

decisions were not binding was satisfactory.⁴⁸¹ It was also suggested that there was a need for the Committee to do further work in establishing benchmarks⁴⁸² and that the system, if established, should operate only in relation to a limited number of rights. With regard to the latter point it was commented that:

"...it was inconceivable that it should subject the full range of economic, social and cultural rights, particularly those enshrined in the crucial article 11, to the kind of legalistic jurisprudential review undertaken by the Human Rights Committee."⁴⁸³

The result of the debate was that the Committee decided to consider the possibility of the Optional Protocol in more detail at its seventh session.

It is considered that the creation of a system of individual or NGO complaints is an attractive proposition on a number of grounds. First and foremost, such a system, if operated effectively, would vastly increase the level of national and international awareness of both the Covenant and the Committee. This in turn may encourage better reporting and more participation by NGOs, stimulate the institution of domestic remedies, and generate greater support for the work of the Committee (including more sessions and Secretariat involvement).

Secondly, the institution of a complaints mechanism would enable the Committee to increase the effectiveness of the supervision system in a way not possible otherwise. Not only would it provide an additional means of supervision bringing extra force to bear on recalcitrant States, it would provide the Committee with the ability to develop the normative content of the rights in a specific and tangible manner. As Alston has noted:

"...the collected 'views' of the Committee based on individual cases are of much greater value in shedding light on the meaning of the various rights formulations than either the Committee's General Comments or the insights generated by its examination of State reports".⁴⁸⁴

Contrary to the general perception of petition systems, their value lies not so much in the degree to which they operate as corrective or remedial mechanisms, but rather in the specificity they provide to the

⁴⁸¹ See, Simma, E/C.12/1991/SR.14, at 13, para.64.

⁴⁸² See e.g., Rattray, E/C.12/1991/SR.13, at 7, para.36.

⁴⁸³ Simma, E/C.12/1991/SR.14, at 13, para.62.

⁴⁸⁴ Discussion Paper, *supra*, note 477, at 7, para.18.

norms allowing States to appreciate in advance the precise type of action required of them.⁴⁸⁵

The principal argument against the creation of a petition system relating to economic, social and cultural rights, has been, and remains, the idea that they are essentially non-justiciable. More specifically, it is argued that given the promotional nature of the rights and the generality of their terminology, it would be impossible for a supervisory body to decide whether or not a State is acting in conformity with its obligations under the Covenant. As was suggested during the drafting of the Covenant, complaints "could only refer to insufficient programmes in the attainment of certain goals and it would be impossible for the committee to determine what the rate of progress in any particular case should be".⁴⁸⁶

It is coming to be accepted that it is no longer valid to characterise economic, social and cultural rights as exclusively "promotional" or entirely non-justiciable. There is increasing evidence of economic, social and cultural rights being the subject of international petitions.⁴⁸⁷ As far as the Committee is concerned, it has already gone some way to identifying rights and obligations within the Covenant that require immediate implementation and therefore would traditionally be suited to judicial determination. In particular, it has mentioned article 3 (equal rights for men and women), article 7(a)(i) (equal remuneration for work of equal value), article 8 (trade union rights), article 10(3) (protection of children from exploitation), article 13(2)(a) (free and compulsory primary education), article 13(3) (respect for parental choice in education), article 13(4) (right to establish and direct educational institutions), article 15(3) (freedom of scientific research and creative activity).⁴⁸⁸ In addition, the Committee has indicated that those aspects of rights that involve State abstention would similarly be capable of immediate implementation. A number of examples could be: freedom

⁴⁸⁵ As Vasak notes, petition systems operate not so much to present a remedy for the individual or group, but to prevent the reoccurrence of that situation. Vasak, *supra*, note 12, at 216.

⁴⁸⁶ UN Doc.A/2929, *supra*, note 33, at 124, para.41.

⁴⁸⁷ One may cite the recent jurisprudence of the HRC and CERD. It should also be noted that the Migrant Workers Convention and UNESCO operate petition systems in the field of economic, social and cultural rights. Moreover, the Inter-American system has recently adopted a protocol allowing for individual petitions on economic, social and cultural rights, and there is evidence that a system might be established under the European Social Charter, *see*, Harris, *supra*, note 148, at 673-4.

⁴⁸⁸ *See*, General Comment No.3, (1990), *in*, UN Doc.E/1990/23, Annex III, at 84, para.5.

from forced labour (article 6(1)), freedom from arbitrary dismissal (article 6), and freedom from arbitrary eviction (article 11).

Such arguments suggest that there is, in fact, a justiciable core to every human right and indeed that it would be theoretically possible to operate a petition system with respect to economic, social and cultural rights. The impression left by the Committee, however, is that it would be better to institute an Optional Protocol with respect to a limited range of rights, leaving in particular, rights such as those relating to food, housing and health to one side. The perceived problem is that those rights that are phrased in excessively general terms and which are, for the main part, to be implemented progressively, might not be suited to judicial determination.

At a theoretical level, it is considered that it is entirely inappropriate for the Committee to divide the rights into those which are suited to a petition procedure and those which are not. Not only would it undermine the indivisibility of the rights, but it would also raise questions as to the relative importance of each group of rights. More importantly, however, it is considered that the problems associated with the operation of a petition system in relation to general or progressive rights are overstated.

First, in theory, whether or not a provision is worded generally or is subject to progressive implementation, there is nothing to prevent a body with the necessary interpretative powers from making a decision as to the compliance of a State with its obligations. The decision might be a difficult one to make, but that is a different question. The justiciability of a particular issue depends, not upon the quality of the decision, but rather upon the authority of the body to make the decision. *Prima facie* then, in so far as the Committee is given the authority to assume a quasi-judicial role over the rights in the Covenant those rights will be justiciable.

The Committee, however, in order to maintain its credibility, would have to concern itself with the quality of the decisions made. Given the difficulty of establishing either the precise conditions of deprivation or the direct responsibility of States, the Committee will have to allow the States a margin of appreciation. Although this will mean concentrating upon overt or manifest violations of the Covenant, it does not entirely deprive the procedure of merit.

It is clear that the precise terms and conditions under which a complaints mechanism might operate will have to be established and agreed upon by the States parties. It will be for the Committee, however, to act as the spur to encourage any such action to be taken. For the Committee to effectively push through the institution of such a mechanism itself, it will have to demonstrate the necessity and advisability of such a development. The primary means by which it

might do so is through developing its existing supervisory role in a way that shows the potential of a complaints mechanism.

IV CONCLUSION

It is undoubtedly the case that in the relatively short period of time that the Committee on Economic, Social and Cultural Rights has been charged with monitoring the implementation of the Covenant, it has transformed the supervision system beyond recognition. The Committee's work has been marked by a series of procedural reforms, undertaken swiftly and with relative ease, that places it in the position of having one of the most developed and potentially effective reporting mechanisms of all the human rights supervisory bodies. Notably, the Committee has undertaken to receive information from Non-Governmental Organisations, has adopted the procedure of making State-specific comments following its consideration of State reports, conducts General Discussions with experts from other fields and organisations, and drafts General Comments to further an understanding of the normative content of the rights in the Covenant and the reporting obligations.

That the Committee has been able to undertake such far-reaching procedural reforms is partially a reflection of the nature of its mandate. Essentially the Committee is charged with assisting the Economic and Social Council with the consideration of State reports. Unlike other human rights Committees, the CESCR is not constrained by specific textual provisions in the treaty, it receives its authority from, and is primarily responsible to ECOSOC. ECOSOC itself is authorised merely to "consider" State reports. Its approach has been to interpret this mandate in a wide sense, allowing the Committee considerable leeway in its development of procedural initiatives.

The success of the Committee in its reform process is more significantly a reflection of the friendly and co-operative relations between its members. On no occasion has it been necessary to take decisions other than by consensus, nor has there been any serious disagreement between Committee members. Effectively, much work is conducted informally with compromises and agreements being made out of session. The formal cohesiveness of the Committee is, to a large extent, a reflection of the amount of informal work that takes place. Having said that, the development of the Committee's work has been pushed forward by a small number of members. Others, while not being opposed to the direction in which the Committee is moving, have not tended to contribute as fully as they might. This is fortuitous in the sense that it allows a greater unity of purpose, but it also means that the work load becomes disproportionately spread. One might also speculate on the possibly disastrous scenario in which certain of the more active members are not re-elected to the Committee in future.

Notwithstanding the success of its reforms, the Committee still faces a number of problems in developing the effectiveness of the supervision process. In particular one might note the continuing inadequacy of the State reports, the failure on the part of a large number of States to report in a timely manner and the disruption of the process of supervision by States failing to appear before the Committee. In addition, the Committee itself is subject to considerable pressure by the fact that it has only a single three-week session per annum. Quite appropriately, the Committee has sought to ease the reporting burden and expedite the process of considering reports, but has not resorted to taking measures that might compromise the quality of supervision.

The largest problem facing the Committee, however, is posed by the substance of the Covenant itself. The breadth of subjects covered by the Covenant, combined with the lack of jurisprudence (whether national or international) in certain vital areas such as health and nutrition, mean that significant importance has to be placed upon the Committee's "creative" or "interpretative" functions. That it has undertaken to draft General Comments to develop an understanding of the normative content of the rights is a useful development in this respect. However, there is no doubt that the Committee lacks the support of a skilled and committed Secretariat prepared to produce analytical reports and provide other necessary assistance. Thus far, the Secretariat not only has failed to provide the form of support that ideally would be expected of it, but it has done little to assist the Committee in taking up those tasks itself. The failure to provide a resource room for the human rights treaty bodies stands out in this respect.

Although the Committee's procedural reforms have been directed at increasing its effectiveness as a supervisory body, they have also lent its work a certain duplicity. Whilst the reforms themselves, have placed the Committee in the position whereby it is theoretically capable of making substantive evaluations of the degree of State compliance with the obligations under the Covenant, it has shown itself, until recently, unwilling to do so. The Committee itself, has preferred to characterise its role as one of monitoring, and facilitating the provision of technical advice and assistance. The inherent tension in its position is evident from the fact that monitoring itself does not exclude the possibility of making quasi-judicial determinations of compliance, and that the Committee is not really in a position to undertake a significant role in the provision of technical assistance.

There are indications, nevertheless, that the Committee is willing, on occasion, to take a more adversarial stance. Certainly, in so far as the Committee is capable of receiving information from NGOs and has undertaken to make concluding observations of a substantive nature on the State reports, it is likely to develop its role in making quasi-judicial

determinations of compliance. Indeed, if it adopts the authority to request ad hoc reports, the procedure might evolve at some stage into an unofficial complaints mechanism. At present, however, in light of the present lack of established standards, minimal NGO participation, and insufficient information, it is considered that the Committee should act with a certain amount of discretion.

Similar considerations have to be born in mind with respect to the proposed institution of an official complaints mechanism in the form of an Optional Protocol. Undoubtedly, a complaints system would be a useful and beneficial development, not merely in terms of increasing the level of supervision, but in so far as it would assist in the normative development of the Covenant and would elevate the status of the Covenant as a human rights instrument. That there might be certain difficulties in establishing criteria to guide decision-making as regards the more generally-stated and progressive rights, should not be overstated. Indeed, in so far as a complaints systems would be the most effective mechanism for defining State obligations in a specific and concrete manner, suggests that the generality of the norms should not stand in the way of such a development.

CHAPTER TEN: CONCLUSIONS

It is something of a paradox that the Covenant on Economic, Social and Cultural Rights, which was intended to form part of the new world order following the Second World War, is now, forty seven years later, only in the early stages of its development. An unduly lengthy and complex drafting process followed by a slow process of ratification meant that the Covenant only entered into force in 1976. It suffered a false start with the abortive supervision process operated by the Working Group such that the beginning of its development as an effective human rights treaty essentially began in 1987 with the creation of the Committee on Economic, Social and Cultural Rights.

That the emergence and development of the Covenant has been a painfully slow process may be put down, to a large extent, to the political and ideological forces that have used human rights as a battleground. Economic, Social and Cultural Rights were long championed by the Socialist States who, whilst ensuring their inclusion in a human rights treaty, were not prepared to accept strong implementation (or rather supervision) procedures. Western States, on the other hand, in making unsubstantiated and categorical claims about the nature of economic, social and cultural rights, ensured that they were separated from their civil and political counterparts in a different instrument. The resulting Covenant on Economic, Social and Cultural Rights was a poor counterpart to the Covenant on Civil and Political Rights, suffering in particular from a weaker implementation procedure.

The political or ideological conflict continued into the mid-1980s and effectively ensured that the already weak supervision system created for the Covenant on Economic, Social and Cultural Rights would have little real force. The revitalisation of the Covenant, under the auspices of the Committee, may be indirectly attributed to the end of the ideological confrontation between East and West, the democratisation process in former Socialist States and the strengthening of international co-operation.

The emergence of the Committee may also be appreciated as a response to the increasing interest in, and concern with economic, social and cultural welfare which accompanied the political "enlightenment" of the 1980s. Despite the resolutely "monetarist" philosophies of the UK and the USA, it had become evident in the context of development at least, that attention needed to be paid to the economic and socially vulnerable, and that sustainable development was not to be achieved merely by reliance upon economic growth and the "trickle down" effect as advocated in the early 1970s. More recently, development organisations such as the World Bank and UNDP have begun to place

emphasis upon the notion of "good governance" (broadly speaking the range of civil, political, social, economic, and cultural rights) and have noted the importance of basic needs in the development process.

Whilst there is increasing awareness and concern as to the economic, social and cultural welfare of populations, this has not, as yet, been entirely transposed into the context of human rights. On the one hand, there remains considerable resistance on the part of legal commentators to the acceptance of economic, social and cultural rights on the same basis as civil and political rights. The rights in the Covenant continue to be characterised as "non-justiciable" or "programmatically". On the other hand, development organisations have been wary of adopting a rights-based stance, which is seen as being too inflexible and confrontational. In the long run, the effectiveness with which the Committee develops the Covenant will be measured by the extent to which it disposes of such arguments in a conclusive manner.

That the Covenant has considerable potential as an international instrument for the protection of economic, social and cultural rights is evidenced by the material scope of protection offered. Although a number of the economic rights are already the subject of international procedures under the auspices of the ILO, the Covenant does offer unparalleled protection as regards social and cultural rights. In particular, it is the only universal instrument that seeks to guarantee in general the rights to food, clothing, housing, health and cultural life.

The unique nature of the rights to which the Covenant is addressed is, however, not without its problems. Perhaps most significant is the fact that the rights are stated in an excessively broad and general manner. This has not necessarily posed a problem for supervisory bodies in the field of civil and political rights, as they have been in the privileged position of being able to draw upon vast array of both national and international jurisprudence generated by other human rights supervisory bodies and the various national constitutional courts that had traditionally dealt with the same, or similar, rights. However, in the case of economic, social and cultural rights, even where they are found in the Constitutions of States, they have rarely given legal effect by the courts concerned. Moreover, international organisations working in the field of economic, social and cultural rights (with the exception of the ILO and, to a lesser extent UNESCO) have resolutely refused to deal with the issues in terms of rights. This inevitably means that a considerable burden is placed upon the Covenant's supervisory body to attempt to breath some life into the provisions.

Further problems evidenced in the text of the Covenant are its confused and inconsistent structure. First, it is not clear whether the obligations clause in article 2(1) relates to all of the substantive rights in

Part III, or only to those that are specifically recognised. Secondly, the substantive articles themselves often contain a confused mixture of rights, objectives and implementation procedures. Thirdly, it is unclear to what extent the rights are intended to be covered by the general or specific limitations clauses to be found in the Covenant or whether indeed it is possible to derogate from the rights at all. Finally, and perhaps most crucially, the general State obligations are so obscure that it appears, on the face of it, to be virtually impossible to establish the extent to which a State is in compliance with its obligations under the Covenant.

Similarly, Part IV of the Covenant which outlines the supervision system is marked more by what it leaves out than by what it includes. Broadly speaking it is a reporting system to be operated under the auspices of ECOSOC. Provision is made for the participation of the Specialised Agencies and the Commission on Human Rights and for general reports to be submitted to the General Assembly. The text, however, does not make clear the degree to which each of the bodies mentioned should involve themselves. Although ECOSOC is mandated with the "consideration" of the reports, the Commission on Human Rights may similarly "study" the reports and make general recommendations. It is unclear which body has the primary responsibility for undertaking supervision. Moreover, although many assumptions could be made about the object and purpose of reporting systems in general, the Covenant only provides for the submission of reports and their consideration. The periodicity, form and content of the reports is left open, as is the nature of the consideration that should be given to them. As a whole, the the raw text of the Covenant could be said to offer considerable potential but little promise.

As of December 1991, there are 104 States parties to the Covenant which, given the date on which it entered into force, is not unreasonable. Apart from their poor record of reporting under the Covenant, which is by no means unusual for the universal human rights treaties, their participation has been consistent if disinterested. To a large extent the unenthusiastic response of States may be put down to the unsatisfactory experience of the Working Group in which there was very little call for States to take their reporting responsibilities seriously. In the experience of the Committee, however, States have participated in a co-operative manner and have not found it necessary to challenge either the procedural or substantive developments in the Committee's work. In fact the Committee has largely been allowed to develop its role and practices without obstruction.

It is primarily the manner in which the Committee has transformed the supervision system that marks its work thus far. In contrast to the superficial and wholly unsatisfactory working methods

of the Working Group, the Committee has adopted a number of useful and innovative procedural initiatives to further the efficacy of its supervisory role. In particular, one could mention the receipt of information from NGOs, the adoption of State-specific concluding comments, the allocation of days to undertake general discussions, and the adoption of General Comments. Whilst the quality of State reports still leaves a certain amount to be desired, the rewards of the reform process are beginning to show. The Committee has adopted four influential General Comments, the most recent of which was on a substantive article, and has come to the point where it was able, with reasonable certainty, to find a State in violation of its obligations under the Covenant.

Having said that, there remain a number of problems that have impeded the full development of the supervisory process in the manner desired by the Committee. First, as noted above, there is need for a considerable improvement in both the quality and timeliness of State reports. The measures taken thus far by the Committee, such as the establishment of new reporting guidelines and the creation of a "black list" of States whose reporting has been particularly bad, have yet to reap rewards. Additionally the most recent decision of the Committee to consider situations where the State has failed to submit a report in ten years, poses problems both of a logistical and legal nature.

Secondly, despite the existence of mechanisms for the receipt of information from NGOs and Specialised Agencies, the response has been particularly poor. There is something of a vicious circle here. Until the Committee demonstrates itself to be an effective supervisory mechanism, giving considered and detailed analyses of State reports and making determinations as to non-compliance in appropriate cases, it will not be deemed worthy of attention by such bodies. Equally, the Committee is essentially hamstrung without adequate access to alternative sources of information. As there is a limited amount that the Committee itself may do in such circumstances, the need for greater Secretariat support and more publicity become of central importance.

The lack of proper Secretariat support has been one of the most unsatisfactory aspects of the Committee's work which, if it continues, could easily stultify the future development of the Covenant. The Secretariat has undertaken no analytical studies and has provided only a minimal amount of assistance in terms of collecting information, undertaking an initial consideration of State reports and publicising the work of the Committee. This is particularly unfortunate in the context of the Committee's work, given its dependence upon large quantities of detailed information on the situation prevailing in the countries concerned and the urgent need for a greater understanding of the content of the norms within the Covenant.

The headway made by the Committee in terms of its procedural reforms have not been matched by its development of the substantive guarantee. It has produced useful General Comments on article 2(1) and on the right to housing in article 11, which have done much to clarify the issues involved, but it continues to be overwhelmed by the range and detail of the subjects with which it is dealing. The reporting guidelines indicate quite clearly that, whereas the Committee has formulated its general approach, it has considerable work to do before it will be able to focus effectively upon the salient issues.

In terms of its general approach, the Committee has made a number of important points about the nature of State obligations under the Covenant. In particular, it has pointed out that despite the broad terms of article 2(1), a number of the rights and articles are capable of immediate implementation. Further, it has suggested that there is a "core obligation" under which States are required to ensure, at least, the enjoyment of a minimum core content of each right. Failure to comply with the core obligation will amount to a *prima facie* violation of the Covenant. However, in so far as the Committee has not spelt out what it understands to be the minimum core content, or even whether it is a national or international standard, suggests that it has considerable more work to do in this area. Other significant aspects of the Committee's general approach have been its use of the "margin of appreciation" doctrine in evaluating whether or not the course of action taken by the State was "appropriate", and its requirement that certain rights be ensured on an inter-individual level.

As regards the specific rights themselves, however, the Committee has only undertaken an in-depth analysis of the right to housing in article 11. Otherwise, it has tended to interpret the articles in a broad manner without excessive analysis of terminology. On the one hand this has enabled the Committee to view the provisions in a dynamic manner, giving them a relevance and validity in current circumstances that they might not otherwise gain. For example, the Committee has extended the range of grounds upon which distinctions might be considered discriminatory far beyond those actually specified in article 2(2). However, on the other hand, the Committee may be criticised for being too general in its approach and for failing to address the precise terms of the articles with sufficient rigour. A particular example is article 8, which is not only considerably more detailed than other articles and encompasses issues that have been dealt with at length by other bodies, but also contains a number of questions that require clarification. Specifically, there is a need for consideration to be given to the relative scope and operation of the limitations clauses in articles 8(1)(a) and 8(2).

Notwithstanding the generality of its approach, the Committee has made a certain amount of headway with articles 6 to 8 in terms of outlining the scope of the provisions and occasionally addressing important points of concern. For example, the Committee has interpreted the right to work in article 6 as including a right not to be arbitrarily dismissed from employment and a right not to be forced to work. Similarly with respect to article 8 it has made important, if controversial, decisions such as viewing pre-entry closed shop agreements as being in violation of the right to join the trade union of one's choice.

In developing the substance of the rights in articles 6 to 9, it is clear that the Committee will have to make reference to the work of the ILO in the area. Not only is it necessary that there should not be any conflict in standards, but it is also apparent that excessive duplication of the supervisory process would be a waste of time and resources for all parties concerned. The main function of the Committee in the area should be to supplement the protection already offered by the ILO. This means concentrating upon the position of those States that are not party to the relevant ILO Convention or who have persistently failed to take the necessary remedial action.

Even for the Committee to undertake such a limited function, it is necessary for it to develop the necessary expertise. It is somewhat unfortunate in this respect, that the participation of the ILO remains at a minimal level, despite the reformed nature of the Committee. In the absence of adequate assistance from the ILO itself, the Committee will have to adopt alternative strategies for developing the necessary expertise. It has been suggested, for example, that the Committee have greater control over the appointment of its members and that individual members should take on the responsibility for developing expertise in particular subject areas.

As suggested, some of the failings of the Committee as regards its approach to the substance of the articles may be put down to the dynamics of its operation as a supervisory body. In particular one might note the lack of technical expertise within, and available to, the Committee, the inadequate amount of time allowed to the Committee to exercise its functions in an effective manner, the lack of strong Secretariat support and the relatively unfocused nature of the reporting procedure. It appears to be extremely difficult, under present conditions, for the Committee to concentrate upon specific issues of relevance during its consideration of a State report. What is required, is some form of assistance whether in terms of secretariat support or time, even of a temporary nature, that might in effect generate some momentum in the implementation process as a whole.

Notwithstanding the various problems faced by the Committee, the prospects for the future are positive. The Committee has operated for a number of sessions without significant conflict, has adopted a number of important general comments and has begun to make headway in developing the normative content of the rights. In addition, it has one of the most well-developed reporting systems to be found at the universal level and has begun to receive useful assistance from NGOs. The level of confidence within the Committee is perhaps reflected in its recent discussions on the possibility of drafting an Optional Protocol providing for a system of individual complaints. Although the establishment of a complaints system is as yet a distant prospect, it is undoubtedly true that the operation of such a system would have a beneficial effect, not only in terms of improving the protection offered by the Covenant, but also in raising the level of international awareness of the work of the Committee.

APPENDIX I

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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,

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

Recognising 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,

Realising 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 recognised 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 realisation 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 realisation of the rights recognised 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 of 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 recognised 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 recognise 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 those 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 activity or to perform any act aimed at the destruction of any of the rights or freedoms recognised 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 recognised 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 recognise such rights or that it recognises them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognise 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 realisation 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 recognise 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 organisation 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 organisations;

(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 Organise 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 recognise the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognise 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 recognise 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 realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognising 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 recognise 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 realisation 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 recognise the right of everyon 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 recognise that, with a view to achieving the full realisation 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 recognise 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 realisation 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 recognise 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 observances of the rights recognised 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 specialised agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialised 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 specialised agencies concerned.
2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.
3. Where relevant information has previously been furnished to the United Nations or to any specialised 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 specialised 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 specialised agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialised 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 specialised agencies on the measures taken

and the progress made in achieving general observance of the rights recognised 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 specialised 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 recognised 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 organised 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 specialised agencies which define the respective responsibilities of the various organs of the United Nations and of the specialised 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 utilise 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 specialised 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 amendments 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

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 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.

APPENDIX II

STATES PARTIES TO THE COVENANT ON ECONOMIC SOCIAL AND CULTURAL RIGHTS

<u>Participant</u>	<u>Signature</u>	<u>Ratification</u> <u>Accession (a)</u> <u>Succession (d)</u>
Afghanistan		24 Jan. 1983(a)
Albania		4 Oct. 1991(a)
Algeria	10 Dec. 1968	12 Sep. 1989
Argentina	19 Feb. 1968	8 Aug. 1986
Australia	18 Dec. 1972	10 Dec. 1975
Austria	10 Dec. 1973	10 Dec. 1973
Barbados		5 Jan. 1973(a)
Belarus	19 Mar. 1968	12 Nov. 1973
Belgium	10 Dec. 1968	21 Apr. 1983
Bolivia		12 Aug. 1982(a)
Bulgaria	8 Oct. 1968	21 Sep. 1970
Burundi		9 May 1990
Cameroon		27 Jun. 1984(a)
Canada		19 May 1976(a)
Central African Republic		8 May 1976(a)
Chile	16 Sep. 1969	10 Feb. 1972
Colombia	21 Dec. 1966	29 Oct. 1969
Congo		5 Oct. 1983(a)
Costa Rica	19 Dec. 1966	29 Nov. 1968
Cyprus	9 Jan. 1967	2 Apr. 1969
Czech and Slovak Republic	7 Oct. 1968	23 Dec. 1975
Democratic People's Republic of Korea		14 Sep. 1981(a)
Denmark	20 Mar. 1968	6 Jan. 1972
Dominican Republic		4 Jan. 1978(a)
Ecuador	29 Sep. 1967	6 Mar. 1969
Egypt	4 Aug. 1967	14 Jan. 1982
El Salvador	21 Sep. 1967	30 Nov. 1979
Equatorial Guinea		25 Sep. 1987(a)
Estonia		21 Oct. 1991(a)
Finland	11 Oct. 1967	19 Aug. 1975

<u>Participant</u>	<u>Signature</u>	<u>Ratification</u> <u>Accession (a)</u> <u>Succession (d)</u>
France		4 Nov. 1980(a)
Gabon		21 Jan. 1983(a)
Gambia		29 Dec. 1978(a)
Germany	9 Oct. 1968	17 Dec. 1973
Greece		16 May 1985(a)
Grenada		6 Sep. 1991(a)
Guatemala		19 May 1988(a)
Guinea	28 Feb. 1967	24 Jan. 1978
Guyana	22 Aug. 1968	15 Feb. 1977
Honduras	19 Dec. 1966	17 Feb. 1981
Hungary	25 Mar. 1969	17 Jan. 1974
Iceland	30 Dec. 1968	22 Aug. 1979
India		10 Apr. 1979(a)
Iran (Islamic Republic of)	4 Apr. 1968	24 Jun. 1975
Iraq	18 Feb. 1969	25 Jan. 1971
Ireland	1 Oct. 1973	8 Dec. 1989
Israel	19 Dec. 1966	3 Oct. 1991
Italy	18 Jan. 1967	15 Sep. 1978
Jamaica	19 Dec. 1966	3 Oct. 1975
Japan	30 May 1978	21 Jun. 1979
Jordan	30 Jun. 1972	28 May 1975
Kenya		1 May 1972(a)
Lebanon		3 Nov. 1972(a)
Libyan Arab Republic		15 May 1970(a)
Lithuania		20 Nov. 1991(a)
Luxembourg	26 Nov. 1974	18 Aug. 1983
Madagascar	14 Apr. 1970	22 Sep. 1971
Mali		16 Jul. 1974(a)
Malta	22 Oct. 1968	13 Sep. 1990
Mauritius		12 Dec. 1973(a)
Mexico		23 Mar. 1981(a)
Mongolia	5 Jun. 1968	18 Nov. 1974
Morocco	19 Jan. 1977	3 May 1979
Nepal		14 May 1991(a)
Netherlands	25 Jun. 1969	11 Dec. 1978
New Zealand	12 Nov. 1968	28 Dec 1978
Nicaragua		12 Mar. 1980(a)
Niger		7 Mar. 1986(a)

<u>Participant</u>	<u>Signature</u>	<u>Ratification</u>	
		<u>Accession (a)</u>	<u>Succession (d)</u>
Norway	20 Mar. 1968	13 Sep. 1972	
Panama	27 Jul. 1976	8 Mar. 1977	
Peru	11 Aug. 1977	28 Apr. 1978	
Philippines	19 Dec. 1966	7 Jun. 1974	
Poland	2 Mar. 1967	18 Mar. 1977	
Portugal	7 Oct. 1976	31 Jul. 1978	
Republic of Korea		10 Apr. 1990(a)	
Romania	27 Jun. 1968	9 Dec. 1974	
Rwanda		16 Apr. 1975(a)	
St Vincent and the Grenadines		9 Nov. 1981(a)	
San Marino		18 Oct. 1985(a)	
Senegal	6 Jul 1970	13 Feb. 1978	
Solomon Islands		17 Mar. 1982(d)	
Somalia		24 Jan. 1990(a)	
Spain	28 Sep. 1976	27 Apr. 1977	
Sri Lanka		11 Jun. 1980(a)	
Sudan		18 Mar. 1986(a)	
Suriname		28 Dec. 1976(a)	
Sweden	29 Sep 1967	6 Dec. 1971	
Syrian Arab Republic		21 Apr. 1969(a)	
Togo		24 May 1984(a)	
Trinidad and Tobago		8 Dec. 1978(a)	
Tunisia	30 Apr. 1968	18 Mar. 1969	
Uganda		21 Jan. 1987(a)	
Ukraine	20 Mar. 1968	12 Nov. 1973	
U.S.S.R.	18 Mar. 1968	16 Oct. 1973	
United Kingdom	16 Sep. 1968	20 May 1976	
United Republic of Tanzania		11 Jun. 1976(a)	
Uruguay	21 Feb. 1967	1 Apr. 1970	
Venezuela	24 Jun. 1969	10 May 1978	
Viet Nam		24 Sep. 1982(a)	
Yemen		9 Feb. 1987(a)	
Yugoslavia	8 Aug. 1967	2 Jun. 1971	
Zaire		1 Nov. 1976(a)	
Zambia		10 Apr. 1984(a)	
Zimbabwe		13 May 1991(a)	

The following States have signed but not ratified:

Cambodia	17 Oct. 1980
Liberia	18 Apr. 1967
U.S.A.	5 Oct. 1977

APPENDIX III

MEMBERSHIP OF THE COMMITTEE

CURRENT MEMBERS

Mr P.ALSTON (Australia):	1987- (re-elected 1990).
Mr J.ALVAREZ VITA (Peru):	1987- (re-elected 1988)
Mr A.H.BADAWI(Egypt):	1991-
Mrs V.BONOAN-DANDAM(Philippines):	1991-
Mr M.L.FOFANA (Guinea):	1987- (re-elected 1988)
Mrs L.IDER (Mongolia):	1991-
Mrs M.JIMENEZ BUTRAGUENO(Spain):	1987- (re-elected 1988)
Mr S.C.KONATE (Senegal):	1987- (re-elected 1988)
Mr V.KOUZNETSOV (U.S.S.R.):	1989- (re-elected 1990)
Mr J.A.MARCHAN ROMERO (Ecuador):	1987- (re-elected 1990)
Mr V.MRACHKOV (Bulgaria):	1987- (re-elected 1988)
Mr A.MUTERAHEJURU (Rwanda):	1987- (re-elected 1990)
Mr W.NENEMAN (Poland):	1987- (re-elected 1988)
Mr K.O.RATTRAY (Jamaica):	1987- (re-elected 1988)
Mr B.SIMMA (F.R.G.):	1987- (re-elected 1990)
Mr M.D.SPARSIS (Cyprus):	1987- (re-elected 1988)
Mr P.TEXIER (France):	1987- (re-elected 1988)
Mr J.WIMER ZAMBRANO (Mexico):	1987- (re-elected 1990)

PREVIOUS MEMBERS

Mr I.BADAWI EL SHEIKH (Egypt):	1987-1990.
Mr A.DAOUDI (Syrian Arab Republic):	1987-1988.(resigned)
Mr S.GLAIEL (Syrian Arab Republic):	1989-1990.
Mr E.P.SVIRIDOV (U.S.S.R.):	1987-1988.(resigned)
Ms C.TAYA (Japan):	1987-1990.

APPENDIX IV

GENERAL COMMENT No.1 (1989)

Reporting by States Parties

1. The reporting obligations which are contained in part IV of the Covenant are designed principally to assist each State party in fulfilling its obligations under the Covenant and, in addition, to provide a basis on which the Council, assisted by the Committee, can discharge its responsibilities for monitoring States parties' compliance with their obligations and for facilitating the realisation of economic, social and cultural rights in accordance with the provisions of the Covenant. The Committee considers that it would be incorrect to assume that reporting is essentially only a procedural matter designed solely to satisfy each State party's formal obligation to report to the appropriate international monitoring body. On the contrary, in accordance with the letter and spirit of the Covenant, the processes of preparation and submission of reports by States can, and indeed should, serve to achieve a variety of objectives.

2. A first objective, which is of particular relevance to the initial report required to be submitted within two years of the Covenant's entry into force for the State party concerned, is to ensure that a comprehensive review is undertaken with respect to national legislation, administrative rules and procedures, and practices in an effort to ensure the fullest possible conformity with the Covenant. Such a review might, for example, be undertaken in conjunction with each of the relevant national ministries or other authorities responsible for policy-making and implementation in the different fields covered by the Covenant.

3. A second objective, is to ensure that the State party monitors the actual situation with respect to each of the rights on a regular basis and is thus aware of the extent to which the various rights are, or are not, being enjoyed by all individuals within the territory or under its jurisdiction. From the Committee's experience to date, it is clear that the fulfilment of this objective cannot be achieved only by the preparation of aggregate national statistics or estimates, but also requires that special attention be given to any worse-off regions or areas and to any specific groups or subgroups which appear to be particularly vulnerable or disadvantaged. Thus, the essential first step towards promoting the realisation of economic, social and cultural rights is diagnosis and knowledge of the existing situation. The

Committee is aware that this process of monitoring and gathering information is a potentially time-consuming and costly one and that international assistance and co-operation, as provided for in article 2, paragraph 1 and articles 22 and 23 of the Covenant, may well be an integral part of any process designed to promote accepted goals of public policy and is indispensable to the effective implementation of the Covenant, it may note that this fact in its report to the Committee and indicate the nature and extent of any international assistance that it may need.

4. While monitoring is designed to give a detailed overview of the existing situation, the principal value of such an overview is to provide the basis of the elaboration of clearly stated and carefully targeted policies, including the establishment of priorities which reflect the provisions of the Covenant. Therefore, a third objective of the reporting process is to enable the Government to demonstrate that such principled policy-making has in fact been undertaken. While the Covenant makes this obligation explicit only in article 14 in cases where "compulsory primary education, free of charge" has not yet been secured for all, a comparable obligation "to work out and adopt a detailed plan of action for the progressive implementation" of each of the rights contained in the Covenant is clearly implied by the obligation in article 2, paragraph 1 "to take steps... by all appropriate means..."

5. A fourth objective of the reporting process is to facilitate public scrutiny of government policies with respect to economic, social and cultural rights and to encourage the involvement of the various economic, social and cultural sectors of society in the formulation, implementation and review of the relevant policies. In examining reports submitted to it to date, the Committee has welcomed the fact that a number of States parties, reflecting different political and economic systems, have encouraged inputs by such non-governmental groups into the preparation of their reports under the Covenant. Other States have ensured the widespread dissemination of their reports with a view to enabling comments to be made by the public at large. In these ways, the preparation of the report, and its consideration at the national level can come to be of at least as much value as the constructive dialogue conducted at the international level between the Committee and representative of the reporting State.

6. A fifth objective is to provide a basis on which the State party itself, as well as the Committee, can effectively evaluate the extent to which progress has been made towards the realisation of the obligations contained in the Covenant. For this purpose, it may be useful for States

to identify specific bench-marks or goals against which their performance in a given area can be assessed. Thus, for example, it is generally agreed that it is important to set specific goals with respect to the reduction of infant mortality, the extent of vaccination of children, the intake of calories per person, the number of persons per health care provider, etc. In many of these areas, global bench-marks are of limited use, whereas national or other more specific bench-marks can provide and extremely valuable indication of progress.

7. In this regard, the Committee wishes to note that the Covenant attaches particular importance to the concept of "progressive realisation" of the relevant rights and, for that reason, the Committee urges States parties to include in their periodic reports information which shows the progress over time, with respect to the effective realisation of the relevant rights. By the same token, it is clear that qualitative, as well as quantitative, data are required in order for an adequate assessment of the situation to be made.

8. A sixth objective is to enable the State party itself to develop a better understanding of the problems and shortcomings encountered in efforts to realise progressively the full range of economic, social and cultural rights. For this reason, it is essential that States parties report in detail on the "factors and difficulties" inhibiting such realisation. This process of identification and recognition of the relevant difficulties then provides the framework within which more appropriate policies can be devised.

9. A seventh objective is to enable the Committee, and the States parties as a whole, to facilitate the exchange of information among States and to develop a better understanding of the common problems faced by States and a fuller appreciation of the type of measures which might be taken to promote effective realisation of each of the rights contained in the Covenant. This part of the process also enables the Committee to identify the most appropriate means by which the international community might assist States, in accordance with articles 22 and 23 of the Covenant. In order to underline the importance which the Committee attaches to this objective, a separate general comment on those articles will be discussed by the Committee at its fourth session.

GENERAL COMMENT No.2 (1990)

International Technical Assistance Measures (Article 22 of the Covenant)

1. Article 22 of the Covenant establishes a mechanism by which the Economic and Social Council may bring to the attention of relevant United Nations bodies any matters arising out of reports submitted under the Covenant "which may assist such bodies in deciding, each within the field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the... Covenant". While the primary responsibility under Article 22 is vested in the Council, it is clearly appropriate for the Committee on Economic, Social and Cultural Rights to play an active role in advising and assisting the Council in this regard.
2. Recommendations in accordance with Article 22 may be made to any "organs of the United Nations, their subsidiary organs and specialised agencies concerned with furnishing technical assistance". The Committee considers that this provision should be interpreted so as to include virtually all United Nations organs and agencies involved in any aspect of international development co-operation. It would therefore be appropriate for recommendations in accordance with Article 22 to be addressed, *inter alia*, to the Secretary-General, subsidiary organs of the Council such as the Commission on the Status of Women, other bodies such as UNDP, UNICEF and CDP, agencies such as the World Bank and IMF, and any of the other specialised agencies such as ILO, FAO, UNESCO and WHO.
3. Article 22 could lead either to recommendations of a general policy nature or to more narrowly focused recommendations relating to a specific situation. In the former context, the principal role of the Committee would seem to be to encourage greater attention to efforts to promote economic, social and cultural rights within the framework of international development co-operation activities undertaken by, or with the assistance of, the United Nations and its agencies. In this regard the Committee notes that the Commission on Human Rights, in its resolution 1989/13 of 2 March 1989, invited it "to give consideration to means by which the various United Nations agencies working in the field of development could best integrate measures designed to promote full respect for economic, social and cultural rights in their activities".
4. As a preliminary practical matter, the Committee notes that its own endeavours would be assisted, and the relevant agencies would also be

better informed, if they were to take a greater interest in the work of the Committee. While recognising that such an interest can be demonstrated in a variety of ways, the Committee observes that attendance by representatives of the appropriate United Nations bodies at its first four sessions has, with the notable exceptions of ILO, UNESCO and WHO, been very low. Similarly, pertinent materials and written information had been received from only a very limited number of agencies. The Committee considers that a deeper understanding of the relevance of economic, social and cultural rights in the context of international development co-operation activities would be considerably facilitated through greater interaction between the Committee and the appropriate agencies. At the very least, the day of general discussion on a specific issue, which the Committee undertakes at each of its sessions, provides an ideal context in which a potentially productive exchange of views can be undertaken.

5. On the broader issues of the promotion of respect for human rights in the context of development activities, the Committee has so far seen only rather limited evidence of specific efforts by United Nations bodies. It notes with satisfaction in this regard the initiative taken jointly by the Centre for Human Rights and UNDP in writing to United Nations Resident Representatives and other field-based officials, inviting their "suggestions and advice, in particular with respect to possible forms of co-operation in on-going projects [identified] as having a human-rights dimension or in new ones in response to a specific Government's request". The Committee has also been informed of longstanding efforts undertaken by ILO to link its own human rights and other international labour standards to its technical co-operation activities.

6. With respect to such activities, two general principles are important. The first is that the two sets of human rights are indivisible and interdependent. This means that efforts to promote one set of rights should also take full account of the other. United Nations agencies involved in the promotion of economic, social and cultural rights should do their utmost to ensure that their activities are fully consistent with the enjoyment of civil and political rights. In negative terms this means that the international agencies should scrupulously avoid involvement in projects which, for example, involve the use of forced labour in contravention of international standards, or promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. In positive terms, it means that, wherever possible, the

agencies should act as advocates of projects and approaches which contribute not only to economic growth or other broadly-defined objectives, but also to enhanced enjoyment of the full range of human rights.

7. The second principle of general relevance is that development co-operation activities do not automatically contribute to the promotion of respect for economic, social and cultural rights. Many activities undertaken in the name of "development" have subsequently been recognised as ill-conceived and even counter-productive in human rights terms. In order to reduce the incidence of such problems, the whole range of issues dealt with in the Covenant should, wherever possible and appropriate, be given specific and careful consideration.

8. Despite the importance of seeking to integrate human rights concerns into development activities, it is true that proposals for such integration can too easily remain at a level of generality. Thus, in an effort to encourage the operationalisation of the principle contained in article 22 of the Covenant, the Committee wishes to draw attention to the following specific measures which merit consideration by the relevant bodies:

(a) As a matter of principle, the appropriate United Nations organs and agencies should specifically recognise the intimate relationship which should be established between development activities and efforts to promote respect for human rights in general, and economic, social and cultural rights in particular. The Committee notes in this regard the failure of each of the first three United Nations Development Decade Strategies to recognise that relationship and urges that the fourth such strategy, to be adopted in 1990, should rectify that omission;

(b) Consideration should be given by United Nations agencies to the proposal, made by the Secretary-General in a report of 1979,¹ that a "human rights impact statement" be required to be prepared in connection with all major development co-operation activities;

¹ "The international dimensions of the right to development as a human right in relation to other human rights based on international co-operation, including the right to peace, taking into account the requirements of the new international economic order and the fundamental human needs" (E/CN.4/1334, para.314).

(c) The training of briefing given to project and other personnel employed by United Nations agencies should include a component dealing with human rights standards and principles.

(d) Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenants are duly taken into account. This would apply, for example, in the initial assessment of the priority needs of a particular country, in the identification of particular projects, in project design, in the implementation of the project, and in its final evaluation.

9. A matter which has been of particular concern to the Committee in the examination of the reports of States parties is the adverse impact of the debt burden and of the relevant adjustment measures on the enjoyment of economic, social and cultural rights in many countries. The Committee recognises that adjustment programmes will often be unavoidable and that these will frequently involve a major element of austerity. Under such circumstances, however, endeavours to protect the most basic economic, social and cultural rights become more, rather than less, urgent. States parties to the Covenant, as well as the relevant United Nations agencies, should thus make a particular effort to ensure that such protection is, to the maximum extent possible, built-in to programmes and policies designed to promote adjustment. Such an approach, which is sometimes referred to as "adjustment with a human face" or as promoting "the human dimension of development" requires that the goal of protecting the rights of the poor and vulnerable should become a basic objective of economic adjustment. Similarly, international measures to deal with the debt crisis should take full account of the need to protect economic, social and cultural rights through, *inter alia*, international co-operation. In many situations, this might point to the need for major debt relief initiatives.

10. Finally, the Committee wishes to draw attention to the important opportunity provided to States parties, in accordance with article 22 of the Covenant, to identify in their reports any particular needs they might have for technical assistance or development co-operation.

GENERAL COMMENT No.3 (1990)

The Nature of States Parties Obligations (art.2, para.1 of the Covenant)

1. Article 2 is of particular importance to a full understanding of the Covenant and must be seen as having a dynamic relationship with all of the other provisions of the Covenant. It describes the nature of the general legal obligations undertaken by States parties to the Covenant. Those obligations include both what may be termed (following the work of the International Law Commission) obligations of conduct and obligations of result. While great emphasis has sometimes been placed on the difference between the formulations used in this provision and that contained in the equivalent article 2 of the International Covenant on Civil and Political Rights, it is not always recognised that there are also significant similarities. In particular, while the Covenant provides for progressive realisation and acknowledges the constraints due to the limits of available resources, it also imposes various obligations which are of immediate effect. Of these, two are of particular importance in understanding the precise nature of States parties obligations. One of these, which is dealt with in a separate General Comment, and which is to be considered by the Committee at its sixth session, is the "undertaking to guarantee" that relevant rights "will be exercised without discrimination...".

2. The other is the undertaking in article 2(1) "to take steps", which in itself, is not qualified or limited by other considerations. The full meaning of the phrase can also be gauged by noting some of the different language versions. In English the undertaking is "to take steps", in French it is "to act" ("s'engage à agir") and in Spanish it is "to adopt measures" ("a adoptar medidas"). Thus while the full realisation of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognised in the Covenant.

3. The means which should be used in order to satisfy the obligation to take steps are stated in article 2(1) to be "all appropriate means, including particularly the adoption of legislative measures". The Committee recognises that in many instances legislation is highly desirable and in some cases may even be indispensable. For example, it may be difficult to combat discrimination effectively in the absence of a sound legislative foundation for the necessary measures. In fields such as health, the protection of children and mothers, and education, as well

as in respect of the matters dealt with in articles 6 to 9, legislation may also be an indispensable element for many purposes.

4. The Committee notes that States parties have generally been conscientious in detailing at least some of the legislative measures that they have taken in this regard. It wishes to emphasise, however, that the adoption of legislative measures, as specifically foreseen by the Covenant, is by no means exhaustive of the obligations of States parties. Rather, the phrase "by all appropriate means" must be given its full and natural meaning. While each State party must decide for itself which means are the most appropriate under the circumstances with respect to each of the rights, the "appropriateness" of the means chosen will not always be self-evident. It is therefore desirable that States parties reports should indicate not only the measures that have been taken but also the basis on which they are considered to be the most "appropriate" under the circumstances. However, the ultimate determination as to whether all appropriate measures have been taken remains one for the Committee to make.

5. Among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable. The Committee notes, for example, that the enjoyment of the rights recognised, without discrimination, will often be appropriately promoted, in part, through the provision of judicial or other effective remedies. Indeed, those States parties which are also parties to the International Covenant on Civil and Political Rights are already obligated (by virtue of arts. 2 (paras. 1 and 3) 3 and 26 of that Covenant) to ensure that any person whose rights or freedoms (including the right to equality and non-discrimination) recognised in that Covenant are violated, "shall have an effective remedy" (art. 2 (3) (a)). In addition, there are a number of other provisions in the International Covenant on Economic, Social and Cultural Rights, including articles 3, 7(a)(i), 8, 10(3), 13(2)(a), (3) and (4) and 15(3) which would seem to be capable of immediate application by judicial and other organs in many national legal systems. Any suggestion that the provisions indicated are inherently non-self-executing would seem to be difficult to sustain.

6. Where specific policies aimed directly at the realisation of the rights recognised in the Covenant have been adopted in legislative form, the Committee would wish to be informed, *inter alia*, as to whether such laws create any right of action on behalf of individuals or groups who feel that their rights are not being fully realised. In cases where

constitutional recognition has been accorded to specific economic, social and cultural rights, or where the provisions of the Covenant have been incorporated directly into national law, the Committee would wish to receive information as to the extent to which these rights are considered to be justiciable (i.e. able to be invoked before the courts). The Committee would also wish to receive specific information as to any instances in which existing constitutional provisions relating to economic, social and cultural rights have been weakened or significantly changed.

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

8. The Committee notes that the undertaking "to take steps... by all appropriate means including particularly the adoption of legislative measures" neither requires nor precludes any particular form of government or economic system being used as the vehicle for the steps in question, provided only that it is democratic and that all human rights are thereby respected. Thus, in terms of political and economic systems the Covenant is neutral and its principles cannot accurately be described as being predicated exclusively upon the need for, or the desirability of a, socialist or a capitalist system, or a mixed, centrally planned, or *laissez-faire* economy, or upon any other particular approach. In this regard, the Committee reaffirms that the rights recognised in the Covenant are susceptible of realisation within the context of a wide variety of economic and political systems, provided only that the interdependence and indivisibility of the two sets of human rights, as affirmed *inter alia* in the preamble to the Covenant, is recognised and reflected in the system in question. The Committee also notes the relevance in this regard of other human rights and in particular the right to development.

9. The principal obligation of result reflected in article 2(1) is to take steps "with a view to achieving progressively the full realisation of the rights recognised" in the Covenant. The term "progressive realisation" is often used to describe the intent of this phrase. The concept of progressive realisation constitutes a recognition of the fact that full realisation of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. In this sense the obligation differs significantly from that contained in article 2 of the International Covenant on Civil and Political Rights which embodies an immediate obligation to respect and ensure all of the relevant rights. Nevertheless, the fact that realisation over time, or in other words

progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realisation of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the *raison d'être*, of the Covenant which is to establish clear obligations for States parties in respect of the full realisation of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.

10. On the basis of the extensive experience gained by the Committee, as well as by the body that preceded it, over a period of more than a decade of examining States parties reports the Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'être*. By the same token, it must be noted that any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned. Article 2(1) obligates each State party to take the necessary steps "to the maximum of its available resources". In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.

11. The Committee wishes to emphasise, however, that even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. Moreover, the obligations to monitor the extent of the realisation, or more especially of the non-realisation, of economic, social and cultural rights, and to devise strategies and programmes for their promotion, are not in any

way eliminated as a result of resource constraints. The Committee has already dealt with these issues in its General Comment No.1 (1989).

12. Similarly, the Committee underlines the fact that even in times of severe resource constraints whether caused by a process of adjustment, of economic recession, or by other factors the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes. In support of this approach the Committee takes note of the analysis prepared by UNICEF entitled "Adjustment With a Human Face: Protecting the Vulnerable and Promoting Growth",² the analysis by UNDP in its Human Development Report 1990³ and the analysis by the World Bank in the World Development Report 1990.⁴

13. A final element of article 2(1), to which attention must be drawn, is that the undertaking given by all States parties is "to take steps, individually and through international assistance and co-operation, especially economic and technical...". The Committee notes that the phrase "to the maximum of its available resources" was intended by the drafters of the Covenant to refer to both the resources existing within a State and those available from the international community through international co-operation and assistance. Moreover, the essential role of such co-operation in facilitating the full realisation of the relevant rights is further underlined by the specific provisions contained in articles 11, 15, 22 and 23. With respect to article 22 the Committee has already drawn attention, in General Comment No.2 (1990), to some of the opportunities and responsibilities that exist in relation to international co-operation. Article 23 also specifically identifies "the furnishing of technical assistance" as well as other activities, as being among the means of "international action for the achievement of the rights recognised...".

14. The Committee wishes to emphasise that in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international co-operation for development and thus for the realisation of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a

² Cornia G., Jolly R. and Stewart F.(eds), (Oxford: Clarendon Press, 1987).

³ Oxford, Oxford University Press, 1990.

⁴ Oxford, Oxford University Press, 1990.

position to assist others in this regard. The Committee notes in particular the importance of the Declaration on the Right to Development adopted by the General Assembly in its resolution 41/128 of 4 December 1986 and the need for States parties to take full account of all of the principles recognised therein. It emphasises that, in the absence of an active programme of international assistance and co-operation on the part of all those States that are in a position to undertake one, the full realisation of economic, social and cultural rights will remain an unfulfilled aspiration in many countries. In this respect, the Committee also recalls the terms of its General Comment No.2 (1990).

GENERAL COMMENT No.4 (1991)

The Right to Adequate Housing (Article 11(1) of the Covenant)

1. Pursuant to article 11(1) of the Covenant, States parties "recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions". The human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.

2. The Committee has been able to accumulate a large amount of information pertaining to this right. Since 1979, the Committee and its predecessors have examined 75 reports dealing with the right to adequate housing. The Committee has also devoted a day of general discussion to the issues at each of its third (see E/1989/22, para.312) and fourth sessions (E/1923, paras.281-285). In addition, the Committee has taken careful note of information generated by the International Year of Shelter for the Homeless (1987) including the Global Strategy for Shelter to the Year 2000 adopted by the General Assembly in its resolution 42/191 of 11 December 1987.⁵ The Committee has also reviewed the relevant reports and other documentation of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities.⁶

3. Although a wide variety of international instruments address the different dimensions of the right to adequate housing⁷ article 11(1) of

⁵ Official Records of the General Assembly, Forty-third Session, Supplement No.8, addendum (A/43/8/Add.1).

⁶ Commission on Human Rights resolutions 1986/36 and 1987/22; reports by Mr Danilo Türk, Special Rapporteur of the Subcommission (E/CN.4/Sub.2/1990/19, paras. 108-120; E/CN.4/Sub.2/1991/17, paras. 137-139); see also Subcommission resolution 1991/26.

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

the Covenant is the most comprehensive and perhaps the most important of the relevant provisions.

4. Despite the fact that the international community has frequently reaffirmed the importance of full respect for the right to adequate housing, there remains a disturbingly large gap between the standards set in article 11(1) of the Covenant and the situation prevailing in many parts of the world. While the problems are often particularly acute in some developing countries which confront major resource and other constraints, the Committee observes that significant problems of homelessness and inadequate housing also exist in some of the most economically developed societies. The United Nations estimates that there are over 100 million persons homeless worldwide and over 1 billion inadequately housed.⁸ There is no indication that this number is decreasing. It seems clear that no State party is free of significant problems of one kind or another in relation to the right to housing.

5. In some instances, the reports of States parties examined by the Committee have acknowledged and described difficulties in ensuring the right to adequate housing. For the most part, however, the information provided has been insufficient to enable the Committee to obtain an adequate picture of the situation prevailing in the State concerned. This General Comment thus aims to identify some of the principal issues which the Committee considers to be important in relation to this right.

6. The right to adequate housing applies to everyone. While the reference to "himself and his family" reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitations upon the applicability of the right to individuals or to female-headed households or other such groups. Thus, the concept of "family" must be understood in a wide sense. Further, individuals, as well as families are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2(2) of the Covenant, not be subject to any form of discrimination.

Development and the ILO Recommendation Concerning Workers' Housing, 1961 (No.115).

⁸ See footnote 1.

7. In the Committee's view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. Thus "the inherent dignity of the human person" from which the rights in the Covenant are said to derive requires that the term "housing" be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in article 11(1) must be read as referring not just to housing but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: "Adequate shelter means... adequate privacy, adequate privacy, adequate space, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities- all at a reasonable cost".

8. Thus the concept of adequacy is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute "adequate housing" for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following:

(a) Legal Security of Tenure. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;

(b) Availability of Services, Materials, Facilities and Infrastructure. An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;

(c) Affordability. Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials;

(d) Habitability. Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the Health Principles of Housing⁹ prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;

(e) Accessibility. Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs

⁹ Geneva, World Health Organisation, 1990.

of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement;

(f) Location. Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants;

(g) Cultural Adequacy. The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernisation in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, *inter alia*, modern technological facilities, as appropriate are also ensured.

9. As noted above, the right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments. Reference has already been made in this regard to the concept of human dignity and the principle of non-discrimination. In addition, the full enjoyment of other right- such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom of residence and the right to participate in public decision-making- is indispensable if the right to adequate housing is to be realised and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing.

10. Regardless of the state of development of any country, there are certain steps which must be taken immediately. As recognised in the Global Strategy for Shelter and in other international analyses, many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices and a commitment to facilitate "self-help" by affected groups. To the extent that any such steps are considered to be beyond the maximum resources

available to a State party, it is appropriate that a request be made as soon as possible for international cooperation in accordance with articles 11(1), 22 and 23 of the Covenant, and that the Committee be informed thereof.

11. States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others. The Committee is aware that external factors can affect the right to a continuous improvement of living conditions, and that in many States parties overall living conditions declined during the 1980s. However, as noted by the Committee in its General Comment No.2 (1990) (E/1990/23, annex III), despite externally caused problems, the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant.

12. While the most appropriate means of achieving the full realisation of the right to adequate housing will inevitably vary significantly from one State party to another, the Covenant clearly requires that each State party take whatever steps are necessary for that purpose. This will almost invariably require the adoption of a national housing strategy which, as stated in paragraph 32 of the Global Strategy for Shelter, "defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals and the most cost-effective way of using them and sets out the responsibilities and time-frame for the implementation of the necessary measures". Both for reasons of relevance and effectiveness, as well as in order to ensure respect for other human rights, such a strategy should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives. Furthermore, steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations under article 11 of the Covenant.

13. Effective monitoring of the situation with respect to housing is another obligation of immediate effect. For a State party to satisfy its

obligations under article 11(1) it must demonstrate, *inter alia*, that it has taken whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of homelessness and inadequate housing within its jurisdiction. In this regard, the revised general guidelines regarding the form and contents of reports adopted by the Committee (E/C.12/1991/1) emphasise the need to "provide detailed information about those groups within... society that are vulnerable and disadvantaged with regard to housing". They include, in particular, homeless persons and families, those inadequately housed and without ready access to basic amenities, those living in "illegal" settlements, those subject to forced evictions and low-income groups.

14. Measures designed to satisfy a State party's obligations in respect of the right to adequate housing may reflect whatever mix of public and private sector measures considered appropriate. While in some States public financing of housing might most usefully be spent on direct construction of new housing, in most cases, experience has shown the inability of Governments to fully satisfy housing deficits with publicly built housing. The promotion by States parties of "enabling strategies", combined with a full commitment to obligations under the right to adequate housing, should thus be encouraged. In essence, the obligation is to demonstrate that, in aggregate, the measures being taken are sufficient to realise the right for every individual in the shortest possible time in accordance with the maximum of available resources.

15. Many of the measures that will be required will involve resource allocations and policy initiatives of a general kind. Nevertheless, the role of formal legislative and administrative measures should not be underestimated in this context. The Global Strategy for Shelter (paras.66-67) has drawn attention to the types of measures that might be taken in this regard and to their importance.

16. In some States, the right to adequate housing is constitutionally entrenched. In such cases the Committee is particularly interested in learning of the legal and practical significance of such an approach. Details of specific cases and of other ways in which entrenchment has proved helpful should thus be provided.

17. The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to: (a) legal appeals aimed at preventing planned evictions or demolitions through the issuance o

court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (d) allegations of any form of discrimination in the allocation and availability of access to housing; and (e) complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness.

18. In this regard, the Committee considers that instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.

19. Finally, article 11(1) concludes with the obligation of States parties to recognise "the essential importance of international cooperation based on free consent". Traditionally, less than 5 per cent of all international assistance has been directed towards housing or inhuman settlements, and often the manner by which such funding is provided does little to address the housing needs of disadvantaged groups. States parties, both recipients and providers, should ensure that a substantial proportion of financing is devoted to creating conditions leading to a higher number of persons being adequately housed. International financial institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing. States parties should, when contemplating international financial cooperation, seek to indicate areas relevant to the right to adequate housing where external financing would have the most effect. Such requests should take full account of the needs and views of the affected groups.