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## Human Rights Council

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Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by the International Commission of Jurists, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[21 August 2012]

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\* This written statement is issued, unedited, in the language received from the submitting non-governmental organization.

## **Discrimination and inequality in the enjoyment of human rights, including the rights to water and sanitation**

The International Commission of Jurists (ICJ) very much welcomes the latest report to the Human Rights Council of the Special Rapporteur on the rights to water and sanitation that considers the linkages between violations of human rights and the challenge of stigma, especially as they relate to water, sanitation and hygiene (A/HRC/21/42). The report constitutes a much needed and timely contribution to the discussion.

According to the experience of the ICJ, it is critical to take a holistic approach to combating discrimination and inequality in the enjoyment of human rights. The present report of the Special Rapporteur on stigma in the realization of the human rights to water and sanitation unambiguously highlights and justifies the need for such a comprehensive and holistic approach to the variety of measures that States should adopt so as to comply with their obligations under international human rights law.

The report of the Special Rapporteur highlights in a very tangible manner the complexity of the societal root causes and implications that underlie and impact upon the realization of the rights to water and sanitation, as well as on human rights in general. In doing so, the report provides concrete and useful guidance for States to tackle the issues raised by calling on them to take specific action in various relevant areas of law, policy and practice. The report also contributes by giving visibility to both specific individuals and groups within society whose rights, aspirations and situations faced are otherwise neglected or sometimes even fully ignored.

It is notable that the report is based upon, and elaborates in a very practical manner, provisions concerning economic, social and cultural rights recognised in international human rights law. In particular, article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) is unambiguous in stating that the realization of economic, social and cultural rights, and thus the rights to water and sanitation, requires States to undertake all appropriate measures to progressively achieving the full realisation of those rights, to the maximum of their available resources:

“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.”

The Committee on Economic, Social and Cultural Rights (the Committee) has clearly established that this requires States to take a various measures in order to comply with their obligations under the Covenant, including (and most importantly in the current context) educational measures:<sup>1</sup>

“Other measures which may also be considered ‘appropriate’ for the purposes of article 2 (1) include, but are not limited to, administrative, financial, educational and social measures.”

The Committee has emphasised the primary role of legislation as the means through which appropriate measures are to be undertaken.<sup>2</sup> In combination with robust legislative measures to combat discrimination, stigma and inequality, it should also be borne in mind

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<sup>1</sup> Committee on Economic, Social and Cultural Rights, General Comment 3, The nature of States parties obligations (Art. 2, par. 1), 1990, para 7.

<sup>2</sup> Ibid, para 2.

that many practical and innovative responses may be adopted. An example can be seen in Australia and Nepal, where identification documents include a third category of gender identification beyond male and female in order to accommodate the gender identity of transsexual and intersex persons. Many further examples of legal and practical measures are to be found in the report of the Special Rapporteur.

The ICJ also welcomes the important analysis provided by the Special Rapporteur with regard to the relationship between stigma, discrimination and inequality. Non-discrimination belongs to the first principles contained in the core human rights instruments<sup>3</sup> and is considered a fundamental standard common to all human rights systems.<sup>4</sup> Non-discrimination is also a principle under customary international law, and the Inter-American Court of Human Rights, among others, has identified the principle as a peremptory norm of international law, thus applying to all States whether or not they are party to a specific international treaty, and giving rise to effects with regard to third parties, including individuals.<sup>5</sup>

Since the principle of non-discrimination was first formalized in article 1 of the United Nations (UN) Charter, it has been continuously developed in universal treaties and other instruments with regard to the treaty at play, the rights it enshrines and the obligations it creates for States parties. This clarification has been undertaken by the Committee on Economic, Social and Cultural Rights, in particular in its General Comment 20 which explains the normative content of the provisions related to equality and non-discrimination under articles 2 and 3 of the ICESCR, the nature of related State obligations, as well as the implications for domestic law and policy making.<sup>6</sup> It must be emphasised in this regard that to ensure the enjoyment of all human rights without discrimination not only formal but also substantial equality is required. Combating both *de jure* and *de facto* discrimination and inequality thus gives rise to the need to take positive and special measures in favour of the individuals and groups suffering discrimination. These are principles on which to build effective actions against stigma, as elaborated by the Special Rapporteur in her present report.

### Call for action

The ICJ urges the Human rights Council and all States to:

- Implement the recommendations of the Special Rapporteur in her report and, in particular, strengthen legal and institutional frameworks to guarantee non-discrimination and equality through *inter alia* a clear constitutional and/or legislative enshrining of equality provisions with corresponding monitoring and adjudicative mechanisms; and
- In accordance with the ICESCR, take all necessary measures to prevent, punish, and redress direct and indirect discrimination concerning the enjoyment of all rights, including the rights to water and sanitation.

<sup>3</sup> Charter of the United Nations, articles 1(3), 13(1)(b), 55(c) and 76(c); Universal Declaration of Human Rights, article 2(1); International Covenant on Civil and Political Rights (ICCPR), articles 2(1) and 26; ICESCR, article 2(2).

<sup>4</sup> Human Rights Committee, General Comment 18: Non-discrimination, UN Doc HRI/GEN/1/Rev.7 (2004), para 1.

<sup>5</sup> Inter-American Court of Human Rights, Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03, Ser. A, No. 18 (2003), at paras 100-101.

<sup>6</sup> Committee on Economic, Social and Cultural Rights, General Comment 20, Non-discrimination in economic, social and cultural rights, UN Doc E/C.12/GC/20 (2009).