitations of working hours, periodic holidays with pay and remuneration for public holidays.

(a) Indicate the factors and difficulties affecting the degree of realization of these rights.

(b) Indicate which categories of workers are excluded by law or in practice, or both, from the enjoyment of which of these rights. What measures are contemplated or currently taken to remedy this situation?

6. In case of subsequent reports, give a short review of changes, if any, in national legislation, court decisions, or administrative rules, procedures and practices during the reporting period affecting the right to just and favourable conditions of work.

7. Please indicate the role of international assistance in the full realization of the right enshrined in article

Article 8 of the *Covenant*

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

International *Covenant* on Civil and Political Rights

ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

ILO Labour Relations (Public Service) Convention, 1978 (No. 151)

and has already submitted reports to the supervisory committee(s) concerned which are relevant to the provisions of article 8, you may wish to refer to the respective parts of those reports rather than repeat the information here. However, all matters which arise under the present *Covenant* and are not covered fully in those reports should be dealt with in the present report.

2. Please indicate what substantive or formal conditions, if any, must be fulfilled in order to join and form the trade union of one's choice.

(a) Please specify whether there exist any special legal provisions regarding the establishment of trade unions by certain categories of workers and, eventually, what these special provisions are, how they have been applied in practice, as well as the number of persons subjected to them.

(b) Are there any restrictions placed upon the exercise of the right to join and form trade unions by workers? Please provide a detailed account of the legal provisions prescribing such restrictions and their application in practice over time.

(c) Please supply information on how your Government secures the right of trade unions to federate and join international trade union organizations. What legal and practical restrictions are placed upon the exercise of this right?

(d) Please indicate in detail what conditions or limitations are placed upon the right of trade unions to function freely. Which trade unions have been adversely affected in practice by these conditions or limitations? What measures are being taken to promote free collective bargaining?

(e) Please supply data on the number and structure of trade unions established in your country, and on their respective membership.

3. Please indicate whether in your country workers are granted the possibility to strike as a matter of constitutional or legal right. If your answer is in the negative, what other legal or factual approach is used to guarantee the exercise of this right?

(a) What restrictions are placed upon the exercise of the right to strike? Please provide a detailed account of the legal provisions governing such restrictions and their application in practice over time.

(b) Please indicate whether there exist any special legal provisions regarding the exercise of the right to strike by certain categories of workers and what these special provisions are, how they have been applied in practice, as well as the number of workers subjected to them.

4. Please indicate whether any restrictions are placed upon the exercise of the rights mentioned in paragraphs 2 and 3 above by members of the armed forces, the police or the administration of the State. How have such restrictions been applied in actual practice?

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

Article 9 of the *Covenant*

1. If your State is a party to the ILO Social Security (Minimum Standards) Convention, 1952 (No. 102) or to other relevant subsequent ILO Conventions (Nos. 121, 128, 130 and 168) and has already submitted reports to the supervisory committee(s) concerned which are relevant to the provisions of article 9, you may wish to refer to the respective parts of those reports rather than repeat the information here. However, all matters which arise under the present *Covenant* and are not covered fully in those reports should be dealt with in the present report.

2. Please indicate which of the following branches of social security exist in your country:

Medical care

Cash sickness benefits

Maternity benefits

Old-age benefits

Invalidity benefits

Survivors' benefits

Employment injury benefits

Unemployment benefits

Family benefits.

3. Please describe for each branch existing in your country the main features of the schemes in force, indicating the comprehensiveness of the coverage provided, both in the aggregate and with respect to different groups within the society, the nature and level of benefits, and the method of financing the schemes.

4. Please indicate what percentage of your GNP as well as of your national and/or regional budget(s) is spent on social security. How does this compare with the situation 10 years ago? What reasons are there for any changes?

5. Please indicate whether in your country the formal (public) social security schemes described are supplemented by any informal (private) arrangements. If such is the case, please describe these arrangements and the inter-relationships between them and the formal (public) schemes.

6. Please indicate whether in your country there are any groups which do not enjoy the right to social security at all or which do so to a significantly lesser degree than the majority of the population. In particular, what is the situation of women in that respect? Please give particulars of such non-enjoyment of social security.

(a) Please indicate what measures are regarded as necessary by your Government in order to realize the right to social security for the groups mentioned above.

(b) Please explain the policy measures your Government has taken, to the maximum of its available resources, to implement the right to social security for these groups. Give a calendar and time-related bench-marks for measuring your achievements in this regard.

(c) Please describe the effect of these measures on the situation of the vulnerable and disadvantaged groups in point, and report the successes, problems and shortcomings of such measures.

7. In case of subsequent reports, give a short review of changes, if any, in national legislation, court decisions, as well as administrative rules, procedures and practices during the reporting period affecting the right to social security.

8. Please indicate the role of international assistance in the full realization of the right enshrined in article 9.

Article 10 of the *Covenant*

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

International *Covenant* on Civil and Political Rights

Convention on the Rights of the Child

Convention on the Elimination of all Forms of Discrimination Against Women

ILO Maternity Protection Convention (Revised) 1952 (No. 103)

ILO Minimum Age Convention, 1973 (No. 138)

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

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

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

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

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

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

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

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

(a) In particular:

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

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

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

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

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

6. Please describe the special measures of protection and assistance on behalf of children and young persons, especially measures to protect them from economic and social exploitation or to prevent their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development.

(a) What are the age limits in your country below which the paid employment of child labour in different occupations is prohibited?

(b) Please specify how many children, and of which age groups, engage in paid employment, and to what extent.

(c) Please specify to what extent children are being employed in their families' households, farms or businesses.

(d) Please indicate whether there are in your country any groups of children and young persons which do not enjoy the measures of protection and assistance at all or which do so to a significantly lesser degree than the majority. In particular, what is the respective situation of orphans, children without living biological parents, young girls, children who are abandoned or deprived of their family environment, as well as physically or mentally handicapped children?

(e) How are the persons mentioned in the preceding paragraph informed of their respective rights?

(f) Please give details of any difficulties and shortcomings. How have such adverse situations developed over time? What measures are being taken to remedy these situations? Please describe the effect of these measures over time and report on successes, problems and shortcomings.

7. In case of subsequent reports, give a short review of changes, if any, in national legislation, court decisions as well as administrative rules, procedures and practices during the reporting period affecting the right enshrined in article 10.

8. Please describe the role of international assistance in the full realization of the right enshrined in article 10.

Article 11 of the *Covenant*

1. (a) Please supply information on the current standard of living of your population, in respect of both the aggregate and different socio-economic, cultural, and other groups within the society. How has the standard of living changed over time (e.g.,

compared with 10 years ago and 5 years ago) with regard to these different groups? Has there been a continuous improvement of living conditions for the entire population or for what groups?

(b) In case your Government has recently submitted reports relevant to the situation with respect to all or some of the rights contained in article 11 to the United Nations or a specialized agency, you may wish to refer to the relevant parts of those reports rather than repeat the information here.

(c) Please indicate the per capita GNP for the poorest 40 per cent of your population. Is there a "poverty line" in existence in your country and, if so, what is the basis for this line?

(d) Please indicate your country's Physical Quality of Life Index.

2. The right to adequate food

(a) Please provide a general overview of the extent to which the right to adequate food has been realized in your country. Describe the sources of information that exist in this regard, including nutritional surveys and other monitoring arrangements.

(b) Please provide detailed information (including statistical data broken down in terms of different geographical areas) on the extent to which hunger and/or malnutrition exists in your country. This information should deal in particular with the following issues:

(i) The situation of especially vulnerable or disadvantaged groups, including:

Landless peasants

Marginalized peasants

Rural workers

Rural unemployed

Urban unemployed

Urban poor

Migrant workers

Indigenous peoples

Children

Elderly people

Other especially affected groups;

(ii) Any significant differences in the situation of men and women within each of the above groups;

(iii) The changes that have taken place over the past five years with respect to the situation of each of the above groups.

(c) During the reporting period, have there been any changes in national policies, laws and practices negatively affecting the access to adequate food by these groups or sectors or within the worse-off regions? If so, please describe these changes and evaluate their impact.

(d) Please indicate what measures are considered necessary by your Government to guarantee access to adequate food for each of the vulnerable or disadvantaged groups mentioned above and for the worse-off areas, and for the full implementation of the right to food for both men and women. Indicate the measures taken and specify time-related goals and nutritional bench-marks for measuring achievements in this regard.

(e) Please indicate in what ways measures taken to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge have contributed towards, or have impeded the realization of the right to adequate food. Please describe the impact of these measures in terms of ecological sustainability and the protection and conservation of food producing resources.

(f) Please indicate what measures are taken to disseminate knowledge of the principles of nutrition and specify whether any significant groups or sectors within society seem to lack such knowledge.

(g) Please describe any measures of agrarian reform taken by your Government to ensure that the agrarian system is efficiently utilized in order to promote food security at household level without negatively affecting human dignity both in the rural and urban settings taking into account articles 6 to 8 of the *Covenant*. Describe the measures taken:

(i) To legislate to this effect;

(ii) To enforce existing law to this effect;

(iii) To facilitate monitoring through governmental and non-governmental organizations.

(h) Please describe and evaluate the measures taken by your Government in order to ensure an equitable distribution, in terms of both production and trade, of world food supplies in relation to need, taking into account the problems of both food-importing and food-exporting countries.

3. The right to adequate housing

(a) Please furnish detailed statistical information about the housing situation in your country.

(b) Please provide detailed information about those groups within your society that are vulnerable and disadvantaged with regard to housing. Indicate, in particular:

(i) The number of homeless individuals and families;

(ii) The number of individuals and families currently inadequately housed and without ready access to basic amenities such as water, heating (if necessary), waste disposal, sanitation facilities, electricity, postal services, etc. (in so far as you consider these amenities relevant in your country). Include the number of people living in over-crowded, damp, structurally unsafe housing or other conditions which affect health;

(iii) The number of persons currently classified as living in "illegal" settlements or housing;

(iv) The number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction;

(v) The number of persons whose housing expenses are above any government-set limit of affordability, based upon ability to pay or as a ratio of income;

(vi) The number of persons on waiting lists for obtaining accommodation, the average length of waiting time and measures taken to decrease such lists as well as to assist those on such lists in finding temporary housing;

(vii) The number of persons in different types of housing tenure by: social or public housing; private rental sector; owner-occupiers; "illegal" sector; and other.

(c) Please provide information on the existence of any laws affecting the realization of the right to housing, including:

(i) Legislation which gives substance to the right to housing in terms of defining the content of this right;

(ii) Legislation such as housing acts, homeless person acts, municipal corporation acts, etc.;

(iii) Legislation relevant to land use, land distribution; land allocation, land zoning, land ceilings, expropriations including provisions for compensation; land planning, including procedures for community participation;

(iv) Legislation concerning the rights of tenants to security of tenure, to protection from eviction; to housing finance and rental control (or subsidy), housing affordability, etc.;

(v) Legislation concerning building codes, building regulations and standards and the provision of infrastructure;

(vi) Legislation prohibiting any and all forms of discrimination in the housing sector, including groups not traditionally protected;

(vii) Legislation prohibiting any form of eviction;

(viii) Any legislative repeal or reform of existing laws which detracts from the fulfilment of the right to housing;

(ix) Legislation restricting speculation on housing or property, particularly when such speculation has a negative impact on the fulfilment of housing rights for all sectors of society;

(x) Legislative measures conferring legal title to those living in the "illegal" sector;

(xi) Legislation concerning environmental planning and health in housing and human settlements.

(d) Please provide information on all other measures taken to fulfil the right to housing, including:

(i) Measures taken to encourage "enabling strategies" whereby local community-based organizations and the "informal sector" can build housing and related services. Are such organizations free to operate? Do they receive Government funding?

(ii) Measures taken by the State to build housing units and to increase other construction of affordable, rental housing;

(iii) Measures taken to release unutilized, under-utilized or mis-utilized land;

(iv) Financial measures taken by the State including details of the budget of the Ministry of Housing or other relevant Ministry as a percentage of the national budget;

(v) Measures taken to ensure that international assistance for housing and human settlements is used to fulfil the needs of the most disadvantaged groups;

(vi) Measures taken to encourage the development of small and intermediate urban centres, especially at the rural level;

(vii) Measures taken during, inter alia, urban renewal programmes, redevelopment projects, site upgrading, preparation for international events (Olympics, expositions, conferences, etc.), "beautiful city campaigns", etc., which guarantee protection from eviction or guaranteed rehousing based on mutual agreement, by any persons living on or near to affected sites;

(e) During the reporting period, have there been any changes in national policies, laws and practices negatively affecting the right to adequate housing? If so, please describe the changes and evaluate their impact.

4. Please give details on any difficulties or shortcomings encountered in the fulfilment of the rights enshrined in article 11 and on the measures taken to remedy these situations (if not already described in the present report).

5. Please indicate the role of international assistance in the full realization of the rights enshrined in article 11.

Article 12 of the *Covenant*

1. Please supply information on the physical and mental health of your population, in respect of both the aggregate and the different groups within your society. How has the health situation changed over time with regard to these groups? In case your Government has recently submitted reports on the health situation in your country to the World Health Organization (WHO) you may wish to refer to the relevant parts of these reports rather than repeat the information here.

2. Please indicate whether your country has a national health policy. Please indicate whether a commitment to the WHO primary health care approach has been adopted as part of the health policy of your country. If so, what measures have been taken to implement primary health care?

3. Please indicate what percentage of your GNP as well as of your national and/or regional budget(s) is spent on health. What percentage of those resources is allocated to primary health care? How does this compare with 5 years ago and 10 years ago?

4. Please provide, where available, indicators as defined by the WHO, relating to the following issues:

(a) Infant mortality rate (in addition to the national value, please provide the rate by sex, urban/rural division, and also, if possible, by socio-economic or ethnic group and geographical area. Please include national definitions of urban/rural and other subdivisions);

(b) Population access to safe water (please disaggregate urban/rural);

(c) Population access to adequate excreta disposal facilities (please disaggregate urban/rural);

(d) Infants immunized against diphtheria, pertussis, tetanus, measles, poliomyelitis and tuberculosis (please disaggregate urban/rural and by sex);

(e) Life expectancy (please disaggregate urban/rural, by socio-economic group and by sex);

(f) Proportion of the population having access to trained personnel for the treatment of common diseases and injuries, with regular supply of 20 essential drugs, within one hour's walk or travel;

(g) Proportion of pregnant women having access to trained personnel during pregnancy and proportion attended by such personnel for delivery. Please provide figures on the maternity mortality rate, both before and after childbirth;

(h) Proportion of infants having access to trained personnel for care.

(Please provide breakdowns by urban/rural and socio-economic groups for indicators (f) to (h).)

5. Can it be discerned from the breakdowns of the indicators employed in paragraph 4, or by other means, that there are any groups in your country whose health situation is significantly worse than that of the majority of the population? Please define these groups as precisely as possible and give details. Which geographical areas in your country, if any, are worse off with regard to the health of their population?

(a) During the reporting period, have there been any changes in national policies, laws and practices negatively affecting the health situation of these groups or areas? If so, please describe these changes and their impact.

(b) Please indicate what measures are considered necessary by your Government to improve the physical and mental health situation of such vulnerable and disadvantaged groups or in such worse-off areas.

(c) Please explain the policy measures your Government has taken, to the maximum of available resources, to realize such improvement. Indicate time- related goals and bench-marks for measuring your achievements in this regard.

(d) Please describe the effect of these measures on the health situation of the vulnerable and disadvantaged groups or worse-off areas under consideration, and report on the successes, problems and shortcomings of these measures.

(e) Please describe the measures taken by your Government in order to reduce the stillbirth-rate and infant mortality and to provide for the healthy development of the child.

(f) Please list the measures taken by your Government to improve all aspects of environmental and industrial hygiene.

(g) Please describe the measures taken by your Government to prevent, treat and control epidemic, endemic, occupational and other diseases.

(h) Please describe the measures taken by your Government to assure to all medical service and medical attention in the event of sickness.

(i) Please describe the effect of the measures listed in subparagraphs (e) to (h) on the situation of the vulnerable and disadvantaged groups in your society and in any worse-off areas. Report on difficulties and failures as well as on positive results.

6. Please indicate the measures taken by your Government to ensure that the rising costs of health care for the elderly do not lead to infringements of these persons right to health.

7. Please indicate what measures have been taken in your country to maximize community participation in the planning, organization, operation and control of primary health care.

8. Please indicate what measures have been taken in your country to provide education concerning prevailing health problems and the measures of preventing and controlling them.

9. Please indicate the role of international assistance in the full realization of the right enshrined in article 12.

Article 13 of the *Covenant*

1. With a view to achieving in your country the full realization of the right of everyone to education:

(a) How does your Government discharge its obligation to provide for primary education that is compulsory and available free to all? (If primary education is not compulsory and/or free of charge, see especially article 14.)

(b) Is secondary education, including technical and vocational secondary education, generally available and accessible to all? To what extent is such secondary education free of charge?

(c) To what extent is general access to higher education realized in your country? What are the costs of such higher education? Is free education established or being introduced progressively?

(d) What efforts have you made to establish a system of fundamental education for those persons who have not received or completed the whole period of their primary education?

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

2. What difficulties have you encountered in the realization of the right to education, as spelt out in paragraph 1? What time-related goals and bench-marks has your Government set in this respect?

3. Please provide statistics on literacy, enrolment in fundamental education with information on rural areas, adult and continuing education, drop-out rates at all levels of education as well as graduating rates at all levels (please disaggregate, if possible, according to sex, religion, etc.). Also provide information on measures taken to promote literacy, with data on the scope of the programmes, target

population, financing and enrolment, as well as graduation statistics by age group, sex, etc. Please report on the positive results of these measures as well as on difficulties and failures.

4. Please provide information on the percentage of your budget (or, if necessary, regional budgets) spent on education. Describe your system of schools, your activity in building new schools, the vicinity of schools, particularly in rural areas, as well as the schooling schedules.

5. To what extent is equal access to the different levels of education and measures to promote literacy enjoyed in practice? For instance:

(a) What is the ratio of men and women making use of the different levels of education and taking part in these measures?

(b) With regard to practical enjoyment of the right to these levels of education and measures to promote literacy, are there any particularly vulnerable and disadvantaged groups? Indicate, for instance, to what extent young girls, children of low-income groups, children in rural areas, children who are physically or mentally disabled, children of immigrants and of migrant workers, children belonging to linguistic, racial, religious or other minorities, and children of indigenous people, enjoy the right to literacy and education spelt out in article 12.

(c) What actions is your Government taking or contemplating in order to introduce or guarantee equal access to all levels of education within your country, for instance in the form of anti-discriminatory measures, financial incentives, fellowships, positive or affirmative action? Please describe the effect of such measures.

(d) Please describe the language facilities provided to this effect, such as the availability of teaching in the mother tongue of the students.

6. Please describe the conditions of teaching staff at all levels in your country, having regard to the Recommendation concerning the Status of Teachers, adopted on 5 October 1966 by the Special Intergovernmental Conference on the Status of Teachers, convened by UNESCO. How do teachers' salaries compare to salaries of (other) civil servants? How has this ratio developed over time? What measures does your country take or contemplate to improve the living conditions of teaching staff?

7. What proportion of schools at all levels in your country is not established and administered by the Government? Have any difficulties been encountered by those wishing to establish or to gain access to those schools?

8. During the reporting period, have there been any changes in national policies, laws and practices negatively affecting the right enshrined in article 13? If so, please describe these changes and evaluate their impact.

9. Please indicate the role of international assistance in the full realization of the right enshrined in article 13.

Article 14 of the *Covenant*

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

Article 15 of the *Covenant*

1. Please describe the legislative and other measures adopted by or in your State to realize the right of everyone to take part in the cultural life which he or she considers pertinent, and to manifest his or her own culture. In particular, provide information on the following:

(a) Availability of funds for the promotion of cultural development and popular participation in cultural life, including public support for private initiative.

(b) The institutional infrastructure established for the implementation of policies to promote popular participation in culture, such as cultural centres, museums, libraries, theatres, cinemas, and in traditional arts and crafts.

(c) Promotion of cultural identity as a factor of mutual appreciation among individuals, groups, nations and regions.

(d) Promotion of awareness and enjoyment of the cultural heritage of national ethnic groups and minorities and of indigenous peoples.

(e) Role of mass media and communications media in promoting participation in cultural life.

(f) Preservation and presentation of mankind's cultural heritage.

(g) Legislation protecting the freedom of artistic creation and performance, including the freedom to disseminate the results of such activities, as well as an indication of any restrictions or limits imposed on the freedom.

(h) Professional education in the field of culture and art.

(i) Any other measures taken for the conservation, development and diffusion of culture.

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

2. Please describe the legislative and other measures taken to realize the right of everyone to enjoy the benefits of scientific progress and its applications, including those aimed at the conservation, development and diffusion of science. In particular, provide information on the following:

(a) Measures taken to ensure the application of scientific progress for the benefit of everyone, including measures aimed at the preservation of mankind's natural

heritage and at promoting a healthy and pure environment and information on the institutional infrastructures established for that purpose.

(b) Measures taken to promote the diffusion of information on scientific progress.

(c) Measures taken to prevent the use of scientific and technical progress for purposes which are contrary to the enjoyment of all human rights, including the rights to life, health, personal freedom, privacy and the like.

(d) Any restrictions which are placed upon the exercise of this right, with details of the legal provisions prescribing such restrictions.

3. Please describe the legislative and other measures taken to realize the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic work of which he or she is the author. In particular, supply information on the practical measures aimed at the full implementation of this right, including provision of the necessary conditions for scientific, literary and artistic activities, and the protection of intellectual property rights resulting from such activities. What difficulties have affected the degree of realization of this right?

4. What steps has your Government taken for the conservation, development and diffusion of science and culture? Please describe in particular:

(a) Measures at the constitutional level, within the national educational system and by means of the communications media.

(b) All other practical steps taken to promote such conservation, development and diffusion.

5. Please describe the legal, administrative and judicial system designed to respect and protect the freedom indispensable for scientific research and creative activity, in particular:

(a) Measures designed to promote enjoyment of this freedom including the creation of all necessary conditions and facilities for scientific research and creative activity.

(b) Measures taken to guarantee the freedom of exchange of scientific, technical and cultural information, views and experience between scientists, writers, creative workers, artists and other creative individuals and their respective institutions.

(c) Measures taken to support learned societies, academies of science, professional associations, unions of workers and other organizations and institutions engaged in scientific research and creative activities.

What difficulties have affected the degree of realization of this freedom?

6. Please describe the legislative and other measures by which your Government encourages and develops international contacts and co-operation in the scientific and cultural fields, including measures taken for:

(a) The fullest utilization, by all the States concerned, of the facilities afforded by their adherence to regional and international conventions, agreements and other instruments in the scientific and cultural fields.

(b) Participation by scientists, writers, artists and others involved in scientific research or creative activity, in international scientific and cultural conferences, seminars, symposiums, etc.

What factors and difficulties have affected the development of international co-operation in these fields?

7. During the reporting period, have there been any changes in national policies, laws and practices negatively affecting the rights enshrined in article 15? If so, please describe these changes and evaluate their impact.

8. In case your Government has recently submitted reports relevant to the situation with respect to the rights contained in article 15 to the United Nations or a specialized agency, you may wish to refer to the relevant parts of those reports rather than repeat the information here.

9. Please indicate the role of international assistance in the full realization of the rights enshrined in article 15.

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----- ANNEX V

THE LIMBURG PRINCIPLES ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC SOCIAL AND CULTURAL RIGHTS

UN Document E/CN.4/1987/17

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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 on 2-6 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 parties Reports by the newly constituted ECOSOC Committee on Economic, Social and Cultural Rights, and international co-operation 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, United Kingdom, United States of America, Yugoslavia, the United Nations Centre for Human Rights, the International Labour Organisation (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 PARTIES' 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 parties' 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 co-operation and dialogue. To this end, in considering the reports of States parties, the Committee on Economic, Social and Cultural Rights, hereinafter called "the Commit-tee", should analyze 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 parties' 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 deter 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 co-operation 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 co-operation especially economic and technical"

29. International co-operation 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 co-operation 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 Universal Declaration of Human Rights).

31. Irrespective of differences in their political, economic and social systems, States shall co-operate 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 co-operate in the realization of the rights recognized by the Covenant.

33. International co-operation 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 co-operation 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 to 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 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 United Nations Charter 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 PARTIES' REPORTS AND INTERNATIONAL CO-OPERATION 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 Doc. 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 the reports of States parties 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 co-operation 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. Reports by States parties should indicate the areas where more progress could be achieved through international co-operation and suggest economic and technical co-operation 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 parties 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 it 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 ECOSOC 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 ECOSOC 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 180 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 co-operation 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 Covenant on Economic, Social and Cultural Rights is related to the 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 Economic, Social and Cultural Rights Committee 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 ECOSOC resolution 1296 (XLIV).

102. The Committee should develop, in co-operation 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.

-----ANNEX VI

THE MAASTRICHT GUIDELINES ON VIOLATIONS OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Introduction

On the occasion of the 10th anniversary of the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (hereinafter 'the Limburg Principles'), a group of more than thirty experts met in Maastricht from 22-26 January 1997 at the invitation of the International

Commission of Jurists (Geneva, Switzerland), the Urban Morgan Institute on Human Rights (Cincinnati, Ohio, USA) and the Centre for Human Rights of the Faculty of Law of Maastricht University (the Netherlands). The objective of this meeting was to elaborate on the Limburg Principles as regards the nature and scope of violations of economic, social and cultural rights and appropriate responses and remedies. The participants unanimously agreed on the following guidelines which they understand to reflect the evolution of international law since 1986. These guidelines are designed to be of use to all who are concerned with understanding and determining violations of economic, social and cultural rights and in providing remedies thereto, in particular monitoring and adjudicating bodies at the national, regional and international levels.

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% of the global income and the richest fifth 85%. 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 UN World Summits 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, interrelated 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 shelter and housing, or of the most basic forms of education is, *prima facie*, violating the Covenant." 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 nongovernmental 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 aide 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 UN 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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ADDITIONAL RESOURCES

The following is a list of additional resources that may assist NGOs with the preparation and submission of civil society reports to the Committee.

BASIC COMMITTEE DOCUMENTS

- State party reports, list of issues and concluding observations may be electronically accessed at <http://www.unhchr.ch/html/menu2/6/cescr/cescrs.htm>
- Notes on Committee Sessions may be electronically accessed at <http://www.unhchr.ch/html/menu2/6/cescrnote.htm>
- All of the following basic Committee documents may be accessed on the UN Treaty Monitoring Database at <http://www.unhchr.ch/tbs/doc.nsf>
- NGO participation in the activities of the Committee on Economic, Social and Cultural Rights (E/C.12/2000/6) and (E/C.12/1993/WP.14)
- Preparation of the initial parts of State party reports ('core documents') under the various international human rights instruments (HRI/CORE/1)
- Status of the International Covenant on Economic, Social and Cultural Rights and reservations, withdrawals, declarations and objections under the Covenant (E/C.12/1993/3/Rev.4)
- Selected bibliography of published material relating to the International Covenant on Economic, Social and Cultural Rights and the work of the Committee (E/C.12/1989/L.3/Rev.2)

OTHER ECONOMIC, SOCIAL AND CULTURAL RIGHTS RESOURCES

- Hansen Stephen A. Thesaurus of Economic, Social and Cultural Rights: Terminology and Potential Violations, AAAS and HURIDOCS, 2000, at <http://shr.aaas.org/thesaurus/>
- Human Rights Research and Education Centre. Virtual Library International Human Rights Web Sites on ESC Rights, at http://www.cdp-hrc.uottawa.ca/links/ecosocint_e.html
- Hunt, Paul. Reclaiming Social Rights - International and Comparative Perspectives, Dartmouth Publishing, Aldershot, UK, 1996
- International Commission of Jurists. Economic, Social and Cultural Rights - A Compilation of International Instruments, Geneva, ICJ, 1997. This volume contains the ICESCR, the Limburg Principles on the Implementation of the International Covenant on Economic, Social, and Cultural Rights, the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, and other important ESCR documents
- International Commission of Jurists. ESCR Fact

Sheets, Geneva, ICJ, 1 June 2003 at www.icj.org (once there click on "Legal Resource Centre" then on "Economic, Social & Cultural Rights") • International Human Rights Internship Program (IHRIP). Circle of Rights - Economic, Social & Cultural Rights Activism: A Training Resource, 2000, at <http://www1.umn.edu/humanrts/edumat/IHRIP/circle/toc.htm> • International Human Rights Internship Program (IHRIP). Ripple in Still Water: Reflections by Activists on Local-and National-Level Work on Economic, Social and Cultural Rights, Institute of International Education, Washington, D.C., 1997, and at <http://www1.umn.edu/humanrts/edumat/IHRIP/ripple/toc.html> • Krause, Catarina and Allan Rosas, eds. Economic, Social and Cultural Rights -A Textbook, Martinus Nijhoff, London, 1995 • Magic Lantern in co-ordination with the International Human Rights Internship Program ("IHRIP"), Out of the Shadows (video), 2000. This is a 84-minute video on how NGOs can promote ESC rights domestically and before the Committee. This video can be ordered on the Magic Lantern website at <http://www.magic-lantern.org/> or by writing to the IHRIP at the Institute of International Education, 1400 K Street, NW Suite 650, Washington, DC 20005, United States of America • McChesney, Allen. Promoting and Defending Economic, Social and Cultural Rights: A Handbook, AAAS and HURIDOCS, 2000, at <http://shr.aaas.org/escr/handbook/> GENERAL RESOURCES

• Human Rights Internet, For The Record: The UN Human Rights System, Ottawa, 1997-2002 at <http://www.hri.ca> • Human Strategies for Human Rights, International Human Rights - Basic Reference Guide for NGOs, at <http://www.hshr.org./hshr%20basic%20reference%20guide.htm> • United Nations Documents Research Guide at <http://www.un.org/Depts/dhl/resguide/> • University of Minnesota Human Rights Library, at <http://www1.umn.edu/humanrts/>

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Footnotes : [1] Allen McChesney, *Promoting and Defending Economic, Social and Cultural Rights: A Handbook* (AAAS and HURIDOCS, 2000) at shr.aaas.org/escr/handbook/chap10.htm.

[2] Centre for Reproductive Rights, *An Advocate's Guide to the Work of UN Treaty Monitoring Bodies on Reproductive and Sexual Rights*, 2002 at www.reproductiverights.org/pub_bp_tmb.html.

[3] *Supra* note 1 at shr.aaas.org/escr/handbook/chap10.htm.