

HR/PUB/91/1 (Rev.1)

OFFICE OF THE
HIGH COMMISSIONER
FOR HUMAN RIGHTS
Geneva

UNITED NATIONS
INSTITUTE FOR TRAINING
AND RESEARCH
(UNITAR)

UNITED NATIONS
STAFF COLLEGE
PROJECT
Turin

MANUAL ON HUMAN RIGHTS REPORTING

**UNDER SIX MAJOR INTERNATIONAL
HUMAN RIGHTS INSTRUMENTS**

UNITED NATIONS
Geneva, 1997

DISCLAIMER

The designation employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

Copyright © United Nations, 1997
All rights reserved

UNITED NATIONS PUBLICATION
<i>Sales No. GV.E.97.0.16</i>
ISBN 92-1-100752-6

TABLE OF CONTENTS

FOREWORD	ix
ABBREVIATIONS.....	xiii

INTRODUCTION

THE INTERNATIONAL SYSTEM OF HUMAN RIGHTS: AN OVERVIEW <i>By Theo Van Boven</i>	3
(a) The scope of human rights.....	4
(b) Categories of human rights.....	5
(c) Human rights in relation to peace and development	7
(d) Inventory of human rights instruments.....	9
(e) Supervisory procedures	11

PART ONE: GENERAL ASPECTS

THE PURPOSES OF REPORTING <i>By Philip Alston</i>	19
(a) The evolution of reporting procedures.....	19
(b) Making the most of reporting	20
(c) The functions served by reporting	21
(d) Concluding comments	24

THE PREPARATION AND DRAFTING OF A NATIONAL REPORT <i>By Cecil Bernard and Petter Wille</i>	25
(a) The need for a political commitment	25
(b) The reality of limited resources	26
(c) Adequate organization and co-ordination	27
(d) The burden of reporting.....	29
(e) The contribution of non-governmental organizations	33
(f) The drafting process	35

NATIONAL REPORTS: THEIR SUBMISSION TO EXPERT BODIES AND FOLLOW-UP	
<i>By Fausto Pocar, Cecil Bernard and Petter Wille</i>	37
(a) Forms of presentation and adequate representation	37
(b) Consideration of reports by international human rights bodies	39
(c) The essence of dialogue	40
(d) Necessary follow-up actions	41
(e) The role of non-governmental organizations	43
HUMAN RIGHTS INFORMATION AND DOCUMENTATION	
<i>By Laurie S. Wiseberg</i>	45
1. The Role of Information and Documentation	45
2. Why Devote Resources to Information Gathering and Analysis?	46
3. Practical Aspects of Collection and Analysis of Human Rights Information	48
4. Creating an Information Management System	55
5. Conclusion	57
Annex: Consolidated Guidelines for the Initial Part of the Reports of States Parties	59
 PART TWO: HUMAN RIGHTS REPORTING UNDER SIX MAJOR INTERNATIONAL HUMAN RIGHTS INSTRUMENTS	
THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS	
<i>By Philip Alston</i>	65
A. The reporting process	65
B. Consideration of the reports by the Committee on Economic, Social and Cultural Rights	154
C. Periodic Reports	169
 THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS	
<i>by Fausto Pocar</i>	171
A. The reporting process	171
B. Consideration of reports by the Human Rights Committee	260

THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION	
<i>by Luis Valencia Rodriguez</i>	267
A. The reporting process.....	267
B. Consideration of reports by the Committee on the Elimination of Racial Discrimination	293
C. Periodic Reports: The Key Issues	303
THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN	
<i>by Zagorka Ilic and Ivanka Corti</i>	305
A. The reporting process.....	305
B. Considerations of reports by the Committee on the Elimination of Discrimination Against Women	353
THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT	
<i>by Joseph Voyame and Peter Burns</i>	367
A. The reporting process.....	367
B. Consideration of reports by the Committee Against Torture	386
C. The Committee's investigative function pursuant to Article 20 of the Convention	391
THE CONVENTION ON THE RIGHTS OF THE CHILD	
<i>by Marta Santos Pais</i>	393
A. The reporting process.....	393
B. Consideration of reports by the Committee on the Rights of the Child.....	491
C. Periodic reports.....	503
RELATED ARTICLES IN THE SIX MAJOR INTERNATIONAL HUMAN RIGHTS INSTRUMENTS	505
BIBLIOGRAPHY	511
NOTES ON CONTRIBUTORS	519
ANNEX 1: Report-writing procedures within the ILO	521

FOREWORD

The main purpose of this Manual is to serve as a practical tool for government officials in the preparation and submission of reports required under the United Nations' international human rights treaties.

The Manual places the reporting process within the framework of both domestic policy-making and a government's international accountability on human rights issues. It thus intends to assist States Parties in monitoring and implementing international human rights standards.

The requirement to submit periodic reports to supervisory bodies is a common feature of all the major human rights treaties. Reporting is at the heart of the international supervision of the domestic implementation of treaty obligations. A crucial element for the proper functioning of the process is the submission of timely and comprehensive reports by States Parties. In facilitating the preparation of such reports, the Manual aims to enhance the functioning of the reporting process.

It is hoped that the Manual will prove useful not only as a guide for reporting officers in the preparation of human rights reports, but also as a means for strengthening the respect for and enjoyment of human rights in States Parties to international human rights treaties.

Given its purpose, the Manual familiarizes reporting officers with reporting under six major international human rights treaties, namely the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention of the Right of the Child. Two international instruments: the International Convention on the Suppression and Punishment of the Crime of Apartheid and the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families are not dealt with in this Manual. The operation of the former Convention was suspended by the United Nations Commission on Human Rights in 1995 upon the establishment of a democratically elected government in South Africa. The latter Convention was adopted by the General Assembly resolution 45/158 of 18 December 1990, but has not yet entered into force.

The introduction to the Manual provides an overview of the essential concepts on the current human rights agenda, and the basis and framework for the reporting process. The four chapters of Part One deal with various stages and aspects of reporting. Chapter I, on the purposes of reporting, discusses the opportunities offered and functions served by report-

ing. Chapter II covers issues related to proper planning and co-ordination of the preparatory work, and provides some practical suggestions in this regard. Chapter III discusses the format and purpose of the dialogue between the expert bodies and representatives of the reporting State, and necessary follow-up activities. Chapter IV on human rights information and documentation provides practical ideas for the identification, organization and analysis of sources of information. The possible role and contribution of non-governmental groups to the reporting process is addressed repeatedly throughout Part One of the Manual.

Part Two of the Manual consists of six chapters dealing with the above-mentioned conventions. Each chapter follows a similar structure. The first section of each chapter discusses the reporting process and requirements under the respective treaty. By presenting articles of the convention, general guidelines and General Comments or Recommendations, as appropriate, adopted by the supervisory body, and the author's commentary, this section is intended to deepen the understanding of the reporting officers regarding the substantive provisions of the convention. At the same time, this section should guide the reporting officers in assembling the information required under each article. The second section of each chapter reviews the procedure followed by the treaty monitoring body in the consideration of reports, and outlines the follow-up required to implement further the convention at national level. It provides the reporting officers with insights into the functions and procedures of the supervisory body. The third section highlights the key issues of periodic reporting.

When using the Manual for the purpose of preparing a report under any of the six conventions dealt with in Part Two, reporting officers should endeavour to study carefully the introduction and Part One of the Manual. These chapters address issues important to the reporting process itself. They are therefore complementary and relevant to each of the six chapters of Part Two. They also provide practical ideas and suggestions on how to cope with the task of reporting.

The bibliography annexed to the Manual is intended to assist in assembling a human rights library for the purpose of reporting.

The authors have contributed to the Manual in their personal capacities. The editorial work was carried out by the Board of Editors, consisting of the following individuals: Professor Philip Alston; Professor Theo van Boven, Cecil Bernard; Hans Geiser, Enayat Houshmand, and Professor Fausto Pocar. The technical and substantive editing of the Revised Manual was undertaken by Enayat Houshmand, former Director of the Implementation of International Instruments and Procedures Branch of the United Nations' Centre for Human Rights.

The annex to the Manual titled “Report-writing procedures within the ILO”, written by Mr. Alessandro Chiarabini, Programme Manager of International Labour Standards and Human Rights, at the International Training Centre of the ILO, gives a general overview on the control system about the application of International Labour Standards and underlines the interaction with Human Rights Reporting procedures within the framework of the United Nations.

The Board of Editors would like to express its gratitude to Ms. Adelina Guastavi, of the International Training Centre of the ILO, who was responsible for coordinating the revision of the Manual.

The Board of Editors

PREFACE

The promotion of the respect for human rights is one of the essential purposes of the United Nations. The commitment to “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”, as stated in the Charter of the United Nations, has guided the Organization in its efforts towards setting and implementing standards in the area of international human rights.

The system of periodic reporting established within the context of all major international human rights instruments is the central element in monitoring the full and effective national implementation of international human rights standards. The reports submitted to independent expert bodies are expected to provide comprehensive information on the measures taken by a government to fulfil its commitments resulting from the ratification of or accession to a particular human rights convention. The reporting procedure establishes a government’s international accountability with regard to its human rights responsibilities.

As a consequence of the entry into force of an increasing number of instruments requiring States Parties to submit periodic reports and of a growing number of States becoming parties to more than one instrument with reporting obligations, it was noted that an ever-larger number of reports was not submitted on time, or did not comply with the guidelines issued by the treaty bodies established to consider the reports.

The Manual on Human Rights Reporting, published jointly by the Centre for Human Rights and UNITAR in 1992, has its origins in a series of training courses on human rights reporting for government officials responsible for the preparation and drafting of reports required under international human rights treaties. These courses were organized in the past by UNITAR and, for the last three years, by the International Training Centre of the ILO in cooperation with the United Nations Centre for Human Rights. The Manual incorporates the experience and expertise gained during these courses.

At their fifth meeting, held at the United Nations Office in Geneva from 19 to 23 September 1994, the Chairpersons of human rights treaty bodies recommended that the *Manual on Human Rights Reporting* (HR/PUB/91/1) be revised, owing to the need to include a new chapter relating to the Convention on the Rights of the Child and the operation of the Committee on the Rights of the Child, as well as to reflect the numerous procedural and other changes that have been adopted by the various committees since its publication.

By its resolution 50/170 of 22 December 1995, the General Assembly requested the United Nations High Commissioner for Human Rights to ensure that the revision of the *Manual on Human Rights Reporting* be completed as soon as possible. Furthermore, in

its resolution 51/87 of 12 December 1996, the Assembly requested the High Commissioner to ensure that the revised Manual is made available in all official languages at the earliest opportunity.

The Ford Foundation of New York has provided financial support for the preparation and revision of this Manual. The UN Staff College Project and the Office of the High Commissioner for Human Rights wish to express their gratitude to the Foundation.

The UN Staff College Project and the Office of the High Commissioner for Human Rights are pleased to co-sponsor this Manual on human rights reporting under six international human rights instruments. In a comprehensive manner, the Revised Manual addresses all elements of relevance in the reporting process. It should provide valuable assistance to government officials in the preparation and submission of reports under international human rights instruments. The Manual is accompanied by a Trainer's Guide and a Pocket Guide designed to support experts and training facilitators in the organization and implementation of training activities, while the Pocket Guide contains the full text of the six human rights instruments in a user-friendly and easy to consult format.

The Manual on Human Rights Reporting, the Trainer's Guide, the Pocket Guide and the supporting documents together constitute the essential tools for an efficient implementation of training activities.

The UN Staff College Project and the Office of the High Commissioner for Human Rights are confident that these elements will contribute to an ever more effective functioning of the reporting system under these instruments.

INTRODUCTION

THE INTERNATIONAL SYSTEM OF HUMAN RIGHTS AN OVERVIEW

By Theo Van Boven

Ever since the end of the Second World War, promoting the respect for, and observance of, human rights and fundamental freedoms everywhere in the world has been a major concern of the international community. The United Nations has made a tremendous contribution to the promotion and protection of human rights, and its achievements in the area of standard-setting are without precedent. The full, truly universal and complete implementation of these standards, set forth in documents of different legal quality, is the challenge now faced by the family of nations.

This Manual deals with a specific and most important aspect of the promotion and protection of human rights, namely the international supervision of the implementation of legal norms and standards adhered to by the States Parties with a commitment of compliance. The reporting procedures contained in the major international instruments dealt with in this Manual strengthen the principle of international accountability of governments in the area of human rights.

This introductory chapter on the international system of human rights provides the frame of reference for the subsequent discussion of the general aspects of the reporting process, and of the procedures created under six major international human rights instruments. Its purpose for the user of this Manual is to facilitate access to international human rights law and to its concepts and mechanisms. Therefore, the following five aspects will be dealt with in this overview: First, the scope of human rights will be examined; secondly, a categorization of human rights is offered; thirdly, human rights will be brought in relation to peace and development; fourthly, an inventory of human rights will be made; and fifthly, the various international human rights procedures are summarized.

(a) The scope of human rights

The Charter of the United Nations makes repeated reference to human rights and fundamental freedoms. In the present context, two of them shall be quoted. The preamble states:

We the peoples of the United Nations determined... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small... .

The purposes of the United Nations are listed in Article 1 of the Charter, of which the third paragraph reads:

To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

The Charter of the United Nations does not further define the content of human rights. The framers of the Charter left this task to the Organization itself and it was decided that for this purpose an International Bill of Human Rights should be drawn up. What finally emerged was the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights and two Optional Protocols thereto, providing for the right of individual petition (1966), and aiming at the abolition of the death penalty (1989), which together form the five constituent parts of the International Bill of Human Rights. These texts can be considered the authoritative interpretation of the human rights clauses of the Charter of the United Nations.

While the human rights provisions of the Charter of the United Nations should be read in conjunction with the International Bill of Human Rights, the Charter provisions themselves shed considerable light on the scope of human rights in connection with the system of promotion and protection established by the United Nations. As the Charter puts it, the promotion and encouragement of respect for human rights and fundamental freedoms is an undertaking to be carried out **for all**. For too long human rights were, by and large, the attributes of privileged people. They represented an exclusive notion. Most people of coloured skin, female sex, non-Christian faith, or foreign stock were excluded from and deprived of the enjoyment of many human rights. As a matter of principle, the Charter brings all human beings within the scope of human rights and this notion is reinforced by

later international instruments, in particular the Universal Declaration of Human Rights. *Ratione personae* human rights are universal or all-inclusive.

A second characteristic of the Charter provisions on human rights is the emphasis on equality or non-discrimination, which is reflected in the words **without distinction as to race, sex, language, or religion**. This notion of equality or non-discrimination is closely connected with the concept of universality inasmuch as they mutually reinforce each other. The prevention and the elimination of discrimination has become a major objective in United Nations activities in the field of human rights. Numerous instruments were drawn up and a good number of supervisory mechanisms were devised with a view to combating discrimination, with particular emphasis on discrimination in the field of race, religion, and sex.

Thirdly, human rights are placed by the Charter in a system of **international cooperation**. This implies that national borders put no limits to human rights but that by their nature human rights represent transboundary values. The notion of international cooperation implies also that human rights are a matter of legitimate international concern and that whenever and wherever human rights are in serious jeopardy, the international community is entitled to raise such issues. And not least, international cooperation entails an obligation on the part of States to fulfil in good faith the undertakings they have assumed on the basis of the Charter of the United Nations and other relevant international instruments.

(b) Categories of human rights

Human rights can be classified into various categories. The most current distinction is that between **civil and political rights** on the one hand, and **economic, social and cultural rights** on the other. The Universal Declaration of Human Rights comprises these two major categories of human rights in one document. However, when the other component parts of the International Bill of Human Rights were elaborated, it was decided to split these two categories of human rights into two separate documents, an International Covenant on Civil and Political Rights, and an International Covenant on Economic, Social and Cultural Rights. The rationale for this division was that the two sets of rights differed in nature – one category of rights was subject to immediate application, whereas the other category required progressive realization – and therefore different implementation measures were called for.

It is, however, questionable whether a clear distinction can be made between civil and political rights and economic, social and cultural rights. At least there should be no misunderstanding that both Covenants entail legal undertakings on the part of States Parties. The preambles of both Covenants underline the conceptual interdependence of both catego-

ries of human rights by explicitly recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy their economic, social and cultural rights as well as their civil and political rights. Moreover, many United Nations pronouncements emphasize the **indivisibility and interdependence of all human rights**. Thus, for example, the Declaration on the Right to Development (1986) states:

All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.

In this overview, the broad range of human rights will not be spelled out in detail. By way of general indication it is recalled that among the civil and political rights are counted: the rights pertaining to the life, integrity, liberty and security of the human person; the rights with respect to the administration of justice; the right to privacy; the rights to freedom of religion or belief and to freedom of opinion and expression; freedom of movement, the right to assembly and association; and the right to political participation. Economic, social and cultural rights include: the right to work; trade union freedoms; the right to an adequate standard of living, including food, clothing and housing; the right to health care; the right to education; and the right to take part in cultural life.

All these rights are contained in the Universal Declaration of Human Rights, and are further defined in the subsequent component parts of the International Bill of Human Rights and in a number of more specific international instruments. They all confirm the notion already included in the Charter of the United Nations and reaffirmed in the Universal Declaration that all persons are entitled to these rights, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The significance and scope of this **principle of non-discrimination** is further highlighted by the provision contained in the Universal Declaration of Human Rights that all persons are equal before the law and are entitled without any discrimination to equal protection of the law.

Another distinction frequently referred to is that of **individual and collective rights**. In the International Bill of Human Rights many human rights are formulated in a way that makes the individual human being the main beneficiary: "Everyone has the right ...". Some human rights combine individual and collective aspects. For instance, freedom to manifest religion or belief can be exercised either individually or in community with others. With regard to other human rights, the collective aspects prevail. This applies for instance to the rights of the family and trade union freedoms. But there are also rights which by their very nature and their subject matter are rights of large collectivities. Cases in point are the rights

of minorities, comprising considerable numbers of persons with common ethnic, religious or linguistic ties, as well as people's rights. The latter include the right to self-determination, the right to development, the right to peace and security, and the right to a healthy environment. The right of peoples to self-determination is enshrined in Article 1 of both Covenants and reaffirmed by the World Conference on Human Rights in the Vienna Declaration and Programme of Action (1993); the right to development is spelled out in the Declaration on the Right to Development and is also reaffirmed in the Vienna Declaration and Programme of Action. It should be noted that human rights and peoples' rights are recognized in their dialectic relationship in the African Charter on Human and Peoples' Rights (1981). This document was the first human rights treaty to contain an enumeration of the rights of peoples.

(c) Human rights in relation to peace and development

Among the purposes of the United Nations, outlined in Article 1 of the Charter, the promotion and encouragement of human rights and fundamental freedoms rank prominently together with the maintenance of international peace and security, the development of friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and the achievement of international cooperation in solving international problems of an economic, social, cultural or humanitarian character. It is against this background that human rights should be viewed in relation to peace and development.

The Human Rights Committee, established under the International Covenant on Civil and Political Rights, and dealt with in the second part of this Manual, drew attention to the close link between human rights, in particular the right to life, and the prevention of war. The Committee stated that "...war and other acts of mass violence continue to be a scourge of humanity and take the lives of thousands of innocent human beings every year". The Committee further observed: "Every effort they (i.e., the States Parties) make to avert the danger of war, especially thermo-nuclear war, and to strengthen international peace and security would constitute the most important condition and guarantee for the safeguarding of the right to life". (General comment 6(16), see Part Two, Chapter II, of this Manual).

At the same time there are more dimensions to the relationship between human rights and peace, as was set out by the United Nations Secretary-General in his Agenda for Peace (1992). Peace is an essential pre-condition for the realization of human rights and fundamental freedoms. Whenever peaceful relations between human beings, groups of persons, peoples and nations are threatened, human rights tend to be jeopardized. Wars and armed conflicts cause *per se* flagrant and passive violations of human rights. On the other hand, under certain circumstances involving persistent patterns of gross violations of human rights, action in favour of human rights may in itself result in disturbing peaceful relations.

Many liberation struggles are human rights struggles and by implication this notion is well reflected in the preamble of the Universal Declaration of Human Rights:

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

Therefore, no peace can be sustained without justice and without respect for human rights.

Article 55 of the Charter of the United Nations spells out areas of international economic and social cooperation which, on the basis of Article 56 of the Charter, require joint and separate action by the Organization and its members. Among these areas of international cooperation are, in the words of Article 55, the promotion of:

- a. *higher standards of living, full employment, and conditions of economic and social progress and development;*
- b. *solutions of international economic, social, health and related problems, and international cultural and educational co-operation; and*
- c. *universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.*

Over the years the United Nations membership has sought to relate human rights to major global issues, in efforts to find solutions for human rights concerns affecting the millions of deprived, dispossessed, discriminated against, and marginalized. The approach, which is reflected in the Proclamation of Teheran (1968) and many subsequent documents, is also known as the **structural approach**. This approach proposes:

- to link human rights to major world-wide patterns and issues;
- to identify the root causes of human rights violations;
- to assess human rights in the light of concrete contexts and situations;
- to recognize the diversity of political and social systems, cultural and religious plurality, and different levels of development.

The structural approach to human rights is also clearly reflected in the Declaration on the Right to Development. This declaration places due emphasis on the central position of the human person in the development process and makes an important contribution to the conceptual link between human rights and development. At the same time, the Declaration can serve as a guide to national and international development policies. If taken seriously, the Declaration may be instrumental in:

- strengthening the relevance of human rights in the development process;
- recognizing the centrality of the human person and the human factor in development efforts;
- providing a sound political, legal, social and moral basis and rationale for development cooperation;
- serving as a yardstick in the development and human rights dialogue between developed and developing nations.

In this connection the World Conference on Human Rights stated in the Vienna Declaration and Programme of action that, while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights. The universal nature of these rights is beyond question.

(d) Inventory of human rights instruments

Probably the greatest accomplishment of the United Nations system in the field of human rights is the creation of a body of international human rights law as the product of many years of international legislative work. The main foundation of this international *corpus juris* is the International Bill of Human Rights with its five constituent parts. The 1994 edition of the Compilation of International Human Rights Instruments, published by the United Nations, lists no less than 95 texts of international conventions, declarations and other documents.

In an inventory of human rights instruments, various categories can be distinguished, viz.:

- general and special instruments;
- global and regional instruments;
- legally binding instruments (treaties) and other instruments.

General instruments usually comprise a wide range of human rights. Although these instruments are not part of the formal constitutions of international organizations and institutions, they are of a constitutional order in a broader sense and give content to the rule of law in the framework of the United Nations or of regional structures of international cooperation. The most prominent of these general instruments are:

- The Universal Declaration of Human Rights (1948)
- The International Covenants on Human Rights (1966)
- The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)
- The European Social Charter (1961)

- The American Declaration of the Rights and Duties of Men (1948)
- The American Convention on Human Rights (1969)
- The African Charter on Human and Peoples' Rights (1981)
- The Arab Charter of Human Rights (1994).

As far as the **special** instruments are concerned, the above-mentioned United Nations Compilation of International Human Rights Instruments makes a classification into the following categories:

- The right of self-determination
- Prevention of discrimination
- Rights of women
- Rights of the child
- Slavery, servitude, forced labour and similar institutions and practices
- Human rights in the administration of justice: protection of persons subjected to detention or imprisonment
- Freedom of information
- Freedom of association
- Employment
- Marriage and the family, childhood and youth
- Social welfare, progress and development
- Right to enjoy culture; international cultural development and cooperation
- Nationality, statelessness, asylum and refugees
- War crimes and crimes against humanity, including genocide
- Humanitarian law.

It is noticeable that in connection with the scope and content of special instruments, three objectives are of a particularly prominent nature, namely the elimination of discrimination, the protection of vulnerable persons and groups, and the fight against large-scale evil practices. Instruments with a view to combating racism and racial discrimination, discrimination against women, discrimination based on religion or belief, discrimination in employment, occupation and remuneration, and discrimination in education all rank high on the agenda. Refugees, women, children, workers, detainees and prisoners, the handicapped, indigenous people, migrant workers and their families, all form categories of persons whose rights and interests need special protection. Genocide, torture, slavery and other forms of human exploitation are evil practices that fall within the area of international crimes and crimes against humanity. Legal instruments have been drawn up specifically to combat these barbarisms.

The second major distinction made above concerns instruments elaborated by organizations of **global** vocation, such as the United Nations, the International Labour Organiza-

tion (ILO), or the United Nations Educational, Scientific and Cultural Organization (UNESCO), and instruments emerging from **regional** institutions or structures. As far as the latter are concerned, the Council of Europe, the Organization of American States, the Organization of African Unity and the League of Arab States have been active in developing comprehensive human rights standards. Equally, the Participating States in the Organization on Security and Cooperation in Europe (OSCE) have reached in the East-West context a far-ranging consensus on human rights principles and their elaboration, as part of their efforts to ensure the effective exercise of human rights and fundamental freedoms and to facilitate contacts and communication between people. Initial fears that regional instruments may constitute a threat to the integrity and validity of global instruments have largely faded away. The view now prevails, after many years of experience with the coexistence of global and regional instruments, that they are complementary and that they mutually reinforce each other.

Another distinction concerns **legally binding** instruments (treaties) and **other** instruments. It is undeniable that human rights standards, when enshrined in a treaty reinforced with implementation provisions, gain a good deal of authority. This is particularly true for treaties that are the result of solid preparation and that have been widely ratified on the basis of a firm commitment to compliance undertaken by States. Many of these human rights treaties have established supervisory mechanisms, including reporting systems which aim to give concrete expression to the accountability of the States Parties to these treaties.

However, more recent standard-setting initiatives – following the example of the Universal Declaration of Human Rights and subsequent international instruments other than treaties – tend to give preference to the non-treaty form, by way of declarations, bodies of principles, codes of ethics, guidelines, etc. Such instruments do not require ratification (which often cause long delays in the entry into force of a treaty instrument) and address themselves, at least at the level of the United Nations, to all the members of the United Nations and, as the case may be, to other actors of society at national and international levels. These other instruments represent not only important political commitments by States, but they are also ground rules for the conduct of international relations and, particularly in the field of human rights, ground rules for the conduct of domestic policies.

(e) Supervisory procedures

International implementation procedures in the field of human rights serve a number of joint or separate purposes. Some procedures may help States concerned to devise better national policies aimed at the realization of human rights. Such procedures have an **advisory** function. There are also procedures that may trigger off international action with a view to rendering material or other forms of assistance to States. These procedures have an **assistance** function. Again, other procedures which focus on non-compliance with in-

international standards have as their main purpose the correction of a human rights situation or certain aspects thereof. These procedures are characterized by their **corrective** function. But there are also procedures which serve to provide relief or remedies to victimized persons or groups. These procedures have therefore a **relief or remedy** function. Most of these procedures have in common that they may prevent certain situations from deteriorating or certain evils from being (again) inflicted upon persons or groups. This may be called the **preventive** function of international control procedures. Much of the effectiveness of these procedures depends on the quality and the expertise of the control mechanisms and on the degree of political will on the part of the States concerned to cooperate in good faith with the mechanisms of international supervision.

The type of supervisory procedure most commonly applied and accepted is the **reporting** system. This system was introduced by the ILO on the basis of its original Constitution, and expanded by amendments to it. States Parties to international labour conventions are under an obligation to report periodically on the application of the international standards they have accepted and member states of the ILO are even under an obligation to report, when requested by the ILO's Governing Body, on the position in regard to unratified conventions and recommendations. Reports are prepared and submitted by national governments, but national organizations of employers and workers are entitled to make written observations which, together with the reports of governments, are examined by the Committee of Experts on the Application of Conventions and Recommendations. The comments of the Committee of Experts are discussed in a tripartite committee of the ILO Conference (composed of representatives of governments and of employers' and workers' organizations), with representatives of the government concerned.

The reporting system can be considered a **regular supervisory** system. It is mainly non-contentious in nature and based on the method of constructive dialogue. Committees of independent experts, established under the respective international human rights treaties and often referred to as "treaty bodies", are functioning as control mechanisms in order to review and assess progress made and difficulties encountered with respect to the implementation of these treaties. The reporting system progressively found its way into a number of important human rights treaties, in particular into the international instruments dealt with in Part Two of this Manual, viz.:

- The International Covenant on Economic, Social and Cultural Rights;
- The International Covenant on Civil and Political Rights;
- The International Convention on the Elimination of All Forms of Racial Discrimination;
- The Convention on the Elimination of All Forms of Discrimination against Women;

- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The Convention on the Rights of the Child.

The most recent human rights treaty providing for a reporting system as a means of regular international supervision is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) which has not yet entered into force because the required number of ratifications or accessions has not yet been attained. This Convention will therefore not be dealt with in this edition of the Manual. The pace of ratifications of this Convention is regrettably slow.

Another human rights treaty which was dealt with in the first edition of this Manual but which is no longer covered in this edition, is the International Convention on the Suppression and Punishment of the Crime of *Apartheid*. This Convention differs from other international instruments inasmuch as its supervisory mechanism is not a special treaty body composed of independent experts but a group of three members of the Commission on Human Rights appointed by the Chairman of the Commission. In the light of the establishment of a united, non-racial and democratic government in South Africa, the Commission on Human Rights decided in 1995 to remove from its agenda the implementation of the International Convention on the Suppression and Punishment of the Crime of *Apartheid* and to suspend the meetings of the Group of Three. The Commission on Human Rights recognized that "the diligent application and monitoring of the International Convention on the Suppression and Punishment of the Crime of *Apartheid* by the international community greatly assisted the dismantling of *apartheid* in South Africa".

From the regular supervisory procedures should be distinguished the **special procedures**. Such special procedures deal with a particular human rights situation prevailing in a country or territory and causing special concern to responsible members of the international community. This type of special procedures is often referred to as the "**country approach**". The special procedures may also apply to certain practices affecting large numbers of people in many countries or territories and giving rise to widespread international concern. These special procedures represent the "**thematic approach**".

Some special procedures are set in motion by petitions or complaints lodged under legal instruments. They are usually referred to as "**communications**" by these instruments and are either available to individuals or groups of individuals regarding alleged violations of rights by the State Party, or to States Parties claiming that another State Party is not fulfilling its obligations under the relevant instrument, or to both. A common feature of most of these complaints procedures is their **quasi-judicial character** with respect to the principles of due process of law. This implies that the supervisory body gives the opportunity to all sides to present written and – as the case may be – oral evidence and information in support of their respective positions, and that the principle *audiatur et altera pars* is duly re-

spected. It also implies that the supervisory body, if it is unable to reach a friendly settlement, will express an opinion whether a breach of the convention has been incurred by the State Party concerned or whether the State Party has failed to give effect to any of its obligations under the convention. The various complaints procedures provided for in a number of global and regional human rights conventions have by and large these quasi-judicial features in common. Reference is made in this respect to the complaints procedures which find their basis in the Constitution of the ILO, in the International Covenant on Civil and Political Rights and the Optional Protocol thereto, in the International Convention on the Elimination of All Forms of Racial Discrimination, in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in the American Convention on Human Rights. The World Conference on Human Rights (1993) has recommended that where such complaints procedures are optional, States Parties to human rights treaties should consider accepting all the available optional procedures.

In addition to the special procedures of a quasi-judicial character, a whole series of other special procedures have come into being as a result of other recommendations made and decisions taken by policy organs of the United Nations, notably the Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities, and the General Assembly. The institution of these special procedures is a response to widespread and strongly felt concerns on the part of large sectors of the United Nations membership.

Thus, the Commission on Human Rights established in 1967 the *Ad Hoc* Working Group of Experts on Southern Africa, whose mandate was renewed many times until it was terminated in 1995 in view of the establishment of a united, non-racial and democratic government in South Africa. Over the years many other country situations and territories have been the subject of investigation and monitoring by Special Rapporteurs or Working Groups because such situations appeared to reveal a consistent pattern of gross violations of human rights. The findings of those Special Rapporteurs or Working Groups provided the basis for pronouncements and recommendations by United Nations policy organs. The current (1996) list of country-specific procedures relates to Afghanistan, Burundi, Cuba, Equatorial Guinea, Iraq, Iran, Myanmar, Palestinian territories occupied since 1967, Rwanda, Sudan, Territory of the Former Yugoslavia, Zaire.

While these procedures focus on a **country** or a **territory**, the practice also developed of concentrating on certain phenomena that affect large numbers of people in many countries and therefore cause widespread concern. This practice is reflected in the so-called **thematic** approach. Thus, in 1980 a Working Group was created by the Commission on Human Rights to examine questions relevant to enforced or involuntary disappearances of persons. In later years, other thematic mechanisms were created dealing with the integrity of human life and the human person and having in common that they monitor and report on flagrant practices in many countries and that in urgent cases of imminent threat they intercede on a humanitarian basis with a view to obtaining immediate attention and relief. To this category of thematic mechanisms belong, in addition to the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Working Group on Arbitrary Detention. But also other phenomena and practices causing serious and widespread concern led the Commission on Human Rights to create additional thematic monitoring devices and procedures. They deal respectively with contemporary forms of racism, racial discrimination and xenophobia; freedom of opinion and expression; independence of judges and lawyers; internally displaced persons; mercenaries; religious intolerance; sale of children, child prostitution and child pornography; toxic wastes and violence against women, its causes and consequences. It should be noted that the World Conference on Human Rights (1993) underlined in its Vienna Declaration and Programme of Action the importance of preserving and strengthening the system of special procedures, rapporteurs, representatives, experts and working groups and asked all States to cooperate fully with these procedures and mechanisms. Similarly the World Conference recognized the important role of non-governmental organizations in the promotion of all human rights. Among the many other tasks non-governmental organizations undertake, they act as sources of information which greatly contribute to the effective functioning of all human rights supervisory procedures and control mechanisms.

Finally, in addition to regular and special procedures, a distinction can be made between **treaty-based** control mechanisms and **charter-based** control mechanisms. In principle, control mechanisms provided for in treaties are only operative with respect to States Parties to these legal instruments. The States ratifying these treaties *ipso facto* accept to cooperate in good faith with these control mechanisms. The terms of reference of the supervisory organs are defined in the treaties. These control procedures and mechanisms are clearly founded on a legal basis. As a general rule, the treaty-based control mechanisms have a permanent character. The charter-based control mechanisms and procedures owe their existence to a decision, usually in the form of a resolution, of a policy organ which is a representative body reflecting the membership of the organization. The legal basis of these mechanisms and procedures is the constitution of the organization or, in the case of the United Nations, its Charter. Taking into account the emphasis placed in the Charter of the

United Nations on the promotion and encouragement of respect for human rights and for fundamental freedoms as one of the main purposes of the Organization (Article 1) and the pledge of cooperation all members of the Organization have undertaken in this respect (Article 56 in conjunction with Article 55), the inherent powers of the United Nations in the area of human rights rest on a solid Charter basis.

It is clear from above inventory of supervisory procedures and control mechanisms that there is a great variety in implementation tools and mechanisms. Many types of procedures coexist: regular procedures and special procedures; (quasi-)judicial and political procedures; country procedures and thematic procedures; treaty-based and charter-based procedures. Moreover, these various types of procedures also coexist between and within the framework of the United Nations, its specialized agencies, and regional organizations such as the Council of Europe, the Organization of American States and the Organization of African Unity. In many instances, these coexisting procedures and mechanisms may be dealing with the same right or the same set of rights, with the same situations or even with the same cases. In order to maintain consistency in the interpretation of standards and in the assessment of facts and information, and with a view to avoiding duplication and confusion, there is much need for co-ordination between the various coexisting procedures and mechanisms. This co-ordination should be a constant concern of international secretariats and of the control mechanisms themselves, notably the chairpersons of all the treaty bodies.

It should be understood, as a final remark, that international supervisory procedures and control mechanisms can never be considered as substitutes for national mechanisms and national measures with the aim of giving effect to human rights standards. Human rights have to be implemented first and foremost at national and local levels. The primary responsibility of States to realize human rights is *vis-à-vis* the people who live under the jurisdiction of these States. However, with the internationalization of human rights and with the recognition that the protection and promotion of human rights does not fall within the exclusive domain of States, the international community can take a legitimate interest in the compliance with internationally recognized standards of each and every State or of any other actor exercising effective power. Consequently, although international control procedures are no substitute for means and methods of national implementation of human rights, international procedures have an important subsidiary or supplemental role to play. These international control mechanisms embody the public interest on the part of the international community in the attainment of conditions in which, as the Universal Declaration and the International Covenants put it, "the 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".

ABBREVIATIONS

- Aparth. Conv.** *International Convention on the Suppression and Punishment of the Crime of Apartheid*
- CAT** *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*
- CEDAW** *Convention on the Elimination of All Forms of Discrimination against Women*
- CPRMW** *Convention on the Protection of the Rights of Migrant Workers and Members of their Family*
- CRC** *Convention on The Rights of the Child*
- ICCPR** *International Covenant on Civil and Political Rights*
- ICERD** *International Convention on the Elimination of All Forms of Racial Discrimination*
- ICESCR** *International Covenant on Economic, Social and Cultural Rights*
- FAO** *Food and Agriculture Organization of the United Nations*
- ILO** *International Labour Organization*
- IMF** *International Monetary Fund*
- NGO** *Non-governmental Organization*
- UNDP** *United Nations Development Programme*
- UNESCO** *United Nations Educational, Scientific and Cultural Organization*
- WHO** *World Health Organization*

PART ONE

GENERAL ASPECTS

THE PURPOSES OF REPORTING

by Philip Alston

All governments today engage regularly in diplomatic and other exchanges about their domestic human rights situations. Such discussions are now an accepted feature of international relations even though on some occasions they may be conducted in an almost adversarial manner and may lead to controversy at the highest political levels. For the most part however, they are of a routine nature and are treated as part of the normal activities of a government. In particular, the process of periodic reporting to international bodies has come to be seen as a constructive and potentially rewarding means by which governments can seek to achieve a variety of objectives. Before examining those objectives it is useful to undertake a very brief historical review in order to trace the international community's evolving attitude to reporting.

(a) The evolution of reporting procedures

The United Nations followed up on the work of its predecessor, the League of Nations, by making extensive use of both reporting and petition procedures in order to ensure that the rights of the peoples of "trust" territories were being respected. It took a number of years, however, before the concept of reporting was extended from colonial situations to the situation in independent nations. The assumption underlying this extension was that the United Nations should concern itself with human rights the world over, rather than only on a selective basis. Initially, reporting was introduced on a global, but entirely voluntary, basis and was linked to the provisions of the Universal Declaration of Human Rights. This system, which was developed in the mid-1950's, was important in establishing the principle of accountability but, for a variety of reasons, proved to be rather unsatisfactory in practice.

The next step, which was undertaken originally in the context of the struggle against racism, was to develop a formalized system of reporting based on specific obligations laid down in an international treaty. Thus the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 required States Parties to submit regular reports to an international committee entrusted with the task of supervising or monitoring their compliance with their treaty obligations. The two International Human Rights Covenants of 1966 adopted a comparable approach as have a number of more recent international human rights treaties dealt with in the second part of this Manual. The result of these developments has been the emergence of a comprehensive reporting system applicable in varying degrees (depending upon the number of treaties acceded to or ratified), to virtually

every State in the world today. It is characterized by: the voluntary undertaking of reporting obligations by States; the spelling out of those obligations in treaty provisions; the creation of independent expert committees to examine the reports; the development of an interpretative role by those committees; and their adoption of conclusions in relation to each report. The assumption underlying the entire procedure is that the primary aim is to assist governments rather than just to criticize their performance.

At the same time as the reporting system was evolving the United Nations and the principal regional human rights bodies were developing a wide range of other procedures for promoting greater awareness of human rights and for responding to human rights violations. These other developments have contributed significantly to efforts to ensure that the reporting process is able to focus primarily on the positive rather than the negative dimensions of international human rights cooperation. Thus the reporting process assumes that there is a need for a **constructive dialogue** between the State concerned on the one hand, and an independent international group of experts on the other. Reporting is not something that is imposed upon an unwilling State, nor is it something designed as an adversarial process. Rather it is premised on the assumptions first that every State is an actual or potential violator of human rights (no matter how good its intentions might be) and second that a degree of routine international accountability is in the best interests of the State itself, of its citizens, and of the international community.

(b) Making the most of reporting

The process of satisfying a State's international reporting obligations should be seen as an occasion for achieving a variety of objectives. Ideally, it will be considered to be an integral part of a continuing process designed to promote and enhance respect for human rights rather than as an isolated event absorbing precious bureaucratic resources solely to satisfy the requirements of an international treaty. In other words, the process should be treated as an opportunity rather than a chore or a formality. It is an opportunity to reaffirm a government's commitment to respect the human rights of its own citizens and to reassert that commitment in the domestic political forum. It is an opportunity for domestic stock-taking and for the adoption of measures to remedy any shortcomings which have been identified. And it is an opportunity to proclaim to the international community that the government concerned is serious about its international commitments.

If the reporting process is taken seriously in this way it will inevitably be a time-consuming and relatively resource-intensive activity. Such costs, however, should be treated as investments rather than as unproductive expenditures. The system that is established in order to oversee the reporting process should be carefully integrated into domestic policy-making arrangements and should take account of the fact that the process should be designed to satisfy both domestic and international objectives.

(c) The functions served by reporting

The purposes of reporting can be identified in a more or less chronological order which corresponds to the period from ratification of a treaty through to the consideration of the report by the international monitoring body.

(i) The initial review function

Either before, or immediately after, a State becomes a party to an international treaty it is expected to review its domestic law and practice to ensure that it is in compliance with the obligations contained in the treaty. Even where this has been done prior to ratification, the obligation to submit an initial report to the relevant treaty body provides the State Party with the occasion to undertake a comprehensive review of national legislation, administrative rules and procedures, and practices in order to ensure the fullest possible conformity with the provisions of the treaty.

In some cases the pre-ratification review will have been undertaken primarily by the Foreign Ministry or its equivalent with relatively limited inputs from other ministries or from the principal sectors of society. The preparation of the initial report might thus involve a considerably expanded process of consultations. All of the supervisory committees attach particular importance to this first, or initial report, as it is technically known.

(ii) The monitoring function

Reporting on *legislative* developments can be done from a desk in a ministry, provided only that the responsible official has access to the necessary documentation. But each and every one of the supervisory committees has emphasized that reporting on the formal legal (or *de jure*) situation is not enough. Accordingly, reports which do not go beyond describing the legal formalities of the situation are not well received by the committee members and always lead to a very large number of requests for supplementary information to be provided by the governmental representatives.

Reports must therefore strike a balance between the situation in theory and that in practice. This means that a detailed and soundly based review of current developments is required. Isolated examples, or anecdotal evidence, will not suffice. Thus, a pre-condition for effective reporting is the existence of an adequate system for monitoring the situation with respect to each of the rights on a regular basis. It cannot safely be asserted that torture never occurs in prisons unless regular monitoring of the situation occurs. Similarly, it cannot be said with any authority that everyone enjoys the right to adequate food unless a system is in place to monitor the prevalence of hunger and malnutrition.

The role of the monitoring function is not to show the government in a bad light. On the contrary, monitoring is an indispensable first step towards identifying and subsequently remedying any human rights problems that might exist. A report that does not, either explicitly or implicitly, demonstrate that at least some good faith efforts at monitoring have been made risks being viewed with considerable scepticism.

Most of the supervisory bodies have expressly noted their wish to receive statistical information along with the usual narrative description. This highlights the importance of disaggregating or breaking down the available information so as to provide a clear picture not only of the country as a whole but of the different regions and groups within the country. For example, the Committee on Economic, Social and Cultural Rights has requested that “specific 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”. The Committee went on to acknowledge that such monitoring is “potentially time-consuming and costly” and noted that States which were unable to afford the type of monitoring suggested should “note this fact in its report to the Committee and indicate the nature and extent of any international assistance that it may need” for the purpose. In view of the recent emphasis placed upon the availability of advisory services within the framework of the United Nations’ human rights programme, it would seem eminently reasonable for such requests to be made.

(iii) The policy formulation function

Many human rights problems can be resolved merely by amending the relevant legislation, by changing administrative practices or by issuing appropriate instructions to the authority concerned. Others, however, are not susceptible of such rapid resolution and require the formulation of a long-term set of policies designed to ensure full and lasting compliance with treaty obligations. For example, efforts to eliminate some aspects of discrimination on the grounds of race or sex might require changes in cultural traditions which cannot be achieved overnight. In such instances the reporting process can act as a catalyst to the formulation of carefully tailored policies designed to respond to the problems that have been identified. The supervisory committees will not expect the impossible to be achieved overnight but they will expect to see evidence of policies which seem likely to achieve the necessary remedial action within a reasonable period of time.

(iv) The public scrutiny function

In his introduction to the Manual, Professor Theo van Boven observes that “international supervisory procedures and control mechanisms can never be considered as substitutes for national mechanisms and national measures...”. This is particularly true of the preparation of a periodic report which should be seen as an important document destined for a domestic as well as an international audience. Human rights treaties seek to promote and en-

hance not only a government's international accountability but also its accountability to its own citizens. The preparation of the report thus provides an important occasion for consultation of the appropriate social, economic, cultural and other sectors of society. In this regard a variety of States from different regions of the world have begun to experiment with different forms of consultation. Some have sought inputs from non-governmental groups on particular issues, others have requested such groups to submit comments on the draft reports and still others have entrusted the preparation of the reports to a group which includes representatives of the non-governmental sector. Some States have also ensured the widespread dissemination of their reports so that the public at large might comment and thus contribute to an ongoing national policy debate.

This public scrutiny function can also be enhanced by ensuring easy access for the public at large to the United Nations **summary records** which document the examination of the State's report by the appropriate treaty body.

(v) *The evaluation function*

The obligation to prepare successive periodic reports at specified intervals provides an ideal opportunity for evaluating progress achieved over time. The supervisory committees themselves tend to stress this element by making comparisons between the problems identified at the time of the examination of an earlier report and those observed when considering a subsequent report. Similarly, States which have set themselves targets or benchmarks against which to assess their own progress can use the periodic reporting process as an occasion for measuring progress (or a lack of it) and re-evaluating the suitability of the relevant benchmarks.

(vi) *The function of acknowledging problems*

The principal human rights treaties with which the Manual is concerned generally request States Parties to report not only on the progress that they have made but also on any "factors and difficulties" that have affected the realization of the rights in question. It is sometimes suggested that States cannot realistically be expected to acknowledge that they are having problems in any areas and that reports will therefore inevitably only deal with the "good news". But this approach is clearly misplaced and the supervisory committees tend to remain unconvinced by reports suggesting that all is well in the world. It must be accepted that no State can expect to have a perfect record in achieving respect for human rights. Even where the situation is generally very positive there is always room for improvement. The frank acknowledgement of problems, even if they are reckoned to be almost intractable (or at least not readily capable of resolution), helps to establish the good faith of the government not only in the eyes of the supervisory committee but also of its own citizens. The reality is that a problem must first be diagnosed before a remedy can be found. In

that respect human rights problems can be compared to drug addiction. Unless the existence of a problem is acknowledged, it will almost certainly not be solved.

(vii) The information exchange function

When the United Nations first moved in the mid-1950's to establish human rights reporting procedures (on a voluntary basis) one of the objectives that was most commonly cited was to collect information on common experiences (both good and bad) so that States could learn from one another. Today, the information exchange function of reporting provides the essential foundation on the basis of which **General Comments** can be elaborated by the supervisory committees. In other words, the reports serve to give the committees a better feel for the types of issues that governments typically encounter in seeking to translate the high-minded legal formulations contained in the treaties into reality. The committees can then distil the wisdom of that collective experience into advice which is made available to all interested parties.

(d) Concluding comments

The various objectives of reporting that have been identified above are not intended to be exhaustive. There may well be other functions. Moreover, it should not be assumed that they will all be of equal importance at all times. Indeed it is very likely that some will assume greater importance than others as circumstances and governmental and popular perceptions of the process change.

The most important point is simply that reporting is part of a continuing process which it is very much in the interests of the government concerned to take seriously. In any situations where this is not the case it may be expected that public opinion, combined with the efforts of the relevant supervisory committees, will sooner or later bring about the required change in attitude.

THE PREPARATION AND DRAFTING OF A NATIONAL REPORT

By Cecil Bernard and Petter Wille

The ratification of or accession to any of the international human rights treaties dealt with in this Manual requires States Parties to submit periodic reports on the implementation of these instruments at the national level.

A variety of factors will determine the quality of both the form and substance of these reports. In the previous chapter, Professor Philip Alston discussed the opportunities offered and various functions served by the reporting process in the national context. This chapter proposes to look at some of the structural and planning aspects that will influence a successful preparation and drafting of reports.

(a) The need for a political commitment

The submission of reports to treaty monitoring bodies is a legal obligation incumbent upon the governments of States Parties. Since this obligation by its nature requires positive action, the political will to prepare an honest and comprehensive report, and to allocate the necessary resources accordingly, is a prerequisite for its realization.

The political leadership may perceive the obligation to report to an international treaty monitoring body on the country's human rights performance as an impingement on sovereignty. It may see this obligation as a "crowbar", by the use of which other States might seek to obtain foreign policy leverage against the reporting State. It may fear that such reporting will lead to the provision of ammunition to be used by unsympathetic non-governmental organizations (NGOs). These and similar considerations may lead to the preparation of reports that contain information insufficient as a basis upon which the expert bodies can execute effectively the tasks entrusted to them under the various conventions.

But such an approach would reflect a number of unfortunate misperceptions. The fact that a government has ratified a particular human rights instrument is itself evidence of an initial commitment by the political leadership to the international protection of human rights. It affirms very clearly that the act of reporting is not considered by any State whatsoever to infringe domestic sovereignty. Moreover, the reporting system is a way of showing NGOs

and other interested parties that the government is cooperating with the relevant international procedures and is not seeking to conceal anything.

A government should recognize the important functions which reporting may serve in the national policy-making process, and should welcome the contribution which the non-judgmental, constructive dialogue with the expert bodies makes toward the promotion and protection of its citizens' human rights. To this end, the political leadership should seek to extend to its reporting officer(s) the independence and support needed critically to seek out and to evaluate all information, favourable and less favourable, to prepare a comprehensive and honest report under any of the human rights treaties dealt with in this Manual.

(b) The reality of limited resources

Serious reporting requires a considerable degree of care and attention to detail. This makes it a time consuming and potentially costly process. The resources – both human and material – invested in this process will affect the result. The government will have to provide the persons in charge of preparing any given report with the necessary time, authority and material resources to accomplish satisfactorily the task before them. Coping with the reality of limited resources will pose a difficult challenge to many countries. Careful planning and co-ordination of the reporting effort will help to maximize available resources.

Good information is an essential ingredient for any report. This Manual's chapter on human rights information and documentation discusses the importance of an active and systematic collection of comprehensive human rights data, and suggests ways of approaching this task.

The preparation of a report requires time. Staff who are given the responsibility for preparing a report should have their other duties lessened accordingly. Inadequate time dedicated to report preparation will likely produce an unsatisfactory report. This in turn will make it difficult to engage in a constructive dialogue with the expert body, and will limit the domestic utility of the report as well. It is therefore in the government's best interests to ensure that the necessary time is provided to staff to carry out properly their reporting assignments.

The preparation of any given report requires input from a variety of sources, including national and local government bodies, administrative agencies, non-governmental sources, and others. The authority of a reporting officer will influence the way request for information are handled. The government should send out a clear message that reporting is important. Busy departments and officials will be more likely to respond to reporting related requests if such requests are made not just by a junior civil servant, but by an official with substantial support from political decision-makers. An additional benefit is that such a per-

son is also likely to command the respect and cooperation of the NGOs whose role is becoming increasingly important in the preparation of reports.

(c) Adequate organization and co-ordination

The scope of each of the international human rights instruments dealt with in Part Two of this Manual makes it unlikely that a single reporting officer, notwithstanding the knowledge and experience he/she might have, will be able to accomplish satisfactorily the task of preparing a report within an acceptable period of time. The goal, therefore, should be to establish a system to draw upon the pool of expertise available in all relevant areas of government and beyond for the compilation of a specific report.

(i) Identifying the participants

It can be assumed that the general level of awareness of the precise requirements of international human rights standards among government officials and administrators not specifically assigned to such matters is fairly low in any country. By broadening the circle of participants in the reporting process, a government can serve two purposes. On the one hand, the substantive quality of the final product will benefit from the expertise and detailed knowledge participants have of their areas of responsibility. On the other hand, the reporting process will help to broaden the understanding government administrators have regarding the impact of international human rights law on their respective areas. An important criterion in the selection process would be the requirement that those persons selected to undertake the task of preparing reports should evince a strong commitment to the protection and strengthening of human rights. This should in turn facilitate and encourage the development of a positive administrative environment regarding the elimination of any discrepancies between domestic law and practice and international human rights standards.

The reporting officer (or team) in charge of the preparation of a specific report should give considerable thought to the identification of the participants that should be involved in the task. Ms. Wiseberg points out in her chapter below that in order to gather relevant information one must know who has what information and in what form. The reporting officer might start with drawing up a list of all the governmental and administrative agencies, as well as of any organization and individual resource persons outside the government who might be able to contribute to the preparation of a specific report. The list will vary from treaty to treaty, and may be different for initial and for periodic reports. The reporting officer should be thoroughly acquainted with the substantive rights covered by a treaty and with its reporting requirements to be able to identify all important sources of information.

(ii) Ensuring adequate co-ordination

Since the preparation of any given report will most likely be a team effort, the lead responsibility should be assigned clearly to one agency (Ministry) and to one person (or team). Given the particularities of the treaties dealt with in this Manual, this responsibility may rest with different agencies for each (or some) of the treaties. For reasons that will be discussed later, these reporting units should not work in isolation from each other, but should maintain close channels of communication and cooperation.

Various approaches are possible for involving the necessary participants. Governments might consider the establishment of a high-level interministerial task force, chaired by the Minister of Foreign Affairs or Justice, to signal the importance accorded to the reporting process. The task force would be in charge of co-ordinating the preparation of all human rights reports the government has to submit. It could consist of representatives of the key ministries involved in the preparation of reports (i.e. exterior, interior, justice, health, women, etc.), and of representatives of major non-governmental and civic groups (i.e. labour groups, professionals associations, research institutions, etc.). The task force would meet regularly to co-ordinate reporting obligations, and could also be assigned to monitor and discuss human rights matters in general, including human rights obligations arising in the context of regional treaties.

The production of individual reports can be accomplished by different approaches. The work can be divided and assigned to focal points in key departments, each with responsibility for a specific segment, and supervised by a central co-ordinator. One can multiply the number of authors and designate a certain number of persons with different areas of expertise to the project. The approach adopted will largely depend on the local circumstances, and especially on the administrative organization of a country.

Whatever structure is chosen, the important point is to co-ordinate properly the work, to assign clearly everybody's task, and to ensure that a common approach to the substance of a report is adopted. It is stressed throughout this Manual that it is not sufficient to report only on the laws as written. The Committees are interested in the administrative practices, in the application of the laws by the courts and tribunals, in programmes and policies to achieve certain goals, and in "factors and difficulties" affecting the implementation of the treaties. The authority of the reporting officer to seek the cooperation of the relevant resource persons and organizations, and a clear political and administrative commitment to human rights reporting will be important assets in the preparatory work. The effectiveness of the information gathering process will also depend on how well the reporting officer can explain the meaning of international human rights obligations to those responsible for administering a given sector of government activity, or NGO representatives, and on what kind of information they should provide for a report.

(d) The burden of reporting

With the expansion of the international (and regional) human rights regime, States Parties are increasingly faced with numerous requests for reports on human rights matters. Such requests may emanate from a variety of sources, and include the United Nations human rights treaty bodies, its human rights policy-making organs, a number of specialized agencies and in particular UNESCO and ILO, as well as regional human rights treaty bodies and policy organs. In this context, it should only be stressed that the submission of any of the reports required under the conventions dealt with in this Manual is a treaty obligation based on the ratification of the respective treaty by a State. This obligation is fundamentally different from the request for information emanating from other sources.

Efforts are under way at various level to address problems related to the coexistence of reporting obligations. The purpose of this Manual is to facilitate reporting under the six major conventions dealt with in Part Two. Another measure is the harmonization and consolidation of the reporting guidelines for the initial part of the reports of States Parties discussed in the annex at the end of Part One in this Manual.

Reporting officers should be aware of such multiple reporting requirements, and how to cope with situations of overlapping reporting obligations.

(i) Dealing with overlapping reporting requirements

Following the categorization given by Professor van Boven in the introduction to this Manual, the two Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights are general instruments covering a wide range of human rights. The other four instruments dealt with in this Manual are special, more narrowly focused instruments which treat more in detail, or with greater specificity, issues also dealt with in the Covenants.

States that are parties to more than one of these instruments will likely find that information prepared for one particular report might appropriately be used also for another report. As a first step, reporting officers should have, or compile, an inventory of the instruments their government has ratified (or proposes to ratify in the near future), including information on reporting cycles, the dates individual reports are due, and the dates reports have been submitted in the past. This inventory should necessarily include other instruments that require periodic reporting, such as ILO conventions and recommendations as well as regional human rights treaties.

Based on this list, States Parties should seek to assess the nature and extent to which certain rights are dealt with in different instruments. Information gathered on these rights is potentially useful for reporting to more than one body. In order to facilitate the determination of the nature and extent of overlapping among various rights, this Manual provides reporting officers also with relevant references to related articles in the six human rights

instruments dealt with in Part Two. At the end of Part Two, a chart compiled for that purpose should provide useful guidance.

Once the information is submitted to one body, a State Party should use precise cross-referencing instead of re-submitting the same information. In fact, the Chairpersons of the treaty bodies at their second meeting in 1988 urged States Parties to use appropriate references rather than to repeat the same information. They reiterated this recommendation at their third meeting held at Geneva in October 1990, stating that "States Parties, in drafting their reports, may refer, annex or incorporate, wherever appropriate, information contained in reports submitted to other treaty bodies, rather than repeat the same information". (Document A/45/636, par. 56). Such a cross-referencing procedure is even expressly provided for in Article 17(3) of the Covenant on Economic, Social and Cultural Rights, which states: "Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice". The use of cross-referencing should not be understood as exempting a State Party from its reporting obligations to any one treaty body, but as a way of alleviating these obligations and of maximizing existing resources. States Parties should have a clear interest in ensuring that material already submitted to one United Nations body also is available in an appropriate form to another.

(ii) *Using previous government reports*

A prerequisite for making full use of appropriate cross-referencing is awareness of previous or parallel reporting efforts. As indicated above, the lead responsibility for the preparation of individual reports may be assigned to different departments. Without appropriate coordination among them, though, the various reporting officers might well remain unaware of the efforts of other colleagues, and limited resources may be wasted by duplicating work. An interministerial task force is well placed to ensure the required overall co-ordination. Also, the value of a documentation collection or of a small documentation centre – as discusses Ms. Wiseberg below – should not be underestimated. As she points out, such a collection must contain as a minimum all past reports the State Party has submitted to any international or regional organization, and reporting officers should fully use these materials in preparing their own reports. It is also recommended that reports of other states be kept in the collection as they are a potential source of encouragement in that they may highlight problems which are common to reporting officers and may offer solutions to overcoming such problems. Of course General Comments, issued from time to time by supervisory bodies should be readily available as reference tools for the team. Such General Comments can be useful, not for their own sake, but as helpful sources of evidence of the thinking of supervising bodies on specific issues. A good example would be the elaboration

of the basic ingredients of the right to adequate housing as set out in General Comment No. 4 issued by the Committee on Economic, Social and Cultural Rights.

The following few examples might serve as an indication of the importance of coordinating reporting efforts and of keeping track of submitted documents. They should also illustrate the usefulness of determining the nature and extent to which rights contained in any of the conventions ratified by the reporting State are dealt with in more than one instrument.

Reports prepared for the ILO under the Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value should contain information that is relevant also under the Convention on the Elimination of All Forms of Discrimination against Women. Information contained in reports prepared for the ILO on issues such as employment, conditions of work, social security, to name but a few, should be checked for its relevance for the Committee on Economic, Social and Cultural Rights. Information on trade union rights and the prohibition of forced labour will be of potential relevance to the ILO, the Human Rights Committee, and the Committee on Economic, Social and Cultural Rights. Under the Standard Minimum Rules for the Treatment of Prisoners (which are not in treaty form, but were adopted by a resolution of the General Assembly in 1984) governments are periodically requested by the Secretary-General to report on their implementation and on difficulties encountered. This information will also be of interest to the Human Rights Committee.

(iii) Using reports prepared by international organizations

Intergovernmental bodies, such as the United Nations and its specialized agencies, regularly prepare items and reports on a variety of issues that should be evaluated for their relevance in human rights reporting. These documents, reports, surveys and statistical tables are usually based on data gathered from governments and can be a very important source of information in the preparation of reports to human rights treaty bodies.

Information prepared by specialized agencies, such as ILO, WHO, or UNESCO, can be made available to the treaty bodies in two different ways. To varying degrees, the Committees themselves have sought the cooperation of some of the specialized agencies, primarily by requesting information and documentation available at those agencies on matters of interest to the respective treaty body. In addition, at their meeting in 1988, the Chairpersons of the treaty bodies also recommended that the members of each of the treaty bodies be supplied with relevant statistical information available from intergovernmental bodies in connection with the consideration of States Parties' reports. At a minimum, they request copies of the Statistical Yearbook of the United Nations, the International Financial Statistics prepared by the International Monetary Fund, the statistical tables appended to the

World Development Report of the World Bank, and UNICEF's report on the State of the World's Children.

It is desirable that such and similar information also reach the Committees directly in the reports submitted by States Parties. In fact, reporting officers that take advantage of these materials in preparing the narrative and statistical parts of their reports will most likely improve the overall quality of their document, and the reporting State will be credited for its submission. The Committee on the Elimination of Discrimination against Women, for example, has been using data from the Compendium of Statistics and Indicators on the Situation of Women, periodically prepared by the Statistical Office of the Department of International Economic and Social Affairs, to better understand the situation of women in States whose reports provided insufficient or no statistical information. The Compendium contains a wealth of information which should not be overlooked by reporting officers. The World Health Assembly of the WHO adopted in 1981 a Global Strategy for Health for All by the Year 2000. It developed a complex system of monitoring and evaluating the effectiveness and implementation of the strategies, based on periodic national reports on so-called global indicators, and followed by regional and global reviews. The second (global) report on monitoring progress in implementing strategies for health of all was issued in 1989. This system should be fully taken into account in preparing the relevant parts of reports to the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination Against Women, the Committee on the Elimination of Racial Discrimination, as well as the Committee on the Rights of the Child.

(iv) *Advisory services and technical assistance programme*

The Office of the High Commissioner for Human Rights in Geneva is the main organizational entity for carrying out the United Nations human rights programme. Except for the Committee on the Elimination of Discrimination against Women, which organizationally is placed with the Division for the Advancement of Women at the United Nations Office in New York, the Centre in Geneva also services the treaty bodies dealt with in this Manual. For the purpose of this chapter, one of the subprogrammes of the Centre shall be briefly reviewed for the potential benefit of reporting officers.

The Centre's programme on advisory services and technical assistance in the field of human rights focuses on providing practical assistance in implementing international human rights conventions for those States which indicate a need for such assistance. Apart from the regular budget which covers, *inter alia*, activities requested by United Nations policy-making bodies, a voluntary fund was set up in 1987 to raise additional resources for implementing projects approved under this programme. In general, these projects aim to create, develop and strengthen the necessary regional and national infrastructures to meet international human rights standards. The programme consists mainly of expert services, fellowships, training courses and seminars. Since 1994, the International Training Centre of

the ILO in Turin, Italy, has been conducting an annual seminar/ workshop on Human Rights Reporting in co-sponsorship with the United Nations Centre for Human Rights, Geneva. These seminar/workshops are designed for training public servants whose work brings, or is likely to bring them into contact with the drafting process.

The assistance provided to governments under the advisory services and technical assistance programme is designed to complement the other parts of the United Nations human rights programme and cannot substitute reporting, monitoring and investigating activities. Such assistance should not be a pretext for a government to evade responsibility for accountability on its human rights situation, and should not exempt it from scrutiny through procedures established within the United Nations.

Based upon requests received from governments, the assistance provided so far can be categorized as follows: (a) Establishment or strengthening of law faculties; (b) Development of adequate law and human rights reference libraries for the administration of justice; (c) Training activities, including training courses and workshops in the administration of justice; (d) Expert advice in the drafting of legal texts in conformity with the provisions of international human rights instruments; (e) Publication of official law journals; (f) Collection and classification of legal material, including legislation and digests of court decisions.

Lastly, it should be pointed out that there exists the possibility, under the advisory services programme, of obtaining expert input to assist in the preparation of a State Party's report.

(e) The contribution of non-governmental organizations

International and local NGOs have established themselves as a major force in the protection and promotion of human rights. Their contributions in this regard range from activist and "watchdog" functions, to non-partisan research and documentation work; and from civil litigation to empowerment projects. Governments should explore ways to involve NGOs and popular and representative groups in the reporting process.

The rationale for including popular or representative groups in the reporting process, and the degree of their involvement, will differ with local circumstances. In the chapter below on human rights information and documentation, Ms Wiseberg discusses the roles such groups can assume in providing information for reports, and reflects on possible reasons why governments seek non-governmental contributions in the preparation of reports. It seems clear that the early involvement of groups outside the government in the reporting process offers an opportunity for critical discussion between the government and its citizens, thereby enabling the political leadership to identify more easily situations that constitute violations of human rights, or that represent a "factor of difficulty" in implementing rights contained in a treaty.

Various States have set up mechanisms for involving popular or representative groups and private individuals in the preparation of reports, or have established a practice of seeking comments on draft reports prepared by the government. A summary of such activities should be included in the final report submitted to the treaty body. The Committees welcome such information and it may be of potential benefit for other States Parties in their own efforts to involve non-governmental groups in the reporting process.

Two examples presented to the Human Rights Committee shall serve as a case in point. (1) Norway reported on the establishment of a Government's Advisory Committee on Human Rights, consisting of members of Parliament from various political parties, representatives of government ministries, non-governmental organizations, and researchers in the field of human rights. Its mandate includes the ability to comment on draft human rights reports. In practice, it serves as a forum for the pooling of information and for consultation and co-ordination; it allows the government and non-governmental organizations to engage in an exchange of views. (2) Italy has reported on the establishment of an Interministerial Committee on Human Rights as a special mechanism for co-ordinating the contributions of the main branches of the public administration to the preparation of all reports under all human rights treaties ratified by the government. Representatives of the public administrations meet periodically to study and examine available information, new laws and court decisions and to prepare draft reports, which in turn must be approved by the Interministerial Committee before submission to the treaty bodies.

In order to improve the adequacy of information it receives on the legal and *de facto* implementation of conventions and recommendations, the ILO Committee of Experts on the Application of Conventions and Recommendations has developed a methodology for seeking information from non-governmental sources, in addition to government information. In its report forms for ratified conventions, the Committee of Experts includes a series of questions which, among other things, seek to elicit observations from employers' and workers' organizations. This procedure and the above-mentioned examples may stimulate reporting officers to seek similar contributions from entities outside the government when preparing human rights reports.

(f) The drafting process

Once the necessary information for a given report is assembled, the reporting officer (or team) will begin the actual writing of the report. As was pointed out earlier, it is important to follow a common approach to the substance of the report. In this regard, the guidelines on the form and contents of reports should be followed closely to facilitate the production of a consistent document. The various Committees have adopted such guidelines both to provide guidance to States in the preparation of reports and to assist the treaty bodies in supervising the implementation of international instruments at the national level.

Guidelines for reporting under the various specific instruments are discussed in detail in Part Two of the Manual. However, some elements common to the drafting process under any of the instruments should be mentioned.

In general, the guidelines suggest preparing reports in two parts. The first part should provide general background information on the reporting State, i.e. a comprehensive picture of the circumstances that determine the implementation of international instruments. The new consolidated guidelines for the initial part of the reports of States Parties (see the note at the end of Part One of the Manual) aim to provide each Committee with a “country profile” of the reporting State.

The second part of a report should contain specific information on the legal and *de facto* situation in the reporting State with regard to the rights contained in any of the international instruments. Since the key consideration of the treaty-monitoring bodies is the level of the actual individual enjoyment of human rights within the local society, it will not be sufficient only to quote the existing laws. Although laws and statutes are a necessary first ingredient for reports, they do not suffice for a proper assessment of the human rights situation in a country.

Members of treaty bodies come from various geographical regions and from different forms of civilization and legal systems. They look at legal texts and administrative rules and regulations from their own backgrounds and perspectives, and may have limited knowledge of local conditions in the reporting State. Laws and statutes must be accompanied by appropriate narrative analysis regarding their actual application and, whenever possible, by judicial decisions and court cases. Statistical data should be used extensively to enhance the comprehensiveness and clarity of reports. Statistics are an excellent means to assess progress made over time towards the achievement of specific goals set for the enjoyment of human rights. To the same end, reports should also contain information on the programmes and projects established to promote these goals, on the structures to monitor progress and compliance, and on means of redressing unsatisfactory situations. The information should be assembled and presented on an article-by-article basis.

In their consideration of reports, the treaty bodies look for details and not just for generalities. Although too much detail can also cause difficulties for the treaty bodies due to lack of time for a report to be considered, the opposite extreme – too little detail – is a more common problem encountered by the treaty bodies. Reporting officers should pay careful attention to the guidelines and to other recommendations adopted by the Committees when they start writing their reports. They should also undertake a comparative study of reports the Committees have received from other countries. This will help to broaden one's own perspective, and to get a better sense of how to balance the various elements – legal and statutory references, description of their practical application, court cases, programme and policy initiatives, factors and difficulties encountered in the implementation, statistical information – that determine the quality of a report.

During the drafting stage, the individual components of the report should be discussed as widely as possible among the relevant government agencies, and especially among the administrators in charge of individual sectors, to ensure the completeness and correctness of the final report. The complete draft should be circulated among government officials, non-governmental agencies, popular and representative groups, and other resource persons, for their comments. Although such a process can be time consuming, it will contribute to the better awareness among the general public regarding the government's reporting obligations and its international accountability on human rights matters. The final product submitted to the expert body should prove satisfactory to all parties concerned: to the citizens of the reporting State, to the government that is fulfilling a treaty obligation, to the team that prepared it, and to the expert body that considers it in a constructive dialogue with representatives of the reporting State.

NATIONAL REPORTS: THEIR SUBMISSION TO EXPERT BODIES AND FOLLOW-UP

By Fausto Pocar, Cecil Bernard and Petter Wille

As Professor Alston points out in his chapter on the purpose of reporting, the preparation of a report in itself fulfils important functions for the State that drafts it since its preparation enables the authorities of the reporting State to engage in a thorough review of the legislative situation and practical realities regarding protection of the rights enshrined in the international instrument under review.

The core of the reporting procedure, at least from the perspective of the international supervision of the implementation of human rights, consists of the consideration of the report by the competent Committee. The Committees are entrusted with supervisory activities that allow them to evaluate the information contained in reports in the light of the experience acquired by each Committee in the examination of a large and continuously growing number of reports. Based on this experience, the supervisory bodies can establish whether and to what extent the situation in the reporting State actually meets the internationally required standards of protection and what measures are needed at the national level in order to improve the situation and to bring it into line with international standards.

(a) Forms of presentation and adequate representation

The specific procedures for the presentation of a report vary according to the international instrument concerned. They are dealt with in Part Two of the Manual. In general, however, it has to be noted that the supervisory activities exercised by the Committees can be fruitful only if two conditions are met: (1) a report must contain exhaustive information on a country's human rights situation under a specific instrument and (2) any gaps in the information provided in a report must be effectively filled during the consideration of the report.

As far as the first condition is concerned, one needs to distinguish between initial reports and subsequent periodic reports submitted to the Committees. The initial report serves the purpose of establishing a first contact between the reporting State and the individual Committee. It prepares the groundwork for the consideration of any future report submitted by the same country. When considering an initial report, the Committees proceed to a first general review of the measures taken by the State in the implementation of the interna-

tional obligations assumed with ratification. During this review, the Committees identify the major areas of concern that require improvement, and upon which the State Party must focus its attention. If the consideration of the report is to fulfil its purpose, the initial report must contain sufficient information about the legal framework within which the implementation of the international instrument takes place, about the status of the instrument in the domestic legal order, about the measures taken in law and in practice regarding the enjoyment of each protected right, and about any factors and difficulties that affect the implementation of the international instrument under review.

Subsequent reports – whose periodicity depends on specific treaty provisions or on decisions taken by the various supervisory bodies – serve the purpose of reviewing in much greater detail the measures adopted by the reporting State in the implementation of its international obligations. Periodic reports need to pay particular attention to those areas identified by the supervisory Committees as giving rise to special concern during consideration of the initial report. The consideration of periodic reports should provide the Committees with the opportunity to appreciate the progress made since the submission of the previous report, be it in general or as a result of the State's cooperation with the Committee. Periodic reports should therefore not only update the information provided in previous reports, but they should also specifically address the issues that were raised by members of the Committees, but that were not fully answered by the reporting State's representatives. This highlights the importance of collecting information and documentation properly, as will be discussed in detail in the chapter by Ms Wiseberg, below. All reports should also take into account any General Comments or recommendations adopted by the Committees regarding any of the provisions of the international instrument in question.

Regarding the second condition necessary to engage in a fruitful dialogue, its quality also depends on the effective elimination of any gaps and the discussion of any doubts during the consideration of the report with the competent Committee. Indeed, it is a matter of current practice – not opposed by the States Parties to the various instruments – that the supervisory bodies hold an oral examination of any report in the presence and with the active participation of representatives of the reporting State. The amount of time allocated to the consideration of each State Party report varies from treaty body to treaty body, and depends on a variety of factors, such as the total length of session determined by the treaty, or by financial constraints.

Although the time factor plays an important role in ensuring a thorough examination of a report, the effectiveness of the supervision clearly depends also on the quality of the delegation sent by the State Party to introduce a report before a Committee. The representatives should be in a position not merely to make general and political statements, but they should also be able to update the report to cover the time period between its submission and its consideration. The representatives should be competent to discuss in detail the issues raised by a Committee on any matter dealt with in the international instrument under

review. It is therefore desirable to send a sufficiently high-level delegation. At the same time, the size of the delegation should be adequate to cover all aspects of a particular instrument, and it should include persons that have taken part actively in the preparation of the report. The members of the delegation should have sufficient experience to engage in a constructive dialogue with a Committee on the issues and questions that arise from the implementation of any given instrument in the specific national context.

(b) Consideration of reports by international human rights bodies

As was stated above, the consideration of reports takes place in public meetings of a Committee in the form of a discussion between the representatives of a reporting State and the members of a Committee. The specifics of length and format depend on treaty provisions, on procedural rules and on decisions taken by the Committees. They are dealt with in Part Two of this Manual.

In general, it is usual practice that the consideration of a report starts with an introductory statement by the State's representatives in order to update the report or to make any other additional comment. Subsequently, the examination of a report takes place in the form of questions Committee members put to the representatives, who provide answers and clarifications. The practice of several different supervisory bodies has been to communicate to a State Party, in writing, the major issues upon which the discussion will concentrate, a few days before the consideration of the report,. This procedure enables the delegation to gather the necessary information and to make the discussion more fruitful and effective.

In order fully to appreciate the nature of the discussion, it must be stressed that the members of the Committees are independent experts who serve on the Committees in their personal capacities. Their ability to raise any issue or to ask any question is limited only by the international instrument under whose authority they carry out their task. In particular, experts are not required to confine their review only to information provided or statements made by the State Party in the report or during its consideration. The members of the Committees may bring into the discussion any issue as long as it falls within the scope of the international instrument under review. Members can therefore use any information available to them, whether it comes from official national or international sources, or from unofficial sources such as the press or non-governmental organizations.

Depending on the procedures of each supervisory body, representatives answer questions either immediately, or at the end of the consideration of reports. Only exceptionally, when a delegation does not have the necessary information at its disposal, an answer may be deferred to a later stage and may be provided subsequently in writing. However, such a procedure has so far not been the usual practice of any Committee.

The consideration of a report is concluded by general remarks, by specific comments by Committee members and by a written comment or concluding observations of the Committee as a whole.

(c) The essence of dialogue

The purpose of considering a report in a public discussion is to establish a constructive dialogue between the reporting State and the supervisory Committee in order to make the Committee's experience available to the State and to enable it to take advantage of this experience in carrying out the implementation of its international obligations.

At this point, one must stress that the Committees are neither courts nor quasi-judicial bodies. The nature of their activity may be of a different quality with regard to the competence of some treaty bodies to receive and to examine individual complaints or communications. However, it has never been claimed that the treaty bodies may perform judicial or quasi-judicial functions in the consideration of States Parties' reports. The Committees, as a result of the dialogue, do not issue a judgement regarding the degree of implementation of the provisions contained in the relevant instrument in the reporting State.

The purpose of the dialogue is rather to assist the reporting State in the implementation of its treaty obligations. The dialogue should clarify the scope and the meaning of the treaty obligations and should highlight those aspects that may have been neglected by the authorities of the reporting State. It is in this spirit that the members of the Committees raise issues of concern to them, ask their questions, and formulate their comments accordingly at the end of the consideration of a report. And it is in the same spirit that the written comments of the Committee as a whole are formulated at the conclusion of the consideration of a report.

In essence, the same purpose guides some of the Committees in the elaboration of General Comments. Such General Comments do not refer specifically or individually to the consideration of any one report, but they deal with specific issues or individual articles of an international instrument. The General Comments reflect the experience acquired on such a point by a Committee in its consideration of reports, and are intended on the one hand to serve as guidelines for States Parties in the preparation of a report, and on the other hand to serve as a reference in setting uniform standards of implementation of the rights enshrined in international instruments in a multitude of national contexts.

Finally, it should be mentioned that the supervisory bodies themselves may report on their activities to various other United Nations bodies. Here, their comprehensive reports serve as the basis for discussion, and for other purposes.

(d) Necessary follow-up actions

After a Committee completes its examination of a report, the representatives who appeared before the Committee will duly report the outcome of the dialogue to their government, and adequate follow-up activities will have to be undertaken.

(i) Submitting supplementary information

The meetings of the Committee are recorded in summary records, documenting the dialogue between a Committee and the representatives of a reporting State. These summary records are issued during or shortly after a session of a Committee and are subject to correction. It is desirable that a government review the responses provided by its representatives during the dialogue with a Committee to ensure their accuracy. Otherwise inaccurate statements may be on record and the government of the reporting State might subsequently be embarrassed.

The government of a reporting State needs to analyse carefully all requests made by a Committee that further information be provided. The analysis should determine how many questions remain unanswered and what kind of information is required.

Depending on the suggestions made by Committee members and the perception of the situation in the reporting State, follow-up information may be provided in various formats to a Committee. In effect, should a report be totally inadequate, a whole new report may be suggested. Where such a suggestion is made by a supervisory body this may be an indication that the State Party needs assistance in the preparation of its reports. If that is the case a request for such assistance can be made to the United Nations Centre for Human Rights in Geneva.

A Committee may request a State to submit formally a supplementary report subsequent to the consideration of a report. This may be the case when the dialogue with the representatives of the State Party could not clarify satisfactorily questions asked or concerns raised by members of the Committee with regard to major issues, whose urgent nature require that they be addressed as quickly as possible. In such situations a Committee usually also indicates the time frame for submitting the supplementary report.

A reporting State may also provide further information to a Committee in some other, less formal, way. This may be the case in particular when a specific piece of information was not available to the representatives in the course of the dialogue, or when the reporting State wishes to clarify certain points which, in the course of consideration of the report, were not fully elaborated.

In general, the analysis of the dialogue will show that Committee members wish to obtain detailed and specific information on certain matters in the next periodic report when it is due. The request for such information is usually an indication that a Committee perceives a matter as giving rise to concern, or as a potential area of concern upon which a government needs to focus its attention. In this regard, a reporting State should endeavour to review carefully its previous report and the summary records of the meeting with a Committee before preparing the subsequent report. It goes without saying that the State Party would be expected to address the issues which gave rise to the concern and to take such steps to correct the situation as may be reasonable in the circumstances.

To the extent that supplementary information needs to be prepared, it is advisable to retain the same team of officials who prepared the submitted report, by reason of their familiarity with its content.

(ii) *Changes required in law, policy and practice*

Since it is only exceptionally that the Committees receive written answers to the questions asked during the dialogue, or that they request a supplementary report to be submitted, the main thrust of the national review of the dialogue should focus on the legal and policy changes that appear to be required as a result of the comments made by Committee members. In fact, some of the comments made by a Committee may well point to the need for legislative changes so that specific laws may be brought into conformity with a State's obligations under an international instrument. Similarly, changes in administrative regulations may be called for. A government may need to introduce changes in policy and practice which a Committee found not in full compliance with the standards set by an international instrument. Since the dialogue established with a Committee is to benefit the citizens of the reporting State in their enjoyment of human rights, a government, in good faith, should see it as an obligation to act upon the issues raised by the supervisory bodies.

(iii) *Necessary publicity*

All those who participated in the preparation of a report should be informed in detail by the government about the report's presentation to a Committee. In particular, the legislature, the various government bodies affected by a particular instrument, and groups and private individuals outside the government who may have been involved in the preparatory phase of a report should be informed of the outcome of the dialogue so that the necessary initiatives can be taken to respond to the concerns of a Committee within their various spheres of responsibility.

Since the implementation of an international human rights instrument concerns each and every individual under a State's jurisdiction, the public at large should also be informed of a State Party's cooperation with a Committee, and of the outcome of this cooperation.

The dissemination of both the report submitted to a Committee and the summary records documenting its consideration represents an important aspect of the follow-up at the national level. Governments may hold press conferences, and they may in general encourage the mass media to report on the State's dialogue with a Committee. Reports and summary records can be made available at libraries, and they can be forwarded to interested bodies outside the government for dissemination and discussion among the public at large. The reports and summary records issued by the United Nations are public documents, and access to them should be encouraged. The Chairpersons of the treaty bodies recommended in 1988 that the United Nations Information Centres in each country be directed to distribute copies of the reports, along with details of a Committee's consideration of it, whenever a report of that State Party is considered.

(e) The role of non-governmental organizations

NGOs play a crucial role in the promotion and protection of human rights. Their potential contribution to the preparation of reports has already been discussed in the chapter above; in the next chapter, Ms Wiseberg will discuss NGOs as important sources of information in the preparation of reports. However, NGOs may also make a substantial contribution regarding the submission and consideration of reports and in the necessary follow-up stage at the national level.

Some Committees formally invite non-governmental organizations in consultative status with the Economic and Social Council to submit information, documentation and written statements on issues of relevance to the Committees' work: namely the Committee on Economic, Social and Cultural Rights, the Committee against Torture and the Committee on the Rights of the Child, in accordance with their rules of procedure. However, as will be pointed out in Part Two of the Manual, all the Committees informally solicit the submission of relevant information from NGOs, and members of the Committees regularly obtain information on an informal basis from a variety of sources, including non-governmental ones. Information provided by NGOs has been a valuable asset in the work of the Committees. It also underlines the important functions of NGOs in ensuring the enjoyment of human rights for individuals.

It is desirable that NGOs also be briefed in detail by the authorities of the reporting State on the results of the dialogue. In addition, NGOs are very well placed for disseminating information on the reporting process among their members and for encouraging public debate. NGOs can take up issues that are of particular importance to them, and appraise the public of specific comments made by a Committee on matters regarding a State's compliance (or non-compliance) with international treaty obligations. Where a government may be slow in implementing recommended changes in its law, policy and practice, NGOs such as law associations can be of service to the public in influencing such changes.

HUMAN RIGHTS INFORMATION AND DOCUMENTATION

By Laurie S. Wiseberg

1. The Role of Information and Documentation

The pivotal importance of information and documentation in the field of human rights is undisputed. Accurate, timely and comprehensive information is a pre-condition for the accomplishment of relevant work in this area. Of course, good information about the status of human rights, and obstacles to their full realization or protection is not enough to produce change towards more rights concerning social orders; political will and education are other key factors. Nonetheless, without accurate information, little progress can be achieved.

The treaty-body reporting system is premised on this belief: that States Parties can improve their capacity to protect and promote the rights of all individuals and groups under their jurisdiction, and especially the rights of those most vulnerable to abuse, by a frank and open dialogue with human rights experts; and that such a dialogue must be grounded in a serious and detailed examination of the status of human rights in their country, the national mechanisms for protection and redress, and the obstacles that must be overcome to produce positive change.

Over the past decade, there have been enormous advances in our capacity to gather, manage and disseminate information as a result of the technological revolution in communications. Relatively low-priced computers can now handle and store vast quantities of information; word-processing software has greatly facilitated the preparation and editing of reports; the speed at which this information can be manipulated has increased dramatically; large number of individuals can share both data and programmes if their computers are connected together in a Local Area Network (LAN); scanners can transform printed information (books, drawings, photographs, microfiche) into electronic data; such information can now be stored and duplicated on CD-ROMs (compact disks) allowing thousands of users to read the data with low-cost CD-ROM drives; the optical disk, a further development on the CD-ROM, enables millions of pages of text to be shared; numerous database programmes allow us to organize and reorganize information in accordance with according to specific needs; and high-speed modems permit us to exchange information with computers in other offices, cities or countries.

This process has been dramatically expanded by the "Internet" – an electronic highway that connects computers all over the world and thus permits rapid exchange of information regardless of geographical location. In addition, new protocols and programmes for formatting, searching and downloading (i.e., copying) information across the Internet – like FTP (File Transfer Protocol), Gopher (a programme which permits one computer to query another by a series of menus or choices) and the World Wide Web (WWW – a protocol which permits the use of graphics and colour as well as text).

Moreover, new human rights documentation centres and networks have been established in all corners of the world by governments, intergovernmental organizations (IGOs), universities, and non-governmental organizations (NGOs). Simultaneously, governments, IGOs and NGOs have become more sophisticated in human rights fact-finding or monitoring. They have also begun to develop indicators and benchmarks by which progress in realization of human rights can be measured.

The obligations that States Parties assume when they adhere to international human rights treaties is to provide information on the "legislative, administrative, judicial or other measures adopted to give effect to the rights enshrined in the treaty under consideration" and, as the case may be, on the "factors or difficulties" affecting implementation. The quality of reports and dialogues between experts and state representatives heavily depends on the quality of information States provide, which makes the process of collecting and analysing the appropriate information and documentation an essential part of the reporting process.

The developments noted above, if appropriately exploited by governments, should greatly facilitate their reporting obligations under the United Nations human rights instruments.

2. Why Devote Resources to Information Gathering and Analysis?

From the outset, it is important to recognize that the gathering and analysis of information is not a cost-free process. Resources, both human and material, must be devoted to the activity. Any State Party which takes its reporting obligations seriously must be prepared to assign personnel to this task, give them adequate time and the equipment necessary to compile the data needed, and send a clear message to government agencies, administrative bodies, and others who may have necessary information, that the preparation of these reports is a priority concern of the government.

Given the multiplicity of governmental concerns, the paucity of resources which confronts many developing countries, and the urgency of what are perceived as "the real issues" – to feed, clothe, shelter and educate a country's citizenry or to develop an economic base for

sustainable development – it is legitimate to ask why scarce resources should be devoted to this task. There are at least four compelling reasons.

First, in becoming a State Party to an international human rights instrument, a country assumes reporting obligations. It thus has an international responsibility to gather the information required by the treaty-body and to organize it according to the guidelines provided.

Second, a report submitted to a treaty-monitoring body, which is the State's own description of its conformity to fundamental standards of individual dignity and worth, is submitted to the glare of publicity and the force of international public opinion. Only a carefully prepared report, based on solid, reliable and detailed information will stand up to such domestic and international scrutiny. A good report can go a long way in demonstrating a State's commitment to international human rights principles, even if its performance falls short of ideals.

Third, the same information that is sought by independent expert bodies in the reporting process is essential for informed and effective national policy-making. The reporting process should not be viewed as a burdensome obligation to be grudgingly met, but as an opportunity for gathering the kind of information critical to the realization of domestic human rights objectives. Information is power; lack of information is powerlessness. No matter how many other demands there are on scarce resources, some significant amount of those resources should be devoted to the collection and analysis of information on the extent to which there is, or is not, domestic compliance with international human rights standards.

Finally, the reports submitted to international treaty monitoring bodies can, if well prepared and widely circulated, serve the ancillary function of educating government officials and administrators on the one hand, and the general public on the other, about human rights. They can stimulate debate and critical discussion about how to move forward in protecting and promoting human rights. Along with sound information and the political will to effect change, human rights education is the single most critical factor for developing a human rights culture; and a human rights culture is the strongest bulwark we have against human rights violations. Helping people to know their rights is to help them to better protect their human rights. Such follow-up activity is also a growing concern of the monitoring bodies.

3. Practical Aspects of Collection and Analysis of Human Rights Information

The very moment a country ratifies or accedes to an international human rights treaty, the process of a systematic information gathering and analysis should begin. The review of existing legislation and practice countries usually undertake before becoming party to an international human rights instrument will already be a first step in the future preparation of the initial report. Good reports are not something that can be haphazardly put together a day, a week, or even a month before a report is due. Rarely will the information needed be available if careful preparatory thought and work has not gone into establishing a process for collecting, organizing, and analysing the data. A few simple guidelines can direct and facilitate that process.

(a) Clearly Understanding the Task

The person or team responsible for preparing a report should have a clear understanding of what this entails, and what constitutes a good report. Therefore, they should be given the time and training needed to become totally familiar with reporting cycles, guidelines, and expert-government exchanges (the constructive dialogue). Studying this Manual is a good starting point. Examining the reports of other governments, reading the summary records of the dialogues between experts and government representatives, and reviewing the General Comments of the relevant Committee is an important next step. Only on this basis can they begin to collect and/or instruct others to collect and analyse the information that will go into their own report.

The UN Centre for Human Rights is currently building electronic databases which will include, *inter alia*, reporting guidelines for all of the treaty bodies, States Parties' reports, the summary records of discussions with States Parties, comments of the Committees, and the General Comments of the Committees on specific articles of the Conventions. A database on the Convention on the Rights of the Child is already under construction and the others will rapidly follow. Since this documentation is all information that is already in the public domain, these databases are being mounted on a World Wide Web site and will be universally accessible. Governments should, therefore, ensure that those entrusted with preparing their reports have access to this resource.

(b) Thinking through the Information Gathering Process

In their consideration of reports, the treaty bodies seek detail, not just generalities; they want information not merely about the laws on the books, but about administrative policies and practices; and they are interested in an honest assessment of difficulties confronting a

State Party in implementing international standards under diverse local conditions. They want information not only on what steps have been taken, but also what steps have not been taken (and why) to implement the rights.

Thus, once the responsibilities for the preparation of a report are clearly assigned, the person in charge must think through **who** will have **what** relevant information and in **what form**. One fact cannot be stressed too strongly: information does not just flow. **It has to be actively solicited and collected**. It is therefore crucial to think clearly about how to formulate specific questions to solicit the required information and to whom to address the questions. It has to be made clear in what form one wants the responses: raw data? digested and analysed information? descriptive information? statistical information? data that is disaggregated according to gender, age, minorities, income? A realistic time frame must be drawn up that allows adequate time for people to respond to information requests, and for the data received to be analysed.

Equally important, when contacting government departments or others for information, the context of the information gathering should be made clear to them. Those from whom information will be solicited will probably have little or no understanding of United Nations human rights reporting obligations. They will not understand why it is important to provide the data requested; why they should devote scarce resources (time and staff) to what may seem to them an academic or irrelevant exercise. The person or persons charged with the information collection must, therefore, ensure that sufficient background information on the process accompanies requests for information. Some basic training or education about the UN human rights reporting system would be ideal; but, if that is not possible, the materials sent out should underline the importance of reporting process and the priority it should be accorded.

(c) Sources of Information

i. Government Agencies and Administrative Bodies

The submission of reports under any of the international human rights treaties is a responsibility incumbent upon the government. Reports are States Parties' reports. Therefore, the bulk of the information needed for the preparation of reports will most likely come from government agencies and administrative bodies. The general guidelines issued by the various treaty bodies and discussed under the individual instruments in the second part of this Manual specify the information sought by the various treaty bodies.

Undoubtedly, different government agencies and administrative bodies (e.g., the courts, the police, the department of correction or prisons, the department of labour, school boards, an office on the status of women, the census bureau, etc.) may all have important

information for reporting on one or another human rights treaty. If a country is federally organized, with jurisdiction divided between the national and provincial/state governments (as with Canada, Ethiopia, or India), it may be necessary to develop a system of information gathering in which contributions are requested from both levels of government. In other cases, particularly in small countries, a government may wish to involve local government agencies.

ii. Resources of Non-Governmental Organizations, the Media, and Scholarly Communities

In preparing a report, there are reasons for going beyond government sources to information produced by the academic or scholastic community, the media, and by NGOs or citizens' groups.

First, government sources offer a government viewpoint. Even though the report presented to the treaty monitoring body is a government's assessment of its own performance, in preparing that assessment it is useful to know how those outside government view its performance. Scholars may have undertaken research and published findings of direct relevance to the government's human rights reports, and with a different perspective from that of the government. Media reports, especially reports from the independent press, is another important source, since the media is frequently the first to flag human rights problems and spotlight cases of importance.

Secondly, there are very likely to be areas where NGOs – including women's, labour, peasant, indigenous, refugee, children's, lawyers', journalists', teachers', or even business organizations, as well as human rights groups – have information that is not available to governmental bodies. Such citizens' groups may be gathering information about human rights abuses, or about problems or achievements in their own areas of concern. Mr. Langis Sirois, from the Canadian Human Rights Directorate, an agency with responsibility for preparing Canada's human rights reports, wrote in response to a question about the value of NGO information: "As you know, I have been involved in the preparation of these reports for a number of years. I can recall numerous occasions when I contacted non-governmental organizations to obtain information on their own activities for inclusion in the reports. These were *ad hoc* consultations. I always found that they were very useful."

In a number of countries, governments have begun to involve NGOs to a greater or lesser extent in the report preparation process. Such involvement may range from informal contacts, to a formal process of soliciting information, to actually having NGOs review and critique draft reports. In the latter instance, the logic is that a government may prefer criticism to be voiced within the domestic arena rather than in the international one. The point, however, is that it is advantageous for the government to know how its citizens evaluate its compliance with international human rights standards.

The person or persons in charge of preparing the government's reports should exploit to the full these sources of information. The reporting officer's assessment of the situation may differ from that of NGOs, scholars or the media, and he/she may wish to discount some, or even all, of the analyses. However, he/she should not be ignorant of what the non-governmental information is or pre-judge its value.

The case of Canada may be instructive in that, on four separate occasions, the government formally asked NGOs to contribute to the process of preparing treaty-body reports. In three of the cases – on the preparation of Canada's third report on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the fourth report on the International Covenant on Civil and Political Rights (CCPR), and the third report on the International Covenant on Economic, Social and Cultural Rights (CESCR) – formal letters were sent to NGOs: to 42 national women's organizations regarding CEDAW and to over 200 NGOs regarding CCPR and CESCR.

While there was some variation in the three letters sent to NGOs, each mailing included a copy of the relevant Convention, Canada's previous report under that Convention, a specification of the articles to be covered, the relevant time period for the report in question, and contact names and numbers should the NGO want further information. Moreover (as in the 1995 letter to NGOs concerning the CESCR), NGOs were told:

All comments will be taken into consideration in the preparation of the... report, and will also be relayed to the federal departments and agencies which are responsible for the subject matter covered. While your specific input may not be reflected in the official text, we will forward to the Committee..., under separate cover, the complete texts of all submissions received from non-governmental organizations. Also, any organization may forward its comments directly to the Committee... [with the address provided].

The government also invited NGOs to bring to its attention any other organizations which might be interested in submitting comments, or to share this letter with them. The idea was to get the widest possible input from the NGO community.

Lest governments fear that such invitations to NGOs will bring a flood of information and documentation that they may be ill-equipped to handle, it should be noted that there were only three NGO responses for the CEDAW report, four for the CCPR, and 10 for the CSECR. NGOs, like government officials, need to be convinced that there is value in expending time and effort to provide input to the process.

In the fourth case, which concerned the preparation of Canada's initial report on the Convention on the Rights of the Child (CRC), the Children's Bureau, which was responsible for the preparation of the report along with the Department of Justice, organized consultations with the Canadian Coalition for the Rights of Children, an umbrella group of more than 45 NGOs with domestic and international perspectives on children's issues; and it also held consultations with national Aboriginal organizations. As reported in Canada's May 1994 report to CRC, the input from the NGOs and Aboriginal groups was incorporated "to the extent possible" in those sections of the report which dealt with "Factors, Difficulties and Progress" and "Priorities and Goals"; and, in addition, the submissions of the Aboriginal and non-governmental organizations were distributed to more than 40 federal government departments and agencies, for their consideration in future policy formulation.

Since the Canadian government's concern is for still greater NGO involvement in the process, human rights reporting officers are currently exploring how they might use the Internet to solicit information from a wider audience. Thus, in the coming months, the Canadian Human Rights Directorate will be experimenting with mounting information about the reporting process on a World Wide Web site or a conference as a means of attracting NGO participation in report preparation.

iii. Libraries, Documentation Centres, and On-Line Sources of Information

In developing countries, which are also – almost by definition – information-poor countries, a government can greatly expand its information base by utilizing information collected by others. Universities almost always have better libraries than government ministries. A number of NGOs have established documentation centres or databases on human rights, or collect information relevant to human rights work. Frequently, they are better placed to collect information, particularly as it pertains to inadequacies in the protection of human rights, than are government ministries.

The government should build on these efforts, not try to duplicate or undermine them. One good practical point of departure for a person charged with reporting to international treaty bodies would be to compile an inventory of organizations and individuals that are likely to have relevant material. Such a listing should be as precise as possible about what type of information can be accessed, where, and under what conditions. The value of preparing such a directory is that it provides institutional memory and continuity; if personnel changes, as it invariably does, the new people responsible do not have to reinvent the wheel.

There is also an enormous amount of information currently available "on-line" on the Internet, some of which may be relevant to governments in the preparation of their reports. Admittedly, governments in the North are only beginning to tap into this informa-

tion for human rights reporting, and governments in the South, with less sophisticated equipment and fewer trained personnel, may take longer to exploit them. Yet there is no doubt that governments, international organizations and NGOs will all need to review their information-gathering strategies in light of recent developments in communications. The following quotation, from a 1995 research proposal on "International Human Rights and the Internet...", suggests the magnitude of the changes occurring.

The capacity to mobilize information and develop global networks has expanded dramatically in recent years with the advent of new communications and information technologies. Computers and faxes were the first wave in these developments, but the recent explosion of the Internet, and in particular the World Wide Web, promises a qualitatively new stage. While there has been a good deal of hype surrounding the Internet, it is indeed an information and communications revolution. Like radio and TV, the Internet is an entirely new form of communication. Most contemporary political theory assumes that information is costly to acquire, difficult to retrieve, and expensive to distribute. The Internet explodes all three assumptions.

Several factors have contributed to the increased usability and usefulness of the Internet. The first is the development of the World Wide Web (WWW), a communication language or protocol which is capable of displaying graphics and pictures in full detail and colour (and increasingly, with multi-media features including audio and moving images). Even more importantly, the WWW is capable of presenting hypertext, or hyperlinked information. To the user, hypertext documents provide an endless web of linked information that can be followed in countless directions with a simple "point-and-click". Hyperlink capacity means that you can readily move between documents regardless of where they are located – whether that is a computer in a nearby city, or a computer on the other side of the world.

The second factor contributing to the usability and usefulness of the Internet, directly related to the first, is the development of HyperText Markup Language (HTML). HTML is a simple coding language used to both prepare documentation for WWW presentation, and also to create the hypertext which links information together. Thus, the WWW in general, and a Website in particular, is actually a collection of HTML documents. Evidence that HTML is relatively easy to learn and that it is being embraced by millions of individuals is given by Matthew Gray, of the Massachusetts Institute of Technology (MIT), who notes that the number of WWW sites has increased from 130 in June 1993 to over 230,000 in June 1996. While the rate of the Web's growth has been slowing, it "continues to be exponential": for the second half of 1993, the Web had a doubling period of under three months; today the doubling is still under six months! In effect, HTML has made it possible for indi-

viduals, organizations, government bodies, commercial entities – indeed, anyone who wishes to do so – to publish their information and documentation.

A third factor that has enhanced the usability and effectiveness of the Web's massive body of information has been the development of WWW browsers, programs which display the contents of a WWW page. Browsers, such as Netscape, Mosaic and Internet Explorer, are capable of displaying both text and images, and some can even play sound and video. A browser serves as the gateway to the WWW, and it is also (in some cases) the means for obtaining a printed version of a page that is viewed on-line. Overall, since their first limited network use in March 1991 and their commercial licensing in 1994, WWW browsers increasingly simplify the task of "surfing" or "browsing" the WWW. Supported by a good WWW browser, minimal computer literacy is required to access information on-line.

Finally, in terms of making the Web's massive information collections more manageable, a fourth factor has enhanced the usability and usefulness of the Internet. The development of "search engines" – programs which routinely index a collection of Web pages – have provided Web users with the ability to tailor their search for information. Search engines on the WWW are used as Web-wide indexes (or catalogues) of every existing Website, and they are also used as limited, local indexing of any particular site or collection of Web pages.

Overall, it is important to note that the progress of the Internet, in terms of its usability and effectiveness, is showing no signs of slowing. For instance, new Internet directions include Java and Shockwave, sophisticated programs for presentation of information on the WWW which enable professional designers to imbue the WWW with elements of interactivity and media. In fact, even television on the Internet has now arrived.

To help individuals and organizations navigate through this vast sea of information – some of it highly valuable, a lot of it unreliable or irrelevant – a number of human rights organizations have begun to develop directories of on-line human rights information sources. In 1995, Human Rights Internet (HRI), an international NGO in consultative status with ECOSOC, published a resource entitled "Selected Online Human Rights Information Sources." This has now been vastly expanded and is being maintained on-line on HRI's Home Page <http://www.hri.ca>. The American Association for the Advancement of Science (AAAS) has developed a similar resource <http://www.aaas.org/spp/shr/shr.htm> as has Project Diane, a cooperative Web Site of several North American universities <http://www.elsinore.cis.yale.edu/dianaweb/diane.htm> which have focused their energies on mounting UN human rights documents on the Web.

Moreover, the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Labour Office (ILO) and the UN Library in Geneva all developed CD-

ROMs with important bibliographic and full-text human rights information,² and these, as well as other UN agencies – the Department of Humanitarian Affairs (DHA), UNICEF, WHO, UNESCO, the UNDP amongst them – have mounted gophers or World Wide Web sites on the Internet. The Office of the High Commissioner for Human Rights WWW site became operational on 10 December 1996. Any of these sites can be accessed through the UN's Home Page on the Internet <http://www.un.org>.

At the end of 1992, the United Nations began putting its official documentation on an optical disk and making this available not only to UN offices, but also to government missions to the UN. Hopefully, this too will eventually be accessible on the Internet.

This suggests that training human rights reporting officers in how to effectively use such tools will become increasingly important and an essential investment for governments, intergovernmental organizations and NGOs. With a relatively low-cost investment in appropriate equipment and training, governments can go a long way towards closing the information gap that currently exists between North and South, as well as facilitating the reporting process.

4. Creating an Information Management System

The reporting officer who is seeking information for the purpose of human rights reporting, or is instructing others to collect specific information over time, should always keep in mind that he or she is the expert in the human rights reporting requirements. Therefore, it is his or her responsibility to seek out all the sources, ask the right questions and give precise instructions for useful and complete information to be assembled. Paper (or electronic data) in itself is not information. To be useful, data needs to be collected purposefully, systematically organized and seriously analysed. For example, if the data provided by a government agency – whether about education, health care, job opportunities, or conditions in prisons – is not disaggregated by gender, the human rights officer should go back to the source and insist on disaggregated data or the reasons why this is not possible. In their initial request for information, they should make it clear that all human rights reporting must

2. The UNHCR's CD-ROM, called "REFWORLD", is a collection of databases developed by the UNHCR Centre for Documentation on Refugees (CDR) which contains authoritative information on refugees including current country reports, legal and policy-related documents and literature references. The ILO's CD-ROM, called "ILOLEX", is a computerized version of the International Labour Code in full text concerning human rights, employment policy, working conditions, industrial relations, occupational safety and health, and social security. The UN Library in Geneva, in cooperation with the UN Centre for Human Rights, has published "Human Rights on CD-ROM", which is a bibliographic database for United Nations Documents and Publications from 1980-the present. It also contains the full text of 95 human rights treaties.

infused with a concern for women's human rights and, therefore, that the data should be broken down by gender.

International human rights treaties cover a wide range of rights and detailed reporting requires information from a multiplicity of sources. If this information is to be of value to governments, concerted effort must be made to collect relevant documentation and to organize it systematically, in such a manner that it is readily retrievable when needed. The steady accumulation of specific information over time will facilitate reporting obligations, and make it less necessary for reporting officers to scurry frantically to find what exists, where it exists, and how to get it.

Therefore, it may be useful for the office charged with human rights reporting to develop a small documentation centre which would contain, at the very least, copies of all relevant treaties (most likely the United Nations Centre for Human Rights' *Compilation of International Instruments*), guidelines and other communications issued by the various treaty bodies, reports submitted by other countries to the treaty bodies which could broaden the understanding of and perspective on human rights reporting, the annual reports of the various treaty bodies to the General Assembly of the United Nations and, of course, all past reports of one's own government under all relevant treaties, including reports submitted to regional treaty bodies, the ILO, etc.

If resources are available, it may be useful to expand this small collection to include a number of academic document collections or key studies bearing on the interpretation of human rights treaties and on various aspects of international human rights law, a few major international human rights journals or annual reports, important domestic legislation on human rights, key reports of both national and international material on regional systems of human rights promotion and protection. The bibliography annexed to this Manual might provide some suggestions in this regard.

The officers charged with reporting might also open vertical files on issues to be covered in forthcoming reports. As items cross their desks or come to their attention, they can sort the material into appropriate files.

Even if this collection initially involves only a bookshelf or two and a filing drawer in someone's office, there is a value in cataloguing the small collection. Unless this is done, the tendency exists for people, intentionally or otherwise, to walk off with important documents that are subsequently lost, or for the collection to disappear as personnel changes. If at all possible, such cataloguing should be done in a computer database, since this maximizes information retrieval as the collection grows.

For similar reasons, it would be valuable to electronically store past reports to the various treaty bodies in a full-text database or, at the very least, to maintain them in one computer "directory" as word-processed documents. To the official reports, one might add notes

about the dialogue with the experts, the questions they asked, the additional information they requested, their General Comments. In this way, the government begins to build an easily accessible record of their reporting process.

As reporting officers begin to use the new communications technologies described above, accessing the Internet or CD-ROMs for important information, they might want to maintain electronic files of downloaded data that will be of use to them, or to others who take up their responsibilities after they move on to other jobs. Data in electronic form needs to be organized and maintained with the same care and attention as information on paper. In this way, scarce resources can be maximized and, as time goes on, the reporting process can become easier, building as it will from a base of experience.

5. Conclusion

Organizing information well will also facilitate the sharing of that information. For example, if different government departments are linked together on a LAN, everyone on that Local Area Network can access the human rights directory or database, without the need to photocopy multiple copies of relevant documents each time a new report is due. Alternatively, if government departments have electronic mail (E-mail) facilities, documents can be sent directly to department computer stations in a matter of seconds; and should officials want paper copies of some of the material, they can print them in their own offices. Another alternative, for still wider dissemination, is to post this information on a conference or gopher or World Wide Web site on the Internet. It is, perhaps, important to note that one can establish private, as well as public conferences; that is, a site on the Internet that can only be accessed by people with the appropriate password. With other security features, such as encryption and firewalls, highly confidential information can be shared while ensuring that only those who have a right to the information can read it.

In a similar manner, governments might want to consider distributing copies of their reports under the various international human rights conventions on the World Wide Web or through a variety of electronic networks that can be accessed by different sectors of their population.³ In some countries, for example, special educational electronic networks have been established – such as Schoolnet in Canada – to link up schools and school children na-

3. While people at universities usually have direct and free access to the Internet, others (including NGOs) usually need to go through an information provider; these may be non-profit providers, such as APC (the Association of Progressive Communicators), which charge only a modest fee for such access, or commercial providers, which charge considerably more. The APC network (which is called Web in Canada; IGC in the USA; Greenet in Europe; Sangonet in South Africa; Alternex in Brazil; etc.) has numerous human rights conferences and is now mounting WWW sites as well.

tionwide. Such networks make it possible to widely disseminate information, such as a State Party's report to a treaty body, with very little cost on the part of the government. Since one of the obligations of States' parties is to disseminate the reports they prepare for the treaty bodies with their own citizens, this may be one cost-effective way for doing so, at least for that part of the citizenry that has access to computers and computer networks.

Regardless, however, of the level of technology available to different States Parties, approaching the question of reporting under the international human rights instruments needs a systematic approach. That means giving serious thought to the gathering, organizing, analysis and dissemination of human rights information, and making available resources to effectively carry out the necessary work. While that is only one step on the long road to improving the human rights situation, it is a prerequisite for any meaningful change in a pro-human rights direction.

ANNEX

CONSOLIDATED GUIDELINES FOR THE INITIAL PART OF THE REPORTS OF STATES PARTIES

The supervisory bodies established under the human rights treaties dealt with in this Manual all have adopted general guidelines on the form and contents of the reports that States Parties are required to submit. Some of the treaty bodies have adopted separate guidelines for the preparation of initial and of second and subsequent periodic reports. In general, the various guidelines recommend that reports be prepared in two parts. The initial, or general, part should provide the supervisory body with basic information about the reporting State and the framework within which certain rights are protected, including constitutional, legal, administrative and judicial aspects. The second part should provide information with regard to the substantive articles of the instrument under consideration. The chapters dealing with the six major instruments in Part Two of the Manual use as their point of reference the individual guidelines adopted by each Committee as they applied in May 1990.

It was mentioned earlier that various efforts are under way to address problems related to the coexistence of reporting obligations for States that are parties to several international human rights treaties. One such effort is the consolidation and harmonization of the guidelines with respect to the initial part of States Parties' reports. (See General Assembly resolution 43/115, and document A/44/668.)

The Chairpersons of the treaty bodies held a second meeting in October 1988 to consider issues regarding the functioning of the reporting procedures, as well as questions regarding the rationalization and co-ordination of these procedures. One of the matters the Chairpersons identified as requiring urgent action was the possible consolidation of the initial parts of the respective guidelines of the various treaty bodies. (See document A/44/98.)

Subsequently, the treaty bodies individually discussed and amended draft-consolidated guidelines for the initial part of the reports of States Parties and by February 1990, all the treaty bodies had commented on the proposal and submitted suggestions. The third meeting of persons chairing the human rights treaty bodies, held in Geneva in October 1990, recommended that the "consolidated guidelines for the initial part of State Party reports under the various treaties, as drawn up in consultation with all the treaty bodies, should be added to the relevant guidelines as soon as possible". (Document A/45/636, Para. 65.)

The adoption of the consolidated guidelines for the initial part of the reports of States Parties expected to alleviate the reporting burdens of states that are parties to more than one

international human rights instrument. They allow a state party to fulfil its reporting obligations with regard to the initial, or general, part of the reports required under the international human rights treaties by submitting the same core document to the various treaty bodies. As a consequence, the consolidated guidelines replace the current initial, or general, parts of the guidelines adopted by the treaty bodies.

Although the final text of the consolidated guidelines for the initial part of the reports of States Parties has not yet been formally added to the guidelines of each individual treaty body at the time of the preparation of this Manual, it appears appropriate to inform reporting officers of the impending change in reporting procedures regarding the initial part of reports under the six instruments dealt with in Part Two. The reporting requirements with respect to the second part of reports, i.e. information requested under the substantive provisions of the individual conventions, **are not affected** by the consolidation of the guidelines and the future submission to the treaty bodies of a core document, or “country profile”, by reporting States.

Text of the consolidated guidelines for the initial part of the reports of States Parties

Land and people

- 1. This section should contain information about the main ethnic and demographic characteristics of the country and its population, as well as such socio-economic and cultural indicators as per capita income, gross national product, rate of inflation, external debt, rate of unemployment, literacy rate and religion. It should also include information on the population by mother tongue, life expectancy, infant mortality, maternal mortality, fertility rate, percentage of population under 15 and over 65, percentage of population in rural and in urban areas and percentage of households headed by women. As far as possible, States should make efforts to provide all data disaggregated by sex.*

General political structure

- 2. This section should describe briefly the political history and framework, the type of government and the organization of the executive, legislative and judicial organs.*

General legal framework within which human rights are protected

3. *This section should contain information on:*
- (a) *Which judicial, administrative or other competent authorities have jurisdiction affecting human rights;*
 - (b) *What remedies are available to an individual who claims that any of his rights have been violated; and what systems of compensation and rehabilitation exists for victims;*
 - (c) *Whether any of the rights referred to in the various human rights instruments are protected either in the constitution or by a separate bill of rights and, if so, what provisions are made in the constitution or bill of rights for derogations and in what circumstances;*
 - (d) *How human rights instruments are made part of the national legal system;*
 - (e) *Whether the provisions of the various human rights instruments can be invoked before, or directly enforced by, the courts, other tribunals or administrative authorities or whether they must be transformed into internal laws or administrative regulations in order to be enforced by the authorities concerned;*
 - (f) *Whether there exists any institution or national machinery with responsibility for overseeing the implementation of human rights.*

Information and publicity

4. *This section should indicate whether any special efforts have been made to promote awareness among the public and the relevant authorities of the rights contained in the various human rights instruments. The topics to be addressed should include the manner and extent to which the texts of the various human rights instruments have been disseminated; whether such texts have been translated into the local language or languages, what government agencies have responsibility for preparing reports and whether they normally receive information or other input from external sources, and whether the contents of the reports are the subject of public debate.*

PART TWO

HUMAN RIGHTS REPORTING UNDER SIX MAJOR INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

By Philip Alston

The International Covenant on Economic, Social and Cultural Rights (hereinafter, the “Covenant”) was adopted by the General Assembly of the United Nations pursuant to Resolution 2200A (XXI) of 16 December 1966. It entered into force on 3 January 1976, in accordance with Article 27. As of 30 September 1996 the Covenant had been ratified, or acceded to, by 135 States.

A. THE REPORTING PROCESS

(a) The Covenant and its reporting requirements

The Covenant is the twin sibling of the International Covenant on Civil and Political Rights. Each of the Covenants elaborates upon some of the rights contained in the Universal Declaration of Human Rights and there is some overlap in content between the two. Most importantly, however, the preamble to the Covenant recognizes that the human rights ideal 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”. (The preamble to the Covenant on Civil and Political Rights expresses the identical sentiment but reverses the order in which the two sets of rights are listed). Thus, this Covenant cannot be viewed in isolation from the other and both the means and the objectives laid down in the Covenant on Civil and Political Rights should be borne in mind in reporting on the Covenant on Economic, Social and Cultural Rights.

Under Article 2(1) of the Covenant, each State Party “undertakes to take steps... with a view to achieving progressively the full realization of the rights recognized...”. The obligation is made subject to the availability of resources, but the scope of that qualification is limited (as discussed below, in connection with Article 2). Moreover, Article 2(2) of the Covenant, which requires States to guarantee that the relevant rights will be exercised without discrimination, is not subject to resource constraints. In other words, if the resources are available to enable any degree of enjoyment of a given right, then it must be under circumstances that do not discriminate. Similarly, Article 3 which provides for affirmative measures to ensure the equal rights of men and women, is not made subject to the availability of resources.

Before considering the nature of the reporting obligation it is appropriate to note that the body which monitors compliance with States Parties' obligations under the Covenant is the Committee on Economic, Social and Cultural Rights (hereinafter referred to as "the Committee"). It does so under the aegis of the Economic and Social Council which is the body formally entrusted with that responsibility under the Covenant. Before the Committee began its work in 1987, the Council was assisted in its task by the Sessional Working Group of Governmental Experts (hereinafter referred to as "the Sessional Working Group").

The principal obligation of States Parties to the Covenant is to implement its provisions at the national level. The obligation to report to an international body, which is the focus of this Manual, is essentially a means of promoting the implementation of that obligation. Article 16(1) states, in the following terms, the obligation to report.

Text of Article 16(1)

The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

The nature of the reports to be submitted is further elaborated upon in Article 17(2) which provides that "[r]eports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant". Taken together, these provisions make it clear that States Parties' reports are required to deal not only with the progress made but also with cases where appropriate progress has not been made. The Committee has made this clear on a number of occasions, and particularly when States' reports have sought to portray only the positive developments in the countries concerned. Such reports are not considered to satisfy the requirements of the Covenant.

In 1976, shortly after the Covenant came into force, the Economic and Social Council instituted a three-phase reporting cycle according to which States Parties were required to report, initially at three-yearly intervals, on different clusters of rights (Articles 6-9, 10-12 and 13-15). This system meant that a complete initial reporting cycle took nine years. The cycle for subsequent, or periodic, reports took only six years to complete but meant that a State Party was required to submit a report under the Covenant every two years. This programme of reporting was considered by the Committee to be unduly burdensome upon States and to reflect an excessively compartmentalized approach to the rights recognized in the Covenant.

A new reporting cycle was thus introduced (Economic and Social Council resolution 1988/4) as a result of which States Parties are now requested to submit an initial report, dealing with the entire Covenant, within two years of the Covenant's entry into force for the State concerned. Every five years thereafter a single, comprehensive, periodic report is required. From 1988 to 1994 the Committee indicated that, in order to facilitate a smooth transition to the new system, it would continue to consider reports drawn up on the old basis which dealt with only three of the rights recognized in the Covenant. As of 1 January 1995, however, the Committee has indicated that only comprehensive reports should henceforth be submitted.

These arrangements are without prejudice to the Committee's ability to request a State Party to submit additional information to supplement that already provided in a report by the State concerned.

(b) Guidelines for reporting under the Covenant

General guidelines dealing with both the form and contents of reports were established shortly after the Covenant's entry into force in 1976. However, in the light of its experience and after extensive discussions the Committee adopted new guidelines at its fifth session. At its fourteenth session the Committee decided to undertake a further review of these guidelines in order to ensure that full account is taken of the implications to be drawn from the programmes adopted by the Beijing, Copenhagen, Cairo and other relevant international conferences as well as the consequences of the various General Comments adopted by the Committee since 1990. This procedure might be expected to lead to a revision of the guidelines as from 1997 or 1998.

The guidelines are intended to provide guidance to States Parties in the preparation of their reports. By following them as closely as possible, reporting officers will minimize the risk that their reports are deemed to be inadequate in scope and insufficient in detail. The guidelines also provide a uniformly applicable framework within which the Committee can work and enable it to demonstrate a consistency of approach from one report to another. Finally, the guidelines are designed to reduce the amount of duplication of information requested by the various treaty bodies.

The Committee's guidelines do not distinguish between initial and periodic reports. The same information is requested in relation to each, although it is unnecessary to repeat in a periodic report information already provided in a previous report and which remains entirely valid. In such a situation a reference to the relevant paragraph(s) of the earlier report would suffice.

The guidelines are divided into two parts. The first, or general, part requests a country profile dealing with matters such as information about the land and its people, the general political structure, the economic, social and cultural characteristics of the country and the general legal framework within which human rights are protected. This part of the guidelines is now common to the reporting guidelines prepared for all of the United Nations human rights treaty bodies and should be reproduced in the core country document which is made available to each of the relevant treaty bodies. (For the text of the Consolidated Guidelines for the initial part of the reports of States Parties, see: Annex to Part One of the Manual). Part One of the guidelines is as follows.

Text of Part One of the Reporting Guidelines regarding the form and contents of reports to be submitted by States Parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights

GENERAL PART OF THE REPORT

1. Country profile

(a) Land and people

This section should contain information on the main geographic, ethnic, linguistic, demographic and religious characteristics of the country and its population.

(b) General political structure

This section should briefly describe the political history and framework, the type of government and the organization of the executive, legislative and judicial organs.

(c) Economic, social and cultural characteristics

This section should include information on such indicators as gross national product (GNP), per capita income, functional distribution of income (i.e., relation of labour/capital income proportion in the public and private sectors of economy), rate of inflation, balances of trade and payment, external debt, rate of unemployment and literacy rate.

(d) General legal framework within which human rights are protected

This section should include information on:

- Which judicial, administrative or other competent authorities have jurisdiction affecting human rights;*

- *What remedies are available to an individual who claims that any of his/her rights have been violated; and what systems of compensation exist for victims;*
- *Whether any of the rights referred to in the various conventions are protected either in the Constitution or by separate legislation and, if so, whether provisions exist in the Constitution or such specific legislation for derogations and under what circumstances;*
- *Whether the provisions of the various international human rights instruments can be invoked before, and directly enforced by, the courts, other tribunals or administrative authorities or whether they have to be transformed into internal laws or administrative regulations in order to be enforced by the authorities concerned.*

2. Information and publicity concerning the Covenant on Economic, Social and Cultural Rights and the country's reports to the Committee

- (a) *In what manner and to what extent has the text of the Covenant been disseminated? Has it been translated into local languages and how have copies of such translations been distributed? Is assistance from the United Nations required in this regard (if so, please specify)?*
- (b) *What government agencies prepared the report? Were inputs sought or received from any sources other than from the Government?*
- (c) *How widely available is the report at the domestic level? Has its content been the subject of public debate?*

3. Legal status and specific implementation of the Covenant on Economic, Social and Cultural Rights

(In so far as not fully dealt with under section 1 (d) above.)

- (a) *In what manner has the right to self-determination been implemented?*
- (b) *What is the status of the Covenant in domestic law? Are any of the rights contained in the Covenant directly applicable by courts and other authorities? Give details of such application.*
- (c) *Which of the rights stipulated in the Covenant are recognized in the Constitution or other legislation? Attach the texts of such provisions and give details of their application by courts and other authorities.*

- (d) *Which of the rights are specifically subject to non-discrimination provisions in national law? Attach the text of such provisions.*
- (e) *Has the ratification of the Covenant given rise to any modification of the relevant domestic law?*
- (f) *To what extent and in what manner are non-nationals not guaranteed the rights recognized in the Covenant? What justification is there for any difference?*

4. *The role of international cooperation in the implementation the Covenant on Economic Social and Cultural Rights*

If your State participates in development cooperation, is any effort made to ensure that it is used, on a priority basis, to promote the realization of economic, social and cultural rights?

Part Two of the Guidelines then deals, on an article-by-article basis, with each of the substantive rights recognized in Articles 6 to 15 of the Covenant. (For the text of the guidelines, see under the relevant articles in section (c) below: "Reporting on the substantive provisions"). There are four matters to which the Committee has attached particular importance in relation to reporting on these articles. The first is that matters which have been adequately dealt with under arrangements for reporting to other United Nations agencies or other human rights treaty bodies need not necessarily be treated again *in extenso* in reports required under the Covenant. Detailed cross-referencing to the relevant reports and, if appropriate, comments on the outcome of consideration of that report may be sufficient. This is designed to reduce the burden of having to report on virtually identical issues to a number of different bodies and accords with the provision of Article 17(3) of the Covenant.

Text of Article 17(3)

Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

By the same token, this arrangement does not in any way preclude a matter on which a report has been submitted to another appropriate body from being taken up and examined in detail by the Committee. Various elements – such as the passage of time, the availability of new information, a perceived difference in approach between the relevant provision of the Covenant and that of another instrument, or a particular interest in an issue by the Committee – might lead the Committee to undertake such an examination.

The second matter to which the Committee has attached particular importance is the need to report not only on relevant factors but also on any difficulties encountered in securing realization of the rights recognized in the Covenant. The guidelines emphasize that this requires a detailed description not only of the legal and administrative situation but also of the *de facto* situation. Negative developments, frustrated aspirations and other difficulties should be reported upon, in addition to information on positive developments. Indeed, the Committee has tended to look much more favourably upon reports which are frank and recognize shortcomings in performance or achievement than on reports which identify only items of 'good news'.

The third matter is the provision of appropriate statistics, wherever available. If they are not available the Committee should also be informed of that fact. The Committee has noted that such information should be presented in context so as to provide an indication of both the progress already achieved as well as of the goals which have yet to be achieved.

The fourth matter concerns the identification of appropriate benchmarks in relation to specific rights. The purpose of such benchmarks, to be set by each State Party in relation to rights such as the rights to work, health, housing, food and education, is to provide a basis upon which the progress made in each country can be assessed both by the people of the country concerned and by the Committee.

In order to promote a better understanding of the various provisions of the Covenant, the Committee has developed two approaches, of which reporting officers, in particular, should be aware. The first is the adoption, from time to time, of **General Comments**. The purposes of these comments, which are in most respects comparable to the purposes served by those adopted by the Human Rights Committee, are discussed further below. The second is the **general discussion** that the Committee seeks to hold at each of its sessions, in which it focuses on a particular right, such as the right to food, or the right to housing, or some other specific matter. These discussions are reported upon in the Committee's reports and are intended to shed light on some of the issues that arise in considering the requirements associated with specific provisions of the Covenant. They provide an opportunity for wide-ranging expert inputs to be made into the work of the Committee and often constitute the starting point for the drafting of a General Comment.

(c) Reporting on the substantive provisions

ARTICLE 1

Text of Article 1

- 1.** *All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*
- 2.** *All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*
- 3.** *The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.*

Commentary

This article is identical to Article 1 of the ICCPR. Thus, if a detailed report on it is presented to the Human Rights Committee by a State Party, reference to that report should be made. States Parties which have not ratified the ICCPR will need to report on this right and, in that regard, might take account of the issues identified in General Comment No. 12(21) on Article 1 of the ICCPR (see Professor Pocar's chapter in this Manual).

At the same time, however, it should be noted that the right to self-determination, as stated in this article, encompasses not only political self-determination but also the right to "freely pursue... economic, social and cultural development". Similarly, Article 1(2) expressly prohibits the deprivation of a people's own means of subsistence. These provisions may have a particular significance in the context of the Covenant and, to the extent that they are not adequately dealt with in reporting under the other Covenant, should clearly be addressed in reports under the ICESCR.

ARTICLE 2

Text of Article 2

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

Text of General Comment No. 3 (1990)

The nature of States Parties' obligations (Article 2, Paragraph 1)

1. *Article 2 is of particular importance to a full understanding of the Covenant and must be seen as being 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 Covenant on Civil and Political Rights, it is not always recognized that there are also significant similarities. In particular, while the Covenant provides for progressive realization 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 ... 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'engager à agir") and in Spanish it is to "adopt measures" ("a adoptar medidas"). Thus while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized 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 recognizes 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 emphasize, however, that the adoption of legislative measures, as specifically foreseen by the Covenant, is by no means exhaustive of the obligations of States Parties. Rather, the phrase "by all appropriate means" must be given its full and natural meaning. While each State Party must decide for itself which means are the most appropriate under the circumstances with respect to each of the rights, the "appropriateness" of the means chosen will not always be self-evident. It is therefore desirable that States Parties' reports should indicate not only the measures that have been taken but also the basis on which they are considered to be the most "appropriate" under the circumstances. However, the ultimate determination as to whether all appropriate measures have been taken remains 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 justifiable. The Committee notes, for example, that the enjoyment of the rights recognized, **without discrimination**, will often be appropriately promoted, in part, through the provision of judicial or other effective remedies. Indeed, those States Parties which are also parties to the International Covenant on Civil and Political Rights are already obligated (by virtue of Articles 2(1), 2(3), 3 and 26 of that Covenant) to ensure that any person whose rights or freedoms (including the right to equality and non-discrimination) recognized in that Covenant are violated, "shall have an effective remedy" (Article 2(3)(a)). In addition, there are a number of other provisions, including Articles 3, 7(a)(i), 8, 10(3), 13(2)(a), 13(3), 13(4) and 15(3) which would seem to be capable of immediate application by judicial and other organs in many national legal systems. Any suggestion that the provisions indicated are inherently non-self-executing would seem to be difficult to sustain.*
6. *Where specific policies aimed directly at the realization of the rights recognized in the Covenant have been adopted in legislative form, the Committee would wish to be informed, inter alia, as to whether such laws create any right of action on behalf of individuals or groups who feel that their rights are not being fully realized. In cases where constitutional recognition has been accorded to specific economic, social and cultural rights, or where the provisions of the Covenant have been incorporated directly into national law, the Committee would 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 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 recognized in the Covenant are susceptible of realization 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 recognized 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 realization of the rights recognized” in the Covenant. The term “progressive realization” is often used to describe the intent of this phrase. The concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. In this sense, the obligation differs significantly from that contained in Article 2 of the Covenant on Civil and Political Rights which embodies an immediate obligation to respect and ensure all of the relevant rights. Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the raison d’être of the Covenant which is to establish clear obligations for States Parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.*
- 10.** *On the basis of the extensive experience gained by the Committee, as well as by the body that preceded it, over a period of more than a decade of examining States Parties’ reports, the Committee is of the view*

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

- 11.** *The Committee wishes to emphasize, however, that even where the available resources are demonstrably inadequate, the obligation remains for a State Party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. Moreover, the obligations to monitor the extent of the realization, or more especially of the non-realization, of economic, social and cultural rights, and to devise strategies and programmes for their promotion, are not in any way eliminated as a result of resource constraints. The Committee has already dealt with these issues in its General Comment No. 1.*
- 12.** *Similarly, the Committee underlines the fact that even in times of severe resources 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 under the title of Adjustment With a Human Face: Protecting the Vulnerable and Promoting Growth, the analysis by the United Nations Development Programme in its Human Development Report 1990 and the analysis by the World Bank in the World Development Report 1990.*

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 cooperation, 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 cooperation and assistance. Moreover, the essential role of such cooperation in facilitating the full realization 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, to some of the opportunities and responsibilities that exist in relation to international cooperation. 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 recognized...".

- 14.** *The Committee wishes to emphasize that in accordance with Articles 55 and 56 of the United Nations Charter, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard. The Committee notes in particular the importance of the Declaration on the Right to Development and the need for States Parties to take full account of all of the principles recognized therein. It emphasized that, in the absence of an active programme of international assistance and cooperation on the part of all those States that are in a position to undertake one, the full realization 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.*

Excerpts* from text of General Comment No. 5 (1994)**Persons with disabilities**

...

II. MEANS OF IMPLEMENTATION

- 13.** *The methods to be used by States Parties in seeking to implement their obligations under the Covenant towards persons with disabilities are essentially the same as those available in relation to other obligations (see General Comment No. 1, 1989). They include the need to ascertain, through regular monitoring, the nature and scope of the problems existing within the State; the need to adopt appropriately tailored policies and programmes to respond to the requirements thus identified; the need to legislate where necessary and to eliminate any existing discriminatory legislation; and the need to make appropriate budgetary provisions or, where necessary, seek international cooperation and assistance. In the latter respect, international cooperation in accordance with Articles 22 and 23 of the Covenant is likely to be a particularly important element in enabling some developing countries to fulfil their obligations under the Covenant.*
- 14.** *In addition, it has been consistently acknowledged by the international community that policy-making and programme implementation in this area should be undertaken on the basis of close consultation with, and involvement of, representative groups of the persons concerned. For this reason, the Standard Rules recommend that everything possible be done to facilitate the establishment of national coordinating committees, or similar bodies, to serve as a national focal point on disability matters. In doing so, Governments should take account of the 1990 Guidelines for the Establishment and Development of National Coordinating Committees on Disability or Similar Bodies.*

* The remaining parts of the General Comment are included below in relation to each of the specific articles to which they refer.

III. THE OBLIGATION TO ELIMINATE DISCRIMINATION ON THE GROUNDS OF DISABILITY

- 15.** *Both de jure and de facto discrimination against persons with disabilities have a long history and take various forms. They range from invidious discrimination, such as the denial of educational opportunities, to more "subtle" forms of discrimination such as segregation and isolation achieved through the imposition of physical and social barriers. For the purposes of the Covenant, "disability-based discrimination" may be defined as including any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights. Through neglect, ignorance, prejudice and false assumptions, as well as through exclusion, distinction or separation, persons with disabilities have very often been prevented from exercising their economic, social or cultural rights on an equal basis with persons without disabilities. The effects of disability-based discrimination have been particularly severe in the fields of education, employment, housing, transport, cultural life, and access to public places and services.*
- 16.** *Despite some progress in terms of legislation over the past decade, the legal situation of persons with disabilities remains precarious. In order to remedy past and present discrimination, and to deter future discrimination, comprehensive anti-discrimination legislation in relation to disability would seem to be indispensable in virtually all States Parties. Such legislation should not only provide persons with disabilities with judicial remedies as far as possible and appropriate, but also provide for social-policy programmes which enable persons with disabilities to live an integrated, self-determined and independent life.*
- 17.** *Anti-discrimination measures should be based on the principle of equal rights for persons with disabilities and the non-disabled, which, in the words of the World Programme of Action concerning Disabled Persons, "implies that the needs of each and every individual are of equal importance, that these needs must be made the basis for the planning of societies, and that all resources must be employed in such a way as to ensure, for every individual, equal opportunity for participation. Disability policies should ensure the access of [persons with disabilities] to all community services".*
- 18.**

Because appropriate measures need to be taken to undo existing discrimination and to establish equitable opportunities for persons with disabilities, such actions should not be considered discriminatory in the sense of Article 2(2) of the International Covenant on Economic, Social and Cultural Rights as long as they are based on the principle of equality and are employed only to the extent necessary to achieve that objective.

Excerpts* from text of General Comment No. 6 (1995)

The economic, social and cultural rights of older persons

...

3. *The rights of older persons in relation to the International Covenant on Economic, Social and Cultural Rights*

9. *The terminology used to describe older persons varies considerably, even in international documents. It includes: "older persons", "the aged", "the elderly", "the third age", "the ageing" and, to denote persons more than 80 years of age, "the fourth age". The Committee opted for "older persons" (in French, *personnes âgées*; in Spanish, *personas mayores*), the term employed in General Assembly resolutions 47/5 and 48/98. According to the practice in the United Nations statistical services, these terms cover persons aged 60 and above (Eurostat, the statistical service of the European Union, considers "older persons" to mean persons aged 65 or above, since 65 is the most common age of retirement and the trend is towards later retirement still).*

10. *The International Covenant on Economic, Social and Cultural Rights does not contain any explicit reference to the rights of older persons, although Article 9 dealing with "the right of everyone to social security, including social insurance", implicitly recognizes the right to old-age benefits. Nevertheless, in view of the fact that the Covenant's provisions apply fully to all members of society, it is clear that older persons are entitled to enjoy the full range of rights recognized in the Covenant. This approach is also fully reflected in the Vienna Interna-*

* The remaining parts of the General Comment are included below in relation to each of the specific articles to which they refer.

tional Plan of Action on Ageing. Moreover, in so far as respect for the rights of older persons requires special measures to be taken, States Parties are required by the Covenant to do so to the maximum of their available resources.

- 11.** *Another important issue is whether discrimination on the basis of age is prohibited by the Covenant. Neither the Covenant nor the Universal Declaration of Human Rights refers explicitly to age as one of the prohibited grounds. Rather than being seen as an intentional exclusion, this omission is probably best explained by the fact that, when these instruments were adopted, the problem of demographic ageing was not as evident or as pressing as it is now.*
- 12.** *This is not determinative of the matter, however, since the prohibition of discrimination on the grounds of "other status" could be interpreted as applying to age. The Committee notes that while it may not yet be possible to conclude that discrimination on the grounds of age is comprehensively prohibited by the Covenant, the range of matters in relation to which such discrimination can be accepted is very limited. Moreover, it must be emphasized that the unacceptableness of discrimination against older persons is underlined in many international policy documents and is confirmed in the legislation of the vast majority of States. In the few areas in which discrimination continues to be tolerated, such as in relation to mandatory retirement ages or access to tertiary education, there is a clear trend towards the elimination of such barriers. The Committee is of the view that States Parties should seek to expedite this trend to the greatest extent possible.*
- 13.** *Accordingly, the Committee on Economic, Social and Cultural Rights is of the view that States Parties to the Covenant are obligated to pay particular attention to promoting and protecting the economic, social and cultural rights of older persons. The Committee's own role in this regard is rendered all the more important by the fact that, unlike the case of other population groups such as women and children, no comprehensive international convention yet exists in relation to the rights of older persons and no binding supervisory arrangements attach to the various sets of United Nations principles in this area.*
- 14.** *By the end of its thirteenth session, the Committee and, before that, its predecessor, the Sessional Working Group of Governmental Experts, had examined 144 initial reports, 70 second periodic reports and 20 initial and periodic global reports on Articles 1 to 15. This ex-*

amination made it possible to identify many of the problems that may be encountered in implementing the Covenant in a considerable number of States Parties that represent all the regions of the world and have different political, socio-economic and cultural systems. The reports examined to date have not provided any information in a systematic way on the situation of older persons with regard to compliance with the Covenant, apart from information, of varying completeness, on the implementation of Article 9 relating to the right to social security.

15. In 1993, the Committee devoted a day of general discussion to this issue in order to plan its future activity in this area. Moreover, it has, at recent sessions, begun to attach substantially more importance to information on the rights of older persons and its questioning has elicited some very valuable information in some instances. Nevertheless, the Committee notes that the great majority of States Parties' reports continue to make little reference to this important issue. It therefore wishes to indicate that, in future, it will insist that the situation of older persons in relation to each of the rights recognized in the Covenant should be adequately addressed in all reports. The remainder of this General Comment identifies the specific issues which are relevant in this regard.

4. **General obligations of States Parties**

16. Older persons as a group are as heterogeneous and varied as the rest of the population and their situation depends on a country's economic and social situation, on demographic, environmental, cultural, and employment factors and, at the individual level, on the family situation, the level of education, the urban or rural environment and the occupation of workers and retirees.
17. Side by side with older persons who are in good health and whose financial situation is acceptable, there are many who do not have adequate means of support, even in developed countries, and who feature prominently among the most vulnerable, marginal and unprotected groups. In times of recession and of restructuring of the economy, older persons are particularly at risk. As the Committee has previously stressed (General Comment No. 3 (1990), Para. 12), even in times of severe resource constraints, States Parties have the duty to protect the vulnerable members of society.

- 18.** *The methods that States Parties use to fulfil the obligations they have assumed under the Covenant in respect of older persons will be basically the same as those for the fulfilment of other obligations (see General Comment No. 1 (1989)). They include the need to determine the nature and scope of problems within a State through regular monitoring, the need to adopt properly designed policies and programmes to meet requirements, the need to enact legislation when necessary and to eliminate any discriminatory legislation and the need to ensure the relevant budget support or, as appropriate, to request international cooperation. In the latter connection, international cooperation in accordance with Articles 22 and 23 of the Covenant may be a particularly important way of enabling some developing countries to fulfil their obligations under the Covenant.*
- 19.** *In this context, attention may be drawn to Global target No. 1, adopted by the General Assembly in 1992, which calls for the establishment of national support infrastructures to promote policies and programmes on ageing in national and international development plans and programmes. In this regard, the Committee notes that one of the United Nations Principles for Older Persons which Governments were encouraged to incorporate into their national programmes is that older persons should be able to form movements or associations of older persons.*

Commentary

The provisions of this article are probably the most complex in the entire Covenant. They are of major importance since they spell out the nature of the general obligation incumbent upon all States Parties with respect to each and every one of the substantive obligations recognized in the Covenant.

A number of features of Article 2(1) deserve to be emphasized. The first is the time frame involved. States Parties are required "to take steps... with a view to achieving progressively..." the various rights. This has sometimes led commentators to suggest that the obligation is entirely open-ended and relates only to some unspecified future aspirations. The Committee has indicated that this interpretation is entirely unwarranted. Several of the rights (dealt with below) are of immediate application and the relevant formulations used to express them indicate that the concept of progressive realization is not applicable in those cases. Most importantly, however, is the fact that the obligation "to take steps" is itself an immediate one. In other words, States Parties are required, no matter what their resource or other constraints might be, to take, immediately, whatever steps they can towards the

achievement of the relevant objectives. At a minimum, this might involve the drawing up of a detailed plan of action for the progressive achievement of the right.

The objective laid down in the Covenant is “full realization”, even though it may be achieved progressively. States Parties are thus required to report on the progress they have or have not made towards that goal.

One of the key elements distinguishing the ICESCR from its counterpart, the ICCPR, is the reference in Article 2(1) to resource availability. The obligation to achieve progress towards full realization applies “to the maximum of... available resources”. While budgetary questions are unquestionably matters for the State Party itself to determine, reports should nevertheless indicate what constraints exist as a result of the unavailability of resources and provide details of efforts that have been made to ensure respect for subsistence rights for all at an absolute minimum. The phrase “its available resources” refers to both the resources of the State Party itself and to those which are available to it from the international community “through international assistance and cooperation”. In this respect it should be recalled that the Committee has specifically drawn attention, in its General Comment No. 2 (1990), “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”.

The type of steps that a State Party should take in order to satisfy its obligations under the Covenant is a matter for the Government to determine in the light of all the relevant circumstances. The basic obligation is to take steps “by all appropriate means”. These might include constitutional, legislative, administrative, judicial, economic, social, or educational measures or a combination thereof. While the article indicates that “the adoption of legislative measures” should clearly be considered, there is no obligation to legislate except in cases where existing legislation is contrary to the letter or spirit of the Covenant or where legislation appears to be an indispensable step in the process of implementation. To date, the Committee has placed considerable emphasis upon practical measures and has not attached particular importance to legislation, except perhaps in the matter of non-discrimination. Although the provision of an effective remedy, and of judicial remedies whenever appropriate, as required by Article 2(3) of the ICCPR, is not explicitly stated to be necessary under the ICESCR, the Committee has shown a consistent interest in ascertaining whether or not any of the rights recognized in the Covenant may be vindicated in the courts. Such information should thus be provided as appropriate.

Article 2(2), which deals with non-discrimination, is one of the provisions of the Covenant that is not subject to the regime of progressive realization referred to in Article 2(1). Instead, the undertaking in Article 2(2) is to “guarantee” non-discrimination on all of the grounds listed. Moreover, the grounds specified are not exhaustive since the provision also prohibits discrimination as to “other status”. While the Committee has not undertaken a

systematic examination of the different types of discrimination that might be covered by the phrase "other status" it has attached particular importance to efforts to eliminate discrimination against persons with disabilities and against older persons. In both cases it has used the terminology and definitions that are widely accepted within the relevant fora of the United Nations. In two separate General Comments it has indicated that compliance with the Covenant requires extensive measures to be taken for these purposes and that States Parties should include in their reports information on the measures taken and the problems persisting in these areas. It may be noted that General Recommendation No. 18 (Tenth Session, 1991) adopted by the Committee on the Elimination of Discrimination against Women also deals with "disabled women".

In its General Comment No. 5 (1994) dealing with persons with disabilities, the Committee notes that both the General Assembly and the Commission on Human Rights have called upon it to monitor the compliance of States Parties with their obligation to ensure the full enjoyment of the relevant rights by persons with disabilities. It notes, however, that very little attention has so far been given to this issue in States' reports. The Covenant does not refer explicitly to persons with disabilities but since its provisions apply fully to all members of society, this group is clearly covered. In addition, the Committee notes that most recent international human rights instruments do address this group specifically. They include the Convention on the Rights of the Child (art. 23); the African Charter on Human and Peoples' Rights (art. 18(4)); and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (art. 18).

By way of definition, the Committee follows the approach adopted in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities adopted by the General Assembly in 1993 which extend to all persons "disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature." The General Comment draws significantly upon the consensus reflected in the Standard Rules.

In addition, in so far as special treatment is necessary, States Parties are required to take appropriate measures, to the maximum extent of their available resources, to enable such persons to seek to overcome any disadvantages, in terms of the enjoyment of the rights specified in the Covenant, flowing from their disability. Moreover, the requirement contained in Article 2(2) of the Covenant that the rights "enunciated... will be exercised without discrimination of any kind" based on certain specified grounds "or other status" clearly applies to discrimination on the grounds of disability.

The Committee notes that while the means chosen to promote the full realization of the rights of this group will inevitably differ significantly from one country to another, there is no country in which a major policy and programme effort is not required. Both developed and developing countries are thus required to take appropriate measures. This begins with

an obligation to abstain from taking measures which might have a negative impact on persons with disabilities. It also covers an obligation to take positive action to reduce structural disadvantages and to give appropriate preferential treatment to people with disabilities. The Committee notes that this almost invariably means that additional resources will need to be made available for this purpose and that a wide range of specially tailored measures will be required. The General Comment also suggests that States Parties are obliged to ensure that not only the public sphere but also the private sphere are, within appropriate limits, subject to regulation to ensure the equitable treatment of persons with disabilities. Privatization of services and facilities thus does not eliminate the obligations of governments.

In its General Comment No. 6 (1995) dealing with the economic, social and cultural rights of older persons, the Committee takes note of the extent of the phenomenon of ageing of the world's population and details the specific measures to be taken to ensure the rights of that group.

While the word "discrimination" is not defined in the Covenant, its meaning may be ascertained by reference to the usage developed in the context of other international human rights treaties. For that purpose, the relevant provisions include Article 2(1) of the ICCPR (see Human Rights Committee General Comment 18(37), reproduced in the section of this Manual dealing with Article 26 of the ICCPR), Article 1 of the ICERD and Article 1 of the CEDAW. In the light of those provisions, "discrimination" for the purposes of the Covenant may be understood to cover any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all of the rights set forth in the Covenant.

Measures of affirmative action taken with a view to eliminating discrimination do not contravene the Covenant. This issue is dealt with in connection with Article 3 below.

While it is for each State Party itself to determine which measures are appropriate in order to implement this guarantee, the Committee assumes that more than legislation is required to achieve this objective. Thus States Parties' reports should indicate not only the constitutional, legislative and administrative measures that have been adopted but also the appropriate policy measures that have been undertaken. The Committee has also consistently requested States Parties to inform it of any problems of discrimination that may still exist and which may be practised by public authorities, by the community at large, or by private persons or bodies.

Related articles of other international instruments deal with non-discrimination and equality before the law. Thus, when assembling information on the issues raised in Articles 2(2)

and 3 of the Covenant, reporting officers should consider the usefulness of any existing information on Articles 2(1), 3 and 26 of the ICCPR, Articles 2(1) and 5 of the ICERD, Articles 2 and 9-16 of the CEDAW, and Articles 2 and 23 among others of the CRC. In this regard note might be taken of General Recommendation XIV (1993) adopted by the Committee on the Elimination of Racial Discrimination. Such information might then be cross-referenced in the report under the Covenant.

Article 2(3) of the Covenant deals with possible limitations upon the rights of non-nationals. In general, the Covenant does not distinguish between nationals and non-nationals. This provision is the only exception in that regard and applies only to "developing countries", as understood in the context of United Nations activities generally. Those countries can only apply restrictions to "economic rights" and may not do so in respect of either social or cultural rights. Moreover, such restrictions can only be imposed with due regard to human rights and must be shown to be indispensable as a result of the condition of the national economy. The fact that no State Party has yet sought to justify such measures in accordance with the Covenant may attest to the difficulty of doing so.

ARTICLE 3

Text of 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.

Excerpts* from text of General Comment No. 5 (1994)

Persons with disabilities**

19. *Persons with disabilities are sometimes treated as genderless human beings. As a result, the double discrimination suffered by women with disabilities is often neglected. Despite frequent calls by the international community for particular emphasis to be placed upon their situation, very few efforts have been undertaken during the decade. The neglect of women with disabilities is mentioned several times in the report of the Secretary-General on the implementation of the*

* The remaining parts of the General Comment are included elsewhere in this chapter in relation to each of the specific articles to which they refer.

*** The footnotes contained in the full text of the General Comment have been omitted for present purposes.

World Programme of Action. The Committee therefore urges States Parties to address the situation of women with disabilities, with high priority being given in future to the implementation of economic, social and cultural rights-related programmes.

Excerpts* from text of General Comment No. 6 (1995)

The economic, social and cultural rights of older persons

- 20.** *In accordance with Article 3 of the Covenant [...] the Committee considers that States Parties should pay particular attention to older women who, because they have spent all or part of their lives caring for their families without engaging in a remunerated activity entitling them to an old-age pension, and who are also not entitled to a widow's pension, are often in critical situations.*
- 21.** *To deal with such situations and comply fully with Article 9 of the Covenant and Paragraph 2 (h) of the Proclamation on Ageing, States Parties should institute non-contributory old-age benefits or other assistance for all persons, regardless of their sex, who find themselves without resources on attaining an age specified in national legislation. Given their greater life expectancy and the fact that it is more often they who have no contributory pensions, women would be the principal beneficiaries.*

Commentary

This provision emphasizes the special importance attached to the obligation to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights. As with Article 2(2), the obligation to “ensure” this result is immediate and is not subject to progressive achievement. The provision has been interpreted as requiring measures of what may be termed a negative as well as a positive nature. While the former are designed to eliminate instances of discrimination, the latter must be designed to promote the positive enjoyment of equal rights. Such positive measures may include affirmative action designed to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. As long as such action is needed to correct de facto discrimination, it may be considered to constitute legitimate differentiation under the Covenant.

* The remaining parts of the General Comment are included elsewhere in this chapter in relation to each of the specific articles to which they refer.

The positive measures needed in order to give effect to Article 3 require more than the enactment of legislation. Thus reports should provide information as to the situation of women in practice in regard to the enjoyment of all of the rights recognized in the Covenant. In view of the very strong commitment made by the World Conference on Human Rights in Vienna in 1993, to ensuring the equal status of women and full respect for all of their human rights, it is of particular importance that States Parties to the Covenant should provide focused and disaggregated information, including statistical and other data, which shows not only the de jure but also the de facto status of girls and women within each society. This applies in relation to each and every one of the substantive rights contained in the Covenant.

ARTICLE 4

Text of Article 4

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

Commentary

Although Articles 5 and 8 of the Covenant also deal in part with the circumstances under which limitations upon the enjoyment of economic, social and cultural rights may be permissible, Article 4 is applicable to all of the rights recognized in the Covenant. Unlike the ICCPR none of the rights are specifically stated to be non-derogable. Nevertheless, the specific requirements that must be met in order to justify the imposition of limitations in accordance with Article 4 will be difficult to satisfy in most cases.

Any limitations must, in the first place, be “determined by law” in accordance with the appropriate national procedures and must not be arbitrary or unreasonable or retroactive. The limitations must also “be compatible with the nature” of these rights. Thus, for example, a limitation which purported to prevent access to food by part of the population would be unlikely to be considered to be compatible with the basic concept of human dignity on which the Covenant is grounded. Moreover, the limitation must be able to be justified as being designed to promote “the general welfare in a democratic society” which would not be the case, for example, if a limitation simply discriminated against one segment of society in favour of another.

States Parties should include in their reports full details of any limitations imposed, along with information on the extent to which the requirements of Article 4 have been satisfied. The duration of such limitations should always be kept to a minimum and reports should contain information on that question. To date this provision has rarely, if ever, been invoked by a reporting State Party.

ARTICLE 5

Text of Article 5

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

Commentary

This article is identical to Article 5 of the ICCPR. It has the same significance in each of the Covenants and it is therefore appropriate to refer here to the analysis provided by Professor Pocar in his chapter on the ICCPR in this Manual with respect to the latter provision.

This article is of a general nature and has a general scope. Paragraph 1 is aimed at preventing any misinterpretations of any of the articles of the Covenant which might cause the destruction or limitation of the rights and freedoms to an extent greater than allowed by the Covenant itself. Paragraph 2 deals with possible conflicts that may arise between the Covenant and other rules applicable in the State Party, whether such rules have been adopted directly by the State Party or are the result of other international agreements. The Covenant recognizes the priority of those provisions which provide the greatest amount of protection.

To the extent that this article contains criteria for the interpretation of the provisions of the Covenant, it does not require specific and separate implementation at the national level, except for the fact that the criteria themselves must be valid under domestic law regarding the application of any rule related to the scope of the Covenant.

Reporting should indicate how, in general, these criteria for interpretation become applicable in the reporting State. Moreover, reports should refer to these criteria under any article whose application may in practice lead to a misinterpretation of the article itself, or to a conflict with domestic law in the sense indicated above. Again, as in the case of Article 4 of the Covenant, the provisions of Article 5 have rarely, if ever, been invoked by a reporting State Party.

ARTICLE 6

Text of Article 6

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

Text of the guidelines on Article 6 of the Covenant

1. *If your State is a party to any of the following conventions:*
 - *International Labour Organization (ILO) Employment Policy Convention, 1964 (No. 122)*
 - *ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*
 - *International Convention on the Elimination of All forms of Racial Discrimination*
 - *Convention of the Elimination of All Forms of Discrimination against Women,**and has already submitted reports to the supervisory committee(s) concerned which are relevant to the provisions of Article 6, you may wish to refer to the respective parts of those reports rather than repeat the information here. However, all matters which arise under the pres-*

ent Covenant and are not covered fully in those reports should be dealt with in the present report.

2. (a) *Please supply information on the situation, level and trends of employment, unemployment and underemployment in your country, both in the aggregate and as they affect particular categories of workers such as women, young persons, older workers and disabled workers. Please compare the respective situation 10 years ago and 5 years ago. Which persons, groups, regions or areas do you consider particularly vulnerable or disadvantaged with regard to unemployment?*
- (b) *Please describe the principal policies pursued and measures taken with a view to ensuring that there is work for all who are available for and seeking work.*
- (c) *Please indicate what measures have been adopted to ensure that work is as productive as possible.*
- (d) *Please indicate what measures have been adopted to ensure that there is freedom of choice of employment and that conditions of employment do not infringe upon fundamental political and economic freedoms of the individual.*
- (e) *Please describe the technical and vocational training programmes that exist in your country, and their effective operation and their practical availability.*
- (f) *Please state whether particular difficulties have been encountered in attaining the objectives of full, productive and freely chosen employment, and indicate how far these difficulties have been overcome.*
3. (a) *Please indicate whether there exist in your country any distinctions, exclusions, restrictions or preferences, be it in law or in administrative practices or in practical relationships between persons or groups of persons, made on the basis of race, colour, sex, religion, political opinion, nationality or social origin, which have the effect of nullifying or impairing the recognition, enjoyment or exercise of equality of opportunity or treatment in employment or occupation. What steps are taken to eliminate such discrimination?*
- (b) *Please supply information on the actual situation in your country regarding vocational guidance and training, employment*

and occupation of persons according to their race, colour, sex, religion, and national origin.

- (c) *Please indicate the main cases in which a distinction, exclusion or preference based on any of the above-named conditions is not considered in your country as discrimination, owing to the inherent requirements of a particular job. Please indicate any difficulties in application, disputes or controversies which have arisen in relation to such conditions.*
4. *Please indicate what part of the working population of your country hold more than one full-time job in order to secure an adequate standard of living for themselves and their families. Describe this development over time.*
5. *In case of subsequent reports, give a short review of changes, if any, in national legislation, court decisions, as well as administrative rules, procedures and practices during the reporting period affecting the right to work.*
6. *Please indicate the role of international assistance in the full realization of the right enshrined in Article 6.*

Excerpts* from text of General Comment No. 5 (1994)

Persons with disabilities**

20. *The field of employment is one in which disability-based discrimination has been prominent and persistent. In most countries the unemployment rate among persons with disabilities is two to three times higher than the unemployment rate for persons without disabilities. Where persons with disabilities are employed, they are mostly engaged in low-paid jobs with little social and legal security and are often segregated from the mainstream of the labour market. The integration of persons with disabilities into the regular labour market should be actively supported by States.*

* The remaining parts of the General Comment are included elsewhere in this chapter in relation to each of the specific articles to which they refer.

*** The footnotes contained in the full text of the General Comment have been omitted for present purposes.

- 21.** *The “right of everyone to the opportunity to gain his living by work which he freely chooses or accepts” (art. 6(1)) is not realized where the only real opportunity open to disabled workers is to work in so-called “sheltered” facilities under substandard conditions. Arrangements whereby persons with a certain category of disability are effectively confined to certain occupations or to the production of certain goods may violate this right. Similarly, in the light of Principle 13(3) of the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, “therapeutical treatment” in institutions which amounts to forced labour is also incompatible with the Covenant. In this regard, the prohibition on forced labour contained in the International Covenant on Civil and Political Rights is also of potential relevance.*
- 22.** *According to the Standard Rules, persons with disabilities, whether in rural or urban areas, must have equal opportunities for productive and gainful employment in the labour market. For this to happen it is particularly important that artificial barriers to integration in general, and to employment in particular, be removed. As the International Labour Organization has noted, it is very often the physical barriers that society has erected in areas such as transport, housing and the workplace which are then cited as the reason why persons with disabilities cannot be employed. For example, as long as workplaces are designed and built in ways that make them inaccessible to wheelchairs, employers will be able to “justify” their failure to employ wheelchair users. Governments should also develop policies which promote and regulate flexible and alternative work arrangements that reasonably accommodate the needs of disabled workers.*
- 23.** *Similarly, the failure of Governments to ensure that modes of transportation are accessible to persons with disabilities greatly reduces the chances of such persons finding suitable, integrated jobs, taking advantage of educational and vocational training, or commuting to facilities of all types. Indeed, the provision of access to appropriate and, where necessary, specially tailored forms of transportation is crucial to the realization by persons with disabilities of virtually all the rights recognized in the Covenant.*
- 24.** *The “technical and vocational guidance and training programmes” required under Article 6(2) of the Covenant should reflect the needs of all persons with disabilities, take place in integrated settings, and be*

planned and implemented with the full involvement of representatives of persons with disabilities.

Excerpts* from text of General Comment No. 6 (1995)

The economic, social and cultural rights of older persons

- 22.** *Article 6 of the Covenant requires States Parties to take appropriate steps to safeguard the right of everyone to the opportunity to gain a living by work which is freely chosen or accepted. In this regard, the Committee, bearing in mind that older workers who have not reached retirement age often encounter problems in finding and keeping jobs, stresses the need for measures to prevent discrimination on grounds of age in employment and occupation.*

Commentary

The right to work is of fundamental importance not only for its own sake but also because it can be the key to the enjoyment of many other rights for the individual concerned. This article consists of two parts. The first deals with the right to work per se, while the second focuses on various specific steps by which States Parties can contribute to the full realization of the right.

The reporting guidelines provide that States Parties to the Covenant that are also Parties to ILO Conventions No. 122 of 1964 (the Employment Policy Convention) and No. 111 of 1958 (the Discrimination (Employment and Occupation) Convention) need not submit comprehensive reports on this article to the Committee. In such cases it is sufficient for the State to refer the Committee to any comments made by the ILO Committee of Experts on the Application of Conventions and Recommendations (hereinafter referred to as “the ILO Committee of Experts”) in response to reports which have, or should have, been submitted to the ILO by the Government.

In the case of a State Party to the Covenant which has not ratified ILO Convention No. 122, information is sought on levels of employment, unemployment and underemployment. In order to put such information into context, the figures should be disaggregated according to categories such as women, young persons, older persons, those with disabilities and, where applicable, members of minority groups and indigenous peoples; and the per-

* The remaining parts of the General Comment are included elsewhere in this chapter in relation to each of the specific articles to which they refer.

sons, groups, regions or areas which are considered to be particularly vulnerable or disadvantaged with respect to employment should be identified.

Information is also sought as to the general strategy that has been adopted in order to improve the employment situation. Since the right to work may be negated in the absence of freedom to choose or accept work, information is requested as to legislative or other provisions designed to promote such freedom. Similarly, reports should provide detailed information on any constraints that have been placed upon the free movement of workers from one job to another and from one location to another. In this regard, Paragraph 1 emphasizes the need for a worker to enjoy freedom to choose or accept a job, and Paragraph 2 emphasizes that Government policies and programmes should operate under conditions which safeguard fundamental political and economic freedoms to the individual.

Paragraph 2 identifies a number of specific steps which States Parties are required to take with a view to promoting realization of the right to work. Thus, even where States report the existence of significant levels of unemployment and underemployment and attribute these problems to, for example, an intractable economic situation, detailed information is still required as to the specific steps that have been taken to improve the situation. In providing details on the steps that have been taken in accordance with the requirements of Paragraph 2, reporting States should also indicate the extent to which these programmes and policies have been specifically designed to address the particular problems of groups subject to any form of discrimination or who are otherwise particularly disadvantaged. In view of the importance attached by the Committee to measures to eliminate and remedy any forms of discrimination, especially in relation to women, persons with disabilities, and older persons, and of the centrality of the rights dealt with in Article 6, these issues should be accorded particular attention in reporting on Article 6.

ARTICLE 7

Text of Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:*
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*

- (ii) *A decent living for themselves and their families in accordance with the provisions of the present Covenant;*
- (b) *Safe and healthy working conditions;*
- (c) *Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;*
- (d) *Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.*

Text of the guidelines on Article 7 of the Covenant

1. *If your State is a party to any of the following ILO Conventions:*
 - *Minimum Wage-fixing Convention, 1970 (No. 131)*
 - *Equal Remuneration Convention, 1951 (No. 100)*
 - *Weekly Rest (Industry) Convention, 1921 (No. 14)*
 - *Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)*
 - *Holidays with Pay Convention (Revised), 1970 (No. 132)*
 - *Labour Inspection Convention, 1947 (No. 81)*
 - *Labour Inspection (Agriculture) Convention, 1969 (No. 129)*
 - *Occupational Safety and Health Convention, 1981 (No. 155),*

and has already submitted reports to the ILO Committee of Experts which are relevant to the provisions of Article 7, you may wish to refer to the respective parts of those reports rather than repeat the information here. However, all matters which arise under the present Covenant and are not covered fully in those reports should be dealt with in the present report.
2. (a) *Please supply information on the principal methods used for fixing wages.*
(b) *Please indicate whether a system of minimum wages has been established, and specify the groups of wage earners to which it applies, the number of persons covered by each group as well as the competent authority for determining these groups. Are there any wage earners remaining outside the protection of the system of minimum wages in law or in fact?*

- (i) *Do these minimum wages have the force of law and in which ways are they secured against erosion?*
 - (ii) *To what extent and by which methods are the needs of workers and their families as well as economic factors taken into consideration and reconciled with each other in determining the level of minimum wages? What standards, goals and benchmarks are relevant in this respect?*
 - (iii) *Please describe briefly the machinery set up for fixing, monitoring and adjusting minimum wages.*
 - (iv) *Please supply information on the development of average and minimum wages 10 years ago, 5 years ago and at present, set against the respective development of the cost of living.*
 - (v) *Please indicate whether, in practice, the system of minimum wages is supervised effectively.*
- (c) *Please indicate whether there exists in your country any inequality in remuneration for work of equal value, infringements of the principle of equal pay for equal work, or conditions of work for women which are inferior to those enjoyed by men.*
- (i) *What steps are taken to eliminate such discrimination? Please describe the successes and failures of these steps with regard to the various groups that are discriminated against.*
 - (ii) *Please indicate what methods, if any, have been adopted to promote an objective appraisal of jobs on the basis of the work to be performed.*
- (d) *Please indicate the income distribution of employees, both in the public and private sectors, taking into account both remuneration and non-monetary benefits. If available, give data on the remuneration of comparable jobs in the public and private sectors.*
- 3.** *What legal, administrative or other provisions exist that prescribe minimum conditions of occupational health and safety? How are these provisions enforced in practice and in which areas do they not apply?*

- (a) *Please indicate which categories of workers, if any, are excluded from existing schemes by law and what other categories benefit from such schemes only insufficiently or not at all.*
 - (b) *Please provide statistical or other information on how the number, nature and frequency of occupational accidents (particularly with fatal results) and diseases have developed over time (10 years ago, 5 years ago as compared with the present).*
4. *Please supply information on the actual realization in your country of the principle of equal opportunity for promotion.*
 - (a) *Which groups of workers are currently deprived of such equal opportunity? In particular, what is the situation of women in this respect?*
 - (b) *What steps are being taken to eliminate such inequality? Please describe the successes and failures of these steps with regard to the various disadvantaged groups.*
5. *Please describe the laws and practices in your country regarding rest, leisure, reasonable limitations of working hours, periodic holidays with pay and remuneration for public holidays.*
 - (a) *Indicate the factors and difficulties affecting the degree of realization of these rights.*
 - (b) *Indicate which categories of workers are excluded by law or in practice, or both, from the enjoyment of which of these rights. What measures are contemplated or currently taken to remedy this situation?*
6. *In case of subsequent reports, give a short review of changes, if any, in national legislation, court decisions, or administrative rules, procedures and practices during the reporting period affecting the right to just and favourable conditions of work.*
7. *Please indicate the role of international assistance in the full realization of the right enshrined in Article 7.*

Excerpts* from text of General Comment No. 5 (1994)

Persons with disabilities

25.

The right to “the enjoyment of just and favourable conditions of work” (art. 7) applies to all disabled workers, whether they work in sheltered facilities or in the open labour market. Disabled workers may not be discriminated against with respect to wages or other conditions if their work is equal to that of non-disabled workers. States Parties have a responsibility to ensure that disability is not used as an excuse for creating low standards of labour protection or for paying below minimum wages.

Excerpts* from text of General Comment No. 6 (1995)

The economic, social and cultural rights of older persons

- 23.** *The right “to the enjoyment of just and favourable conditions of work” (Covenant, art. 7) is of special importance for ensuring that older workers enjoy safe working conditions until their retirement. In particular, it is desirable to employ older workers in circumstances in which the best use can be made of their experience and know-how.*
- 24.** *In the years preceding retirement, retirement preparation programmes should be implemented, with the participation of representative organizations of employers and workers and other bodies concerned, to prepare older workers to cope with their new situation. Such programmes should, in particular, provide older workers with information about: their rights and obligations as pensioners; the opportunities and conditions for continuing an occupational activity or undertaking voluntary work; means of combating detrimental effects of ageing; facilities for adult education and cultural activities, and the use of leisure time.*

Commentary

This provision, which is complementary to the right to work recognized in the preceding article, seeks to ensure that those who do work have the right to do so under just and favourable conditions. Since many of the specific issues dealt with in this article are the subject of detailed ILO standards, the reporting guidelines seek to avoid duplication in

* The remaining parts of the General Comment are included elsewhere in this chapter in relation to each of the specific articles to which they refer.

* The remaining parts of the General Comment are included elsewhere in this chapter in relation to each of the specific articles to which they refer.

reporting. The Conventions in question are No. 14 of 1921, No. 81 of 1947, No. 100 of 1951, No. 106 of 1957, No. 131 of 1970, No. 132 of 1970, and No. 155 of 1981. Thus any State that has ratified some or all of these Conventions can cross-refer in its report to information already provided to the ILO Committee of Experts and can provide a response to any comments made by that Committee. However, since many States have not ratified all of these ILO Conventions there will still be a need to respond to issues raised in the guidelines with respect to matters not dealt with in the ratified Conventions.

With respect to conditions of work, the first specific issue dealt with in the Covenant concerns wages. In particular, reporting States should indicate whether there is a system of minimum wages and, if so, how it works and who it covers. The relationship between the minimum wage and the minimum amount of money needed to satisfy the basic needs of a worker and his or her family is of particular interest to the Committee. The legal status of any minimum wage entitlement should also be indicated, to enable the Committee to assess the extent to which such a system appears to recognize that a human right is involved.

Another issue dealt with in Article 7(a)(i) is that of discrimination or “distinction of any kind” in employment conditions. In particular, the provision seeks to ensure that women are “being guaranteed conditions of work not inferior to those enjoyed by men”, and that all workers, and especially women, are receiving equal pay for equal work. In other words, gender is an impermissible basis on which to pay higher salaries to men than to women who are doing the same, or ‘equal’, work.

One of the oldest concerns of international standards in the labour field is to ensure that workers enjoy conditions that are both safe and healthy. Legislative measures alone will not ensure such conditions and States Parties should indicate how such measures are promoted by other policies and programmes. In terms of the legal position, reports should indicate whether there are any categories of workers who are excluded from existing occupational safety and health schemes or are only partially covered. In terms of the situation in practice, reports should indicate the nature and frequency of occupational accidents and diseases and provide comparable figures over time to show the evolution of the situation.

The principle of equal opportunity for promotion is designed to ensure that extraneous and inappropriate factors, such as sexual favours or racial origins, do not prejudice the possibility that the average worker might be promoted. Given the difficulty of measuring such problems in terms of legislative activity, the report should place particular emphasis upon evaluating the actual situation with regard to women, minorities and any other groups that might be disadvantaged in this regard.

By contrast, information on legal and administrative provisions with respect to Article 7(d) – relating to rest, leisure, reasonable working hours, periodic holidays with pay, and remuneration – is not required.

neration for public holidays – would be of considerable value. In particular, reports should indicate whether there are any categories of workers who are not covered by appropriate provisions.

The right to just and favourable conditions of work is also protected by Article 5(e)(i) of the ICERD and Article 11(1)(d and f), (2) and (3) of CEDAW. These provisions should be kept in mind by reporting officers in determining whether the State Party report might, in part, cross-refer to information already provided elsewhere.

ARTICLE 8

Text of Article 8

1. *The States Parties to the present Covenant undertake to ensure:*
 - (a) *The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;*
 - (b) *The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;*
 - (c) *The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;*
 - (d) *The right to strike, provided that it is exercised in conformity with the laws of the particular country.*
2. *This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.*
3. *Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom*

of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Text of the guidelines on Article 8 of the Covenant

1. *If your State is a party to any of the following conventions:
 - International Covenant on Civil and Political Rights
 - ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)
 - ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
 - ILO Labour Relations (Public Service) convention, 1978 (No. 151),and has already submitted reports to the supervisory committee(s) concerned which are relevant to the provisions of Article 8, you may wish to refer to the respective parts of those reports rather than repeat the information here. However, all matters which arise under the present Covenant and are not covered fully in those reports should be dealt with in the present report.*

2. *Please indicate what substantive or formal conditions, if any, must be fulfilled in order to join and form the trade union of one's choice.*
 - (a) *Please specify whether there exist any special legal provisions regarding the establishment of trade unions by certain categories of workers and, eventually, what these special provisions are, how they have been applied in practice, as well as the number of persons subjected to them.*
 - (b) *Are there any restrictions placed upon the exercise of the right to join and form trade unions by workers? Please provide a detailed account of the legal provisions prescribing such restrictions and their application in practice over time.*
 - (c) *Please supply information on how your Government secures the right of trade unions to federate and join international trade union organizations. What legal and practical restrictions are placed upon the exercise of this right?*
 - (d) *Please indicate in detail what conditions or limitations are placed upon the right of trade unions to function freely. Which*

trade unions have been adversely affected in practice by these conditions or limitations? What measures are being taken to promote free collective bargaining?

- (e) *Please supply data on the number and structure of trade unions established in your country, and on their respective membership.*
3. *Please indicate whether in your country workers are granted the possibility to strike as a matter of constitutional or legal right. If your answer is in the negative, what other legal or factual approach is used to guarantee the exercise of this right?*
- (a) *What restrictions are placed upon the exercise of the right to strike? Please provide a detailed account of the legal provisions governing such restrictions and their application in practice over time.*
- (b) *Please indicate whether there exist any special legal provisions regarding the exercise of the right to strike by certain categories of workers and what these special provisions are, how they have been applied in practice, as well as the number of workers subjected to them.*
4. *Please indicate whether any restrictions are placed upon the exercise of the rights mentioned in Paragraphs 2 and 3 above by members of the armed forces, the police or the administration of the State. How have such restrictions been applied in actual practice?*
5. *In case of subsequent reports, give a short review of changes, if any, in national legislation, court decisions, as well as administrative rules, procedures and practices during the reporting period affecting the rights enshrined in Article 8.*

Excerpts* from text of General Comment No. 5 (1994)

Persons with disabilities**

26. *Trade union-related rights (art. 8) apply equally to workers with disabilities and regardless of whether they work in special work facilities or in the open labour market. In addition, Article 8, read in conjunction with other rights such as the right to freedom of association,*

* The remaining parts of the General Comment are included elsewhere in this chapter in relation to each of the specific articles to which they refer.

*** The footnotes contained in the full text of the General Comment have been omitted for present purposes.

serves to emphasize the importance of the right of persons with disabilities to form their own organizations. If these organizations are to be effective in "the promotion and protection of [the] economic and social interests" (art. 8(1) (a)) of such persons, they should be consulted regularly by government bodies and others in relation to all matters affecting them; it may also be necessary that they be supported financially and otherwise so as to ensure their viability.

- 27.** *The International Labour Organization has developed valuable and comprehensive instruments with respect to the work-related rights of persons with disabilities, including in particular Convention No. 159 (1983) concerning vocational rehabilitation and employment of persons with disabilities. The Committee encourages States Parties to the Covenant to consider ratifying that Convention.*

Excerpts* from text of General Comment No. 6 (1995)

The economic, social and cultural rights of older persons

- 25.** *The rights protected by Article 8 of the Covenant, namely, trade union rights, including after retirement age, must be applied to older workers.*

Commentary

The right to form and join trade unions, which is also recognized in Article 22 of the ICCPR, is to be 'ensured' by States Parties and is thus not subject to the principle of progressive realization. Its inclusion in the present Covenant provides a perfect example of the inter-dependence of the two sets of rights and of the artificiality of attempts to treat each set as if it were entirely different in nature from the other.

In its reporting guidelines the Committee notes that States Parties to the Covenant, which are also parties to the ICCPR and/or to ILO Conventions No. 87 of 1958 or No. 98 of 1949, might wish to cross-refer to reports provided thereunder rather than repeating the same information again in this context. Similarly, reporting officers might also wish to take account of the fact that Article 5(e)(ii) of the ICERD also deals with trade union rights.

However, even States that are parties to all of those other instruments will still need to provide information on a number of matters in respect to which the provisions of the ICESCR are different. In particular, this applies to the right to strike recognized in Article 8(1)(d) which is not explicitly provided for in either the ICCPR or the relevant ILO Conventions. Thus all reporting States should indicate whether the right to strike enjoys constitutional,

legislative or other protection, and if so whether any groups are excluded from coverage. In so far as restrictions may be placed upon the exercise of the right to strike, reports should indicate their basis and nature and give details of their application during the period under review. If the right to strike of members of the armed forces, the police, public officials or employees of publicly owned undertakings is restricted in any way, details should be provided in the report. Information should cover the situation both in law and in practice.

In the case of States Parties that have not already provided information on the right to form and join trade unions, through reports submitted under the ICCPR or the relevant ILO Conventions, a significant range of information of both a legal and practical nature should be included in reporting under this article.

Information should be provided as to the conditions which must be met before individuals are allowed to join or form a trade union of their own choice. If there is only one or a very small number of trade unions in the country this would be a prima facie indication that significant constraints, of a formal or informal nature or both, exist. Information addressing this issue should thus be included in the report. The situation, both in legal and practical terms, of public sector and other special categories of employees with respect to the right to form and join trade unions should also be spelled out. The Covenant specifies that the exercise of this right must not be subject to restrictions unless they satisfy various criteria that are specified not only in Article 4 of the Covenant but also Article 8(1)(a). Thus, the restrictions must be: (1) prescribed by law and not by extra-legal or otherwise unconstitutional means; and (2) necessary in a democratic society in order to achieve a very limited range of objectives. Those objectives are: (1) to protect national security; (2) to protect public order; (3) to protect the rights and freedoms of others. The key word here is "necessary". In other words, it is not enough for a reporting State simply to invoke one or other of these justifications. Rather, the State's report must demonstrate that the restrictions imposed were necessary and were in proportion to the threat identified. The same requirements apply to any restrictions imposed by a Government upon the right of trade unions to function freely.

Finally, reports under this article should supply information on how the Government has sought to ensure the right of trade unions to federate and join international trade union organizations and whether any legal or practical restrictions have been imposed in this regard.

ARTICLE 9

Text of Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Text of the guidelines on Article 9 of the Covenant

1. *If your State is a party to the ILO Social Security (Minimum Standards) Convention, 1952 (No. 102) or to other relevant subsequent ILO Conventions (Nos. 121, 128, 130, 168), and has already submitted reports to the supervisory committee(s) concerned which are relevant to the provisions of Article 9, you may wish to refer to the respective parts of those reports rather than repeat the information here. However, all matters which arise under the present Covenant and are not covered fully in those reports should be dealt with in the present report.*
2. *Please indicate which of the following branches of social security exist in your country:*
 - *Medical care*
 - *Cash sickness benefits*
 - *Maternity benefits*
 - *Old-age benefits*
 - *Invalidity benefits*
 - *Survivors' benefits*
 - *Employment injury benefits*
 - *Unemployment benefits*
 - *Family benefits*
3. *Please describe for each branch existing in your country the main features of the schemes in force, indicating the comprehensiveness of the coverage provided, both in the aggregate and with respect to different groups within the society, the nature and level of benefits, and the method of financing the schemes.*

4. *Please indicate what percentage of your GNP as well as of your national and/or regional budget(s) is spent on social security. How does this compare with the situation 10 years ago? What reasons are there for any changes?*
5. *Please indicate whether in your country the formal (public) social security schemes described are supplemented by any informal (private) arrangements. If such is the case, please describe these arrangements and the inter-relationships between them and the formal (public) schemes.*
6. *Please indicate whether in your country there are any groups which do not enjoy the right to social security at all or which do so to a significantly lesser degree than the majority of the population. In particular, what is the situation of women in that respect? Please give specifics on such non-enjoyment of social security.*
 - (a) *Please indicate what measures are regarded as necessary by your Government in order to realize the right to social security for the groups mentioned above.*
 - (b) *Please explain the policy measures your Government has taken, to the maximum of its available resources, to implement the right to social security for these groups. Give a calendar and time-related benchmarks for measuring your achievements in this regard.*
 - (c) *Please describe the effect of these measures on the situation of the vulnerable and disadvantaged groups in point, and report the successes, problems and shortcomings of such measures.*
7. *In case of subsequent reports, give a short review of changes, if any, in national legislation, court decisions, as well as administrative rules, procedures and practices during the reporting period affecting the right to social security.*
8. *Please indicate the role of international assistance in the full realization of the right enshrined in Article 9.*

Excerpts* from text of General Comment No. 5 (1994)**Persons with disabilities****

- 28.** *Social security and income-maintenance schemes are of particular importance for persons with disabilities. As stated in the Standard Rules, “States should ensure the provision of adequate income support to persons with disabilities who, owing to disability or disability-related factors, have temporarily lost or received a reduction in their income or have been denied employment opportunities”. Such support should reflect the special needs for assistance and other expenses often associated with disability. In addition, as far as possible, the support provided should also cover individuals (who are overwhelmingly female) who undertake the care of a person with disabilities. Such persons, including members of the families of persons with disabilities, are often in urgent need of financial support because of their assistance role.*
- 29.** *Institutionalization of persons with disabilities, unless rendered necessary for other reasons, cannot be regarded as an adequate substitute for the social security and income-support rights of such persons.*

Excerpts* from text of General Comment No. 6 (1995)**The economic, social and cultural rights of older persons**

- 26.** *Article 9 of the Covenant provides generally that States Parties “recognize the right of everyone to social security”, without specifying the type or level of protection to be guaranteed. However, the term “social security” implicitly covers all the risks involved in the loss of means of subsistence for reasons beyond a person’s control.*
- 27.** *In accordance with Article 9 of the Covenant and the provisions concerning implementation of the ILO social security conventions – Convention No. 102 concerning Social Security (Minimum Standards) (1952) and Convention No. 128 concerning Invalidity, Old-Age and Survivors’ Benefits (1967) – States Parties must take appropriate*

* The remaining parts of the General Comment are included elsewhere in this chapter in relation to each of the specific articles to which they refer.

*** The footnotes contained in the full text of the General Comment have been omitted for present purposes.

measures to establish general regimes of compulsory old-age insurance, starting at a particular age, to be prescribed by national law.

- 28.** *In keeping with the recommendations contained in the two ILO Conventions mentioned above and Recommendation No. 162, the Committee invites States Parties to establish retirement age so that it is flexible, depending on the occupations performed and the working ability of elderly persons, with due regard to demographic, economic and social factors.*
- 29.** *In order to give effect to the provisions of Article 9 of the Covenant, States Parties must guarantee the provision of survivors' and orphans' benefits on the death of the breadwinner who was covered by social security or receiving a pension.*
- 30.** *Furthermore, as already observed in Paragraphs 20 and 21, in order fully to implement the provisions of Article 9 of the Covenant, States Parties should, within the limits of available resources, provide non-contributory old-age benefits and other assistance for all older persons, who, when reaching the age prescribed in national legislation, have not completed a qualifying period of contribution and are not entitled to an old-age pension or other social security benefit or assistance and have no other source of income.*

Commentary

If a State Party to the Covenant is also a party to ILO Convention No. 102 of 1952 it need not provide the Committee with information which would otherwise be pertinent in reporting under this article and which has already been provided to the ILO. In such cases, however, it should inform the Committee of the nature of any comments made by the ILO Committee of Experts in regard to that information.

Although this article is the briefest in the entire Covenant, an adequate report by a State Party should address a number of different issues. A statement to the effect that a social security scheme exists and an indication of some of the benefits available is insufficient. The report should first indicate which of the following types of social security schemes exist in the country concerned: medical care; cash sickness benefits; maternity benefits; old-age benefits; invalidity benefits; survivor's benefits; employment injury benefits; unemployment benefits; and family benefits. For each of those categories the report should indicate the type and extent of the scheme's coverage, particularly as a proportion of the total number of people that should, ideally, be covered. The report should clearly indicate the number of people who are not covered by any of the various types of social security. In this

regard, the Committee will be particularly interested in the situation of the most vulnerable and disadvantaged groups in society such as, for example, rural women, and indigenous and minority groups.

Particularly in the case of developing countries, many of these categories might be of very limited relevance. But in such cases, reports should provide information as to informal arrangements that might provide *de facto* coverage to parts of the population. The coverage and adequacy of such arrangements should be described and an indication given of the proportion of the population considered to be without the protection of any form of social security.

With respect to the right to social security, reporting officers might wish to consult or refer to information provided in other reports pertaining to Article 5(e)(iv) of the ICERD, Articles 11(1)(e) and 13(a) of the CEDAW, and Article 26 of the CRC. In relation to the CEDAW Convention, reference might also be made to General Recommendation No. 16 (Tenth Session, 1991) adopted by the Committee on the Elimination of Discrimination against Women.

ARTICLE 10

Text of Article 10

The States Parties to the present Covenant recognize that:

- 1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.*
- 2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.*
- 3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punish-*

able by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Text of the guidelines on Article 10 of the Covenant

1. *If your State is a party to any of the following conventions:*
 - *International Covenant on Civil and Political Rights*
 - *Convention on the Rights of the Child*
 - *Convention on the Elimination of all Forms of Discrimination against Women*
 - *ILO Maternity Protection Convention (Revised), 1952 (No. 103)*
 - *ILO Minimum Age Convention, 1973 (No. 138),*

or to any other ILO convention on the protection of children or young persons in relation to employment and work, and if your Government has already submitted reports to the supervisory committee(s) concerned which are relevant to the provisions of Article 10, you may wish to refer to the respective parts of those reports rather than repeat the information here. However, all matters which arise under the present Covenant and are not covered fully in these reports should be dealt with in the present report.
2. *Please indicate what meaning is given in your society to the term "family".*
3. *Please indicate the age at which in your country children are deemed to attain their majority for different purposes.*
4. *Please supply information on the ways and means, both formal and informal, employed in your country to grant assistance and protection to the family. In particular:*
 - (a) *How does your country guarantee the right of men and, particularly, women to enter into marriage with their full and free consent and to establish a family? Please indicate and eventually give specifics about cases where the measures taken were not successful in abolishing practices adversely affecting the enjoyment of this right.*
 - (b) *By what measures does your country facilitate the establishment of a family as well as maintain, strengthen and protect it, par-*

particularly while it is responsible for the care and education of dependent children? Despite these measures, are there families which do not enjoy the benefit of such protection and assistance at all or which do to a significantly lesser degree than the majority of the population? Please give specifics of these situations. Are extended families or other forms of familial organization recognized in determining the availability or applicability of these measures, particularly with respect to government benefits?

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

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

- (a) *In particular:*

- (i) *Describe the scope of the scheme of protection;*
(ii) *Indicate the total length of maternity leave and of the period of compulsory leave after confinement;*
(iii) *Describe the cash, medical and other social security benefits granted during these periods;*
(iv) *Indicate how these benefits have been developed over time.*

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

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

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

- (b) *Please specify how many children, and of which age groups, engage in paid employment, and to what extent.*
 - (c) *Please specify to what extent children are being employed in their families' households, farms or businesses.*
 - (d) *Please indicate whether there are in your country any groups of children and young persons which do not enjoy the measures of protection and assistance at all or which do to a significantly lesser degree than the majority. In particular, what is the respective situation of orphans, children without living biological parents, young girls, children who are abandoned or deprived of their family environment, as well as physically or mentally handicapped children?*
 - (e) *How are the persons mentioned in the preceding paragraph informed of their respective rights?*
 - (f) *Please give specifics on any difficulties and shortcomings. How have such adverse situations developed over time? What measures are being taken to remedy these situations? Please describe the effect of these measures over time and report on successes, problems and shortcomings.*
- 7.** *In case of subsequent reports, give a short review of the changes, if any, in national legislation, court decisions as well as administrative rules, procedures and practices during the reporting period affecting the rights enshrined in Article 10.*
- 8.** *Please describe the role of international assistance in the full realization of the right enshrined in Article 10.*

Excerpts* from text of General Comment No. 5 (1994)

Persons with disabilities**

- 30.** *In the case of persons with disabilities, the Covenant's requirement that "protection and assistance" be rendered to the family means that everything possible should be done to enable such persons, when they*

* The remaining parts of the General Comment are included elsewhere in this chapter in relation to each of the specific articles to which they refer.

*** The footnotes contained in the full text of the General Comment have been omitted for present purposes.

so wish, to live with their families. Article 10 also implies, subject to the general principles of international human rights law, the right of persons with disabilities to marry and have their own family. These rights are frequently ignored or denied, especially in the case of persons with mental disabilities. In this and other contexts, the term “family” should be interpreted broadly and in accordance with appropriate local usage. States Parties should ensure that laws and social policies and practices do not impede the realization of these rights. Persons with disabilities should have access to necessary counselling services in order to fulfil their rights and duties within the family.

- 31.** *Women with disabilities also have the right to protection and support in relation to motherhood and pregnancy. As the Standard Rules state, “persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood”. The needs and desires in question should be recognized and addressed in both the recreational and the procreational contexts. These rights are commonly denied to both men and women with disabilities world-wide. Both the sterilization of, and the performance of an abortion on, a woman with disabilities without her prior informed consent are serious violations of Article 10(2).*
- 32.** *Children with disabilities are especially vulnerable to exploitation, abuse and neglect and are, in accordance with Article 10(3) of the Covenant (reinforced by the corresponding provisions of the Convention on the Rights of the Child), entitled to special protection.*

Excerpts* from text of General Comment No. 6 (1995)

The economic, social and cultural rights of older persons

- 31.** *On the basis of Article 10, Paragraph 1, of the Covenant and Recommendations 25 and 29 of the Vienna International Plan of Action on Ageing, States Parties should make all the necessary efforts to support, protect and strengthen the family and help it, in accordance with each society’s system of cultural values, to respond to the needs of its dependent ageing members. Recommendation 29 encourages Governments and non-governmental organizations to establish social*

* The remaining parts of the General Comment are included elsewhere in this chapter in relation to each of the specific articles to which they refer.

services to support the whole family when there are elderly people at home and to implement measures especially for low-income families who wish to keep elderly people at home. This assistance should also be provided for persons living alone or elderly couples wishing to remain at home.

Commentary

This article deals with a wide range of issues including: the family; marriage; maternity protection; and children's rights. States Parties to the Covenant might thus have furnished relevant information to a variety of other treaty supervisory bodies in connection with the following instruments: the ICCPR, especially Articles 23 and 24; the Convention on the Rights of the Child; ILO Conventions No. 103 of 1952 and No. 138 of 1973; and the CEDAW, especially Articles 11, 12, 13 and 16. The relevant information need not be reproduced in reporting on Article 10 of the ICESCR. Instead, reference may be made to those other reports and an indication given as to the comments, if any, made by the relevant supervisory bodies thereon.

In so far as the relevant information has not been provided elsewhere, information is required by the Committee on the following issues. The first concerns the family. For that purpose the State Party should report on how the concept and scope of the 'family' is construed or defined in their own society and legal system. Information should then be provided on the ways and means by which "the widest possible protection and assistance" is accorded to the family. An assessment of the extent to which the family continues to function as the fundamental group unit of society should also be given. This is particularly pertinent in light of the many threats that have emerged in recent decades to the position of the family within many societies.

The next issue concerns the existence of any constraints, of a formal or informal nature, on the ability of intending spouses to exercise their free consent in regard to marriage. In particular, the situation of young women should be addressed and information provided as to the continued existence of any practices that adversely affect them in this respect.

With respect to the provision of special protection to mothers during a reasonable period before and after childbirth, information should be provided on both formal and informal arrangements. The latter would consist of practices that are widely followed within a community, perhaps involving no governmental or public role, which help to provide the type of protection required.

The Covenant does not assume that **all** of the measures to be taken to protect this right, or any of the other rights recognized in the Covenant, should necessarily be undertaken or funded, in the first instance, by the Government. However, when the range of community-based and other measures that do exist fall significantly short of the requirements of the Covenant, the Government does have a responsibility to do whatever it can to ensure that the discrepancy is somehow reduced or eliminated.

Reports should also indicate what formal maternity protection arrangements exist and provide the relevant details. Information as to the number and proportion of women not covered thereby is of particular importance.

The provision in Paragraph 3 with respect to children and young persons is more far-reaching than might appear at first. While all of the specific issues identified in this provision relate to questions of labour conditions and forms of exploitation, the first sentence is much more general in nature and far broader in scope. It requires "special measures of protection and assistance" to be taken on behalf of all children and young persons and also requires that these be taken without any discrimination. It is clear that all of the rights in the Covenant apply to children, even though some of them may be less relevant at times than others. Nevertheless, because the Covenant requires special protection for children and young persons and because they are often far more vulnerable than other groups, reports should make a particular point of indicating the extent to which children enjoy, or are deprived of, the various rights recognized in the Covenant. Again, where a State Party to the Covenant has also reported on these matters in a relatively recent report under the CRC, a cross-reference to that information should suffice.

The Covenant does not specify any precise age at which an individual ceases to be classified as either a child or a young person. This is to be determined by each State Party in the light of the relevant economic, social and cultural conditions. Reports should indicate the relevant age limits specified by national law in this respect.

In addition to the specific rights referred to in the Covenant, other measures may well be necessary in order to satisfy the Covenant's recognition that special measures of protection and assistance, in general, are required. Thus, for example, where particular threats to children and young persons have been identified, the necessary measures should be described and progress indicated. Reporting States should provide information on the extent to which children under their jurisdiction are discriminated against in the enjoyment of their rights.

Finally, reports should provide specific information on the measures that have been taken to satisfy the requirements: to protect children and young persons from economic and social exploitation; to punish by law the employment of children and young persons in work harmful to their morals or health or dangerous to life or likely to hamper their normal development; and to set age limits below which the paid employment of child labour is prohibited and punishable by law. In addition to dealing with the situation in law, information on the situation in practice is also required.

ARTICLE 11

Text of Article 11

1. *The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*
2. *The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:*
 - (a) *To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;*
 - (b) *Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.*

Text of the guidelines on Article 11 of the Covenant

1. (a) *Please supply information on the current standard of living of your population, both intake aggregate and with respect to different socio-economic, cultural and other groups within the society. How has the standard of living changed over time (e.g., compared with 10 years ago, 5 years ago) with regard to these different groups? Has there been a continuous improvement of living conditions for the entire population or for what groups?*
- (b) *In case your Government has recently submitted reports relevant to the situation with respect to all or some of the rights contained in Article 11 to the United Nations or a specialized agency, you may wish to refer to the relevant parts of those reports rather than repeat the information here.*

- (c) *Please indicate the per capita GNP for the poorest 40 per cent of your population. Is there a "poverty line" in existence in your country and, if so, what is the basis for this line?*
- (d) *Please indicate your country's Physical Quality of Life Index.*

2. The right to adequate food

- (a) *Please provide a general overview of the extent to which the right to adequate food has been realized in your country. Describe the sources of information that exist in this regard, including nutritional surveys and other monitoring arrangements.*
- (b) *Please provide detailed information (including statistical data broken down in terms of different geographical areas) on the extent to which hunger and/or malnutrition exists in your country. This information should deal in particular with the following issues:*
- (i) *The situation of especially vulnerable or disadvantaged groups including:*
- landless peasants*
 - marginalized peasants*
 - rural workers*
 - rural unemployed*
 - urban unemployed*
 - urban poor*
 - migrant workers*
 - indigenous peoples*
 - children*
 - elderly people*
 - other especially affected groups;*
- (ii) *Any significant differences in the situation of men and women within each of the above groups;*
- (iii) *The changes that have taken place over the past five years with respect to the situation of each of the above groups.*

- (c) *During the reporting period, have there been any changes in national policies, laws and practices negatively affecting the access to adequate food by these groups or sectors, or within the worse-off regions? If so, please describe these changes and evaluate their impact.*
- (d) *Please indicate what measures are considered necessary by your Government to guarantee access to adequate food for each of the vulnerable or disadvantaged groups mentioned above and for the worse-off areas, and for the full implementation of the right to food for both men and women. Indicate the measures taken and specify time-related goals and nutritional benchmarks for measuring achievements in this regard.*
- (e) *Please indicate in what ways measures taken to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge have contributed towards, or have impeded the realization of, the right to adequate food. Please describe the impact of these measures in terms of ecological sustainability and the protection and conservation of food producing resources.*
- (f) *Please indicate what measures are taken to disseminate knowledge of the principles of nutrition and specify whether any significant groups or sectors within society seem to lack such knowledge.*
- (g) *Please describe any measures of agrarian reform taken by your Government to ensure that the agrarian system is efficiently utilized in order to promote food security at household level without negatively affecting human dignity both in the rural and urban settings taking into account Articles 6 and 8 of the Covenant. Describe the measures taken:*
 - (i) *To legislate to this effect;*
 - (ii) *To enforce existing laws to this effect;*
 - (iii) *To facilitate monitoring through governmental and non-governmental organizations.*
- (h) *Please describe and evaluate the measures taken by your Government in order to ensure an equitable distribution, in terms of both production and trade, of world food supplies in relation to need, taking into account the problems of both food-importing and food-exporting countries.*

3. The right to adequate housing

- (a) *Please furnish detailed statistical information about the housing situation in your country.*
- (b) *Please provide detailed information about those groups within your society that are vulnerable and disadvantaged with regard to housing. Indicate, in particular:*
 - (i) *The number of homeless individuals and families;*
 - (ii) *The number of individuals and families currently inadequately housed and without ready access to basic amenities such as water, heating (if necessary), waste disposal, sanitation facilities, electricity, postal services, etc. (in so far as you consider these amenities relevant in your country). Include the number of people living in over-crowded, damp, structurally unsafe housing or other conditions which affect health;*
 - (iii) *The number of persons currently classified as living in "illegal" settlements or housing;*
 - (iv) *The number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction;*
 - (v) *The number of persons whose housing expenses are above any government-set limit of affordability, based upon ability to pay as a ratio of income;*
 - (vi) *The number of persons on waiting lists for obtaining accommodation, the average length of waiting time and measures taken to decrease such lists as well as to assist those on such lists in finding temporary housing;*
 - (vii) *The number of persons in different types of housing tenure by: social or public housing; private rental sector; owner-occupiers; "illegal" sector; and other;*
- (c) *Please provide information on the existence of any laws affecting the realization of the right to housing, including:*
 - (i) *Legislation which gives substance to the right to housing in terms of defining the content of this right;*
 - (ii) *Legislation such as housing acts, homeless person acts, municipal corporation acts, etc.;*

- (iii) *Legislation relevant to land use, land distribution; land allocation, land zoning, land ceilings, expropriations including provisions for compensation; land planning, including procedures for community participation;*
 - (iv) *Legislation concerning the rights of tenants to security of tenure, to protection from eviction; to housing finance and rental control (or subsidy), housing affordability, etc.;*
 - (v) *Legislation concerning building codes, building regulations and standards and the provision of infrastructure;*
 - (vi) *Legislation prohibiting any and all forms of discrimination in the housing sector, including groups not traditionally protected;*
 - (vii) *Legislation prohibiting any form of eviction;*
 - (viii) *Any legislative repeal or reform of existing laws which detracts from the fulfilment of the right to housing;*
 - (ix) *Legislation restricting speculation on housing or property, particularly when such speculation has a negative impact on the fulfilment of housing rights for all sectors of society;*
 - (x) *Legislative measures conferring legal title to those living in the “illegal” sector;*
 - (xi) *Legislation concerning environmental planning and health in housing and human settlements.*
- (d) *Please provide information on all other measures taken to fulfil the right to housing, including:*
- (i) *Measures taken to encourage “enabling strategies” whereby local community-based organizations and the “informal sector” can build housing and related services. Are such organizations free to operate? Do they receive government funding?*
 - (ii) *Measures taken by the State to build housing units and to increase other construction of affordable, rental housing;*
 - (iii) *Measures taken to release unutilized, under-utilized or mis-utilized land;*
 - (iv) *Financial measures taken by the State including details of the budget of the Ministry of Housing or other relevant Ministry as a percentage of the national budget;*

- (v) *Measures taken to ensure that international assistance for housing and human settlements is used to fulfil the needs of the most disadvantaged groups;*
 - (vi) *Measures taken to encourage the development of small and intermediate urban centres, especially at the rural level;*
 - (vii) *Measures taken during, inter alia, urban renewal programmes, redevelopment projects site upgrading, preparation for international events (Olympics, exhibitions, conferences, etc.), "beautiful city campaigns", etc., which guarantee protection from eviction or guaranteed rehousing based on mutual agreement, by any persons living on or near affected sites;*
- (e) *During the reporting period, have there been any changes in national policies, laws and practices negatively affecting the right to adequate housing? If so, please describe the changes and evaluate their impact.*
4. *Please give specifics on any difficulties or shortcomings encountered in the fulfilment of the rights enshrined in Article 11 and on the measures taken to remedy these situations (if not already described in the present report).*
5. *Please indicate the role of international assistance in the full realization of the rights enshrined in Article 11.*

Text of General Comment No. 4 (1991)

The right to adequate housing

1. *Pursuant to Article 11(1) of the Covenant, States Parties "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions". The 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 ade-*

quate housing. The Committee has also devoted a day of general discussion to the issue at each of its third (see E/1989/22, Para. 312) and fourth sessions (E/1990/23, Para. 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. The Committee has also reviewed relevant reports and other documentation of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

3. *Although a wide variety of international instruments address the different dimensions of the right to adequate housing, Article 11(1) of 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 world-wide and over 1 billion inadequately housed. 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.

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 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 house hold 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 Housing** 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 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 modernization 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 rights – 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 realized 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 recognized 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 facilitating "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 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 realization 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 of, 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) emphasize 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 are 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 realize 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* (para. 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 of 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 recognize “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 human 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.

Excerpts* from text of General Comment No. 5 (1994)

Persons with disabilities**

- 33.** *In addition to the need to ensure that persons with disabilities have access to adequate food, accessible housing and other basic material needs, it is also necessary to ensure that “support services, including assistive devices” are available “for persons with disabilities, to assist them to increase their level of independence in their daily living and to exercise their rights”. The right to adequate clothing also assumes a special significance in the context of persons with disabilities who have particular clothing needs, so as to enable them to function fully and effectively in society. Wherever possible, appropriate personal assistance should also be provided in this connection. Such assistance should be undertaken in a manner and spirit which fully respect the human rights of the person(s) concerned. Similarly, as already noted by the Committee in Paragraph 8 of General Comment No. 4 (Sixth session, 1991), the right to adequate housing includes the right to accessible housing for persons with disabilities.*

* The remaining parts of the General Comment are included elsewhere in this chapter in relation to each of the specific articles to which they refer.

*** The footnotes contained in the full text of the General Comment have been omitted for present purposes.

Excerpts* from text of General Comment No. 6 (1995)***The economic, social and cultural rights of older persons***

- 32.** *Of the United Nations Principles for Older Persons, Principle 1, which stands at the beginning of the section relating to the independence of older persons, provides that: "Older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help". The Committee attaches great importance to this principle, which demands for older persons the rights contained in Article 11 of the Covenant.*
- 33.** *Recommendations 19 to 24 of the Vienna International Plan of Action on Ageing emphasize that housing for the elderly must be viewed as more than mere shelter and that, in addition to the physical, it has psychological and social significance which should be taken into account. Accordingly, national policies should help elderly persons to continue to live in their own homes as long as possible, through the restoration, development and improvement of homes and their adaptation to the ability of those persons to gain access to and use them (Recommendation 19). Recommendation 20 stresses the need for urban rebuilding and development planning and law to pay special attention to the problems of the ageing, assisting in securing their social integration, while Recommendation 22 draws attention to the need to take account of the functional capacity of the elderly in order to provide them with a better living environment and facilitate mobility and communication through the provision of adequate means of transport.*

Commentary

This provision is of central importance to the overall objectives of the Covenant. Although paragraph 2 is devoted exclusively to an elaboration of aspects of the right to adequate food, the article as a whole is much more wide-ranging. It covers the right to an adequate standard of living, the right to the continuous improvement of living conditions, and the rights to adequate food, clothing and housing.

* The remaining parts of the General Comment are included elsewhere in this chapter in relation to each of the specific articles to which they refer.

In the past, reporting States have tended to provide relatively little information on some of these issues, especially the right to an adequate standard of living and the right to adequate housing. In addition, much of the statistical and other information provided has been rather uninformative because of the lack of an adequate contextual explanation or of sufficient details. For example, per capita food intake measured in calories is useful for certain purposes but does not, of itself, say anything about the extent of enjoyment by individuals of their right to adequate food. To be meaningful to the Committee, such information needs to be broken down according to specific groups of the population (e.g. women, children, minority groups etc.) and to indicate the extent to which the national average conceals major problems of undernutrition and malnutrition. The situation of women is, in almost all cases, worse than that of men. Where this is true, the Committee calls upon States Parties to report in particular detail on the gender dimension of the enjoyment of each of the rights and on the measures which have been taken, or are planned, in order to overcome existing discrimination and inequality.

Since the guidelines are detailed and specific with respect to each of the rights dealt with in Article 11(1) it is not useful to repeat them here. Nevertheless, it may be noted that, in general terms, at least the following types of information are required in connection with each right:

- (a) an assessment of the present position with particular emphasis on the situation of the most vulnerable and disadvantaged members of the society. The report should also give details of the means by which the Government has obtained the information required to provide an accurate and detailed description. For example, the report should describe a national nutrition survey if one has been undertaken regularly, or indicate how, in the absence of such surveys, the Government ascertains the exact nature of the nutritional status of the population. The same would apply to descriptions of the situation with respect to the standard of living and housing.
- (b) an indication of progress achieved over time with respect to each of the rights. For example, a comparison of the situation ten and five years ago with the existing situation is extremely useful. Once reporting under the Covenant is sufficiently detailed, this information should automatically be available to the Committee on the basis of each State Party's five-yearly periodic reports.
- (c) an identification of the principal problems that have prevented full realization of each right. While this need not be exhaustive, its purpose is to demonstrate that the Government has sought to analyse the problems that exist.
- (d) a general indication of the type of policies envisaged in order to address existing shortcomings in the realization of each right. While the particular policy and programme measures to be adopted are matters for the State Party alone to decide, the

Committee needs to know that Government policies have in fact been formulated in an attempt to promote the progressive realization of the rights in question. Of particular importance in this regard is the identification by the State Party of specific benchmarks against which the realization of each of the rights recognized in Article 11 can be assessed.

In reporting on the right to adequate clothing, the issue of major interest to the Committee is whether or not there are significant numbers of persons who do not have access to the clothing they require not only for survival but as part of the enjoyment of an adequate standard of living.

In reporting on the right to adequate housing, reporting officers might wish to make use of information compiled and policies pursued in connection with the adoption of a "national shelter strategy". The guidelines for the preparation of such a strategy were endorsed by the General Assembly and are contained in an Annex to General Assembly resolution 43/181 of 20 December 1988. It is also important in this regard for reports to address the specific issues identified in General Comment No. 4 (1991).

The most important point to note about paragraph 2 is that the various measures listed, such as the improvement of methods of production, are only of interest to the Committee in so far as they are linked to enhanced realization of the right to food. Thus, for example, there may be many motives involved in reforming agrarian systems or promoting use of scientific knowledge. But these issues need only be dealt with in a State Party's report to the extent that they have had a demonstrable impact on the enjoyment of the right to adequate food.

Reporting officers should note that the rights dealt with in Article 11 are also protected by other international instruments. They include Article 6(1) of ICCPR, Articles 11(2) and 14(2) (g) and (h) of CEDAW, Article 5(e)(iii) of ICERD, and Article 27 of the CRC.

ARTICLE 12

Text of Article 12

- 1.** *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*
- 2.** *The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:*

- (a) *The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;*
- (b) *The improvement of all aspects of environmental and industrial hygiene;*
- (c) *The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*
- (d) *The creation of conditions which would assure to all medical service and medical attention in the event of sickness.*

Text of the guidelines on Article 12 of the Covenant

- 1.** *Please supply information on the physical and mental health of your population, both in the aggregate and with respect to different groups within your society. How has the health situation changed over time with regard to these groups? In case your Government has recently submitted reports on the health situation in your country to the World Health Organization (WHO) you may wish to refer to the relevant parts of these reports rather than repeat the information here.*
- 2.** *Please indicate whether your country has a national health policy. Please indicate whether a commitment to the WHO primary health-care approach has been adopted as part of the health policy of your country. If so, what measures have been taken to implement primary health care?*
- 3.** *Please indicate what percentage of your GNP as well as of your national and/or regional budget(s) is spent on health. What percentage of those resources is allocated to primary health care? How does this compare with 5 years ago and 10 years ago?*
- 4.** *Please provide, where available, indicators as defined by WHO, relating to the following issues:*
 - (a) *Infant mortality rate (in addition to the national value, please provide the rate by sex, urban/rural division, and also, if possible, by socio-economic or ethnic group and geographical area. Please include national definitions of urban/rural and other subdivisions);*
 - (b) *Population access to safe water (please disaggregate urban/ rural);*

- (c) *Population access to adequate excrete disposal facilities (please disaggregate urban/rural);*
- (d) *Infants immunized against diphtheria, pertussis, tetanus, measles, poliomyelitis and tuberculosis (please disaggregate urban/rural and by sex);*
- (e) *Life expectancy (please disaggregate urban/rural, by socio-economic group and by sex);*
- (f) *Proportion of the population having access to trained personnel for the treatment of common diseases and injuries, with regular supply of 20 essential drugs, within one hour's walk or travel;*
- (g) *Proportion of pregnant women having access to trained personnel during pregnancy and proportion attended by such personnel for delivery. Please provide figures on the maternity mortality rate, both before and after childbirth,*
- (h) *Proportion of infants having access to trained personnel for care.*

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

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

- (a) *During the reporting period, have there been any changes in national policies, laws and practices negatively affecting the health situation of these groups or areas? If so, please describe these changes and their impact.*
- (b) *Please indicate what measures are considered necessary by your Government to improve the physical and mental health situation of such vulnerable and disadvantaged groups or in such worse-off areas.*

- (c) *Please explain the policy measures your Government has taken, to the maximum of available resources, to realize such improvement. Indicate time-related goals and benchmarks for measuring your achievements in this regard.*
 - (d) *Please describe the effect of these measures on the health situation of the vulnerable and disadvantaged groups or worse-off areas under consideration, and report on the successes, problems and shortcomings of these measures.*
 - (e) *Please describe the measures taken by your government in order to reduce the stillbirth rate and infant mortality and to provide for the healthy development of the child.*
 - (f) *Please list the measures taken by your government to improve all aspects of environmental and industrial hygiene.*
 - (g) *Please describe the measures taken by your government to prevent, treat and control epidemic, endemic, occupational and other diseases.*
 - (h) *Please describe the measures taken by your Government to assure to all medical service and medical attention in the event of sickness.*
 - (i) *Please describe the effect of the measures listed in subparagraphs (e) to (h) on the situation of the vulnerable and disadvantaged groups in your society and in any worse-off areas. Report on difficulties and failures as well as on positive results.*
6. *Please indicate the measures taken by your Government to ensure that the rising costs of health care for the elderly do not lead to infringements of these persons' right to health.*
7. *Please indicate what measures have been taken in your country to maximize community participation in the planning, organization, operation and control of primary health care.*
8. *Please indicate what measures have been taken in your country to provide education concerning prevailing health problems and the measures of preventing and controlling them.*
9. *Please indicate the role of international assistance in the full realization of the right enshrined in Article 12.*

Excerpts* from text of General Comment No. 5 (1994)**Persons with disabilities****

34. *According to the Standard Rules, “States should ensure that persons with disabilities, particularly infants and children, are provided with the same level of medical care within the same system as other members of society”. The right to physical and mental health also implies the right to have access to, and to benefit from, those medical and social services – including orthopaedic devices – which enable persons with disabilities to become independent, prevent further disabilities and support their social integration. Similarly, such persons should be provided with rehabilitation services which would enable them “to reach and sustain their optimum level of independence and functioning”. All such services should be provided in such a way that the persons concerned are able to maintain full respect for their rights and dignity.*

Excerpts* from text of General Comment No. 6 (1995)**The economic, social and cultural rights of older persons**

34. *With a view to the realization of the right of elderly persons to the enjoyment of a satisfactory standard of physical and mental health, in accordance with Article 12, paragraph 1, of the Covenant, States Parties should take account of the content of Recommendations 1 to 17 of the Vienna International Plan of Action on Ageing, which focus entirely on providing guidelines on health policy to preserve the health of the elderly and take a comprehensive view, ranging from prevention and rehabilitation to the care of the terminally ill.*

35. *Clearly, the growing number of chronic, degenerative diseases and the high hospitalization costs they involve cannot be dealt with only by curative treatment. In this regard, States Parties should bear in mind that maintaining health into old age requires investments during the entire life span, basically through the adoption of healthy lifestyles (food, exercise, elimination of tobacco and alcohol, etc.).*

* The remaining parts of the General Comment are included elsewhere in this chapter in relation to each of the specific articles to which they refer.

*** The footnotes contained in the full text of the General Comment have been omitted for present purposes.

Prevention, through regular checks suited to the needs of the elderly, plays a decisive role, as does rehabilitation, by maintaining the functional capacities of elderly persons, with a resulting decrease in the cost of investments in health care and social services.

Commentary

Under this article, reporting States should focus in particular on two issues. The first is the overall level of physical and mental health of the population. The second concerns the degree of access to health care that is available to the population. The reporting guidelines place particular emphasis upon the provision of statistical information based on generally accepted indicators of health, as defined by the WHO. If this information is already available in reports provided to the WHO, reference may be made to that information provided that it is accessible to the Committee.

In addition to such information, however, the guidelines also indicate the importance of providing information about any groups whose health situation is significantly worse than that of the majority of the population. As is the case with the other provisions of the Covenant, the Committee's concern is to ascertain details of the situation in practice as well as to obtain an indication of the policies and programmes that are being pursued with a view to improving the existing levels of realization of the right. In this regard, the identification of benchmarks or time-specific goals for improvement can assist the Committee in evaluating the extent of a State Party's compliance with its obligations under the Covenant.

It will be recalled that the World Conference on Human Rights specifically recognized "the importance of the enjoyment by women of the highest standard of physical and mental health throughout their life span". The Conference also reaffirmed "a woman's right to accessible and adequate health care and the widest range of family planning services". It is of particular importance therefore that reporting on Article 12 should provide a detailed breakdown of the situation of women in relation to all key issues. An indication should also be given of any measures aimed at redressing the existing inequities and inadequacies in this regard.

Finally, it might be observed that the specific measures listed under sections (a) to (d) of paragraph 2 are not necessarily exhaustive of the measures that might need to be taken to ensure progressive realization of the right to physical and mental health. In this regard, particular attention should be given in reporting to the health and related threats posed by pollution and other environmental problems. While the Covenant does not explicitly recognize a right to environmental well-being as such, it is clear that the right to health encompasses many aspects of a right to a safe and healthy environment. Thus, the Committee has consistently sought appropriate information from States Parties whose reports have been deficient in that regard. The situation in relation to HIV/AIDS is also of particu-

lar relevance in this respect. Information should focus on the number of persons affected, the measures taken to provide them with appropriate care, preventive measures and measures to ensure non-discrimination in relation to those infected by the virus.

The right to health is also dealt with in Articles 12 and 14(2)(b) of CEDAW, Article 5(e)(iv) of ICERD, and Article 24 of the CRC.

ARTICLE 13

Text of Article 13

1. *The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.*
2. *The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:*
 - (a) *Primary education shall be compulsory and available free to all;*
 - (b) *Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;*
 - (c) *Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;*
 - (d) *Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;*
 - (e) *The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.*

3. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.*
4. *No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.*

Text of the guidelines on Article 13 of the Covenant

1. *With a view to achieving in your country the full realization of the right of everyone to education:*
 - (a) *How does your government discharge the obligation to provide for primary education that is compulsory and available free to all? (If primary education is not compulsory and/or free of charge, see especially Article 14).*
 - (b) *Is secondary education, including technical and vocational secondary education, generally available and accessible to all? To what extent is such secondary education free of charge?*
 - (c) *To what extent is general access to higher education realized in your country? What are the costs of such higher education? Is free education established or being introduced progressively?*
 - (d) *What efforts have you made to establish a system of fundamental education for those persons who have not received or completed the whole period of their primary education?*

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

2. *What difficulties have you encountered in the realization of the right to education, as spelt out in paragraph 1? What time-related goals and benchmarks has your Government set in this respect?*
3. *Please provide statistics on literacy, enrolment in fundamental education with information on rural areas, adult and continuing education, drop-out rates at all levels of education as well as graduating rates at all levels (please disaggregate, if possible, according to sex, religion, etc.). Also provide information on measures taken to promote literacy with data on the scope of programmes, target population, financing and enrolment, as well as graduation statistics by age group, sex, etc. Please report on the positive results of these measures as well as on the difficulties and failures.*
4. *Please provide information on the percentage of your budget (or, if necessary, regional budgets) spent on education. Describe your system of schools, your activity in building new schools, the vicinity of schools, particularly in rural areas, as well as the schooling schedules.*
5. *To what extent is equal access to the different levels of education and to measures to promote literacy enjoyed in practice? For instance:*
 - (a) *What is the ratio of men and women making use of the different levels of education and taking part in these measures?*
 - (b) *With regard to the practical enjoyment of the right to these levels of education and measures to promote literacy, are there any particularly vulnerable and disadvantaged groups? Indicate, for instance, to what extent young girls, children of low-income groups, children in rural areas, children who are physically or mentally disabled, children of immigrants and of migrant workers, children belonging to linguistic, racial, religious or other minorities, and children of indigenous people, enjoy the right to literacy and education spelt out in Article 12.*
 - (c) *What actions is your Government taking or contemplating in order to introduce or guarantee equal access to all levels of education within your country, for instance in the form of anti-discriminatory measures, financial incentives, fellowships, positive or affirmative action? Please describe the effect of such measures.*

- (d) *Please describe the linguistic facilities provided to this effect, such as the availability of teaching in the mother tongue of the students.*
6. *Please describe the conditions of teaching staff at all levels in your country, having regard to the Recommendation concerning the Status of Teachers adopted on 5 October 1966 by the Special Intergovernmental Conference on the Status of Teachers, convened by UNESCO. How do teachers' salaries compare to salaries of (other) civil servants? How has this ratio developed over time? What measures does your country take or contemplate to improve the living conditions of teaching staff?*
7. *What proportion of schools at all levels in your country is not established and administered by the Government? Have any difficulties been encountered by those wishing to establish or to gain access to those schools?*
8. *During the reporting period, have there been any changes in national policies, laws and practices negatively affecting the right enshrined in Article 13? If so, please describe these changes and evaluate their impact.*
9. *Please indicate the role of international assistance in the full realization of the right enshrined in Article 13.*

Excerpts^{*} from text of General Comment No. 5 (1994)

Persons with disabilities^{}**

35. *School programmes in many countries today recognize that persons with disabilities can best be educated within the general education system. Thus the Standard Rules provide that "States should recognize the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities, in integrated settings". In order to implement such an approach, States should ensure that teachers are trained to educate children with dis-*

* The remaining parts of the General Comment are included elsewhere in this chapter in relation to each of the specific articles to which they refer.

*** The footnotes contained in the full text of the General Comment have been omitted for present purposes.

abilities within regular schools and that the necessary equipment and support are available to bring persons with disabilities up to the same level of education as their non-disabled peers. In the case of deaf children, for example, sign language should be recognized as a separate language to which the children should have access and whose importance should be acknowledged in their overall social environment.

Excerpts* from text of General Comment No. 6 (1995)

The economic, social and cultural rights of older persons

- 36.** *Article 13, paragraph 1, of the Covenant recognizes the right of everyone to education. In the case of the elderly, this right must be approached from two different and complementary points of view: (a) the right of elderly persons to benefit from educational programmes; and (b) making the know-how and experience of elderly persons available to younger generations.*
- 37.** *With regard to the former, States Parties should take account of: (a) the recommendations in Principle 16 of the United Nations Principles for Older Persons to the effect that older persons should have access to suitable education programmes and training and should, therefore, on the basis of their preparation, abilities and motivation, be given access to the various levels of education through the adoption of appropriate measures regarding literacy training, life-long education, access to university, etc.; and (b) Recommendation 47 of the Vienna International Plan of Action on Ageing which, in accordance with the concept of life-long education promulgated by the United Nations Educational, Scientific and Cultural Organization (UNESCO), recommends informal, community-based and recreation-oriented programmes for the elderly in order to develop their sense of self-reliance and the community's sense of responsibility. Such programmes should enjoy the support of national Governments and international organizations.*
- 38.** *With regard to the use of the know-how and experience of older persons, as referred to in the part of the recommendations of the Vienna International Plan of Action on Ageing dealing with education (para.*

* The remaining parts of the General Comment are included elsewhere in this chapter in relation to each of the specific articles to which they refer.

74-76), attention is drawn to the important role that elderly and old persons still play in most societies as the transmitters of information, knowledge, traditions and spiritual values and to the fact that this important tradition should not be lost. Consequently, the Committee attaches particular importance to the message contained in Recommendation 44 of the Plan: "Educational programmes featuring the elderly as the teachers and transmitters of knowledge, culture and spiritual values should be developed".

Commentary

This article deals with the right to education in all of its different dimensions. Information is thus sought with respect to primary, secondary, higher (tertiary) and fundamental (sometimes referred to as 'adult') education. There is a very important difference, however, in the nature of the obligation with respect to primary education. Under Article 13(2)(a), the State Party is required to recognize that primary education shall be compulsory and available free to all. The fact that this obligation is of immediate application is underscored by the provision in Article 14 (see below) which requires any State Party that has not satisfied this obligation to take very precise measures towards that goal. This immediacy contrasts with the element of progressive realization that is specifically mentioned with respect to each of the other educational levels.

Reports should provide any available statistical information and make use of indicators devised in that regard by UNESCO. If reports have been made under the Convention Against Discrimination in Education, adopted by UNESCO in 1960, appropriate cross-references should be provided. The information required under Article 13, however, extends considerably beyond the range of issues dealt with in that Convention.

Reports under Article 13 should pay particular attention to the situation of vulnerable and disadvantaged groups within society (e.g. children of low-income groups, children in rural areas, children who are physically or mentally disabled, children of immigrants or of migrant workers, children belonging to linguistic, racial, religious or other minorities, and children of indigenous people). Such information should deal not only with the legal or administrative situation but also with the situation in practice. The situation of the girl child in relation to access to education at all levels, and the possibility in practice of taking advantage of opportunities that exist in theory, is of particular interest to the Committee. A full breakdown of gender differentials in regard to all forms of education is thus sought by the Committee.

In reporting on progress towards the various goals set in Article 13(2), States Parties could usefully take account of the principles and objectives laid down in the World Declaration on Education for All and the accompanying Framework for Action to Meet Basic Learning

Needs, adopted by the World Conference held in Jomtien, Thailand in March 1990. In that regard, paragraph 6 of the Framework notes the importance of “time-bound targets” which “convey a sense of urgency and serve as a reference against which indices of implementation and accomplishment can be compared”. This approach would seem to be particularly apposite in the context of implementing Article 13 of the Covenant.

Paragraphs 3 and 4 of this article underscore the interdependence of the two sets of rights by emphasizing that efforts to ensure realization of the right to education must not be pursued at the expense of certain other rights. Reports on these provisions should deal not only with the relevant legal and administrative provisions but also with the situation in practice. Some explanation would seem to be useful in situations in which no non-government schools have ever been established.

The right to education is also dealt with in Articles 5(e)(v) of ICERD, Articles 5(a) and (b), 10 and 14(2)(d) of CEDAW, and Articles 28 and 29 of CRC.

ARTICLE 14

Text of 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.

Text of the guidelines on Article 14 of the Covenant

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

Commentary

This article need only be reported upon by those States Parties to the Covenant which have not yet been able to secure primary education on a compulsory basis and free of charge for

all citizens. This would thus cover any State which has moved from such a system to one in which some charges now apply, whatever the reasons for that regressive move might be. The requirement that such education be “free of charge” cannot be circumvented by the introduction of other “user fees” such as compulsory charges for school-building funds or other such mandatory contributions to the basic service.

The report under this article should provide the specifics of the “detailed plan of action” that has been worked out. That plan should reflect a step-by-step approach designed to ensure that, within a reasonable number of years, the requisite goal has been met. The assumption underlying this provision is that every State, no matter how tight its financial situation might be or how low its present level of primary school facilities, must make immediate and carefully planned moves to ensure the availability of primary education, as a matter of right, to all. As the Framework for Action to Meet Basic Learning Needs (see Article 13 above) states “observable and measurable targets assist in the objective evaluation of progress”.

ARTICLE 15

Text of Article 15

- 1.** *The States Parties to the present Covenant recognize the right of everyone:*
 - (a) To take part in cultural life;*
 - (b) To enjoy the benefits of scientific progress and its applications;*
 - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.*
- 2.** *The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.*
- 3.** *The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.*
- 4.** *The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.*

Text of the guidelines on Article 15 of the Covenant

1. *Please describe the legislative and other measures in, or adopted by your State to realize the right of everyone to take part in the cultural life which he or she considers pertinent, and to manifest his or her own culture. In particular, provide information on the following:*
 - (a) *Availability of funds for the promotion of cultural development and popular participation in cultural life including popular support for private initiative;*
 - (b) *The institutional infrastructure established for the implementation of policies to promote popular participation in culture, such as cultural centres, museums, libraries, theatres, cinemas, and in traditional arts and crafts;*
 - (c) *Promotion of cultural identity as a factor of mutual appreciation among individuals, groups, nations and regions;*
 - (d) *Promotion of awareness and enjoyment of the cultural heritage of national ethnic groups and minorities and of indigenous peoples;*
 - (e) *Role of mass media and communications media in promoting participation in cultural life;*
 - (f) *Preservation and presentation of mankind's cultural heritage;*
 - (g) *Legislation protecting the freedom of artistic creation and performance, including the freedom to disseminate the results of such activities, as well as an indication of any restrictions or limitations imposed on the freedom;*
 - (h) *Professional education in the field of culture and art;*
 - (i) *Any other measures taken for the conservation, development and diffusion of culture.*

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

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

- (a) *Measures taken to ensure the application of scientific progress for the benefit of everyone, including measures aimed at the preservation of mankind's natural heritage and at promoting a healthy and pure environment and information on the institutional infrastructures established for that purpose,*
 - (b) *Measures taken to promote the diffusion of information on scientific progress;*
 - (c) *Measures taken to prevent the use of scientific and technical progress for purposes which are contrary to the enjoyment of all human rights, including the rights to life, health, personal freedom, privacy and the like;*
 - (d) *Any restrictions which are placed upon the exercise of this right, with details of the legal provisions prescribing such restrictions.*
3. *Please describe the legislative and other measures taken to realize the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic work of which he or she is the author. In particular, supply information on the practical measures aimed at the full implementation of this right, including provision of the necessary conditions for scientific, literary and artistic activities, and the protection of intellectual property rights resulting from such activities. What difficulties have affected the degree of realization of this right?*
4. *What steps has your Government taken for the conservation, development and diffusion of science and culture? Please describe in particular:*
 - (a) *Measures at the constitutional level, within the national educational system and by means of the communications media;*
 - (b) *All other practical steps taken to promote such conservation, development and diffusion.*
5. *Please describe the legal, administrative and judicial system designed to respect and protect the freedom indispensable for scientific research and creative activity, in particular:*
 - (a) *Measures designed to promote enjoyment of this freedom including the creation of all necessary conditions and facilities for scientific research and creative activity;*

- (b) *Measures taken to guarantee the freedom of exchange of scientific, technical and cultural information, views and experience between scientists, writers, creative workers, artists and other creative individuals and their respective institutions;*
- (c) *Measures taken to support learned societies, academies of science, professional associations, unions of workers and other organizations and institutions engaged in scientific research and creative activities.*

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

- 6.** *Please describe the legislative and other measures by which your Government encourages and develops international contacts and co-operation in the scientific and cultural fields, including measures taken for:*
- (a) *the fullest utilization, by all the States concerned, of the facilities afforded by their adherence to regional and international conventions, agreements and other instruments in the scientific and cultural fields;*
 - (b) *Participation by scientists, writers, artists and others involved in scientific research or creative activity in international scientific and cultural conferences, seminars, symposiums, etc.*

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

- 7.** *During the reporting period, have there been any changes in national policies, laws and practices negatively affecting the rights enshrined in Article 15? If so, please describe these changes and evaluate their impact.*
- 8.** *In case your Government has recently submitted reports relevant to the situation with respect to the rights contained in Article 15 to the United Nations or a specialized agency, you may wish to refer to the relevant parts of those reports rather than repeat the information here.*
- 9.** *Please indicate the role of international assistance in the full realization of the right enshrined in Article 15.*

Excerpts* from text of General Comment No. 5 (1994)**Persons with disabilities****

- 36.** *The Standard Rules provide that “States should ensure that persons with disabilities have the opportunity to utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of their community, be they in urban or rural areas... States should promote the accessibility to and availability of places for cultural performances and services...”. The same applies to places for recreation, sports and tourism.*
- 37.** *The right to full participation in cultural and recreational life for persons with disabilities further requires that communication barriers be eliminated to the greatest extent possible. Useful measures in this regard might include “the use of talking books, papers written in simple language and with clear format and colours for persons with mental disability, [and] adapted television and theatre for deaf persons”.*
- 38.** *In order to facilitate the equal participation in cultural life of persons with disabilities, Governments should inform and educate the general public about disability. In particular, measures must be taken to dispel prejudices or superstitious beliefs against persons with disabilities, for example those that view epilepsy as a form of spirit possession or a child with disabilities as a form of punishment visited upon the family. Similarly, the general public should be educated to accept that persons with disabilities have as much right as any other persons to make use of restaurants, hotels, recreation centres and cultural venues.*

Excerpts* from text of General Comment No. 6 (1995)**The economic, social and cultural rights of older persons**

- 39.** *In Article 15, paragraphs 1 (a) and (b), of the Covenant, States Parties recognize the right of everyone to take part in cultural life and to enjoy the benefits of scientific progress and its applications. In this respect, the Committee urges States Parties to take account of the recommen-*

* The remaining parts of the General Comment are included elsewhere in this chapter in relation to each of the specific articles to which they refer.

*** The footnotes contained in the full text of the General Comment have been omitted for present purposes.

dations contained in the United Nations Principles for Older Persons, and in particular of Principle 7: "Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations"; and Principle 16: "Older persons should have access to the educational, cultural, spiritual and recreational resources of society".

40. Similarly, Recommendation 48 of the Vienna International Plan of Action on Ageing encourages Governments and international organizations to support programmes aimed at providing the elderly with easier physical access to cultural institutions (museums, theatres, concert halls, cinemas, etc.).
41. Recommendation 50 stresses the need for Governments, non-governmental organizations and the ageing themselves to make efforts to overcome negative stereotyped images of older persons as suffering from physical and psychological disabilities, incapable of functioning independently and having neither role nor status in society. These efforts, in which the media and educational institutions should also take part, are essential for achieving a society that champions the full integration of the elderly.
42. With regard to the right to enjoy the benefits of scientific progress and its applications, States Parties should take account of Recommendations 60, 61 and 62 of the Vienna International Plan of Action and make efforts to promote research on the biological, mental and social aspects of ageing and ways of maintaining functional capacities and preventing and delaying the start of chronic illnesses and disabilities. In this connection, it is recommended that States, intergovernmental organizations and non-governmental organizations should establish institutions specializing in the teaching of gerontology, geriatrics and geriatric psychology in countries where such institutions do not exist.

Commentary

The reporting guidelines relating to this article are detailed and relatively specific. The most important point to note from a reporting perspective is that three very different issues are dealt with in the article and each must be addressed in some detail in States Parties' reports. Perhaps the most neglected of the rights dealt with in this article is the right of everyone to take part in cultural life. This is the only provision in the Covenant that explicitly addresses this issue. Given the constantly growing awareness of the importance of cultural identity,

especially for groups such as minorities, indigenous peoples, immigrants, and others whose cultural roots and traditions differ from those of the majority, this right is often of the greatest importance. While general information on positive programs and activities in the cultural field is relevant here, the Committee is especially concerned to identify the extent to which the right is not currently enjoyed by different groups within each society.

With respect to the other issues dealt with in Article 15, past experience shows that there is a tendency for States Parties' reports to list a few pieces of legislation and some international exchange agreements and assume that the reporting requirements are thereby satisfied. However, as is also the case with the other provisions of the Covenant, States Parties should bear in mind the importance of indicating the factors and difficulties, if any, which continue to constrain the full realization of each of these rights.

These rights are also dealt with in Article 27 of ICCPR, Article 5(e)(vi) of ICERD, Article 13(c) of CEDAW, and Articles 30 and 31 of CRC.

B. CONSIDERATION OF THE REPORTS BY THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

(a) The Committee: its composition

As noted earlier, the Covenant does not expressly provide for the creation of a Committee to assist the Economic and Social Council in its work under the Covenant. Initially the Council sought to fulfil its mandate on the basis of the work of a Sessional Working Group. This was composed, in the first instance, of delegates to the Council, and subsequently of Governmental Experts. However, the Council concluded that these arrangements were unsatisfactory and opted instead to establish a committee which would, for all practical purposes, parallel that established to monitor compliance under the ICCPR (i.e. the Human Rights Committee).

The relevant arrangements were adopted by the Council in 1985 and, after thorough reviews in 1990 and 1995, were again endorsed by the Council. As of 1996 the Council was considering ways and means by which the formal legal, and not just the *de facto*, status of the Committee could be brought into conformity with that of the other bodies expressly created by the relevant treaty instruments.

Excerpts from Economic and Social Council resolution 1985/17 of 28 May 1985

...

- (b) *The Committee shall have eighteen members who shall be experts with recognized competence in the field of human rights, serving in their personal capacity, due consideration being given to equitable geographical distribution and to the representation of different forms of social and legal systems; to this end, fifteen seats will be equally distributed among the regional groups, while the additional three seats will be allocated in accordance with the increase in the total number of States Parties per regional group;*
- (c) *The members of the Committee shall be elected by the Council by secret ballot from a list of persons nominated by States Parties to the International Covenant on Economic, Social and Cultural Rights under the following conditions:*
 - (i) *The members of the Committee shall be elected for a term of four years and shall be eligible for re-election at the end of their term, if renominated;*
 - (ii) *One half of the membership of the Committee shall be renewed every second year, bearing in mind the need to maintain the equitable geographical distribution mentioned in subparagraph (b) above;*
 - (iii) *The first elections shall take place during the Council's first regular session of 1986; immediately after the first elections, the President of the Council shall choose by lot the names of nine members whose term shall expire at the end of two years;*
 - (iv) *The terms of office of members elected to the Committee shall begin on 1 January following their election and expire on 31 December following the election of members that are to succeed them as members of the Committee;*
 - (v) *Subsequent elections shall take place every second year during the first regular session of the Council;*
 - (vi) *At least four months before the date of each election to the Committee the Secretary-General shall address a written invitation to the States Parties to the Covenant to submit their nominations for membership of the Committee within three months, the Secretary-General shall prepare a list of the persons thus nominated, with an indication of*

the States Parties which have nominated them, and shall submit it to the Council no later than one month before the date of each election;

- (d) The Committee shall meet annually for a period of up to three weeks, taking into account the number of reports to be examined by the Committee, with the venue alternating between Geneva and New York;*
- (e) The members of the Committee shall receive travel and subsistence expenses from United Nations resources;*
- (f) The Committee shall submit to the Council a report on its activities, including a summary of its consideration of the reports submitted by States Parties to the Covenant, and shall make suggestions and recommendations of a general nature on the basis of its consideration of those reports and of the reports submitted by the specialized agencies, in order to assist the Council to fulfil, in particular, its responsibilities under Articles 21 and 22 of the Covenant;*
- (g) The Secretary-General shall provide the Committee with summary records of its proceedings, which shall be made available to the Council at the same time as the report of the Committee; the Secretary-General shall further provide the Committee with the necessary staff and facilities for the effective performance of its functions, bearing in mind the need to give adequate publicity to its work.*

...

Candidates for membership of the Committee may only be nominated by States which are parties to the Covenant. The election, however, takes place in the Economic and Social Council, all of the members of which are entitled to vote. Despite the role thus played by States which are both parties and non-parties to the Covenant, the members of the Committee do not in any way represent the State whose nationality they bear. They are elected as independent experts and serve in their personal capacities.

The Committee elects from among its members a Bureau composed of a Chairperson, three Vice-Chairpersons and a Rapporteur. They serve a term of two years and are eligible for re-election. The Committee has always met in Geneva, partly because of financial difficulties within the United Nations and partly because of an increasing tendency to centralize the activities of the various human rights treaty bodies in Geneva, rather than New York.

(b) The Committee: its methods of work

The Committee normally holds two three-week sessions per year, in May and in November-December, in Geneva. The procedures for the examination of States' reports, in conformity with Part IV of the Covenant and with the relevant resolutions and decisions of the Economic and Social Council, are reflected in the Committee's Rules of Procedure as well as in the practices that have evolved since its first session in 1987. In general, the Committee has endeavoured to follow procedures that are comparable to those adopted by the other treaty bodies, with appropriate modifications to reflect the special nature of the tasks entrusted to it.

Consideration of the report of each State Party takes place in an open, or public, session of the Committee and in the presence of one or more representatives of the State Party concerned. The reporting State is notified in advance of the session at which its report will be considered and of the date on which that consideration is expected to commence. Last-minute requests by States to defer the presentation of a report which has been scheduled for consideration at a particular session are extremely disruptive for all concerned and have caused major problems for the Committee in the past. Accordingly, the Committee's policy as from its eighth session is not to grant such requests and to proceed with its consideration of all scheduled reports, even in the absence of a representative of the State concerned.

The representatives of the State Party are entitled to make an opening and closing statement to the Committee (see sub-section (d) below) and to respond to the various questions posed during the consideration of the report. In view of the importance of that role, from the viewpoint of both the Committee and the State concerned, it is desirable that the experience, status and expertise of the representatives should enable them to deal with the full range of rights recognized in the Covenant.

Each session is normally preceded by a pre-sessional working group which meets for a period of five days. The principal purpose of the working group is to identify in advance the questions which might most usefully be discussed with the representatives of the reporting States. The aim is to improve the efficiency of the system and to facilitate the task of States representatives by providing advance notice of the principal issues which might arise in the examination of the reports. It is generally accepted that the complex nature and diverse range of many of the issues raised in connection with the implementation of the Covenant constitute a strong argument in favour of providing States Parties with the possibility of preparing in advance to answer some of the principal questions arising out of their reports. Such an arrangement also enhances the likelihood that the State Party will be able to provide precise and detailed information.

In terms of working methods, the working group usually decides, in the interests of efficiency, to allocate to each of its members initial responsibility for undertaking a detailed review of a specific number of reports and for putting before the group a preliminary list of issues. The decision as to how the reports should be allocated for this purpose is based in part on the preferred areas of expertise of the member concerned. Each draft is then revised and supplemented on the basis of observations by the other members of the group and the final version of the list is adopted by the group as a whole. This procedure is applied equally to both initial and periodic reports.

In preparation for the pre-sessional working group, the Committee has asked the secretariat to place at the disposal of its members a country analysis as well as all pertinent documents containing information relevant to each of the reports to be examined. For this purpose the Committee has invited all concerned individuals, bodies and non-governmental organizations to submit relevant and appropriate documentation to the secretariat. It has also asked the secretariat to ensure that certain types of information are regularly placed in the relevant files.

In order to ensure that the Committee is as well informed as possible, it provides opportunities for non-governmental organizations to submit relevant information to it. They may do this in writing at any time, in accordance with the appropriate Economic and Social Council procedures. The Committee's pre-sessional working group is also open to the submission of information in person or in writing from any non-governmental organization, provided that it relates to matters on the agenda of the working group. In addition, the Committee sets aside part of the first afternoon at each of its sessions to enable representatives of non-governmental organizations to provide oral information. Such information should: (a) focus specifically on the provisions of the International Covenant on Economic, Social and Cultural Rights; (b) be of direct relevance to matters under consideration by the Committee; (c) be reliable; and (d) not be abusive. The relevant meeting is open and provided with interpretation services, but is not covered by summary records.

The Committee has requested the secretariat to ensure that any written information formally submitted to it by individuals or non-governmental organizations in relation to the consideration of a specific State Party report be made available as soon as possible to the representative of the State concerned.

The Committee has agreed that every effort should be made to limit the overall number of questions included in the list of written questions drawn up by the Working Group and to ensure that they are all pertinent to issues arising out of the Covenant. The list of issues thus drawn up is transmitted directly to the permanent mission of the State concerned with a note stating, *inter alia*, the following:

“The list is not intended to be exhaustive and it should not be interpreted as limiting or in any other way prejudging the type and range of questions which members of the Committee might wish to ask. However, the working group believes that the constructive dialogue which the Committee wishes to have with the representatives of the State Party can be facilitated by making the list available in advance of the Committee’s session”.

In order to improve the dialogue that the Committee seeks, it strongly urges each State Party to provide in writing its replies to the list of issues and to do so sufficiently in advance of the session at which its report will be considered to enable the replies to be translated and made available to all members of the Committee. In cases in which government representatives have arrived at the Committee with the written answers, rather than providing them in advance, the dialogue is unlikely to be a satisfactory one and the task for the representatives becomes much more difficult. It also increases the likelihood that the Committee’s dissatisfaction will be reflected in its concluding observations.

In order to allow sufficient time for the relevant processes, the pre-sessional working group is actually held at the end of the preceding session with a view to preparing as far in advance as possible for the next session and in order to reduce travel and related costs.

In addition, the Committee has stated that in cases in which a State Party’s report is “very significantly overdue” it will consider the situation concerning the implementation of the Covenant in the absence of the report. It has indicated that it considers that a situation of persistent non-reporting by States Parties risks bringing the entire supervisory procedure into disrepute, thereby undermining one of the foundations of the Covenant. For that reason, it decided in 1990 to begin to consider the situation concerning the implementation of the Covenant in respect of each State Party whose initial or periodic reports were very significantly overdue. The Committee subsequently adopted a four step procedure in such cases. The first consists of the identification of those States Parties whose reports are very much overdue, primarily on a chronological basis. The second step involves notification of that State Party whose situation the Committee intends to consider at a specified future session. In situations in which the State Party concerned indicates that a report will shortly be provided to the Committee, the Chairperson of the Committee is authorized to defer consideration of the situation for one session, but not longer. The third step is to proceed, in the absence of any report, to its consideration of the status of economic, social and cultural rights in that country in the light of all available information. The consideration is based upon the preparation of a draft set of concluding observations by a country rapporteur who consults all available sources. The final step is the adoption of concluding observations.

In a significant number of cases in which this procedure has been invoked, States Parties with long overdue reports have responded promptly and provided the Committee with a report. In those cases in which no such report has been provided, the Committee has shown that it will undertake an intensive examination of the situation and will not hesitate to adopt a highly critical approach if that appears to be warranted.

On occasion, the Committee has been presented with information by non-governmental sources which alleges violations of the Covenant in relation to a State Party whose report is not at that time under consideration by the Committee. The Committee's practice in such cases has been to make a preliminary assessment as to whether the information seems credible and as to whether the seriousness of the matters involved attains a certain threshold which would be appropriate to trigger its concern. Where such criteria are met, the Committee will ask the State Party to comment on the information, in the context of either a report already under preparation, or of an overdue report which the Committee suggests be prepared and submitted as soon as possible.

An up-to-date overview of the present working methods of the Committee is included in each of the Committee's reports and a State Party's representative is well advised to refer to it prior to presenting a report to the Committee.

(c) Constructive dialogue

The discussion that takes place between the members of the Committee and the representatives of the State Party is designed to achieve a constructive and mutually rewarding dialogue. The process is not in any way an adversarial one and its principal objectives are to assist States Parties in fulfilling their obligations under the Covenant and to create a deeper awareness and understanding of its provisions. Through this dialogue the Committee seeks to obtain a complete picture of the situation in the country concerned, which in turn enables the Committee to make whatever comments they believe appropriate for the most effective implementation of the obligations contained in the Covenant.

In engaging in a dialogue with the State Party concerned the Committee seeks to take account of all available sources of information that might assist it in its task. Thus, in addition to the information contained in the reports before it, the Committee also makes use of information emanating from the various United Nations bodies and organs in the human rights and development fields and welcomes constructive information provided by non-governmental organizations.

(d) Presentation and examination of reports

The procedures followed by the Committee have evolved considerably since its first session in 1987. As a result, they have now become reasonably well settled, although some further modifications may be appropriate in the light of experience. The following description of the procedure reflects that used by the Committee at its fourteenth session, in 1996.

The representative of the State Party is invited to introduce the report by making brief introductory comments and giving a brief introduction to any written replies already submitted by the State to the list of issues drawn up by the pre-sessional working group. The Committee then proceeds on an article-by-article basis with the members of the Committee posing questions and, where relevant, representatives of the specialized agencies providing additional information. The representative is then encouraged to reply immediately to any questions that can be so answered and to defer until the next meeting or the next day, as the case may be, the answers to more complex questions such as those requiring research or the obtaining of additional information from the capital. Once this dialogue on an article-by-article basis has been completed, a further period of time is made available to the representative to respond, as precisely as possible, to the questions not answered earlier. Committee members are free to intervene at any point to seek additional clarification. It is generally understood that questions that cannot be adequately dealt with in this manner can be responded to by providing the Committee with additional information in writing after the session.

The final phase of the Committee's examination of the report consists of the drafting and adoption of the Committee's concluding observations. Within a day or so of the completion of the dialogue with the State Party's representatives, the Committee sets aside a brief period, in closed session, to enable its members to express their preliminary views. The member with primary responsibility in relation to the State Party concerned will then prepare, with the assistance of the secretariat, a draft set of concluding observations for consideration by the Committee. The agreed structure of the concluding observations is as follows: introduction; positive aspects; factors and difficulties impeding the implementation of the Covenant; principal subjects of concern; and suggestions and recommendations. At a later stage, the Committee then discusses the draft, again in private session, with a view to adopting it by consensus.

The concluding observations are formally adopted in public session on the final day. As soon as this occurs they are considered to have been made public and are available to all interested parties. They are then forwarded to the State Party concerned and included in the Committee's report. If it so wishes, the State Party may address any of the Committee's concluding observations in the context of any additional information that it provides to the Committee.

The outcome of the Committee's deliberations is very similar to that of the other treaty bodies. As noted above, the Committee as a whole formulates concluding observations ad-

dressed directly to each individual reporting State. These comments are then published in the Committee's report to the Economic and Social Council, as well as being widely distributed by all other appropriate means.

In situations in which the Committee considers that additional information is necessary to enable it to continue its dialogue with the State Party concerned, there are several options that might be pursued: (a) the Committee might note that specific issues should be addressed in a detailed manner in the State Party's next periodic report, which would normally be due in five years' time; (b) the Committee might take note specifically of the State Party's stated intention to submit additional information in writing, particularly in response to questions posed by the members of the Committee; (c) the Committee might specifically request that additional information, relating to matters that it would identify, be submitted to the Committee within six months, thus enabling it to be considered by the pre-sessional working group. In general, the working group could recommend one or another of the following responses to the Committee: (i) that it take note of such information; (ii) that it adopt specific concluding observations in response to that information; (iii) that the matter be pursued through a request for further information; or (iv) that the Committee's Chairperson be authorized to inform the State Party, in advance of the next session, that the Committee would take up the issue at its next session and that, for that purpose, the participation of a representative of the State Party in the work of the Committee would be welcome; (d) the Committee might determine that the receipt of additional information is urgent and request that it be provided within a given time-limit (perhaps two to three months). In such a case, the Chairperson, in consultation with the members of the Bureau, may be authorized to follow up the matter with the State Party if no response is received or if the response is patently unsatisfactory.

In situations in which the Committee considers that it is unable to obtain the information it requires on the basis of the above-mentioned procedures, it may decide to adopt a different approach instead. In particular, the Committee may, as has already been done in connection with two States Parties, request that the State Party concerned accept a mission consisting of one or two members of the Committee. Such a decision will only be taken once the Committee has satisfied itself that there is no adequate alternative approach available to it and that the information in its possession warrants such an approach. The purposes of such an on-site visit are: (a) to collect the information necessary for the Committee to continue its constructive dialogue with the State Party and to enable it to carry out its functions in relation to the Covenant; and (b) to provide a more comprehensive basis upon which the Committee might exercise its functions in relation to Articles 22 and 23 of the Covenant concerning technical assistance and advisory services. The Committee will state specifically the issue(s) with respect to which its representative(s) will wish to gather information from all available sources. The representative(s) will also have the task of considering

whether the programme of advisory services administered by the Centre for Human Rights could be of assistance in connection with the specific issue at hand.

At the conclusion of the visit, the representative(s) will report to the Committee. In the light of the report presented by its representative(s), the Committee then formulates its own conclusions. Those conclusions relate to the full range of functions carried out by the Committee, including those relating to technical assistance and advisory services. In a case where the State Party concerned does not accept the proposed mission, the Committee would consider making whatever recommendations might be appropriate to the Economic and Social Council.

In addition, the Committee adopts **General Comments** which are of a more general nature and do not address the situation in any specific State. The objectives of these General Comments are: to make the experience gained so far through the examination of these reports available for the benefit of all States Parties in order to assist and promote their further implementation of the Covenant; to draw the attention of the States Parties to insufficiencies disclosed by a large number of reports; to assist the States Parties, the international organizations and the specialized agencies concerned in achieving progressively and effectively the full realization of the rights recognized in the Covenant. Whenever necessary, the Committee may, in the light of the experience of the States Parties and of the conclusions which it has drawn therefrom, revise and update its General Comments.

The Committee has so far adopted the following General Comments: General Comment No. 1 (1989) on reporting by States Parties; General Comment No. 2 (1990) on international technical assistance measures; General Comment No. 3 (1990) on the nature of States Parties' obligations; General Comment No. 4 (1991) on the right to adequate housing; General Comment No. 5 (1994) on the rights of persons with disabilities; and General Comment No. 6 (1995) on the economic, social and cultural rights of older persons.

Mention should also be made of the **day of general discussion**. At each session, the Committee devotes one day, usually the Monday of the third week, to a general discussion of a particular right or of a particular aspect of the Covenant. The purpose is twofold: the day assists the Committee in developing in greater depth its understanding of the relevant issues; and it enables the Committee to encourage inputs into its work from all interested parties. The following issues have been the focus of discussion: the right to adequate food (third session); the right to housing (fourth session); economic and social indicators (sixth session); the right to take part in cultural life (seventh session); the rights of the ageing and elderly (eighth session); the right to health (ninth session); the role of social safety nets (tenth session); human rights education (eleventh session); the interpretation and practical application of the obligations incumbent on States Parties (twelfth session); and a draft optional protocol to the Covenant (thirteenth session).

The most readily accessible outcome of the work of the Committee is the Report that it adopts at the end of each session for transmission to the Economic and Social Council. The report contains, *inter alia*, the concluding observations made by the Committee, a section dealing with its methods of work, a section summarizing the proceedings of the day of general discussion that is usually devoted to a specific right, and the text of any General Comments adopted by the Committee.

One distinctive feature of the Committee's mandate to which attention should be drawn is contained in Article 22 of the Covenant.

Text of Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

One of the Committee's tasks is to advise the Council on measures which should be recommended in this regard. It has adopted the following General Comment on this issue.

Text of General Comment No. 2 (1990)

International technical assistance measures

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 its 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 specialized 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 cooperation. 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 Human rights, the commission on social Development and 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 specialized 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 cooperation 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 recognizing 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 cooperation activities would be considerably facilitated through greater interaction between the Com-*

mittee 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 cooperation in ongoing 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 long-standing efforts undertaken by ILO to link its own human rights and other international labour standards to its technical cooperation 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 cooperation activities do not automatically contribute to the promotion of respect of economic, social and cultural rights. Many activities undertaken in the name of "development" have subsequently been recog-*

nized 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 operationalization 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 recognize 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 recognize that relationship and urges 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(*) that a "human rights impact statement" be required to be prepared in connection with all major development cooperation activities;*
- (c) *The training or briefing given to project and other personnel employed by the 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.*

* *The international dimensions of the right to development as a human right in relation with 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).*

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 recognizes 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 cooperation. 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 cooperation.*

(e) Follow-up

The report of the Committee is submitted to the Economic and Social Council for consideration. In addition, it is widely circulated to other United Nations bodies, to the members of the other human rights treaty bodies and to the public at large. The summary records of the Committee's proceedings, including its dialogue with the representatives of States Parties, are also made available to the public. In this way, the results of each State Party's exchange with the Committee is given wide circulation.

This aspect, however, is considerably less significant in the long run than the process which reporting should ideally set in train at the national level. The Committee has gone to considerable lengths to emphasize that a genuine and sustained exchange of views at the national level about the implementation of the Covenant is ultimately of the greatest importance. States Parties are thus urged to ensure the widest possible dissemination of

the Covenant in all appropriate languages and to inform the Committee of its efforts in this respect. In addition, the Committee has very warmly welcomed the use of procedures at the national level whereby governments encourage inputs to the reports from a diverse range of sources including, in particular, the principal social partners within the country.

By way of follow-up at the national level, it is essential that governments give careful consideration to each of the issues raised in the course of the examination of their reports by the Committee. Wherever appropriate, legislative, administrative or policy measures ought to be taken to ensure that the Covenant is being adequately reflected in national law and practice.

C. PERIODIC REPORTS

Unlike several of the other human rights treaty bodies, the Committee on Economic, Social and Cultural Rights has not adopted a distinct procedure for dealing with periodic, or follow-up reports, as distinct from the initial reports submitted by States Parties. This reflects the Committee's principal concern with practice rather than legal formalities and the speed with which the situation can change in this area.

Nevertheless, the Committee has indicated that it does not expect States Parties to repeat in a subsequent report information provided in an initial report in so far as the situation remains unchanged. However, while this may well apply to some of the legal and other arrangements that exist within a country, it is not likely to be the case that the situation in practice will have remained unchanged over a five year period. Periodic reports are thus expected to be almost as detailed as initial reports. The Committee has attached particular importance to its wish to receive information detailing the change over time since the last report. In addition, periodic reports should attach particular emphasis to providing information in relation to matters which were highlighted by the Committee in its examination of the State's previous report. This applies to all issues dealt with at length but especially to those matters on which the Committee, in its concluding observations, has requested the State Party to report in the context of its next periodic report.

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

By Fausto Pocar

The International Covenant and Civil and Political Rights (hereinafter, the “Covenant” or “ICCPR”) was adopted by the General Assembly of the United Nations with resolution 2200 A(XXI) of 16 December 1966. It entered into force on 23 March 1976, in accordance with Article 49. As of 30 September 1996, 135 States had ratified, acceded to or declared to succeed to, the Covenant.

A. THE REPORTING PROCESS

(a) The Covenant and its reporting requirements

Under Article 2(1) of the Covenant, each State Party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized, and specifically listed and dealt with, in Part III of the Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. The Covenant itself addresses the implementation of this fundamental international treaty obligation of States Parties in the subsequent paragraphs of Article 2. It points out that each State Party has to take the necessary steps, in accordance with its constitutional processes and the provisions of the Covenant, to adopt legislative and other measures required to give effect to the rights recognized in the Covenant. Such measures shall in any case include effective remedies for victims of violations of their rights and freedoms, possibly in a judicial form and enforceable by competent authorities when granted.

In connection with this provision, and parallel to it, the Covenant requires States Parties to submit reports on the measures adopted by them on the progress made in the enjoyment of the rights defined in the Covenant, and on any factors and difficulties that may affect the implementation of the Covenant. This obligation is set forth in Article 40, which also describes the main characteristics of the monitoring system based on reporting.

Text of Article 40

1. *The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:*
 - (a) *Within one year of the entry into force of the present Covenant, for the States Parties concerned;*
 - (b) *Thereafter whenever the Committee so requests.*
2. *All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.*
3. *The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.*
4. *The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such General Comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.*
5. *States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.*

According to Article 40(1) to (3), each State Party is required to submit within one year of its entry into force an initial report covering the rights enshrined in the Covenant. Subsequent reports are due upon request by the Human Rights Committee (hereinafter, the "Committee"). Therefore, the submission of any report constitutes a treaty obligation. Regarding the initial report, this obligation is explicitly stated in the Covenant; in regard to subsequent reports, it derives from the powers conferred upon the Committee by the Covenant.

In exercising its powers, the Committee has decided in principle to establish a specific periodicity for the submission of States' reports. Based on a decision adopted by the Committee in 1981 and amended in 1982 (United Nations document

CCPR/C/19/Rev. 1), States Parties which have submitted their initial reports before July 1981 are requested to submit subsequent reports every five years after the consideration of their initial reports. Other States Parties are required to submit subsequent reports to the Committee every five years from the date when the initial report was due. The date of the submission of a State Party's next periodic report may be deferred in cases where a state party, following the examination of its report and at the request of the Committee, submits additional information, provided that such additional information is considered at a meeting with representatives of the reporting State. This decision is without prejudice to the power of the Committee to request a subsequent report whenever it deems appropriate.

Indeed, in recent years the Committee has requested special reports (restricted, as the case may be, to certain provisions of the Covenant) from States Parties where serious situations of emergency or major violations of human rights were reported to occur.

As to the substance of the reporting obligation undertaken by States Parties, Article 40 gives only general indications. It refers to measures adopted to give effect to the protected rights, to progress made in their enjoyment, and to any factors or difficulties affecting the implementation of the Covenant.

(b) Guidelines for reporting under the Covenant

The Committee has prepared general guidelines regarding the form and contents of reports. These guidelines are intended to provide guidance to the States Parties in their reporting activities and to avoid general and incomplete presentations. They are further designed to ensure that reports are presented in a uniform manner and that they offer a complete picture of the situation in each State regarding the implementation of the rights contained in the Covenant. This formal structure provides a uniform character to the reports, and enable the Committee to better perform its supervisory duties in its consideration of reports, and at the same time offers an opportunity to other States Parties fully to appreciate how the obligations under the Covenant are carried out by each State Party.

The Committee has issued separate general guidelines for initial and for subsequent reports. They follow the same structural pattern, but differ to a certain extent in the emphasis they place on reporting under the individual provisions of the Covenant.

The guidelines were amended several times and their last version is contained in the Committee's annual report issued in 1995 (document A/50/40, Annex VII); according to them, the reports should be divided in two parts, the first one describing the information about the reporting State, the second one describing the measures taken in relation to specific provisions of the Covenant.

The general part of the report – both initial and periodic – should be prepared in accordance with the consolidated guidelines for the initial part of the reports of States Parties to be submitted under the various international human rights instruments, including the Covenant, as contained in document HRI/1991/1. The information required for this core document of each State Party is described in the annex to Part One of the Manual.

According to these common guidelines applicable to all United Nations human rights treaty bodies, this core document should be of a general nature and provide background information on the context within which civil and political rights are ensured in the reporting State. To this end, the status of the Covenant in the domestic legal order needs to be clarified. The Committee seeks information on how the Covenant becomes part of the national legislation, namely either by means of corresponding provisions in the constitution or a separate Bill of Rights and in internal laws, or through its direct applicability, granting rights to individuals that can be invoked directly before and enforced by State courts and other authorities. Moreover, specific information should be provided on the remedies available in domestic law to individuals claiming a violation of their rights as contained in the Covenant. Finally, this part of the report should describe any other step taken by the State's authorities to implement the Covenant and the role of national institutions in supervising and implementing the protected rights.

The second part of each report should observe the following guidelines:

(i) Initial Reports

The part of the report relating specifically to parts I, II and III of the Covenant should describe in relation to the provisions of each article:

- (a) The legislative, administrative or other measures in force in regard to each right;*
- (b) Any restrictions or limitations, even of a temporary nature, imposed by law or practice or any other manner on the enjoyment of the right;*
- (c) Any other factors or difficulties affecting the enjoyment of the right by persons within the jurisdiction of the State, including any factors affecting the equal enjoyment by women of that right;*
- (d) Any other information on the progress made in the enjoyment of the right.*

The report should be accompanied by copies of the principal legislative and other texts referred to in the report. These will be made available to members of the Committee. It should be noted however that,

for reasons of expense, they will not normally be reproduced for general distribution with the report except to the extent that the reporting State specifically requests. It is desirable, therefore, that when a text is not actually quoted in or annexed to the report itself, the report should contain sufficient information to be understood without reference to it.

(ii) Periodic reports

Information relating to each of the articles in parts I, II and III of the Covenant should concentrate especially on:

- (a) The completion of the information before the Committee as to the measures adopted to give effect to rights recognized in the Covenant, taking account of questions raised in the Committee on the examination of any previous report and including in particular additional information as to questions not previously answered or not fully answered;*
- (b) Information taking into account General Comments which the Committee may have made under Article 40(4) of the Covenant;*
- (c) Changes made or proposed to be made in the laws and practices relevant to the Covenant;*
- (d) Action taken as a result of experience gained in cooperation with the Committee;*
- (e) Factors affecting and difficulties experienced in the implementation of the Covenant, including any factors affecting the equal enjoyment by women of rights referred to in the Covenant;*
- (f) The progress made since the last report in the enjoyment of rights recognized in the Covenant.*

If a State Party to the Covenant is also a party to the Optional Protocol and if, in the period under review, the Committee has issued views finding that the State Party has violated provisions of the Covenant, the report should include a section explaining what action has been taken relating to the communication concerned. In particular, the State Party should indicate what remedy it has afforded the author of the communication whose rights the Committee found to have been violated.

It should be noted that the reporting obligation extends not only to the relevant laws and other norms, but also to the practices of the courts and administrative organs of the State

Party and other relevant facts likely to show the degree of actual enjoyment of rights recognized by the Covenant.

As shown in the guidelines, the second part of the report should then be devoted, on an article-by-article basis, to the description of measures taken to realize each specific right set forth in the Covenant. In this respect, a detailed description should be made of any restrictions affecting the enjoyment of each protected right, as well as any other difficulty encountered by the State in implementing them. In order to get a complete and comprehensive picture of the actual level of implementation reached by the State Party, the information provided to the Committee should refer not only to measures adopted in the legislative field, but also to the judicial and administrative practice and even, as the case may be, to activities of bodies other than State organs, as far they are relevant to the enjoyment of any specific right. Since the State Party is under an obligation both to respect and to ensure the rights under the Covenant, negative as well as positive measures taken by the authorities are relevant and, as far as applicable, should be dealt with under each article. For the Committee, it is important to obtain a clear understanding of the legal and the *de facto* situation in the reporting State.

The Committee recently also decided to adopt certain measures to follow up on its views on communications under the Optional Protocol to the Covenant. Accordingly, States Parties to whom views finding that a violation has occurred have been addressed by the Committee, are expected to include the appropriate information in their reports to the Committee.

State reports should always follow the format recommended by the Committee in its guidelines.

The differences in the requirements for initial and subsequent periodic reports lie in general in the request for more detailed and specific information in subsequent reports, in particular regarding changes and developments that occurred during the five-year period since the consideration or the submission of the previous report. It is essential for the reporting State to respond to the issues raised by the Committee during the consideration of previous reports and to address the questions that had remained unanswered on that occasion. Any action taken by the State Party as a follow-up to the examination of previous reports also needs to be included. Such information will serve the double purpose of providing the Committee with a thorough picture of the situation in the reporting State, and of testing the effectiveness of the Committee's procedures. It also contributes to the constructive dialogue, which is at the heart of the consideration of reports under Article 40 of the Covenant between the Committee and the reporting State.

The Committee has adopted a number of **General Comments** in accordance with Article 40(4) of the Covenant. These General Comments reflect the experience gained by the

Committee in the consideration of reports. At the same time, they are intended to assist States Parties in fulfilling their reporting obligations. Therefore, States Parties should pay particular attention to these General Comments when preparing reports. (For more details on General Comments, see below).

(c) Reporting on the substantive provisions

ARTICLE 1

Text of Article 1

- 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*
- 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*
- 3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.*

Text of General Comment 12(21)

(General comments of the Committee are numbered chronologically by their order of adoption – in the above case, “12”. The second number (in parentheses) indicates the Committee’s session at which the General Comment was adopted).

- 1. In accordance with the purposes and principles of the Charter of the United Nations, Article 1 of the International Covenant on Civil and Political Rights recognizes that all peoples have the right of self-determination. The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that*

States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as Article 1 apart from and before all of the other rights in the two Covenants.

- 2. Article 1 enshrines an inalienable right of all peoples as described in its paragraphs 1 and 2. By virtue of that right they freely “determine their political status and freely pursue their economic, social and cultural development”. The article imposes on all States Parties corresponding obligations. This right and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law.*
- 3. Although the reporting obligations of all States Parties include Article 1, only some reports give detailed explanations regarding each of its paragraphs. The Committee has noted that many of them completely ignore Article 1, provide inadequate information in regard to it or confine themselves to a reference to election laws. The Committee considers it highly desirable that States Parties’ reports should contain information on each paragraph of Article 1.*
- 4. With regard to paragraph 1 of Article 1, States Parties should describe the constitutional and political processes which in practice allow the exercise of this right.*
- 5. Paragraph 2 affirms a particular aspect of the economic content of the right of self-determination, namely the right of peoples, for their own ends, freely to “dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence”. This right entails corresponding duties for all States and the international community. States should indicate any factors or difficulties which prevent the free disposal of their natural wealth and resources contrary to the provisions of this paragraph and to what extent that affects the enjoyment of other rights set forth in the Covenant.*
- 6. Paragraph 3, in the Committee’s opinion, is particularly important in that it imposes specific obligations on States Parties, not only in relation to their own peoples but vis-à-vis all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination. The general nature of this paragraph*

is confirmed by its drafting history. It stipulates that “The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations”. The obligations exist irrespective of whether a people entitled to self-determination depends on a State Party to the Covenant or not. It follows that all States Parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination. Such positive action must be consistent with the States’ obligations under the Charter of the United Nations and under international law: in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination. The reports should contain information on the performance of these obligations and the measures taken to that end.

- 7.** *In connection with Article 1 of the Covenant, the Committee refers to other international instruments concerning the rights of all peoples to self-determination, in particular the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970 (General Assembly resolution 2625(XXV)).*
- 8.** *The Committee considers that history has proved that the realization of and respect for the right of self-determination of peoples contributes to establishment of friendly relations and cooperation between States and to strengthening international peace and understanding.*

Reporting officers should bear in mind that the right to self-determination is protected by an identical Article 1 in the ICESCR.

ARTICLE 2

Text of Article 2

1. *Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*
2. *Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.*
3. *Each State Party to the present Covenant undertakes:*
 - (a) *To ensure that any person whose rights or freedoms as herein recognized as violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*
 - (b) *To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;*
 - (c) *To ensure that the competent authorities shall enforce such remedies when granted.*

Text of General Comment 3(13)

1. *The Committee notes that Article 2 of the Covenant generally leaves it to the States Parties concerned to choose their method of implementation in their territories within the framework set out in that article. It recognizes, in particular, that the implementation does not depend solely on constitutional or legislative enactments, which in themselves are often not per se sufficient. The Committee considers it necessary to draw the attention of States Parties to the fact that the*

obligation under the Covenant is not confined to the respect of human rights, but that the States Parties have also undertaken to ensure the enjoyment of these rights to all the individuals under their jurisdiction. This aspect calls for specific activities by the States Parties to enable individuals to enjoy their rights. This is obvious in a number of articles (e.g. Article 3 which is dealt with in General Comment 4(13)), but in principle this undertaking relates to all rights set forth in the Covenant.

- 2. In this connection, it is very important that individuals should know what their rights under the Covenant (and the Optional Protocol, as the case may be) are and also that all administrative and judicial authorities should be aware of the obligations which the State Party has assumed under the Covenant. To this end, the Covenant should be publicized in all official languages of the State and steps should be taken to familiarize the authorities concerned with its contents as part of their training. It is desirable also to give publicity to the State Party's cooperation with the Committee.*

Text of General Comment 15(27), paragraphs 1 to 7

The position of aliens under the Covenant

- 1. Reports from States Parties have often failed to take into account that each State Party must ensure the rights in the Covenant to "all individuals within its territory and subject to its jurisdiction" (Article 2, para. 1). In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness.*
- 2. Thus, the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens. Aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant, as provided in Article 2 thereof. This guarantee applies to aliens and citizens alike. Exceptionally, some of the rights recognized in the Covenant are expressly applicable only to citizens (Article 25), while Article 13 applies only to aliens. However, the Committee's experience in examining reports show that in a number of countries, other rights that aliens should enjoy under the Covenant are denied to them or are subject to limitation that cannot always be justified under the Covenant.*

3. *A few constitutions provide for equality of aliens with citizens. Some constitutions adopted more recently carefully distinguish fundamental rights that apply to all and those granted to citizens only, and deal with each in detail. In many States, however, the constitutions are drafted in terms of citizens only when granting relevant rights. Legislation and case law may also play an important part in providing for the rights of aliens. The Committee has been informed that, in some States, fundamental rights, though not guaranteed to aliens by the Constitutions or other legislation, will also be extended to them as required by the Covenant. In certain cases, however, there has clearly been a failure to implement Covenant rights without discrimination in respect of aliens.*
4. *The Committee considers that States Parties should give attention in their reports to the position of aliens, both under their law and in actual practice. The Covenant gives aliens all the protection regarding rights guaranteed therein, and its requirements should be observed by States Parties in their legislation and in practice as appropriate. The position of aliens would thus be considerably improved. States Parties should ensure that the provisions of the Covenant and the rights under it are made known to aliens within their jurisdiction.*
5. *The Covenant does not recognize the right of aliens to enter or reside in the territory of a State Party. It is in principle a matter for the State to decide who it will admit to its territory. However, in certain circumstances an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.*
6. *Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment. A State may also impose general conditions upon an alien who is in transit. However, once aliens are allowed to enter the territory of a State Party they are entitled to the rights set out in the Covenant.*
7. *Aliens thus have an inherent right to life, protected by law, and may not be arbitrarily deprived of life. They must not be subjected to torture or to cruel, inhuman or degrading treatment or punishment; nor may they be held in slavery or servitude. Aliens have the full right to liberty and security of the person. If lawfully deprived of their liberty, they shall be treated with humanity and with respect for the inherent*

dignity of their person. Aliens may not be imprisoned for failure to fulfil a contractual obligation. They have the right to liberty of movement and free choice of residence; they shall be free to leave the country. Aliens shall be equal before the courts and tribunals, and shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of any criminal charge or of rights and obligations in a suit at law. Aliens shall not be subjected to retrospective penal legislation, and are entitled to recognition before the law. They may not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence. They have the right to freedom of thought, conscience and religion, and the right to hold opinions and to express them. Aliens receive the benefit of the right of peaceful assembly and of freedom of association. They may marry when at a marriageable age. Their children are entitled to those measures of protection required by their status as minors. In those cases where aliens constitute a minority within the meaning of Article 27, they shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion and to use their own language. Aliens are entitled to equal protection by the law. There shall be no discrimination between aliens and citizens in the application of these rights. This rights of aliens may be qualified only by such limitations as may be lawfully imposed under the Covenant.

Commentary

Article 2 concerns the implementation of the Covenant at the national level. It contains a general obligation for States Parties to respect and to ensure the rights recognized in the Covenant without any distinctions on the grounds enumerated in Article 2.

The scope of the non-discrimination clause contained in this article, and of similar clauses in some other articles of the Covenant, is comprehensively discussed in General Comment 18(37), which accordingly should be taken into account when reporting on any of the provisions of the Covenant. (For the text of General Comment 18(37) see below under Article 26). Furthermore, in its General Comment 15 (27) the Committee has pointed out that almost all the rights and freedoms contained in the Covenant must be granted both to nationals and to aliens. As a consequence, States Parties should expressly report how the question of nationality is being dealt with when describing the measures they have adopted to ensure that the enjoyment of the rights enshrined in the Covenant takes place without any discrimination prohibited by Article 2.

The choice of steps that have to be taken to implement the Covenant at the national level is left to each State Party to decide according to its constitutional system. Such steps may consist of legislative or other measures. When describing such steps in their reports, States Parties should bear in mind that the obligation set forth in Article 2 is of both a negative and a positive nature: on the one hand, Article 2 contains the obligation to respect the free exercise of the rights and freedoms set forth in the Covenant; on the other hand, Article 2 contains the obligation to ensure the exercise of these rights and freedoms through the creation of favourable conditions for their full enjoyment by all individuals under the jurisdiction of the State Party.

Paragraph 3 of Article 2 deserves special attention. This paragraph concerns the development of remedies, especially judicial remedies, for situations in which a right or freedom recognized in the Covenant is being violated. Reports should comprehensively describe the remedies that are available to victims, their practical application and the results of their application during the reporting period. Since a person's awareness of his/her rights and of the remedies against violations is a prerequisite for their effective protection, reporting States should provide information on the measures taken to promote such awareness, including the training of public authorities, of judges and lawyers, or the dissemination of information on the Covenant and on any remedies, either directly by the government or through special agencies or bodies.

Other international instruments deal in related articles with non-discrimination, equality before the law, and the pursuit of general policies in these areas. Therefore, when assembling information in accordance with Articles 2(1), 3, and 26 of the Covenant, reporting officers should assess the usefulness of any existing information on Articles 2(2) and 3 of ICESCR, 2(1) and 5(a) of ICERD, 2, 9-16 and 15(1) of CEDAW and 2(1) and 2(2) of CRC for purposes of reporting under the ICCPR.

ARTICLE 3

Text of Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Text of General Comment 4(13)

- 1. Article 3 of the Covenant requiring, as it does, States Parties to ensure the equal right of men and women to the enjoyment of all civil and political rights provided for in the Covenant, has been insufficiently*

dealt with in a considerable number of States' reports and has raised a number of concerns, two of which may be highlighted.

- 2. Firstly, Article 3, as Article 2(1) and 26 in so far as those articles primarily deal with the prevention of discrimination on a number of grounds, among which sex is one, requires not only measures of protection but also affirmative action designed to ensure the positive enjoyment of rights. This cannot be done simply by enacting laws. Hence, more information has generally been required regarding the role of women in practice with a view to ascertaining what measures, in addition to purely legislative measures of protection, have been or are being taken to give effect to the precise and positive obligations under Article 3 and to ascertain what progress is being made or what factors or difficulties are being met in this regard.*
- 3. Secondly, the positive obligation undertaken by States Parties under that article may itself have an inevitable impact on legislation or administrative measures specifically designed to regulate matters other than those dealt with in the Covenant but which may adversely affect rights recognized in the Covenant. One example, among others, is the degree to which immigration laws which distinguish between a male and a female citizen may or may not adversely affect the scope of the right of the woman to marriage to non-citizens or to hold public office.*
- 4. The Committee, therefore, considers that it might assist States Parties if special attention were given to a review by specially appointed bodies or institutions of laws or measures which inherently draw a distinction between men and women in so far as those laws or measures adversely affect the rights provided for in the Covenant and, secondly, that States Parties should give specific information in their reports about all measures, legislative or otherwise, designed to implement their undertaking under this article.*
- 5. This Committee considers that it might help the States Parties in implementing this obligation, if more use could be made of existing means of international cooperation with a view to exchanging experience and organizing assistance in solving the practical problems connected with the assurance of equal rights for men and women.*

Commentary

The provision of this article of the Covenant, in addressing one of the grounds for discrimination identified in Article 2(1), is intended to stress the need for the protection of women in society in order to enable them to enjoy civil and political rights on an equal footing with men. The article, by referring to “equality” instead of mere “non-discrimination”, also intends to indicate that substantive affirmative action may be especially necessary in the area covered by Article 3. Therefore, States Parties should report in particular on the legislative, administrative or other measures they have taken to implement in concrete terms the principle of equality of men and women in the enjoyment of the rights set forth in the Covenant. In this context, reports should provide details about the activities of bodies established in various countries at governmental or quasi-governmental levels to undertake the review of legislation and practice affecting the enjoyment of rights by women. In order to allow the Committee fully to appreciate the role of such bodies and, in general, the impact of actions taken by the State in this respect, detailed information should be provided about the participation of women in the political and economic life of the country. Available statistics showing the ratio between men and women elected to parliamentary bodies and appointed to public service, or engaged in the professions, i.e. lawyers, physicians, engineers, architects, etc., are very desirable. Numbers of male and female students enrolled in secondary and higher education are also important indicators under this article. Similarly, a thorough account would be required of the continuing existence of any laws discriminating against women in the reporting State, and of steps taken to bring such laws into line with the principle of equality regarding both the professional and private lives of women. Concerning the latter, reports should give due consideration to family matters and especially to equal rights between spouses and between spouses and children. Related areas, such as the impact of marriage on women’s and children’s nationality, also should be addressed in States Parties’ reports.

See also Articles 2(1) and 26 as well as Article 23 of this Covenant and the relevant cross references under Article 2, in particular Articles 2 and 15(1) of CEDAW.

ARTICLE 4

Text of Article 4

- 1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not*

involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

- 2.** *No derogation from Articles 6, 7, 8 (paragraph 1 and 2), 11, 15, 16 and 18 may be made under this provision.*
- 3.** *Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.*

Text of General Comment 5(13)

- 1.** *Article 4 of the Covenant has posed a number of problems for the Committee when considering reports from some States Parties. When a public emergency which threatens the life of a nation arises and it is officially proclaimed, a State Party may derogate from a number of rights to the extent strictly required by the situation. The State Party, however, may not derogate from certain specific rights and may not take discriminatory measures on a number of grounds. The State Party is also under an obligation to inform the other States Parties immediately, through the Secretary-General, of the derogations it has made including the reasons therefor and the date on which the derogations are terminated.*
- 2.** *States Parties have generally indicated the mechanism provided in their legal systems for the declaration of a state of emergency and the applicable provisions of the law governing derogations. However, in the case of a few States which had apparently derogated from Covenant rights, it was unclear not only whether a state of emergency had been officially declared but also whether rights from which the Covenant allows no derogation had in fact not been derogated from and, furthermore, whether the other States Parties had been informed of the derogations and of the reasons for the derogations.*
- 3.** *The Committee holds the view that measures taken under Article 4 are of an exceptional and temporary nature and may only last as long as the life of the nation concerned is threatened and that, in times of emergency, the protection of human rights becomes all the more im-*

portant, particularly those rights from which no derogations can be made. The Committee also considers that it is equally important for States Parties, in times of public emergency, to inform the other States Parties of the nature and extent of the derogations they have made and of the reasons therefor and, further, to fulfil their reporting obligations under Article 40 of the Covenant by indicating the nature and extent of each right derogated from, together with the relevant documentation.

Commentary

According to the Covenant's provision and its analysis by the Committee, a report should give two kinds of information.

First, the constitutional mechanism by which a state of emergency can be declared in the country has to be described, indicating the powers the executive branch will have under such circumstances. The report should address the role of State authorities, such as military and police, during the period of emergency. In addition, the report should specify what mechanisms are available to review the correct exercise of extraordinary powers of such authorities during a period of emergency.

Secondly, a report has to indicate whether any state of emergency has been declared during the time span it covers. It has to describe the precise content of the official act of declaration and, as the case may be, the act of termination of the state of emergency – bearing in mind that the Secretary-General of the United Nations already ought to have been notified of such acts.

The report also needs to specify the measures adopted regarding any particular right enshrined in the Covenant, taking into account that certain rights cannot be derogated from. Regarding each derogable right, the report should indicate the scope of the derogation from it and should clarify the reasons why such a derogation, and the extent thereof, was or is necessary to face the situation of emergency in the country. In this context, attention must be paid to the practical impact a derogation has on the exercise of each right, on the remedies available to the individual to obtain redress in case of abuse, and on any other consequence such derogations have during the existence and after the formal termination of the state of emergency.

States Parties to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, should note that in accordance with Article 6 of the Protocol the list of irrevocable rights is to include the right not to be executed. (As of this writing, the Protocol is in force for 28 States. See also under Article 6 of the Covenant).

Situations of public emergencies, the limitation of rights and the derogation from rights are dealt with in related articles of other international instruments as well. They therefore may be of relevance for reporting under this Covenant. These articles are: Articles 4 and 5 of ICESCR, Articles 2(2) and (3) of CAT and Articles 13(2), 14(3), 15(2) and 37 of CRC. See also Articles 5 and 20 below.

ARTICLE 5

Text of Article 5

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

Commentary

This article is of a general nature and has a general scope. Paragraph 1 is aimed at preventing any misinterpretations of any of the articles of the Covenant which might cause the destruction or limitation of the rights and freedoms to an extent greater than allowed by the Covenant itself. Paragraph 2 deals with possible conflicts that may arise between the Covenant and other rules applicable in the State Party, whether such rules have been adopted directly by the State Party or are the result of other international agreements. The Covenant recognizes the priority of those provisions which provide the greatest amount of protection.

To the extent that this article contains criteria for the interpretation of the provisions of the Covenant, it does not require specific and separate implementation at the national level, except for the fact that the criteria themselves must be valid under domestic law regarding the application of any rule related to the scope of the Covenant.

Reports should therefore indicate how in general this criteria for interpretation should become applicable in the reporting State. Moreover, reports should refer to these criteria un-

der any article whose application may in practice lead to a misinterpretation of the article itself, or to a conflict with domestic law in the sense indicated above.

See also Article 4 above.

ARTICLE 6

Text of Article 6

- 1.** *Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*
- 2.** *In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provision of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.*
- 3.** *When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.*
- 4.** *Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.*
- 5.** *Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.*
- 6.** *Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.*

The Committee, at different sessions, has adopted two General Comments on this article.

Text of General Comment 6(16)

1. *The right to life enunciated in Article 6 of the Covenant has been dealt with in all States reports. It is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (Article 4). However, the Committee has noted that quite often the information given concerning Article 6 was limited to only one or other aspect of this right. It is a right which should not be interpreted narrowly.*
2. *The Committee observes that war and other acts of mass violence continue to be a scourge of humanity and take the lives of thousands of innocent human beings every year. Under the Charter of the United Nations, the threat or use of force by any State against another State, except in exercise of the inherent right of self-defence, is already prohibited. The Committee considers that States have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life. Every effort they make to avert the danger of war, especially thermo-nuclear war, and to strengthen international peace and security would constitute the most important condition and guarantee for the safeguarding of the right to life. In this respect, the Committee notes, in particular, a connection between Article 6 and Article 20, which states that the law shall prohibit any propaganda for war (para. 1) or incitement to violence (para. 2) as therein described.*
3. *The protection against arbitrary deprivation of life which is explicitly required by the third sentence of the Article 6(1) is of paramount importance. The Committee considers that States Parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.*
4. *States Parties should also take specific and effective measures to prevent the disappearance of individuals, something which unfortunately has become all too frequent and leads too often to arbitrary deprivation of life. Furthermore, States should establish effective facilities and procedures to investigate thoroughly cases of missing and*

disappeared persons in circumstances which may involve a violation of the right to life.

- 5.** *Moreover, the Committee has noted that the right to life has been too often narrowly interpreted. The expression "inherent right to life" cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States Parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.*
- 6.** *While it follows from Article 6(2) to (6) that States Parties are not obliged to abolish the death penalty totally they are obliged to limit its use and, in particular, to abolish it for other than the "most serious crimes". Accordingly, they ought to consider reviewing their criminal laws in this light and, in any event, are obliged to restrict the application of the death penalty to the "most serious crimes". The article also refers generally to abolition in terms which strongly suggest (paras 2(2) and (6)) that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life within the meaning of Article 40, and should as such be reported to the Committee. The Committee notes that a number of States have already abolished the death penalty or suspended its application. Nevertheless, States' reports show that progress made towards abolishing or limiting the application of the death penalty is quite inadequate.*
- 7.** *The Committee is of the opinion that the expression "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure. It also follows from the express terms of Article 6 that it can only be imposed in accordance with the law in force at the time of the commission of the crime and not contrary to the Covenant. The procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the sentence.*

Commentary

As the right to life is of paramount importance, the individual provisions of Article 6 deserve the utmost attention by States Parties when they report to the Committee.

Whereas many of the provisions of Article 6 expressly refer to the death penalty, paragraph 1 has a more general scope and covers any action States Parties might take to create conditions guaranteeing to all human beings under their jurisdiction the enjoyment of the right to life, as well as to protect them against arbitrary deprivation of life.

Paragraph 1 is drafted in general terms. This explains the emphasis put by the Committee in its General Comments on the need to avert the danger of war and in particular, of nuclear war, including the danger inherent in the production and possession of nuclear weapons. In this connection, attention is drawn also to **General Comment 14(23)**, the text of which is not reproduced in this Manual, where the Committee recommended that the “production, testing, possession and use of nuclear weapons should be prohibited and recognized as crimes against humanity”. States Parties should therefore describe in their reports the measures they have adopted, or are adopting, to reduce the threat of war, which is in itself contradictory to the enjoyment of the right to life, as well as of any other human right.

In order to allow the Committee fully to appreciate the efforts undertaken to create favourable conditions for the enjoyment of the right to life, States Parties should describe any positive action they are taking to increase life expectancy through reduction of infant mortality or elimination of malnutrition and epidemics, as well as to prevent nuclear disasters and environmental pollution.

Paragraph 1 refers to the protection of life by law and it obligates States to prevent the arbitrary deprivation of life. Reporting States are therefore required to give full information about measures available to prevent any arbitrary deprivation of life and to punish those responsible in case it does occur. Reports should cover both ordinary laws and special laws that regulate particular acts (e.g. terrorist activities) as well as existing provisions to compensate all victims of such wrongful activities, be they committed by civil servants or by private individuals. Furthermore, since it can occur that public authorities or officials commit arbitrary killings, States Parties’ reports shall explain in detail the rules and regulations governing the use of firearms by the police and security forces. Reports should also indicate whether any violations of these rules and regulations occurred and, if so, whether any lives were lost as a result of the excessive use of force by the military, the police, or other law enforcement agencies. Consequently, the Committee seeks information on any investigations that have been carried out to establish the responsibility of, and to punish those found responsible for such acts. The Committee further seeks information on measures that have been taken to prevent the recurrence of further abuses.

The phenomenon of the disappearance of persons, which often results in the arbitrary deprivation of life, deserves special consideration. Reports shall provide detailed accounts of actions taken to prevent disappearances and of procedures established and, as the case may be, followed to investigate complaints regarding missing persons effectively, especially when such complaints allegedly involve security forces or other public authorities.

Regarding the death penalty, it must be recalled that, although the Covenant does not prescribe the abolition of capital punishment, it imposes a set of obligations on States Parties still using it. Article 6(2) indicates that the use of the death penalty must be restricted as far as possible, and draws the attention of States Parties to the desirability of abolishing it. In general terms, States are therefore required to provide information on their current domestic situation and on any initiatives and plans aiming at further reducing or totally abolishing capital punishment. In addition, and since according to Article 6 this type of penalty cannot be imposed except for the "most serious crimes" and may be imposed only in accordance with the law in force at the time of the commission of the crime, reporting States shall clearly indicate the crimes punishable by the death penalty and whether its application in such cases is mandatory or not. Furthermore, information must be provided as to which courts are competent to impose capital punishment and as to the procedures observed, in particular taking into account all the guarantees set forth in Article 14 of the Covenant as minimum requirements for a fair trial. Consideration must also be given to the right to appeal a death sentence and to the additional right to seek pardon or commutation of the sentence, both of which have to be provided for under the domestic legal order. The State must also grant special protection to persons who commit a crime carrying the death penalty when they are under eighteen years of age. Such persons cannot be sentenced to death; nor can a death sentence be carried out on pregnant women. Reports are required to provide specific information on these points.

Reports must discuss the actual application of the death penalty by providing information on how many death sentences have been pronounced and for what crimes, and on how many sentences have been carried out and for what crimes, during the time period covered by the report. Reports also must indicate how many individuals remain on death row, and how many, if any, sentences have been commuted.

Finally it shall be mentioned that with resolution 44/128, the General Assembly of the United Nations at its forty-fourth session adopted and opened for signature, ratification and accession the Second Optional Protocol to the Covenant on Civil and Political Rights, aimed at the abolition of the death penalty, ten ratifications being required for it to enter into force. As of this writing, 28 States have ratified the Protocol.

Text of Article 1 of the Second Optional Protocol

1.

No one within the jurisdiction of a State Party to the present Protocol shall be executed.

2. *Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.*

Text of Article 2 of the Second Optional Protocol

1. *No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.*
2. *The State Party making such a reservation shall at the time of ratification or accession communicate to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.*
3. *The State Party having made such a reservation shall notify the Secretary-General of the United Nations of any beginning or ending of a state of war applicable to its territory.*

According to its Article 3, States Parties to the Second Optional Protocol shall include in their reports to the Committee information on the measures that they have adopted to give effect to the Second Optional Protocol. The information thus provided shall include in particular a description of the steps taken to abolish the death penalty in domestic law, of the changes in the procedures that used to allow for the death penalty to be imposed before the entry into force of the Second Optional Protocol, and of the steps taken to commute the sentences of convicted persons on death row.

Reporting officers should bear in mind Article 12 of ICESCR, Article 12 of CEDAW and Article 24 of CRC which deal with the right to enjoy the highest standard of physical and mental health, as well as Articles 6 and 37(a) of CRC. Information gathered for reporting on those provisions may be of relevance also for the right to life of Article 6 of this Covenant.

ARTICLE 7

Text of Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Text of General Comment 20 (44)

- 1.** *This General Comment replaces General Comment No. 7 (16) reflecting and further developing it.*
- 2.** *The aim of the provisions of Article 7 of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State Party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by Article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity. The prohibition in Article 7 is complemented by the positive requirements of Article 10, paragraph 1, of the Covenant, which stipulates that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".*
- 3.** *The test of Article 7 allows no limitation. The Committee reaffirms that, even in situations of public emergency such as those referred to in Article 4 of the Covenant, no derogation from the provision of Article 7 is allowed and its provisions must remain in force. The Committee likewise observes that no justification or extenuating circumstances may be invoked to excuse a violation of Article 7 for any reasons, including those based on an order from a superior officer or public authority.*
- 4.** *The Covenant does not contain any definition of the concepts covered by Article 7, nor does the Committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied.*
- 5.** *The prohibition in Article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. In the*

Committee's view, moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educational or disciplinary measure. It is appropriate to emphasize in this regard that Article 7 protects, in particular, children, pupils and patients in teaching and medical institutions.

- 6. The Committee notes that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by Article 7. As the Committee has stated in its General Comment No. 6(16), Article 6 of the Covenant refers generally to abolition of the death penalty in terms that strongly suggest that abolition is desirable. Moreover, when the death penalty is applied by a State Party for the most serious crimes, it must not only be strictly limited in accordance with Article 6 but it must be carried out in such a way as to cause the least possible physical and mental suffering.*
- 7. Article 7 expressly prohibits medical or scientific experimentation without the free consent of the person concerned. The Committee notes that the reports of States Parties generally contain little information on this point. More attention should be given to the need and means to ensure observance of this provision. The Committee also observes that special protection in regard to such experiments is necessary in the case of persons not capable of giving valid consent, and in particular those under any form of detention or imprisonment. Such persons should not be subjected to any medical or scientific experimentation that may be detrimental to their health.*
- 8. The Committee notes that it is not sufficient for the implementation of Article 7 to prohibit such treatment or punishment or to make it a crime. States Parties should inform the Committee of the legislative, administrative, judicial and other measures they take to prevent and punish acts of torture and cruel, inhuman and degrading treatment in any territory under their jurisdiction.*
- 9. In the view of the Committee, States Parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. States Parties should indicate in their reports what measures they have adopted to that end.*

- 10.** *The Committee should be informed how States Parties disseminate, to the population at large, relevant information concerning the ban on torture and the treatment prohibited by Article 7. Enforcement personnel, medical personnel, police officers and any other persons involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment must receive appropriate instruction and training. States Parties should inform the Committee of the instruction and training given and the way in which the prohibition of Article 7 forms an integral part of the operational rules and ethical standards to be followed by such persons.*
- 11.** *In addition to describing steps to provide the general protection against acts prohibited under Article 7 to which anyone is entitled, the States Parties should provide detailed information on safeguards for the special protection of particularly vulnerable persons. It should be noted that keeping under systematic review interrogation rules, instructions, methods and practices, as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment, is an effective means of preventing cases of torture and ill-treatment. To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention to be kept in registers readily available and accessible to those concerned, including relatives and friends. To the same effect, the time and place of all interrogations should be recorded, together with the names of all judicial or administrative proceedings. Provisions should also be made against incommunicado detention. In that connection, States Parties should ensure that any places of detention be free from any equipment liable to be used for inflicting torture or ill-treatment. The protection of the detainee also requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members.*
- 12.** *It is important for the discouragement of violations under Article 7 that the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment.*
- 13.** *States Parties should indicate when presenting their reports the provisions of their criminal law which penalize torture and cruel, inhuman and degrading treatment or punishment, specifying the penalties ap-*

plicable to such acts, whether committed by public officials or other persons acting on behalf of the State, or by private persons. Those who violate Article 7, whether by encouraging, ordering, tolerating or perpetrating prohibited acts, must be held responsible. Consequently, those who have refused to obey orders must not be punished or subjected to any adverse treatment.

- 14.** *Article 7 should be read in conjunction with Article 2, paragraph 3, of the Covenant. In their reports, States Parties should indicate how their legal system effectively guarantees the immediate termination of all the acts prohibited by Article 7 as well as appropriate redress. The right to lodge complaints against maltreatment prohibited by Article 7 must be recognized in the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective. The reports of States Parties should provide specific information on the remedies available to victims of maltreatment and the procedures that complainants must follow, and statistics on the number of complaints and how they have been dealt with.*
- 15.** *The Committee has noted that some States have granted amnesty in respect of acts of torture. Amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible.*

Commentary

According to this article, as the Committee has commented, a report should first describe the place accorded to the prohibition of torture and inhuman treatment in the domestic legal structure. In particular, the Committee seeks information on how torture is defined, whether and to what extent it constitutes a crime, what sanctions are provided by penal and administrative laws in case of its commission, whether the law voids any declaration or confession obtained through torture, and what kind of compensation the law provides for the victims of such acts. Since the Covenant also prohibits cruel or inhuman punishment, a reference to existing laws in this area is also required. States Parties that still use the death penalty must include information on regulations concerning the treatment of persons on death row.

The Committee noted that cases of torture occur notwithstanding the existence of penal laws prohibiting torture or similar practices. This makes it of utmost importance for the Committee to receive detailed reports on the practice followed in the treatment of detainees, including measures taken to train law enforcement officials. Reports should be very specific regarding time limits that prison authorities must abide by when resorting to special security measures or to solitary confinement of prisoners in special security cells. Information is required on safeguards against detention *incommunicado* and against abuses of such practices by prison governors, and on measures adopted to ensure the right of detainees to receive visits and to maintain contacts with the outside world. Since effective protection largely depends on the existence of a machinery of control, reports should also give a full account of such machinery. For that purpose, States Parties' reports should specify on the one hand what control mechanisms have been instituted to ensure that persons arrested or detained are not subjected to torture or other ill-treatment, and the procedures – which should be independent and impartial – under which complaints about ill-treatment of individuals by the police, the security forces, or prison officials can be filed and are investigated. On the other hand, reports should specify whether any complaints regarding torture or ill-treatment have been made during the reporting period. If so, reports should indicate how such allegations have been investigated by the authorities and with what results. In this context, the issue of expulsion of persons to countries where the expelled might be expected to be subjected to torture should also be addressed.

The Committee has pointed out that Article 7 protects not only detainees from ill-treatment by public authorities or by persons acting outside or without any official authority, but also in general any person. This point is of particular relevance in situations concerning pupils and patients in educational and medical institutions, whether public or private. Therefore, reporting States should address the issue of correctional methods in schools and other educational institutions, including the use of corporal punishment. They should further address the conditions and procedures for providing medical and particularly psychiatric care. Information should be provided on detention in psychiatric hospitals, on measures taken to prevent abuses in this field, on appeals available to persons interned in a psychiatric institution and on any complaints registered during the reporting period.

Finally, the second part of Article 7 prohibits medical or scientific experimentation upon people without their free consent. In this regard, reports should contain a detailed description of the laws and practices governing experimentation on human beings. In particular, reports should describe existing control mechanisms (1) to verify that the individual's consent has been given freely, and (2) to ensure that experimentation on individuals not capable of expressing such consent is made impossible.

ARTICLE 8

Text of Article 8

1. *No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.*
2. *No one shall be held in servitude.*
3. (a) *No one shall be required to perform forced or compulsory labour;*
 - (b) *Paragraph 3(a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;*
 - (c) *For the purpose of this paragraph the term "forced or compulsory labour" shall not include:*
 - (i) *Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;*
 - (ii) *Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;*
 - (iii) *Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;*
 - (iv) *Any work or service which forms part of normal civil obligations.*

Commentary

Since slavery has been abolished and the slave-trade is forbidden world-wide, this provision is meant to combat any resurgent form of slavery and especially to prohibit any form of servitude in which a person may be held in modern society. This provision covers any situation in which a person is compelled to depend on another person, as it may happen particularly in situations such as prostitution, drug trafficking, or some forms of psychiatric abuse. Consequently, a report should address these issues and provide information on any legal or practical measures taken to prevent and combat such and similar forms of servitude

and the exploitation they represent. Such measures should cover situations involving public authorities, as well as situations involving relationships only between private individuals.

Article 8 goes into more detail in the provision concerning forced or compulsory labour. After stating its prohibition in principle, paragraph 3 goes on to state that such a prohibition does not preclude the existence of hard labour as a measure of punishment, provided that its imposition is based on a sentence pronounced by a competent court. Reports should indicate whether such forms of punishment may be imposed under domestic law and what the actual practice is. The performance of hard labour must always be consistent with other provisions of the Covenant, and in particular with Articles 7 and 10. Therefore, reports should also analyse the conditions under which hard labour is performed and discuss the administration of institutions established for this purpose, such as colony-settlements, corrective labour colonies, etc. It should be kept in mind that the administration of such colonies must be in compliance with United Nations Standard Minimum Rules for the Treatment of Prisoners.

Reports should further provide information about the existence of services listed in paragraph 3(c) which may be required from individuals without resulting in forced or compulsory labour within the meaning of this provision. Thus, in addition to describing the existence of forced labour as a punishment for crime, reports should describe any kind of work or service that may be imposed as an ordinary consequence of a court order on persons under detention and on persons on conditional release. Furthermore, reports should discuss compulsory military service and, if applicable, national civil service for conscientious objectors; services required in cases of emergency or calamity threatening the life of the community; and works or services which are part of normal civil obligations.

Although these services are not prohibited under the provision contained in paragraph 3, the fact that they constitute exceptions to the general rule implies that they shall be interpreted narrowly, and that in any case they shall be applied without discrimination and in a manner consistent with other provisions of the Covenant. Their detailed description enables the Committee to comment on the use of such practices and their conformity with the Covenant in the reporting State.

When preparing information for Articles 6, 7, and 8 of this Covenant, reporting officers should evaluate existing information on related rights in other instruments. Of particular interest are: Article 6 of CEDAW (on traffic in women), Articles 1 and 16 of CAT (on torture and other cruel, inhuman or degrading treatment or punishment), and Articles 6, 11, 32 to 36 and 37(a) of CRC (on the right to life, physical and moral integrity, slavery, forced labour and traffic in persons).

ARTICLE 9

Text of Article 9

1. *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*
2. *Anyone who is arrested shall be informed, as the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*
3. *Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should occasion arise, for execution of the judgement.*
4. *Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*
5. *Anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation.*

Text of General Comment 8 (16)

1. *Article 9 which deals with the right to liberty and security of persons has often been somewhat narrowly understood in reports by States Parties, and they have therefore given incomplete information. The Committee points out that paragraph 1 is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc. It is true that some of the provisions of Article 9 (part of paragraph 2 and the whole of paragraph 3) are only applicable to persons against whom criminal charges are brought. But the rest, and in particular the important guarantee laid down in paragraph 4, i.e. the right to control by a court of the legality*

of the detention, applies to all persons deprived of their liberty by arrest or detention. Furthermore, States Parties have in accordance with Article 2(3) also to ensure that an effective remedy is provided in other cases in which an individual claims to be deprived of his liberty in violation of the Covenant.

- 2. Paragraph 3 of Article 9 requires that in criminal cases any person arrested or detained has to be brought "promptly" before a judge or other officer authorized by law to exercise judicial power. More precise time limits are fixed by law in most States Parties and, in the view of the Committee, delays must not exceed a few days. Many States have given insufficient information about the actual practice in this respect.*
- 3. Another matter is the total length of detention pending trial. In certain categories of criminal cases in some countries, this matter has caused some concern within the Committee, and members have questioned whether their practices have been in conformity with the entitlement "to trial within a reasonable time or to release" under paragraph 3. Pre-trial detention should be an exception and as short as possible. The Committee would welcome information concerning mechanisms existing and measures taken with a view to reducing the duration of such detention.*
- 4. Also if so-called preventive detention is used, for reasons of public security, it must be controlled by these same provisions, i.e. it must not be arbitrary, and must be based on grounds and procedures established by law (para. 1), information on the reasons must be given (para. 2) and court control of the detention must be available (para. 4) as well as compensation in the case of a breach (para. 5). And if, in addition, criminal charges are brought in such cases, the full protection of Article 9(2) and (3), as well as Article 14, must also be granted.*

Commentary

According to the wording of paragraph 1 and in the Committee's General Comment thereon, this provision refers to all cases of deprivation of liberty, whether in a criminal or any other case. Therefore, reports should first describe the circumstances under which a person may be deprived of his or her liberty. Such circumstances must be established by law and in any case must not be arbitrary, i.e. inconsistent with the provisions of the Covenant, or unreasonable. In this context, any kind of deprivation of liberty provided for by law and as occurring in practice has to be addressed. To this end, reports should indicate the

procedures that ensure the respect for the guarantees set forth in the provisions of the Covenant in cases of deprivation of liberty. The Committee has stressed that some of these guarantees apply to any kind of deprivation of liberty, whereas others specifically apply to persons against whom criminal charges are being brought.

Regarding the guarantees required for any kind of deprivation of liberty, reports have to describe how soon and under what conditions person deprived of his liberty is informed of the reasons of his arrest, how soon that person can contact a lawyer, and if his family is notified. These guarantees have the double purpose of averting the danger of disappearances and of enabling the detained person to exercise a remedy against his detention. Paragraph 4 of Article 9 stresses the importance of such a remedy and specifies that it has to consist of a prompt and effective judicial proceeding, leading to the release of the detained person in case of unlawful detention. In addition, reports should describe (1) the law that in such cases regulates proceedings before the courts, and (2) any complaints that actually have occurred, including their eventual resolution.

Regarding the guarantees to which persons against whom criminal charges are being brought are entitled, two time limits come into consideration and should be referred to in reports. The first is the time frame within which an arrested person must be brought before a judge, and the second, the length of time for which the same person may be detained while awaiting trial. In the first case, action must occur promptly and not be delayed by more than a few days. Pre-trial detention must be reasonable and shall not be the rule. Reports should therefore describe procedures and remedies (such as *habeas corpus*, *amparo*, and similar appeals) established to ensure that a person is promptly brought before a judge, as well as measures taken to reduce as far as possible the length of pre-trial detention, including a description of existing remedies available during such a detention, and of measures for a release dependent upon certain guarantees, in which case the need for equality in application (especially on financial grounds) may not be overlooked.

Finally, victims of unlawful arrest or detention shall have an enforceable right to compensation. Reports should therefore indicate the compensation mechanism established by law and provide details on its practical application in cases involving criminal charges and in cases regarding other forms of detention.

ARTICLE 10

Text of Article 10

- 1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.***

2. (a) *Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;*
- (b) *Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.*
3. *The penitentiary system shall comprise treatment of prisoners, the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.*

Text of General Comment 21(44), paragraphs 5 to 13

5. *States Parties are invited to indicate in their reports to what extent they are applying the relevant United Nations standards applicable to the treatment of prisoners: the Standard Minimum Rules for the Treatment of Prisoners (1957), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), the Code of Conduct for Law Enforcement Officials (1978) and the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment (1982).*
6. *The Committee recalls that reports should provide detailed information on national legislative and administrative provisions that have a bearing on the right provided for in Article 10, paragraph 1. The Committee also considers that it is necessary for reports to specify what concrete measures have been taken by the competent authorities to monitor the effective application of the rules regarding the treatment of persons deprived of their liberty. States Parties should include in their reports information concerning the system for supervising penitentiary establishments, the specific measures to prevent torture and cruel, inhuman or degrading treatment, and how impartial supervision is ensured.*
7. *Furthermore, the Committee recalls that reports should indicate whether the various applicable provisions form an integral part of the instruction and training of the personnel who have authority over persons deprived of their liberty and whether they are strictly adhered to*

by such personnel in the discharge of their duties. It would also be appropriate to specify whether arrested or detained persons have access to such information and have effective legal means enabling them to ensure that those rules are respected, to complain if the rules are ignored and to obtain adequate compensation in the event of a violation.

- 8.** *The Committee recalls that the principle set forth in Article 10, paragraph 1, constitutes the basis for the more specific obligations of States Parties in respect of criminal justice, which are set forth in Article 10, paragraphs 2 and 3.*
- 9.** *Article 10, paragraph 2(a), provides for the segregation, save in exceptional circumstances, of accused persons from convicted ones. Such segregation is required in order to emphasize their status as unconvicted persons who at the same time enjoy the right to be presumed innocent as stated in Article 14, paragraph 2. The reports of States Parties should indicate how the separation of accused persons from convicted persons is effected and explain how the treatment of accused persons differs from that of convicted persons.*
- 10.** *As to Article 10, paragraph 3, which concerns convicted persons, the Committee wishes to have detailed information on the operation of the penitentiary system of the State Party. No penitentiary system should be only retributive; it should essentially seek the reformation and social rehabilitation of the prisoner. States Parties are invited to specify whether they have a system to provide assistance after release and to give information as to its success.*
- 11.** *In a number of cases, the information furnished by the State Party contains no specific reference either to legislative or administrative provisions or to practical measures to ensure the re-education of convicted persons. The Committee requests specific information concerning the measures taken to provide teaching, education and re-education, vocational guidance and training and also concerning work programmes for prisoners inside the penitentiary establishment as well as outside.*
- 12.** *In order to determine whether the principle set forth in Article 10, paragraph 3, is being fully respected, the Committee also requests information on the specific measures applied during detention, e.g., how convicted persons are dealt with individually and how they are*

categorized, the disciplinary system, solitary confinement and high-security detention and the conditions under which contacts are ensured with the outside world (family, lawyer, social and medical services, non-governmental organizations).

- 13.** *Moreover, the Committee notes that in the reports of some States Parties no information has been provided concerning the treatment accorded to accused juvenile persons and juvenile offenders. Article 10, paragraph 2(b), provides that accused juvenile persons shall be separated from adults. The information given in reports shows that some States Parties are not paying the necessary attention to the fact that this is a mandatory provision of the Covenant. The text also provides that cases involving juveniles must be considered as quickly as possible. Reports should specify the measures taken by States Parties to give effect to that provision. Lastly, under Article 10, paragraph 3, juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status in so far as conditions of detention are concerned, such as shorter working hours and contact with relatives, with the aim of furthering their reformation and rehabilitation. Article 10 does not indicate any limits of juvenile age. While this is to be determined by each State Party in the light of relevant social, cultural and other conditions, the Committee is of the opinion that Article 6, paragraph 5, suggests that all persons under the age of 18 should be treated as juveniles, at least in matters relating to criminal justice. States should give relevant information about the age groups of persons treated as juveniles. In that regard, States Parties are invited to indicate whether they are applying the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, known as the Beijing Rules (1987).*

Commentary

As the Committee has pointed out in its General Comment, the first paragraph of this article supplements to a certain extent the provisions contained in Articles 7 and 9, and applies to any person deprived of his/her liberty. States Parties' reports should therefore provide information on detention in prisons as well as in other institutions for reasons unconnected with the commission of a crime (e.g. psychiatric institutions). In this context, due attention should be given to existing arrangements for the operation of such places of detention and their supervision by public authorities. Procedures for receiving and investigating complaints should be duly reflected in reports.

The Committee has underlined the links between the general provision of paragraph 1 and the requirements of the subsequent paragraphs concerning accused persons (para. 2) and convicted persons (para. 3). Therefore, reports should show how the segregation of accused persons from convicted offenders is ensured, and note any difference in treatment accorded in practice to accused as compared to convicted persons. Moreover, reports should indicate the measures taken to accelerate the consideration of charges against juvenile persons.

The treatment of convicted persons implies further the monitoring of the main aspects of the law and practice of the State's penitentiary system in order to test whether the principles of reformation and social rehabilitation of prisoners are respected and promoted. To this effect, particular attention has to be paid to compliance with the United Nations Minimum Standard Rules for the Treatment of Prisoners, the Code of Conduct for Law Enforcement Officials, and the Principles of Medical Ethics relevant for prison doctors. In order to enable the Committee to know that these bodies of rules are being respected, reports should provide information as to whether such regulations and directives form part of the training of prison staff and whether they are known and accessible to prisoners. Reports should also describe any other practice followed during detention (such as the grouping of prisoners according to social, cultural, or other characteristics, resorting to special security cells and solitary confinement, applying work programmes within or outside the prisons as a means of rehabilitation, etc.). The description of such practices should also show to what extent juvenile offenders receive special treatment aiming at their reformation and social rehabilitation.

Reporting officers should bear in mind that Articles 5(b) of ICERD and 37(b) and (c) of CRC also protect the right to liberty and security of the person for the purposes of those Conventions. Information assembled in that regard might be useful under Articles 9 and 10 of this Covenant as well.

ARTICLE 11

Text of Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Commentary

This article underlines that deprivation of liberty may only follow the violation of a criminal or, exceptionally, a civil law, but not the mere inability to fulfil a contractual obligation. The purpose of this article is to stress that poverty and the lack of financial means cannot justify

the putting of a person in jail. The general terms in which the article is drafted suggest that no reference whatsoever, not even an indirect one, shall be allowed regarding the inability to fulfil a contract as a ground for imprisonment. Consequently, a report should give an account of the legal situation in the reporting State, and include a description of any cases in which non-compliance with a court order to fulfil a contractual obligation resulted in a deprivation of liberty.

ARTICLE 12

Text of Article 12

- 1.** *Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*
- 2.** *Everyone shall be free to leave any country, including his own.*
- 3.** *The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.*
- 4.** *No one shall be arbitrarily deprived of the right to enter his own country.*

(To date, no General Comment has been adopted on this article; however, paragraph 8 of General Comment 15(27) refers to the position of aliens under this article).

Text of General Comment 15(27), paragraph 8

- 8.** *Once an alien is lawfully within a territory, his freedom of movement and his right to leave that territory may only be restricted in accordance with Article 12, para. 3. Differences in treatment in this regard between aliens and nationals, or between different categories of aliens, need to be justified under Article 12, para. 3. Since such restrictions must, inter alia, be consistent with the other rights recognized in the Covenant, a State Party cannot, by restraining an alien or by deporting him to a third country, arbitrarily prevent his return to his own country (Article 12, para. 4).*

Commentary

Article 12 recognizes the freedom of movement of individuals both with regard to the freedom of movement within the territory of the State in which they find themselves, and with regard to the freedom to cross the borders of this State.

Since the right to freedom of movement within the territory of a State refers not only to travelling but also to movement for the purpose of establishing oneself at a certain place, i.e. the choosing and the changing of one's residence, reports should contain information on the laws and practice regarding both of these situations. Reports should therefore describe any requirements for the registration of persons in a particular district and the formalities and/or conditions that govern the registration of a person as a resident in a different district. Reports should describe what kind of information has to be provided to public authorities in case of temporary displacement of a person; the controls that authorities impose upon travelling persons; any restrictions that are in place regarding the access to, or leaving of, certain areas; and any other conditions or limitations determining the movement of persons within the country.

Regarding the right to freedom of movement as the right to leave a country, reports should provide information on the conditions for the issuance of travel documents, on the conditions allowing for a person's passport to be withdrawn, on the procedures that have to be followed in such instances, and on the authorities that are responsible for making decisions in this regard. Reports should discuss the remedies available in the event of an unfavourable decision. In order to illustrate the practice in the reporting State it is useful to provide figures that show the overall number of applications submitted for travel documents, the percentage of applications that were turned down, and the reasons for the refusal of documents during the reporting period.

The information provided should enable the Committee to consider whether any existing restrictions are in compliance with paragraph 3 of Article 12. A first prerequisite of compliance is the formal requirement that any restriction must be based upon a law. The substantive requirements of compliance demand that such restrictions must be necessary to reach certain purposes set forth in paragraph 3 and that they must be consistent with other rights protected by the Covenant.

In the context of Article 12, special attention has to be paid to restrictions concerning certain categories of persons, among whom aliens occupy a particular place. As the Committee has pointed out in its General Comment 15 (27) on the position of aliens under the Covenant, the rights enshrined in paragraphs 1 and 2 of Article 12 are conferred not only upon nationals, but upon foreigners as well on the condition that they are lawfully within the territory of the State. Reports should indicate the requirements for the admission of aliens to the territory of the reporting State; they should further indicate how the freedom of

movement of aliens is regulated. Note that, in this regard, any discrimination in the treatment of aliens as opposed to nationals or any discrimination regarding the treatment of aliens from different countries has to be justified under Article 12, paragraph 3.

Lastly, by virtue of paragraph 4 of Article 12 everybody is entitled to enter his own country and nobody should be deprived arbitrarily of this right. Accordingly, reports should describe any measures of banishment of citizens that may exist under the law, and whether such measures have been applied and under what circumstances, during the reporting period. With regard to aliens, the Committee has also stressed the relationship that exists between the right to enter one's own country and freedom of movement.

With regard to the freedom of movement, reporting officers may find relevant certain information assembled for reporting on Article 5(d)(i) and (ii) of ICERD, on Article 15(4) of CEDAW and Article 10 of CRC. See also Article 5(f) of ICERD.

ARTICLE 13

Text of Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Text of General Comment 15(27), paragraphs 9 and 10

(Note that General Comment 15(27) applies not only to Article 13, but refers in general to the position of aliens under the Covenant. See in this regard Article 2 for paragraphs 1 to 7, and Article 12 for paragraph 8 of General Comment 15(27)).

- 9.** *Many reports have given insufficient information on matters relevant to Article 13. The article is applicable to all procedures aimed at the obligatory departure of an alien, whether described in national law as expulsion or otherwise. If such procedures entail arrest, the safeguards of the Covenant relating to deprivation of liberty (Articles 9 and 10) may also be applicable. If the arrest is for the particular purpose of extradition, other provisions of national and international law may apply. Normally, an alien who is expelled must be allowed to*

leave for any country that agrees to take him. The particular rights of Article 13 only protect those aliens who are lawfully in the territory of a State Party. This means that national law concerning the requirements for entry and stay must be taken into account in determining the scope of that protection, and that illegal entrants and aliens who have stayed longer than the law or their permits allow, in particular, are not covered by its provisions. However, if the legality of an alien's entry or stay is in dispute, any decision on this point leading to his expulsion or deportation ought to be taken in accordance with Article 13. It is for the competent authorities of the State Party, in good faith and in the exercise of their powers, to apply and to interpret the domestic law, observing, however, such requirements under the Covenant as equality before the law (Article 26).

10. Article 13 directly regulates only the procedure and not the substantive grounds for expulsion. However, by allowing only those carried out "in pursuance of a decision reached in accordance with law", its purpose is clearly to prevent arbitrary expulsions. On the other hand, it entitles each alien to a decision in his own case and, hence, Article 13 would not be satisfied with laws or decisions providing for collective or mass expulsions. This understanding, in the opinion of the Committee, is confirmed by further provisions concerning the right to submit reasons against expulsion and to have the decision reviewed by and to be represented before the competent authority or someone designated by it. An alien must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one. The principles of Article 13 relating to appeal against expulsion and the entitlement to review by a competent authority may only be departed from when "compelling reasons of national security" so require. Discrimination may not be made between different categories of aliens in the application of Article 13.

Commentary

According to Article 13 – the only article of the Covenant applicable only to aliens – and the interpretation thereof by the Committee in its General Comment, reports should describe the laws and the practice concerning the mandated departure of aliens from the territory of the State, and should illustrate the grounds for expulsion and the procedures leading to it. If applicable, reports should provide the exact number of expulsions that occurred during the reporting period, and the reasons for such expulsions. It is of utmost im-

portance to provide a detailed description of the procedures followed for that purpose because Article 13 contains certain safeguards that have to be respected both in a judicial and in an administrative procedure. In this context, remedies against an expulsion order play a special role. Although Article 13 does not say that such remedies must be available before the expulsion takes place and that in effect they must suspend the expulsion order, the appeal must nevertheless be an effective appeal. The practice in the reporting State should allow the effectiveness of the available remedy to be tested in the particular circumstances of each case.

Although the guarantees of Article 13 protect only aliens who are lawfully within the territory of a State, reports should also describe the procedures leading to the expulsion of illegal entrants. In particular, reports should describe the procedures for reaching the decision on the legality or illegality of a person's entry or stay in the country. The Committee has pointed out that such a decision must comply with the requirements of Article 13.

To the extent that Article 13 (and, to a limited extent, Article 12) deals with expulsion and extradition, reporting officers should consult Article 3 of CAT for existing relevant information. See also Article 5(d)(i) and (ii) and 5(f) of ICERD.

ARTICLE 14

Text of Article 14

- 1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or where the interest of the private lives of the Parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes of the guardianship of children.*

2. *Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*
3. *In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:*
 - (a) *to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;*
 - (b) *To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;*
 - (c) *To be tried without undue delay;*
 - (d) *To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;*
 - (e) *To examine, or to have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
 - (f) *To have the free assistance of an interpreter if he cannot understand or speak the language used in court;*
 - (g) *Not to be compelled to testify against himself or to confess guilt.*
4. *In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.*
5. *Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.*
6. *When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such a conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.*

7. *No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.*

Text of General Comment 13(21)

1. *The Committee notes that Article 14 of the Covenant is of a complex nature and that different aspects of its provisions will need specific comments. All of these provisions are aimed at ensuring the proper administration of justice, and to this end uphold a series of individual rights such as equality before the courts and tribunals and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. Not all reports provided details on the legislative or other measures adopted specifically to implement each the provisions of Article 14.*
2. *In general, the reports of States Parties fail to recognize that Article 14 applies not only to procedures for the determination of criminal charges against individuals but also to procedures to determine their rights and obligations in a suit at law. Laws and practices dealing with these matters vary widely from State to State. This diversity makes it all the more necessary for States Parties to provide all relevant information and to explain in greater detail how the concepts of "criminal charges" and "rights and obligations in a suit at law" are interpreted in relation to respective legal systems.*
3. *The Committee would find it useful if, in their future reports, States Parties could provide more detailed information on the steps taken to ensure that equality before the courts, including equal access to courts, fair and public hearings and competence, impartiality and independence of the judiciary are established by law and guaranteed in practice. In particular, States Parties should specify the relevant constitutional and legislative texts which provide for the establishment of the courts and ensure that they are independent, impartial and competent, in particular with regard to the manner in which judges are appointed, the qualifications for appointment, and the duration of their terms of office; the conditions governing promotion, transfer and cessation of their functions and the actual independence of the judiciary from the executive branch and the legislative.*
4. *The provisions of Article 14 apply to all courts and tribunals within the scope of that article whether ordinary or specialized. The Commit-*

tee notes the existence, in many countries, of military or special courts which try civilians. This could present serious problems as far as the equitable, impartial and independent administration of justice is concerned. Quite often the reason for the establishment of such courts is to enable exceptional procedures to be applied which do not comply with the normal standards of justice. While the Covenant does not prohibit such categories of courts, nevertheless the conditions which it lays down clearly indicate that the trying of civilians by such courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in Article 14. The Committee has noted a serious lack of information in this regard in the reports of some States Parties whose judicial institutions include such courts for the trying of civilians. In some countries, such military and special courts do not afford the strict guarantees of the proper administration of justice in accordance with the requirements of Article 14 which are essential for the effective protection of human rights. If States Parties decide in circumstances of a public emergency as contemplated by Article 4 to derogate from normal procedures required under Article 14, they should ensure that such derogations do not exceed those strictly required by the exigencies of the actual situation, and respect the other conditions in paragraph 1 of Article 14.

5. The second sentence of Article 14, paragraph 1, provides that "everyone shall be entitled to a fair and public hearing". Paragraph 3 of the article elaborates on the requirements of a "fair and public hearing" in regard to the determination of criminal charges. However, the requirements of paragraph 3 are minimum guarantees, the observance of which is not always sufficient to ensure the fairness of a hearing as required by paragraph 1.
6. The publicity of hearings is an important safeguard in the interest of individuals and of society at large. At the same time Article 14, paragraph 1, acknowledges that courts have the power to exclude all or part of the public for reasons spelt out in that paragraph. It should be noted that, apart from such exceptional circumstances, the Committee considers that a hearing must be open to the public in general, including members of the press, and must not, for instance, be limited only to a particular category of persons. It should be noted that, even in cases in which the public is excluded from the trial, the judgement must, with certain strictly defined exceptions, be made public.
- 7.

The Committee has noted a lack of information regarding Article 14, paragraph 2 and, in some cases, has even observed that the presumption of innocence, which is fundamental to the protection of human rights, is expressed in very ambiguous terms or entails conditions which render it ineffective. By reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of trial.

8. Among the minimum guarantees in criminal proceedings prescribed by paragraph 3, the first concerns the right of everyone to be informed in a language which he understands of the charge against him (subparagraph (a)). The Committee notes that State reports often do not explain how this right is respected and ensured. Article 14(3)(a) applies to all cases of criminal charges, including those of persons not in detention. The Committee notes further that the right to be informed of the charge "promptly" requires that information is given in the manner described as soon as the charge is first made by a competent authority. In the opinion of the Committee, this right must arise when in the course of an investigation a court or an authority of the prosecution decides to take procedural steps against a person suspected of a crime or publicly names him as such. The specific requirements of subparagraph 3(a) may be met by stating the charge either orally or in writing, provided that the information indicates both the law and the alleged facts on which it is based.
9. Subparagraph 3(b) provides that the accused must have adequate time and facilities for the preparation of this defence and to communicate with counsel of his own choosing. What is "adequate time" depends on the circumstances of each case, but the facilities must include access to documents and other evidence which the accused requires to prepare his case, as well as the opportunity to engage and communicate with counsel. When the accused does not want to defend himself in person or request a person or an association of his choice, he should be able to have recourse to a lawyer. Furthermore, this subparagraph requires counsel to communicate with the accused in conditions giving full respect for the confidentiality of their communications. Lawyers should be able to counsel and to represent their clients in

accordance with their established professional standards and judgement without any restrictions, influences, pressures or undue interference from any quarter.

- 10.** *Subparagraph 3(c) provides that the accused shall be tried without undue delay. This guarantee relates not only to the time by which a trial should commence, but also the time by which it should end and judgement be rendered; all stages must take place "without undue delay". To make this right effective, a procedure must be available in order to ensure that the trial will proceed "without undue delay", both in first instance and on appeal.*
- 11.** *Not all reports have dealt with all aspects of the right of defence as defined in subparagraph 3(d). The Committee has not always received sufficient information concerning the protection of the right of the accused to be present during the determination of any charge against him or how the legal system assures his right either to defend himself in person or to be assisted by counsel of his own choosing, or what arrangements are made if a person does not have sufficient means to pay for legal assistance. The accused or his lawyer must have the right to act diligently and fearlessly in pursuing all available defences and the right to challenge the conduct of the case if they believe it to be unfair. When, exceptionally, for justified reasons trials in absentia are held, strict observance of the rights of the defence is all the more necessary.*
- 12.** *Subparagraph 3(e) states that the accused shall be entitled to examine or have examined the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. This provision is designed to guarantee to the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.*
- 13.** *Subparagraph 3(f) provides that if the accused cannot understand or speak the language used in court he is entitled to the assistance of an interpreter free of any charge. This right is independent of the outcome of the proceedings and applies to aliens as well as to nationals. It is of basic importance in cases in which ignorance of the language used by a court or difficulty in understanding may constitute a major obstacle to the right of defence.*

- 14.** *Subparagraph 3(g) provides that the accused may not be compelled to testify against himself or to confess guilt. In considering this safeguard the provisions of Article 7 and Article 10, paragraph 1, should be borne in mind. In order to compel the accused to confess or to testify against himself, frequently methods which violate these provisions are used. The law should require that evidence provided by means of such methods or any other form of compulsion is wholly unacceptable.*
- 15.** *In order to safeguard the rights of the accused under paragraphs 1 and 3 of Article 14, judges should have authority to consider any allegations made of violations of the rights of the accused during any stage of the prosecution.*
- 16.** *Article 14, paragraph 4, provides that in the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation. Not many reports have furnished sufficient information concerning such relevant matters as the minimum age at which a juvenile may be charged with a criminal offence, the maximum age at which a person is still considered to be a juvenile, the existence of special courts and procedures, the laws governing procedures against juveniles and how all these special arrangements for juveniles take account of "the desirability of promoting their rehabilitation". Juveniles are to enjoy at least the same guarantees and protection as are accorded to adults under Article 14.*
- 17.** *Article 14, paragraph 5, provides that everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. Particular attention is drawn to the other language versions of the word "crime" ("infraction", "delito", "prestuplenie") which show that the guarantee is not confined only to the most serious offences. In this connection, not enough information has been provided concerning the procedures of appeal, in particular the access to and the powers of reviewing tribunals, what requirements must be satisfied to appeal against a judgement, and the way in which the procedures before review tribunals take account of the fair and public hearing requirements of paragraph 1 of Article 14.*
- 18.** *Article 14, paragraph 6, provides for compensation according to law in certain cases of a miscarriage of justice as described therein. It seems from many State reports that this right is often not observed or insufficiently guaranteed by domestic legislation. States should,*

where necessary, supplement their legislation in this area in order to bring it into line with the provisions of the Covenant.

- 19.** *In considering States' reports, differing views have often been expressed as to the scope of paragraph 7 of Article 14. Some States Parties have even felt the need to make reservations in relation to procedures for the resumption of criminal cases. It seems to the Committee that most States Parties make a clear distinction between a resumption of a trial justified by exceptional circumstances and a re-trial prohibited pursuant to the principle of ne bis in idem as contained in paragraph 7. This understanding of the meaning of ne bis in idem may encourage States Parties to reconsider their reservations to Article 14, paragraph 7.*

Commentary

Judicial remedies play a central role in the protection of human rights, and Article 14 spells out a series of rights relating to a fair administration of justice, both in criminal cases and in suits at law. It indicates in particular the minimum guarantees to which any accused person is entitled in the determination of a criminal charge against him/her. The scope of the protected rights and the information States Parties are required to submit to the Committee are thoroughly dealt with in the extensive General Comment adopted by the Committee. The General Comment should therefore be taken duly into account in the preparation of reports by States Parties.

For details on the reporting requirements under Article 14, reporting officers should refer to the General Comment. In general, it should be stressed here that reports should describe the organization of the judiciary in the reporting State. Reports should mention the guarantees protecting the independence of the judiciary from the executive power. They should also provide information on the procedure for the appointment and the advancement of judges, on the existence of extraordinary courts alongside the regular courts, such as special or military courts, and their competencies. Moreover, reports should deal with the guarantees that exist in law and in practice with regard to the right of all persons to a fair and public hearing, including the relevant rules for and practices concerning the publicity of trials and the public pronouncement of judgements. This has to include information on the specific rules that govern the admission of the interested public and the access to court hearings of representatives of the local and foreign press and of the mass media in general. Detailed information should also be provided about the organization and functioning of the bar and about the guarantees that allow lawyers freely to assist their clients, as well as about the availability of free legal assistance to criminal defendants without means.

It has to be kept in mind that the guarantees set forth in Article 14 are minimum guarantees. Therefore, States Parties must strictly comply with the provisions of Article 14. This strict compliance has to be reflected in the report by providing a detailed account of the legislative or other measures taken to ensure the full implementation of all the provisions of Article 14.

When assembling information for Article 14 (and for Articles 15 and 16 below), reporting officers should be aware that related articles in other international instruments also contain rights to procedural guarantees, in particular Articles 5(a) of ICERD, 15(2) and (3) of CEDAW, 12 to 15 of CAT, and 12(2), 37(d) and 40 of CRC.

ARTICLE 15

Text of Article 15

- 1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.*
- 2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.*

Commentary

Article 15 prohibits the retroactive application of criminal laws, and covers both the criminalization of certain acts and the severity of the punishment that may be imposed for criminal offences.

States Parties' reports should state in particular whether the principle of non-retroactive jurisdiction is contained in domestic legislation, and they should provide the Committee with its exact formulation. The existence of such a provision in domestic law is of special importance since Article 15 does not allow for any exception to the principle. Moreover, Article 15 is one of the provisions of the Covenant which, according to Article 4, cannot be derogated from, not even in case of a public emergency. Reports should therefore show that

the principle of non-retroactive jurisdiction exists and is actually applied not only in ordinary criminal law, but also in military criminal codes both in peace and in time of war.

With regard to the principle that an offender shall benefit from laws that are passed after the commission of the crime and that impose lesser penalties than the law applicable at the time of the commission of the crime, reports should describe the actual application of such laws. They should therefore address situations in which the change in the law occurs during the trial, and examine the application of the new law in situations in which an offender has already been convicted and is serving a sentence based on an older, less favourable law.

ARTICLE 16

Text of Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Commentary

The purpose of this article is to ensure that everyone is the subject, and not the object, of the law. However, it does not deal with the question of the legal capacity to act, which may be restricted for such reasons as minority age or insanity.

Information should be provided on the moment, which may be even before birth, at which legal personality is acquired under the law, and at which an individual becomes a subject before the law. According to Article 4, not even in case of a public emergency can Article 16 be derogated from since the recognition as a person before the law is a prerequisite to be entitled to any other right. The recognition as a person has to be ensured everywhere, i.e. also in situations where an individual is not within the territory of the State but where the law nevertheless reaches him or her.

ARTICLE 17

Text of Article 17

- 1.** *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*
- 2.**

Everyone has the right to the protection of the law against such interference or attacks.

Text of General Comment 16(32)

- 1.** *Article 17 provides for the right of every person to be protected against arbitrary or unlawful interference with his privacy, family, home or correspondence as well as against unlawful attacks on his honour and reputation. In the view of the Committee, this right is required to be guaranteed against all such interferences and attacks whether they emanate from States authorities or from natural or legal persons. The obligations imposed by this article require the State to adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right.*
- 2.** *In this connection, the Committee wishes to point out that, in the reports of States Parties to the Covenant, the necessary attention is not being given to information concerning the manner in which respect for this right is guaranteed by legislative, administrative or judicial authorities and in general by the competent organs established in the State. In particular, insufficient attention is paid to the fact that Article 17 of the Covenant deals with protection against both unlawful and arbitrary interference. That means that it is precisely in State legislation above all that provision must be made for the protection of the right set forth in that article. At present the reports either say nothing about such legislation or provide insufficient information on the subject.*
- 3.** *The term "unlawful" means that no interference can take place except in cases envisaged by the law. Interference authorized by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the Covenant.*
- 4.** *The expression "arbitrary interference" is also relevant to the protection of the right provided for in Article 17. In the Committee's view, the expression "arbitrary interference" can also extend to interference provided for under the law. The introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.*

5. *Regarding the term "family", the objectives of the Covenant require that for the purposes of Article 17 this term be given a broad interpretation to include all those comprising the family as understood in the society of the State Party concerned. The term "home" in English, "manzel" in Arabic, "zhuzhai" in Chinese, "domicile" in French, "zhilische" in Russian and "domicilio" in Spanish, as used in Article 17 of the Covenant, is to be understood to indicate the place where a person resides or carries out his usual occupation. In this connection, the Committee invites States to indicate in their reports the meaning given in their society to the terms "family" and "home".*
6. *The Committee considers that the reports should include information on the authorities and organs set up within the legal system of the State which are competent to authorize interference allowed by the law. It is also indispensable to have information on the authorities which are entitled to exercise control over such interference with strict regard for the law, and to know in what manner and through which organs persons concerned may complain of a violation of the right provided for in Article 17 of the Covenant. States should in their reports make clear the extent to which actual practice conforms to the law. State Party reports should also contain information on complaints lodged in respect of arbitrary or unlawful interference, and the number of any findings in that regard, as well as the remedies provided in such cases.*
7. *As all persons live in society, the protection of privacy is necessarily relative. However, the competent public authorities should only be able to call for such information relating to an individual's private life the knowledge of which is essential in the interests of society as understood under the Covenant. Accordingly, the Committee recommends that States should indicate in their reports the laws and regulations that govern authorized interferences with private life.*
8. *Even with regard to interferences that conform to the Covenant, relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted. A decision to make use of such authorized interference must be made only by the authority designated under the law, and on case-by-case basis. Compliance with Article 17 requires that the integrity and confidentiality of correspondence should be guaranteed de jure and de facto. Correspondence should be delivered to the addressee without interception and without being opened or otherwise read. Surveillance, whether*

electronic or otherwise, interceptions of telephonic, telegraphic and other form of communication, wire-tapping and recording of conversations should be prohibited. Searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment. So far as personal and body searches are concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body search by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex.

- 9.** *States Parties are under a duty themselves not to engage in interferences inconsistent with Article 17 of the Covenant and to provide the legislative framework prohibiting such acts by natural or legal persons.*
- 10.** *The gathering and holding of personal information on computers, databanks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law. Effective measures have to be taken by States to ensure that information concerning a person's private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the Covenant. In order to have the most effective protection of his private life, every individual should have the right to ascertain, in an intelligible form whether, and – if so – what, personal data is stored in automatic data files and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control their files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to request rectification or elimination.*
- 11.** *Article 17 affords protection to personal honour and reputation and States are under an obligation to provide adequate legislation to that end. Provisions must also be made to protect the individual against any unlawful attacks that do occur and to have an effective remedy against those responsible. States Parties should indicate in their reports to what extent the honour or reputation of individuals is protected by law and how this protection is achieved according to their legal system.*

Commentary

General Comment 16(32) provides detailed guidance regarding both the scope of the protected rights contained in Article 17 and the information required from States Parties in their reports, especially with regard to protective legislation against arbitrary or unlawful interference with privacy, family and home. However, it may be useful to draw the attention of reporting States to the need for a detailed description of the practice that exists in the application of these protective laws and to refer especially to any violation of such laws and any complaints brought under these laws. States should report on the use alleged victims made (or make) of existing remedies, and the eventual results of such cases. Reports should provide information on any practical steps taken – such as instructions given to police or other authorities – to prevent future violations, in particular those that resulted from arbitrary behaviour of public officials.

ARTICLE 18

Text of Article 18

- 1.** *Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*
- 2.** *No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*
- 3.** *Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*
- 4.** *The States Parties to the present Covenant undertake to have respect for the liberty of the parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*

Text of General Comment No. 22(48), paragraphs 4 to 11

- 4.** *The freedom to manifest religion or belief may be exercised "either individually or in community with others and in public or private". The*

freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulas and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life and the use of a particular language customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as, inter alia, the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.

- 5.** *The Committee observes that the freedom to "have or to adopt" a religion or belief necessarily entails the freedom to choose a religion or belief, including, inter alia, the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief. Article 18(2) bars coercion that would impair the right to have or adopt a religion or belief, including the use or threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Policies or practices having the same intention or effect, such as, for example, those restricting access to education, medical care, employment or the rights guaranteed by Article 25 and other provisions of the Covenant are similarly inconsistent with Article 18(2). The same protection is enjoyed by holders of all beliefs of a non-religious nature.*
- 6.** *The Committee is of the view that Article 18(4) permits public school instruction in subjects such as the general history of religions and ethics if it is given in a neutral and objective way. The liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own convictions, set forth in Article 18(4), is related to the guarantees of the freedom to teach a religion or belief stated in Article 18(1). The Committee notes that public education that includes instruction in a particular religion or belief is inconsistent with Article 18(4) unless provision is made for non-*

discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.

- 7.** *According to Article 20, no manifestation of religions or beliefs may amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. As stated by the Committee in its General Comment No. 11(19), States Parties are under the obligation to enact laws to prohibit such acts.*
- 8.** *Article 18(3) permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. The freedom from coercion to have or to adopt a religion or belief and the liberty of the parents and guardians to ensure religious and moral education cannot be restricted. In interpreting the scope of permissible limitation clauses, States Parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in Articles 2, 3 and 26. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in Article 18. The Committee observes that Article 18, paragraph 3, is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The Committee observes that the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint. States Parties' reports should provide information on the full scope and effects of limitations under Article 18(3), both as a matter of law and of their application in specific circumstances.*
- 9.**

The fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise the majority of the population shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including Articles 18 and 27, nor in any discrimination against adherents of other religions or non-believers. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under Article 26. The measures contemplated by Article 20, paragraph 2, of the Covenant constitute important safeguards against infringements of the rights of religious minorities and of other religious groups to exercise the rights guaranteed by Articles 18 and 27, and against acts of violence or persecution directed toward those groups. The Committee wishes to be informed of measures taken by States Parties concerned to protect the practices of all religions or beliefs from infringement and to protect their followers from discrimination. Similarly, information on respect for the rights of religious minorities under Article 27 is necessary for the Committee to assess the extent to which the freedom of thought, conscience, religion and belief has been implemented by States Parties. States Parties concerned should also include in their reports information relating to practices considered by their laws and jurisprudence to be punishable as blasphemous.

- 10.** *If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of the ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under Article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it.*
- 11.** *Many individuals have claimed the right to refuse to perform military service (conscientious objection) on the basis that such a right derives from their freedoms under Article 18. In response to such claims, a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and have replaced it with alternative national service. The Covenant does not explicitly*

refer to a right of conscientious objection, but the Committee believes that such a right can be derived from Article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. When this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service. The Committee invites States Parties to report on the conditions under which persons can be exempted from military service on the basis of their rights under Article 18 and on the nature and length of alternative national service.

Commentary

As the Committee has pointed out, Article 18, which protects the freedom of thought, religion and conscience, has two aspects: it protects the freedom to have a religion, and it protects the freedom to manifest such a religion or belief either in private or in public, individually or in community with others, and to observe or not observe certain practices. The first right is an absolute right that cannot be restricted in any way, not even during a state of emergency. The right to manifest a religion or a belief, on the other hand, may be subject to certain limitations, provided that such limitations are contained in a law and that they are necessary for certain purposes.

Reports should therefore provide sufficient information to allow the Committee to consider how the absolute character of the first right is safeguarded and whether any restrictions that may be imposed on the second right are compatible with paragraph 3 of Article 18. To that effect, the Committee seeks detailed information about the existence of different religions in the reporting State, the use of places of worship, the publication and circulation of religious material and the measures taken to prevent and to punish offences against the free exercise of one's religion. In cases where a State religion exists, reports should show how a person's freedom not to have a religion is guaranteed and how the application of the principle of non-discrimination on religious grounds is ensured. Moreover, reports should describe any procedures that have to be followed for the legal recognition, authorization or toleration of various religious denominations in the country. Information should be provided on the practical application of such procedures with special reference to any possible refusals of recognition that might have occurred during the reporting period and in particular when such refusals were due to the incompatibility of a religion with another dominant religion in the reporting State. The role and powers of State authorities in deciding about such incompatibilities need to be explained. In cases where a dominant religion exists, re-

ports should outline the main status differences between the dominant religion and other denominations, in particular with regard to the need for equal treatment of all of them.

Paragraph 2 of Article 18 states that no coercion may be used that would impair a person's freedom to have a religion or belief. Reports should therefore describe any form of control or supervision that may be imposed upon persons having a certain religion or belief, and any privilege that may be granted to individuals belonging to one religious group but denied to others.

The status and position of conscientious objectors should also be discussed under this article, and statistical information should be provided regarding the number of persons that applied for the status of, and the number of those that were actually recognized as, conscientious objectors; the reasons given to justify conscientious objection and the rights and duties of conscientious objectors as compared to those persons who serve in the regular military service.

A specific provision in Article 18(4) concerns the right of parents to ensure the religious education of their children in conformity with their own convictions. Consequently, specific information is required on the legal regulation and the practice of religious education, in particular where religion is taught in public schools. In this regard, special attention needs to be paid as to how the above-mentioned rights of parents are safeguarded.

Note that Article 5(d)(vii) of ICERD and Article 14 of CRC protect the right to freedom of thought, conscience and opinion for the purposes of those Conventions.

ARTICLE 19

Text of Article 19

- 1.** *Everyone shall have the right to hold opinions without interference.*
- 2.** *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
- 3.** *The exercise of the rights provided in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:*
 - (a)** *For respect of the rights or reputation of others;*

- (b) *For protection of national security or of public order (ordre public), or of public health or morals.*

Text of General Comment 10(19)

1. *Paragraph 1 requires protection of the “right to hold opinions without interference”. This is a right to which the Covenant permits no exception or restriction. The Committee would welcome information from States Parties concerning paragraph 1.*
2. *Paragraph 2 requires protection of the right to freedom of expression, which includes not only freedom to “impart information and ideas of all kinds”, but also freedom to “seek” and “receive” them “regardless of frontiers” and whatever medium, “either orally, in writing or in print, in the form of art, or through any other media of his choice”. Not all States Parties have provided information concerning all aspects of the freedom of expression. For instance, little attention has so far been given to the fact that, because of the development of modern mass media, effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression in a way that is not provided for in paragraph 3.*
3. *Many State reports confine themselves to mentioning that freedom of expression is guaranteed under the Constitution or the law. However, in order to know the precise regime of freedom of expression in law and in practice, the Committee needs in addition pertinent information about the rules which either define the scope of freedom of expression or which set forth certain restrictions, as well as any other conditions which in practice affect the exercise of this right. It is the interplay between the principle of freedom of expression and such limitations and restrictions which determines the actual scope of the individual’s right.*
4. *Paragraph 3 expressly stresses that the exercise of the right to freedom of expression carries with it special duties and responsibilities and for this reason certain restrictions on the right are permitted which may relate either to the interests of other persons or to those of the community as a whole. However, when a State Party imposes certain restrictions on the exercise of the freedom of expression, these may not put in jeopardy the right itself. Paragraph 3 lays down conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be “provided by law”; they may only be*

imposed for one of the purposes set out in the subparagraphs (a) and (b) of paragraph 3; and they must be justified as being "necessary" for that State Party for one of those purposes.

Commentary

Like Article 18 on the freedom of religion and belief, Article 19 has two aspects: on the one hand, it guarantees a right with an absolute nature, namely the right to hold opinions without interference, and on the other hand, it protects the right to freedom of expression, which may be subject to certain restrictions under the law. Such a law, however, must abide by the conditions set forth in the same Article 19.

As far as the right to hold opinions is concerned, reports should indicate the measures adopted by the State Party to ensure that no interference takes place, and that in particular the holding of political opinions is not used by public authorities as a reason to discriminate against a person, or even as a ground to restrict a person's freedom.

The Committee has pointed out that the freedom of expression has a broad scope that includes all aspects relating to the circulation of information in any form and through any media. A comprehensive State Party report should therefore address all these issues and should provide complete information not only on the controls exercised with regard to the freedom of expression in general and on any cases of persons arrested or detained because of the expression of political views, but also on the legal regime that regulates the ownership and licensing of the press and the broadcasting media. States Parties should include the reasons for granting or for refusing a media license, and they should discuss any controls imposed upon the press and other mass media and on the activities of journalists by public authorities. Reports should provide information on the conditions under which a journalist can exercise his or her profession, and on any measures taken to ensure that all political opinions are reflected in the media.

The access of foreign journalists to information and the circulation of foreign print media within the country deserve attention in reports. Detailed information should be provided on the number of foreign newspapers and periodicals that are imported and distributed in the reporting State, and the reasons why their circulation may be restricted or prohibited.

It is of utmost importance for the Committee to receive detailed information regarding each of the issues mentioned above because of the special duties and responsibilities connected with the exercise of one's freedom of expression, and because of the restrictions to which its exercise may be subjected according to paragraph 3 of Article 19.

The right to freedom of opinion and expression is protected by Article 5(d)(viii) of ICERD and Articles 12 and 13 of CRC for the purposes of those Conventions. See also Article 4(a) and (c) of ICERD, and Article 20 of the Covenant, below.

ARTICLE 20

Text of Article 20

1. *Any propaganda of war shall be prohibited by law.*
2. *Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.*

Text of General Comment 11(19)

1. *Not all reports submitted by States Parties have provided sufficient information as to the implementation of Article 20 of the Covenant. In view of the nature of Article 20, States Parties are obliged to adopt the necessary legislative measures prohibiting the actions referred to therein. However, the reports have shown that in some States such actions are neither prohibited by law nor are appropriate efforts intended or made to prohibit them. Furthermore, many reports failed to give sufficient information concerning the relevant national legislation and practice.*
2. *Article 20 of the Covenant states that any propaganda of war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. In the opinion of the Committee, these required prohibitions are fully compatible with the right to freedom of expression as contained in Article 19, the exercise of which carries with it special duties and responsibilities. The prohibition under paragraph 1 extends to all forms of propaganda threatening or resulting in an act of aggression or breach of the peace contrary to the Charter of the United Nations, while paragraph 2 is directed against any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, whether such propaganda or advocacy has aims which are internal or external to the State concerned. The provisions of Article 20, paragraph 1, do not prohibit advocacy of the sovereign right of self-defence or the right of peoples to self-determination and*

independence in accordance with the Charter of the United Nations. For Article 20 to become fully effective there ought to be a law making it clear that propaganda and advocacy as described therein are contrary to public policy and providing for an appropriate sanction in case of violation. The Committee, therefore, believes that States Parties which have not yet done so should take the measures necessary to fulfil the obligations contained in Article 20, and should themselves refrain from any such propaganda or advocacy.

ARTICLE 21

Text of Article 21

The right of peaceful assembly shall be recognized. No restriction may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Commentary

Article 21 recognizes the right to assemble peacefully in private or in public, for political or for other purposes.

States Parties' reports should describe how the law regulates this right and the protection persons enjoy who hold assemblies or who meet to demonstrate or to discuss in public their views or to manifest any opinion. The right to peaceful assembly creates a positive obligation for the State to ensure the exercise of the right, and a negative obligation for public authorities not to interfere to restrict the right beyond the limits set by the Covenant. In this regard, Article 21 allows restrictions only if they are established by law. The law itself must not go beyond the need to protect certain public interests and must be compatible with a democratic society. On the basis of these requirements, reports should provide information about any cases where the holding of a peaceful assembly was prohibited. Reports should discuss whether it is necessary to obtain the authorization of public authorities to hold an assembly, the procedures to be followed and the conditions to be fulfilled to obtain such an authorization, and the restrictions placed upon people taking part in this assembly. As usual, the information should cover both the law and the practice, and should describe the instructions given to public officials, in particular police officials, and their attitudes toward public assemblies. In this context, reports should contain statistics regarding any reg-

istered allegations that violence was used against peaceful and unarmed demonstrators. Reports should specify whether such allegations were investigated, and the eventual results of such investigations.

Since public demonstrations may constitute a means of expressing political or other opinions, the right protected in Article 21 is also linked to the right of freedom of expression protected in Article 19. Therefore, reports should carefully explain any existing connections in the law and in practice between the restrictions that may be placed on these two rights.

ARTICLE 22

Text of Article 22

- 1.** *Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.*
- 2.** *No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedom of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.*
- 3.** *Nothing in this article shall authorize States Parties to the international Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice the guarantees provided for in that Convention.*

Commentary

Article 22 guarantees a person's freedom to form associations with other persons for political or for other purposes. This article thus spells out a right which to a certain degree is complementary to the right of peaceful assembly recognized in Article 21. As a consequence, the restrictions that may be placed upon the exercise of the right to freedom of association must abide by the same requirements as the restrictions that may be placed upon the exercise of the right of peaceful assembly, namely they must be prescribed by the law and they must be necessary in a democratic society for the protection of public interests as indicated in the Covenant.

States Parties' reports should therefore describe the procedures that regulate the formation of associations, where and in what instances an authorization or a registration have to be obtained, and the controls exercised by public authorities over the lives and activities of associations.

The right to freedom of association is of particular importance and must be protected particularly with regard to the free formation of political associations, and especially of political parties. In this context, reports should provide full information about the relevant laws and the practice regarding the establishment of political parties. Reports should indicate whether more than one political party takes part in the political life of the reporting State, what may be the reasons for prohibiting the establishment of a particular political party, or of political parties in general. Reports should further indicate whether there have been cases of appeals against rejected applications, and the eventual results of such appeals. The Committee also seeks information on any controls imposed upon the activities of political parties.

Under the Covenant, States Parties undertake the general obligation to ensure the protection of human rights. It is therefore of particular interest to the Committee to obtain information with regard to the right to form associations and groups working for the promotion of human rights. The establishment and the activities of such groups or associations should not only be tolerated by the public authorities, but they should be encouraged. Reports on the implementation of Article 22 should describe the measures taken to ensure that such groups can act freely and play a role in the defence of human rights.

A special provision of Article 22 guarantees a person's right to form and join trade unions for the protection of his or her interests. Reports should specifically address this issue and should describe the laws and the practice that apply to trade unions in the reporting State. Reports should describe the organizational structure of trade unions, the size of their membership also broken down by industry sector, and the percentage of the total work force belonging to trade unions. The Committee seeks information on any legislative restrictions concerning trade union rights both in general and with regard to specific categories of

workers. Reports should indicate whether trade union rights include the right to strike and the regulation of this right, and any practical measures adopted to ensure the free exercise of trade union rights. Reporting States must keep in mind that according to Article 22(3) neither the law nor the practice may prejudice the guarantees contained in the ILO Convention of 1948. Reports should thus show how domestic legislation conforms with this Convention.

The rights to peaceful assembly and association (Articles 21 and 22 of the Covenant) are protected by Article 5(d)(ix) of ICERD and Article 15 of CRC for the purposes of those Conventions. See also Article 4(b) of ICERD. With regard to trade union rights, reporting officers should bear in mind that Article 8 of ICESCR, and Article 5(e)(ii) of ICERD may be of interest when reporting under Article 22 of the Covenant.

ARTICLE 23

Text of Article 23

- 1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*
- 2. The right of men and women of marriageable age to marry and to found a family shall be recognized.*
- 3. No marriage shall be entered into without the free and full consent of the intending spouses.*
- 4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.*

Text of General Comment 19(39), paragraphs 4 to 6

- 4. Article 23, paragraph 2, of the Covenant reaffirms the right of men and women of marriageable age to marry and to found a family. Paragraph 3 of the same article provides that no marriage shall be entered into without the free and full consent of the intending spouses. States Parties' reports should indicate whether there are restrictions or impediments to the exercise of the right to marry based on special factors such as degree of kinship or mental incapacity. The Covenant does not establish a specific marriageable age either for men or for*

women, but that age should be such as to enable each of the intending spouses to give his or her free and full personal consent in a form and under conditions prescribed by law. In this connection, the Committee wishes to note that such legal provisions must be compatible with the full exercise of the other rights guaranteed by the Covenant; thus, for instance, the right to freedom of thought, conscience and religion implies that the legislation of each State should provide for the possibility of both religious and civil marriages. In the Committee's view, however, for a State to require that a marriage, which is celebrated in accordance with religious rites, be conducted, affirmed or registered also under civil law is not incompatible with the Covenant. States are also requested to include information on this subject in their reports.

5. *The right to found a family implies, in principle, the possibility to procreate and live together. When States Parties adopt family planning policies, they should be compatible with the provisions of the Covenant and should, in particular, not be discriminatory or compulsory. Similarly, the possibility to live together implies the adoption of appropriate measures, both at the internal level and as the case may be, in cooperation with other States, to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons.*
6. *Article 23, paragraph 4, of the Covenant provides that States Parties shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and dissolution.*

With regard to equality as to marriage, the Committee wishes to note in particular that no sex-based discrimination should occur in respect of the acquisition or loss of nationality by reason of marriage. Likewise, the right of each spouse to retain the use of his or her original family name or to participate on an equal basis in the choice of a new family name should be safeguarded.

During marriage, the spouses should have equal rights and responsibilities in the family. This equality extends to all matters arising from their relationship, such as choice of residence, running of the household, education of the children and administration of assets. Such equality continues to be applicable to arrangements regarding legal separation or dissolution of the marriage.

Thus, any discriminatory treatment in regard to the grounds and procedures for separation or divorce, child custody, maintenance or alimony, visiting rights or the loss or recovery of parental authority must be prohibited, bearing in mind the paramount interest of the children in this connection. States Parties should, in particular, include information in their reports concerning the provision made for the necessary protection of any children at the dissolution of a marriage or on the separation of the spouses.

Commentary

As indicated in the General Comment adopted by the Committee, Article 23 is aimed at the protection of the family which is considered to be the natural fundamental group unit of society. Paragraph 1 contains neither a definition of the term "family", nor indicates what protective measures fall within the responsibility of the State and of society. Reports should therefore provide basic information on how the concept of family is understood or defined in the society and, as the case may be, in the law of the reporting State. Reports should describe how the society and the State ensure the effective protection of the family. They should further state whether the law recognizes and protects a family formed by a permanent cohabitation of partners without formal marriage.

Article 23, paragraph 2-4 protects certain rights of members, or future members, of a family based on marriage. In this respect, Article 23 recognizes the right to marry and establishes the principle that a valid marriage must be based upon the free consent of the spouses. Reports should give the marriageable age of men and of women, and the requirements and procedures for entering into a valid marriage, and any restrictions or impediments affecting the exercise of the right to marry. Article 23 also establishes the principle of equality of rights and responsibilities of spouses with regard to marriage, during marriage and at its dissolution. Accordingly, reports should provide information about the non-discriminatory treatment of men and women with regard to marriage itself, and with regard to any consequences resulting therefrom, such as the nationality of spouses, and the rights and duties between the spouses and towards their children. Reports should also address the treatment of requests for divorce, the granting of a divorce, child custody and visiting rights, in particular with regard to non-discrimination between men and women. Finally, and in accordance with paragraph 4, last sentence, reports should indicate how the necessary protection of any children born in or out of wedlock is ensured in case of dissolution of marriage, and with regard to the paramount interest of the children.

ARTICLE 24

Text of Article 24

1. *Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.*
2. *Every child shall be registered immediately after birth and shall have a name.*
3. *Every child has the right to acquire a nationality.*

Text of General Comment 17(35), paragraphs 4 to 8

4. *The right to special measures of protection belongs to every child because of his status as a minor. Nevertheless, the Covenant does not indicate the age at which he attains his majority. This is to be determined by each State Party in the light of the relevant social and cultural conditions. In this respect, States should indicate in their reports the age at which the child attains his majority in civil matters and assumes criminal responsibility. States should also indicate the age at which a child is legally entitled to work and the age at which he is treated as an adult under labour law. States should further indicate the age at which a child is considered adult for the purposes of Article 10, paragraphs 2 and 3. However, the Committee notes that the age for the above purposes should not be set unreasonably low and that in any case a State Party cannot absolve itself from its obligations under the Covenant regarding persons under the age of 18, notwithstanding that they have reached the age of majority under domestic law.*
5. *The Covenant requires that children should be protected against discrimination on any grounds such as race, colour, sex, language, religion, national or social origin, property or birth. In this connection, the Committee notes that, whereas non-discrimination in the enjoyment of rights provided for in the Covenant also stems, in the case of children, from Article 2 and their equality before the law from Article 26, the non-discrimination clause contained in Article 24 relates specifically to the measures of protection referred to in that provision. Reports by States Parties should indicate how legislation and practice ensure that measures of protection are aimed at removing all discrimination in every field, including inheritance, particularly as between*

children who are nationals and children who are aliens or as between legitimate children and children born out of wedlock.

- 6.** *Responsibility for guaranteeing children the necessary protection lies with the family, society and the State. Although the Covenant does not indicate how such responsibility is to be apportioned, it is primarily incumbent on the family, which is interpreted broadly to include all persons composing it in the society of the State Party concerned, and particularly on the parents, to create conditions to promote the harmonious development of the child's personality and his enjoyment of the rights recognized in the Covenant. However, since it is quite common for the father and mother to be gainfully employed outside the home, reports by States Parties should indicate how society, social institutions and the State are discharging their responsibility to assist the family in ensuring the protection of the child. Moreover, in cases where the parents and the family seriously fail in their duties, ill-treat or neglect the child, the State should intervene to restrict parental authority and the child may be separated from his family when circumstances so require. If the marriage is dissolved, steps should be taken, keeping in view the paramount interest of the children, to give them necessary protection and, so far as is possible, to guarantee personal relations with both parents. The Committee considers it useful that reports by States Parties should provide information on the special measures of protection adopted to protect children who are abandoned or deprived of their family environment in order to enable them to develop in conditions that most closely resemble those characterizing the family environment.*
- 7.** *Under Article 24, paragraph 2, every child has the right to be registered immediately after birth and to have a name. In the Committee's opinion, this provision should be interpreted as being closely linked to the provision concerning the right to special measures of protection and it is designed to promote recognition of the child's legal personality. Providing for the right to have a name is of special importance in the case of children born out of wedlock. The main purpose of the obligation to register children after birth is to reduce the danger of abduction, sale of or traffic in children, or of other types of treatment that are incompatible with the enjoyment of the rights provided for in the Covenant. Reports by States Parties should indicate in detail the measures that ensure immediate registration of children born in their territory.*

8. *Special attention should also be paid, in the context of protection to be granted to children, to the right of every child to acquire a nationality, as provided for in Article 24, paragraph 3. While the purpose of this provision is to prevent a child from being afforded less protection by society and the State because he is stateless, it does not necessary make it an obligation for States to give their nationality to every child born in their territory. However, States are required to adopt every appropriate measure, both internally and in co-operation with other States, to ensure that every child has a nationality when he is born. In this connection, no discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both the parents. The measures adopted to ensure that children have a nationality should always be referred to in reports by States Parties.*

Commentary

Article 24 sets forth a specific right of children to special measures of protection as are required by their status as minors. It has to be pointed out that this right is an additional one, and that, as individuals, children benefit from all the civil rights enunciated in the Covenant. When they report on Article 24, States should therefore indicate the special measures that they have taken in addition to those that are normally adopted to ensure to all persons the rights provided in the Covenant. It has also to be stressed that such measures, although intended to ensure the civil right, may also be of an economic, social and cultural nature. The accent put by Article 24 on the responsibility of the family, society and the State must also be taken into account in describing the measures adopted. The General Comment specifies how reports should address these questions and deal with situations that may arise within the context of the above-mentioned responsibilities.

With regard to Articles 23 and 24 of the Covenant, reporting officers should be aware of related Articles 10 of ICESCR, 5(d)(iv) of ICERD, 16, 12, and 4(2) of CEDAW, and Articles 5, 16, 18 to 20, 22, 34 and 36 of CRC, dealing with the rights to marry and to found a family, and the protection of the family, mother and children. The right (of every child) to a nationality under Article 24(3) of the Covenant is also contained in related Articles 5(d)(iii) of ICERD, 9 of CEDAW and 7 and 8 of CRC.

ARTICLE 25

Text of Article 25

Every citizen shall have the right and the opportunity, without any of the restrictions mentioned in Article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;*
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;*
- (c) To have access, on general terms of equality, to public service in his country.*

Text of General Comment 25(57), paragraphs 2 to 24

- 2.** *The rights under Article 25 are related to, but distinct from, the right of peoples to self determination. By virtue of the rights covered by Article 1(1), peoples have the right to freely determine their political status and to enjoy the right to choose the form of their constitution or government. Article 25 deals with the right of individuals to participate in those processes which constitute the conduct of public affairs. Those rights, as individual rights, can give rise to claims under the first Optional Protocol.*
- 3.** *In contrast with other rights and freedoms recognized by the Covenant (which are ensured to all individuals within the territory and subject to the jurisdiction of the State) Article 25 protects the rights of "every citizen". State reports should outline the legal provisions which define citizenship in the context of the rights protected by Article 25. No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with Article 25. State reports should indicate whether any groups, such as permanent residents, enjoy these rights on a limited basis, for example, by having the right to vote in local elections or to hold particular public service positions.*
- 4.** *Any conditions which apply to the exercise of the rights protected by Article 25 should be based on objective and reasonable criteria. For example, it may be reasonable to require a higher age for election or*

appointment to particular offices than for exercising the right to vote, which should be available to every adult citizen. The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable. For example, established mental incapacity may be a ground for denying a person the right to vote or to hold office.

- 5.** *The conduct of public affairs, referred to in paragraph (a), is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by Article 25 should be established by the constitution and other laws.*
- 6.** *Citizens participate directly in the conduct of public affairs when they exercise power as members of legislative bodies or by holding executive office. This right of direct participation is supported by paragraph (b). Citizens also participate directly in the conduct of public affairs when they choose or change their constitution or decide public issues through a referendum or other electoral process conducted in accordance with paragraph (b). Citizens may participate directly by taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community and in bodies established to represent citizens in consultation with government. Where a mode of direct participation by citizens is established, no distinction should be made between citizens as regards their participation on the grounds mentioned in Article 2, paragraph 1, and no unreasonable restrictions should be imposed.*
- 7.** *Where citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in Article 25 that those representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power. It is also implicit that the representatives exercise only those powers which are allocated to them in accordance with constitutional provisions. Participation through freely chosen representatives is exercised through voting processes which must be established by laws which are in accordance with paragraph (b).*

- 8.** *Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association.*
- 9.** *Paragraph (b) of Article 25 sets out specific provisions dealing with the right of citizens to take part in the conduct of public affairs as voters or as candidates for election. Genuine periodic elections in accordance with paragraph (b) are essential to ensure the accountability of representatives for the exercise of the legislative or executive powers vested in them. Such elections must be held at intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors. The rights and obligations provided for in paragraph (b) should be guaranteed by law.*
- 10.** *The right to vote at elections and referenda must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements. Party membership should not be a condition of eligibility to vote, nor a ground for disqualification.*
- 11.** *States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed. If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote. Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced. Voter education and registration campaigns are necessary to ensure the effective exercise of Article 25 rights by an informed community.*
- 12.** *Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected. Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty or impediments to freedom of movements which prevent persons entitled to vote from exercising their rights effectively. Information and materials about*

voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice. States Parties should indicate in their reports the manner in which the difficulties highlighted in this paragraph are dealt with.

- 13.** *State reports should describe the rules governing the right to vote, and the application of those rules in the period covered by the report. State reports should also describe factors which impede citizens from exercising the right to vote and the positive measures which have been adopted to overcome these factors.*
- 14.** *In their reports, States Parties should indicate and explain the legislative provisions which would deprive citizens of their right to vote. The grounds for such deprivation should be objective and reasonable. If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence. Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote.*
- 15.** *The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person's candidacy. States Parties should indicate and explain the legislative provisions which exclude any group or category of persons from elective office. The grounds for such exclusion should be reasonable and objective.*

- 16.** *Conditions relating to nomination dates, fees or deposits should be reasonable and not discriminatory. If there are reasonable grounds for regarding certain elective offices as incompatible with tenure of specific positions, (e.g., the judiciary, high-ranking military office, public service), measures to avoid any conflicts of interest should not unduly limit the rights protected by paragraph (b). The grounds for the removal of elected office-holders should be established by laws based on objective and reasonable criteria and incorporating fair procedures.*
- 17.** *The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties. If a candidate is required to have a minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy. Without prejudice to paragraph (1) of Article 5 of the Covenant, political opinion may not be used as a ground to deprive any person of the right to stand for election.*
- 18.** *State reports should describe the legal provisions which establish the conditions for holding elective public office, and any limitations and qualifications which apply to particular offices. Reports should describe conditions for nomination, e.g. age limits, and any other qualifications or restrictions. State reports should indicate whether there are restrictions which preclude persons in public-service positions (including positions in the police or armed services) from being elected to particular public offices. The legal grounds and procedures for the removal of elected office holders should be described.*
- 19.** *In conformity with paragraph (b), elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights. Persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind. Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party. The results of genuine elections should be respected and implemented.*

- 20.** *An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant. States should take measures to guarantee the requirement of the secrecy of the vote during elections including absentee voting, where such a system exists. This implies that voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted, and from any unlawful or arbitrary interference with the voting process. Waiver of these rights is incompatible with Article 25 of the Covenant. The security of ballot boxes must be guaranteed and votes should be counted in the presence of the candidates or their agents. There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes. Assistance provided to the disabled, blind or illiterate should be independent. Electors should be fully informed of these guarantees.*
- 21.** *Although the Covenant does not impose any particular electoral system, any system operating in a State Party must be compatible with the rights protected by Article 25 and must guarantee and give effect to the free expression of the will of the electors. The principle of one person, one vote must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.*
- 22.** *State reports should indicate what measures they have adopted to guarantee genuine, free and periodic elections and how their electoral system or systems guarantee and give effect to the free expression of the will of the electors. Reports should describe the electoral system and explain how the different political views in the community are represented in elected bodies. Reports should also describe the laws and procedures which ensure that the right to vote can in fact be freely exercised by all citizens and indicate how the secrecy, security and validity of the voting process are guaranteed by law. The practical implementation of these guarantees in the period covered by the report should be explained.*
- 23.**

Subparagraph (c) of Article 25 deals with the right and the opportunity of citizens to have access on general terms of equality to public service positions. To ensure access on general terms of equality, the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable. Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens. Basing access to public service on equal opportunity and general principles of merit, and providing secure tenure, ensure that persons holding public service positions are free from political interference or pressures. It is of particular importance to ensure that persons do not suffer discrimination in the exercise of their rights under Article 25, subparagraph (c), on any of the grounds set out in Article 2, paragraph 1.

- 24.** *States reports should describe the conditions for access to public service positions, any restrictions which apply and the processes for appointment, promotion, suspension and dismissal on removal from office as well as the judicial or other review mechanisms which apply to these processes. Reports should also indicate how the requirement for equal access is met, and whether affirmative measures have been introduced and, if so, to what extent.*

Commentary

Article 25 concerns the political rights of citizens and establishes the principle that such rights must be guaranteed without unreasonable restrictions, as well as on a non-discriminatory basis on the grounds set forth in Article 2.

Reports should indicate any regulations and restrictions that apply to exercise of political rights of both citizens in general and with regard to certain categories of persons. Reports should describe the legislation and the practice regarding the access to public office, and should make specific reference to the electoral system in the reporting State. Report must show how the requirements contained in Article 25(a) and (b) are reflected in the rules and regulations that govern the electoral process, in particular also with regard to the need to observe the principle of non-discrimination and to ensure every citizen's equal opportunity to take part in the conduct of public affairs.

Furthermore, Article 25(c) requires the equal access to public service; reports should provide information on the rules and regulations governing such equal access.

Finally, although the rights contained in Article 25 must be guaranteed only to citizens, a description of experiences in applying provisions regarding the right of foreign nationals to

take part in the conduct of public affairs, especially through general or local elections, and to hold public office in central or local governments bodies, should also be included in the report.

With regard to political rights and access to public service, information assembled for Articles 5(c) of ICERD, and 7 and 8 of CEDAW may be of some usefulness also with regard to this Covenant.

ARTICLE 26

Text of Article 26

All persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Text of General Comment 18(37), paragraphs 1 and 7 to 13

1. *Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitutes a basic and general principle relating to the protection of human rights. Thus Article 2, paragraph 1, of the International Covenant on Civil and Political Rights obligates each State Party to respect and to ensure to all persons within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or status. Article 26 not only entitles all persons to equality before the law as well as equal protection of the law but also prohibit any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

...

7. *While other conventions deal only with cases of discrimination on specific grounds, the Committee believes that the term "discrimina-*

tion" as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.

- 8.** *The enjoyment of rights and freedoms on an equal footing, however, does not mean identical treatment in every instance. In this connection, the provisions of the Covenant are explicit. For example, Article 6, paragraph 5, prohibits the death sentence from being imposed on persons below 18 years of age. The same paragraph prohibits that sentence from being carried out on pregnant women. Similarly, Article 10, paragraph 3, requires the segregation of juvenile offenders from adults. Furthermore, Article 25 guarantees certain political rights, differentiating on grounds of citizenship.*
- 9.** *Reports of many States Parties contain information regarding legislative as well as administrative measures and court decisions which relate to protection against discrimination in law, but they very often lack information which would reveal discrimination in fact. When reporting on Article 2(1), 3 and 26 of the Covenant, States Parties usually cite provisions of their constitution or equal opportunity laws with respect to equality of persons. While such information is of course useful, the Committee wishes to know if there remain any problems of discrimination in fact, which may be practised either by public authorities, by the community, or by private persons or bodies. The Committee wishes to be informed about the legal provisions and administrative measures directed at diminishing or eliminating such discrimination.*
- 10.** *The Committee also wishes to point out that the principle of equality sometimes requires States Parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct*

discrimination in fact, it is a case of legitimate differentiation under the Covenant.

- 11.** *Both Article 2, paragraph 1, and Article 26 enumerate grounds of discrimination such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Committee has observed that in a number of constitutions and laws not all the grounds on which discrimination is prohibited, as cited in Article 2, paragraph 1, are enumerated. The Committee would therefore like to receive information from States Parties as to the significance of such omissions.*
- 12.** *While Article 2 limits the scope of the rights to be protected against discrimination to those provided for in the Covenant, Article 26 does not specify such limitations. That is to say, Article 26 provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds. In the view of the Committee, Article 26 does not merely duplicate the guarantee already provided for in Article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 therefore concerns the obligations imposed on States Parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State Party, it must comply with the requirement of Article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in Article 26 is not limited to those rights which are provided for in the Covenant.*
- 13.** *Finally, the Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.*

Commentary

General comment 18(37) adopted by the Committee clearly sets out the scope of Article 26 and of the principle of non-discrimination contained therein. However, it should be pointed out that this General Comment refers not only to Article 26, but it also extends in general to the non-discrimination clauses contained in various other articles of the Covenant. Therefore, General Comment 18(37) also needs to be taken into account when reporting on these other articles of the Covenant.

The most important point for States Parties to be aware of with regard to the meaning of Article 26 is that this article provides for an autonomous right that may also apply in areas not directly addressed in the Covenant. The impact of the right contained in Article 26 may extend also to any legislative measure in domestic law that provides for an individual right (see paragraph 12 of the General Comment). Reports should therefore also describe the steps taken to revise existing legislation and to enact new legislation in order to ensure their non-discriminatory content.

See also Articles 2(1) and 3 of this Covenant.

ARTICLE 27

Text of Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Text of General Comment No. 23(50)

- 1. Article 27 of the Covenant provides that, in those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language. The Committee observes that this article establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy under the Covenant.*

2. *In some communications submitted to the Committee under the Optional Protocol, the right protected under Article 27 has been confused with the right of peoples to self-determination proclaimed in Article 1 of the Covenant. Further, in reports submitted by States Parties under Article 40 of the Covenant, the obligations placed upon States Parties under Article 27 have sometimes been confused with their duty under Article 2, paragraph 1, to ensure the enjoyment of the rights guaranteed under the Covenant without discrimination and also with equality before the law and equal protection of the law under Article 26.*
- 3.1 *The Covenant draws a distinction between the right to self-determination and the rights protected under Article 27. The former is expressed to be a right belonging to peoples and is dealt with in a separate part (part I) of the Covenant. Self-determination is not a right cognizable under the Optional Protocol. Article 27, on the other hand, relates to rights conferred on individuals and such and is included, like the articles relating to other personal rights conferred on individuals, in part III of the Covenant and is cognizable under the Optional Protocol.*
- 3.2 *The enjoyment of the rights to which Article 27 relates does not prejudice the sovereignty and territorial integrity of a State Party. At the same time, one or other aspect of the rights of individuals protected under that article for example, to enjoy a particular culture – may consist in a way of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities constituting a minority.*
4. *The Covenant also distinguishes the rights protected under Article 27 from the guarantees under Article 2, paragraphs 1, and Article 26. The entitlement, under Article 2, paragraph 1, to enjoy the rights under the Covenant without discrimination applies to all individuals within the territory or under the jurisdiction of the State whether or not those persons belong to a minority. In addition, there is a distinct right provided under Article 26 of equality before the law, equal protection of the law, and non-discrimination in respect of rights granted and obligations imposed by the States. It governs the exercise of all rights, whether protected under the Covenant or not, which the state party confers by law on individuals within its territory or under its jurisdiction, irrespective of whether they belong to the minorities specified in Article 27 or not. Some States Parties who claim that they do*

not discriminate on grounds of ethnicity, language or religion wrongly contend, on that basis alone, that they have no minorities.

- 5.1** *The terms used in Article 27 indicate that the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language. Those terms also indicate that the individuals designed to be protected need not be citizens of the State Party. In this regard, the obligations deriving from Article 2, paragraph 1, are also relevant, since a State Party is required under that article to ensure that the rights protected under the Covenant are available to all individuals within its territory and subject to its jurisdiction, except rights which are expressly made to apply to citizens, for example, political rights under Article 25. A State Party may not, therefore, restrict the rights under Article 27 to its citizens alone.*
- 5.2** *Article 27 confers rights on persons belonging to minorities which "exist" in a State Party. Given the nature and scope of the rights envisaged under the article, it is not relevant to determine the degree of permanence that the term "exist" connotes. Those rights simply are that individuals belonging to those minorities should not be denied the right, in community with members of their group, to enjoy their own culture, to practise their religion and speak their language. Just as they need not be nationals or citizens, they need not be permanent residents. Thus, migrant workers or even visitors in a State Party constituting such minorities are entitled not to be denied the exercise of those rights. As any other individual in the territory of the State Party, they would, also for this purpose, have the general rights, for example, to freedom of association, of assembly and of expression. The existence of an ethnic, religious or linguistic minority in a given State Party does not depend upon a decision by that State Party but requires to be established by objective criteria.*
- 5.3** *The right of individuals belonging to a linguistic minority to use their language among themselves, in private or in public, is distinct from other language rights protected under the Covenant. In particular, it should be distinguished from the general right to freedom of expression protected under Article 19. The latter right is available to all persons, irrespective of whether they belong to minorities or not. Further, the right protected under Article 27 should be distinguished from the particular right which Article 14, paragraph 3(f), of the Covenant confers on accused persons to interpretation where they cannot understand or speak the language used in the courts. Article 14, paragraph*

3(f), does not in any other circumstances confer on accused persons the right to use or speak the language of their choice in court proceedings.

- 6.1 Although Article 27 is expressed in negative terms, that article, nevertheless, does recognize the existence of a "right" and requires that it shall not be denied. Consequently, a State Party is under an obligation to ensure that the existence and the exercise of this right are protected against denial or violation. Positive measures of protection are, therefore, required not only against the acts of the State Party itself, whether through its legislative, judicial or administrative authorities, but also against the acts or other persons within the State Party.
- 6.2 Although the rights protected under Article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion. Accordingly, positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group. In this connection, it has to be observed that such positive measures must respect the provisions of Article 2, paragraph 1, and Article 26 of the Covenant, both as regards the treatment accorded different minorities and the treatment accorded the persons belonging to them and the remaining part of the population. However, as long as those measures are aimed at correcting conditions which prevent or impair the enjoyment of the rights guaranteed under Article 27, they may constitute a legitimate differentiation under the Covenant, provided that they are based on reasonable and objective criteria.
7. With regard to the exercise of the cultural rights protected under Article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.
- 8.

The Committee observes that none of the rights protected under Article 27 of the Covenant may be legitimately exercised in a manner or to an extent inconsistent with the other provisions of the Covenant.

9. *The Committee concludes that Article 27 relates to rights whose protection imposes specific obligations on States Parties. The protection of these rights is directed to ensure the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole. Accordingly, the Committee observes that these rights must be protected as such and should not be confused with other personal rights conferred on one and all under the Covenant. States Parties, therefore, have an obligation to ensure that the exercise of these rights is fully protected and they should indicate in their reports the measures they have adopted to this end.*

Commentary

Article 27 sets forth a right of persons belonging to ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practise their own religion and to use their own language. Since the obligation to protect the rights contained in Article 27 is only imposed on States in which minorities, including indigenous groups, exist, States Parties' report must indicate if any such groups live in the country, whether permanently or otherwise. In this respect it has to be kept in mind that any existing minority, though small, must be taken into account under this article. In particular it must be underlined that the existence of a constitutional or other provision establishing that all citizens should be treated equally does not in itself mean that no minorities exist in a given country. Should any such groups exist within the territory of the reporting State, information must be provided about these existing minorities, their respective number as compared to the majority population of the country, and the concrete positive measures adopted by the reporting State to preserve their ethnic, religious, cultural and linguistic identity, as well as on any measures to provide minorities with equal economic and political opportunities. Particular reference should be made to their representation in central government and in local government bodies.

Reporting States also should bear in mind that although Article 27 refers to enjoyment of rights by persons belonging to a minority "in community with other members of their group", the rights themselves are individual rights and have to be protected as such. States reports should therefore provide information not only on the measures they have taken in general to protect minorities and indigenous populations established on their territory, but also on how an individual member of a minority may effectively exercise his or her rights. Furthermore, under this article reports have to provide information on any remaining dis-

crimination in law and/or practice regarding the enjoyment by members of minorities of other rights enshrined in the Covenant, since such discrimination may indirectly lead to restrictions or violations of the rights contained in Article 27 as well. In this context, special attention must be paid to the possible existence of discrimination against individuals on the basis of their belonging to a minority or indigenous group. Of particular concern in this regard are civil rights in the areas most closely related to the rights protected by Article 27, and political rights such as the participation in the conduct of public affairs and the access to public service in the reporting State.

The rights of vulnerable groups are protected by other international instruments as well. Reporting officers should bear in mind that Articles 2(3) of ICESCR, 1(4) and 2(2) of ICERD, 4 and 14 of CEDAW, and 22, 23 and 30 of CRC may be of relevance when reporting under Article 27 of the Covenant.

B. CONSIDERATION OF REPORTS BY THE HUMAN RIGHTS COMMITTEE

(a) The Committee: its composition

It was mentioned earlier that according to Article 40 of the Covenant, reports submitted by States Parties are to be considered by the Human Rights Committee.

The Committee is a treaty body established according to Article 28 of the Covenant. It consists of eighteen members of high moral character and recognized competence in the field of human rights. Members serve in their personal capacity.

Text of Article 28

- 1.** *There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.*
- 2.** *The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.*
- 3.**

The members of the Committee shall be elected and shall serve in their personal capacity.

Text of Article 29

- 1.** *The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in Article 28 and nominated for the purpose by the States Parties to the present Covenant.*
- 2.** *Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.*
- 3.** *A person shall be eligible for renomination.*

The procedure for the election is set forth in Articles 30, 31 and 32 of the Covenant, which provide for the Secretary-General of the United Nations to prepare a list of persons nominated for the purpose and to convene a meeting of the States Parties in order to elect the members of the Committee. The Covenant further specifies that the Committee may not include more than one national of the same State, that consideration shall be given to equitable geographical distribution of membership and to representation of the different forms of civilization and of the principal legal systems. Nominees who obtain an absolute majority and the largest number of votes are elected. The members of the Committee are elected for a four year term, and if renominated may be re-elected. Elections take place every two years for one half of the Committee members.

Although nominated and elected by States Parties to the Covenant, the members of the Committee are in no way representatives or delegates of the State whose nationality they carry, but independent experts serving in their personal capacity: as such, before taking up their duties, they make a solemn declaration in an open, i.e. public, meeting that they will perform their functions impartially and conscientiously (Article 38).

The Committee elects from among its members a Chairperson, three Vice-Chairpersons, and a Rapporteur, each serving a term of two years.

(b) The Committee: its method of work

The Committee normally holds three sessions of three weeks each per year – one in New York (March/April), and two in Geneva (July and October/November). Each session is preceded by a one-week session of its working groups. (One working group deals with communications under the Optional Protocol to the Covenant; a second working group deals

with issues regarding the work of the Committee under Article 40: among others, it prepares the “list of issues” concerning the reports to be examined.) In general, meetings for the consideration of States reports are public, whereas the examination of individual communications under the Optional Protocol takes place in closed sessions. Twelve members constitute a quorum, and decisions are taken by majority vote; however, the Committee has resolved that its method of work should normally attempt to reach decisions by consensus before resorting to voting. This method has been the rule ever since the Committee’s inception.

The procedure for the consideration of States reports is laid down in Article 40(4-5) of the Covenant, in the Committee’s own rules of procedure, as well in a number of internal decisions and in the practice developed by the Committee.

Article 40(4) states that the Committee “shall study the reports submitted by States Parties” to the Covenant. The rules of procedure and the practice of the Committee established that such study, after the necessary individual examination of the report by each member of the Committee, takes place collectively in a public meeting and in presence of representative(s) of the State Party concerned. The reporting State is notified of the date of consideration of its report, so that the State can authorize its representatives to attend the scheduled meeting. The representatives should be able to answer questions put to them by the Committee and make statements on the report submitted by their State. They may also submit additional information (rule 68): It is therefore desirable that the status and experience, and preferably the number, of the attending representatives enable them to respond to questions posed and comments made by the Committee on the whole range of matters covered by the Covenant.

(c) Constructive dialogue

The purpose of a public meeting with representatives of the reporting State is to establish a constructive dialogue between the Committee and the State Party. In this connection it has to be underlined that the Committee in its consideration of States reports is neither a judicial nor even a quasi-judicial body. Its role is not to pass judgement on the implementation of the provisions of the Covenant in any given State. The main function of the Committee is to assist States Parties in fulfilling their obligations under the Covenant, to make available to them the experience the Committee has acquired in its examination of other reports and to discuss with them any issue related to the enjoyment of the rights enshrined in the Covenant in a particular country. In fulfilling this function, the Committee or its members pose questions to the representatives of the reporting State in order to obtain information or clarification on any factual or legal matter that may affect the implementation of the Covenant.

Practice has shown that in asking questions the Committee is not limited by the pronouncements made by the State Party in its report. Since the Committee is not a court and its procedure is not a judicial one, such restrictions would not be justified. In the performance of the duties entrusted to it, the Committee must be bound only by the Covenant and therefore it must be free to raise any issue falling within the scope of the Covenant itself. The Committee must also be free to use any information available to it, whether it comes from official documents of reporting State authorities, from intergovernmental organizations, or from unofficial sources such as the press or non-governmental organizations. Any information may therefore serve as the basis for a fruitful dialogue, whose purpose is to obtain from the representatives of the reporting State a complete picture of the situation in the country and to allow members of the Committee to make the comments they deem necessary for a further implementation of the rights enshrined in the Covenant at the national level.

The procedure allowing for a constructive dialogue between the Committee and the States Parties has undergone some changes since the inception of the Committee's activities in 1977. Since the rules of procedure are drafted in rather general terms, the Committee in practice has developed procedural norms that are sufficiently detailed to govern the consideration of reports.

(d) Presentation and examination of reports

The practice of the Committee has undergone a certain evolution as far as the effectiveness of the dialogue with States Parties is concerned. It used to distinguish between initial and subsequent periodic reports.

Recently, however, as from 1996, the Committee has decided to streamline the procedures to consider initial and periodic reports. In this respect, the Committee agreed that initial reports should be dealt with according to the same procedure followed for subsequent reports.

In order to ensure the effectiveness of the dialogue, the consideration of reports envisages that questions posed receive an immediate reply at the same meeting. The Committee identifies in advance the various matters which might most usefully be discussed with the representatives of the reporting State. A working group of the Committee is entrusted with the preparation of a written "list of issues", which is formally adopted by the full Committee at the beginning of each session. At the Committee's request, the list is transmitted to the Government through its Permanent Representative to the United Nations. During the meeting, the State's representatives make again an introductory statement, after which the dialogue takes place on the basis of the written list of issues.

On each chapter, the representatives provide the Committee with oral replies to the written questions on the list. Following such replies, members of the Committee may seek further clarification on the same issue, or ask additional questions. It needs to be pointed out that the list is not intended to be exhaustive and cannot be interpreted as limiting or prejudging the type and range of questions the members of the Committee will pose in the course of the dialogue. These additional questions or requests for further clarification should be answered immediately by the representatives, permitting therefore a direct dialogue with the Committee. They can, however, reserve some replies for a later time.

In concluding the consideration of the report, members of the Committee usually make general observations, summing up their previous remarks or commenting in some form on the result of the dialogue.

The consideration of subsequent periodic reports by the Committee takes into account that a first general information is already available and that the dialogue should focus on the progress made by the State in question since the submission, or consideration, of the previous report.

The Committee also agreed recently that, as far as the number of subsequent reports submitted by each State Party progresses, the list of issues prepared for transmission to States Parties would be more concise and more precise, in order to avoid repetitions and to make the dialogue more effective. In principle, the list concentrates on developments occurring after the submission of previous reports and does not include issues extensively dealt with at these occasions, except those identified as giving rise to concern. Usually, two to three meetings will be allocated for dealing with a report.

(e) The outcome of the consideration of reports

As noted above, the Committee is not a court and the result of the dialogue is not a judgement on the level of implementation of the Covenant in States Parties. That does not mean, however, that the consideration of reports does not yield any results. According to Article 40(4) of the Covenant, the Committee transmits its reports and General Comments to the States Parties. This provision has two aspects.

First, the Committee members formulate their oral comments at the end of the consideration of a report, as described above. Such comments are reflected in the summary records of the Committee, which are published as documents of the United Nations. A summary of such comments is also included in the annual report that the Committee has to submit to the General Assembly according to Article 45 of the Covenant.

More recently, as from 1992, the Committee agreed that it would adopt, at the conclusion of the consideration of each report, its own *written comments*. Such comments are contained in a document consisting of an introduction, a section on factors and difficulties affecting the implementation of the Covenant, a section on positive aspects, a section on main subjects of concern, and finally a section containing suggestions and recommendations of the Committee. The purpose of written comments addressed to each State Party is to better clarify the views of the Committee as a whole on the implementation of the Covenant in a given State and to indicate with more precision the suggestions and recommendations of the Committee as to the measures that should be adopted, thus helping the States Parties to identify such measures and to report on them on the occasion of a subsequent report. These comments are normally adopted at the end of each session and made public. They are also included in the annual report to the General Assembly.

Secondly, the Committee adopts **General Comments**, which are of a more general nature, and make no reference to information gathered during the consideration of a specific State report. They reflect the experience gained by the Committee in its consideration of a significant number of reports, and deal with specific articles of the Covenant, or particular issues raised under it. These General Comments are addressed to all States Parties.

In presenting its General Comments to States Parties, the Committee underlines the fact that they reflect the experience acquired in reviewing the situation in various countries, representing different regions of the world and different political, social and legal systems. These comments illustrate most of the problems that may arise in implementing the Covenant, although they do not allow for a fully comprehensive, world-wide review of the status of civil and political rights. As the Committee has pointed out, "The purpose of these General Comments is to make this (the Committee's) experience available for the benefit of all States Parties in order to promote their further implementation of the Covenant; to draw their attention to insufficiencies disclosed by a large number of reports; to suggest improvements in the reporting procedure and to stimulate the activities of these States and international organizations in the promotion and protection of human rights. These comments should also be of interest to other States, especially those preparing to become parties to the Covenant and thus to strengthen the cooperation of all States in the universal promotion and protection of human rights." (Document CCPR/C/21/Rev.1, p.1.)

The intention is to assist States and to draw their attention to certain aspects, without imposing limits or attributing priorities between different aspects of the implementation of the Covenant. As of 1990, the Committee has adopted twenty four General Comments: twenty-one on specific articles and three on issues covered by various provisions of the Covenant (on the position of aliens, on non-discrimination and on issues relating to reservations).

(f) Follow-up

As mentioned above, the Committee submits an annual report to the General Assembly (Article 45). The report contains a summary of the activities of the Committee, as well as all its decisions and recommendations, including in particular those expressed in General Comments and in comments adopted at the conclusion of the consideration of an individual state report. Therefore, if the Committee expresses its concern with regard to any situation occurring in a particular country, this is reflected in its annual report, which is issued as an official document of the General Assembly and receives the attention of the Third Committee of the General Assembly during its discussion of the Covenant and its implementation.

This debate on the annual report in the General Assembly can be considered in itself a follow-up to the consideration of States' reports by the Committee. However, the follow-up at the national level is even more important. Indeed, one has to keep in mind that, although the international implementation machinery provides a guarantee for the protection of the rights enshrined in international instruments, in the final analysis however, it is the duty and responsibility of States to ensure the concrete and full enjoyment and exercise of human rights within their territories and jurisdictions. Therefore, it is critically important that the result of the dialogue with the Committee receive the highest attention of the government in question and that any issue raised during the consideration of the report be put before the competent political, administrative and judicial national authorities, so that they can keep under review the measures that they are taking, or that need to be taken, to give full effect to the rights recognized in the Covenant.

It is also desirable to give the widest publicity to the process of reporting and to the States party's cooperation with the Committee. Through the media and other channels, bodies and groups outside the government and the public at large should be involved in the debate about the correct implementation of the Covenant and the full enjoyment of the rights recognized therein. Monitoring the process of implementation by the States party, supported by feedback obtained from the involvement of the public, should lead to the adoption of such measures as may be necessary to bring internal legislation and practice into line with the requirements of the Covenant.

Supplemented in this way by extensive national follow-up activities, the consideration of a report will prove to be a truly fruitful exercise and allow the State Party to come back to the Committee with an important new periodic report, covering developments that occurred and progress made since the submission of the previous report. The exchange of views and experience with the supervisory body for the purpose of the implementation of the Covenant can thus continue.

THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

By Luis Valencia Rodriguez

The Convention on the Elimination of All Forms of Racial Discrimination (hereinafter, the "Convention") was adopted by the General Assembly of the United Nations with resolution 2106A(XX) of 21 December 1965. It entered into force on 4 January 1969 in accordance with Article 19. As of 30 September 1996, the Convention had been ratified or acceded to by 148 States.

A. THE REPORTING PROCESS

(a) The Convention and its reporting requirements

The preamble of the Convention sets out some of the considerations of the States Parties for preparing this instrument. The States Parties express their conviction that "any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous", and they reaffirm that "discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples".

States, in becoming parties to the Convention, declare their abhorrence of racial discrimination and segregation. They are resolved to adopt all necessary measures to eliminate racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races. These ideals are reflected in the substantive provisions of the Convention.

The Convention has been defined as the international community's **only** tool for combating racial discrimination which is at one and the same time universal in reach, comprehensive in scope, legally binding in character, and equipped with built-in measures of implementation, including international machinery – a pioneer in the field – responsible for monitoring the actual implementation of their obligations by the contracting sovereign States. This assessment remains valid to this day.

The system of international accountability and international review built into the Convention is the reporting procedure, in which the Committee on the Elimination of Racial Discrimination (hereinafter the "Committee") plays the central role. States Parties are required to submit periodic reports on the measures taken by them to implement the Convention. This obligation, which is set forth in Article 9 of the Convention, is a treaty obligation binding all States Parties to the Convention.

Text of Article 9

- 1.** *States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention: (a) within one year after the entry into force of the Convention for the State concerned; and (b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.*

- 2.** *The Committee shall report annually, through the Secretary-General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.*

According to Article 9, consequently, two kinds of reports have to be submitted. The initial report must be submitted by the State Party within one year of the entry into force of the Convention for the State concerned. Periodic reports must be submitted at two-year intervals, and upon request of the Committee. (For a change in this periodicity, see section C) below). The presentation of both initial and subsequent reports therefore constitutes a treaty obligation specifically contained in the Convention, and as a consequence, is binding for all States Parties.

As to the substance of the reporting obligation undertaken by States Parties, Article 9 gives only general indications. It refers to measures adopted by the States Parties to give effect to the provisions of the Convention. The Committee has prepared guidelines to assist States Parties in fulfilling their obligations under the Convention.

(b) Guidelines for reporting under the Convention

Initial and periodic reports should be prepared in accordance with the general guidelines established by the Committee for the preparation of reports. A communication to States Parties was first adopted by the Committee in 1970. At its twenty-first session in 1980, the Committee adopted general guidelines on the form and contents of reports by States Parties, which replaced the communication. At its twenty-fifth session in 1982, the Committee adopted additional guidelines for the implementation of Article 7 of the Convention. At its forty-second session in 1993, the Committee revised these guidelines.

According to these general guidelines, reports from States Parties should always be presented in two parts. A first part (entitled "Part One – General") should provide general background information, and the second part (entitled "Part Two – Information in relation to Articles 1 to 7 of the Convention") should deal individually with each of the substantive provisions of the Convention.

If needed, the reports should be accompanied by sufficient copies in one of the working languages (English, French, Russian or Spanish) of all other supplementary documentation which the reporting States may wish to have distributed to all members of the Committee in connection with their reports.

On the basis of reports prepared and submitted according to these guidelines, the Committee is confident that it will be enabled to develop or continue a constructive and fruitful dialogue with each State Party for the purpose of the implementation of the Convention and thereby to contribute to mutual understanding and peaceful and friendly relations among nations in accordance with the Charter of the United Nations.

The format of the guidelines follows exactly the above-mentioned pattern. Therefore, the guidelines for the second part will be discussed jointly with each specific article to which they refer under subsection (c) Reporting on the substantive provisions.

Text of the general guidelines concerning the form and contents of reports to be submitted by States Parties under Article 9, paragraph 1, of the Convention

Part One – general

This part should contain general information on the land and people, general political structure, general legal framework within which human rights are protected and on which information and publicity should be prepared in accordance with the consolidated guidelines for the initial part of reports of States Parties to be submitted under the various international human rights instruments, as contained in document HRI/CORE/1.

(Part One of the guidelines is now common to the reporting guidelines prepared for all United Nations human rights treaty bodies. For the text of the consolidated guidelines for the initial part of the reports of States Parties see the annex at the end of Part One of the Manual).

Part Two – Information relating to Articles 1 to 7 of the Convention

This part should describe briefly the policy of eliminating racial discrimination in all its forms and the general legal framework within which racial discrimination as defined in Article 1, paragraph 1, of the Convention is prohibited and eliminated in the reporting State, and the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life are promoted and protected.

The ethnic characteristics of the country are of particular importance in connection with the International Convention on the Elimination of All Forms of Racial Discrimination. Many States consider that, when conducting a census, they should not draw attention to factors like race lest this reinforce divisions they wish to overcome. If progress in eliminating discrimination based on race, colour, descent, national and ethnic origin is to be monitored, some indication is needed of the number of persons who could be treated less favourably on the basis of these characteristics. States which do not collect information on these characteristics in their censuses are therefore requested to provide information on mother tongues (as requested in para. 1 of HRI/CORE/1) as indicative of ethnic differences, together with any information about race, colour, descent, national and ethnic origins derived from social surveys. In the absence of quantitative information, a qualitative description of the ethnic characteristics of the population should be supplied. The remainder of this part should provide specific information in relation to Articles 2 to 7, in accordance with the sequence of those articles and their respective provisions.

The Committee requests States Parties to incorporate in this part, under the appropriate headings, the texts of the relevant laws, judicial decisions and regulations referred to therein, as well as all other elements which they consider essential for the Committee's consideration of their reports.

Pursuant to these guidelines, the Committee expects to receive information from the States Parties on: a) their compliance with the obligation assumed under Article 1 of the Convention; b) the ethnic characteristics of the country; and c) the text of the relevant laws, judicial decisions and regulations which relate to Articles 1 to 7 of the Convention.

(c) Reporting on the substantive provisions

ARTICLE 1

Text of Article 1

1. *In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.*
2. *This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.*
3. *Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship of naturalization, provided that such provisions do not discriminate against any particular nationality.*
4. *Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.*

Commentary

Article 1 defines the concept of racial discrimination. It is important to emphasize that according to this definition, racial discrimination exists not only when there are distinctions, exclusions, restrictions or preferences based only on race or the colour of the skin, but also when they are a consequence of descent, or national or ethnic origin. It is also necessary to remember that racial discrimination exists when such differences cause the nullification or impairment of the equal recognition, enjoyment or exercise of human rights and fundamental freedoms in all fields of public life. Article 1 further defines racial discrimination in

terms of “purpose or effect”, covering what is sometimes called indirect discrimination or unjustifiable disparate impact. Many States have not yet confronted this requirement.

The essence of this definition, therefore, is its adherence to the principle of equality, which is later reflected in several of the substantive provisions of the Convention, and in particular in Article 5, which contains the right to equality before the law. Although the definition of racial discrimination is different from the statement of Article 5, the latter must be taken into account in interpreting the definition. To be sure, equality and non-discrimination can be seen as affirmative and negative statements of the same principle.

The Committee’s General Recommendation XIV(42), adopted on 17 March 1993, drew the attention of the States Parties to certain aspects of the definition of racial discrimination given in Article 1, paragraph 1, of the Convention. The Committee was of the opinion that the words “based on” do not bear a different meaning from “on the grounds of” in paragraph 7 of the preamble: “A distinction is contrary to the Convention if it has either the purpose or the effect of impairing particular rights and freedoms. This is confirmed by the obligation placed upon States Parties by Article 2, paragraph 1(c), to nullify any law or practice which has the effect of creating or perpetuating racial discrimination”. Article 1, paragraph 1, of the Convention “also refers to the political, economic, social and cultural fields; the related rights and freedoms are set up in Article 5.”

Statements and resolutions in the United Nations organs have often concentrated upon extreme forms, like *apartheid* or “ethnic cleansing”. They have emphasized features which are specific to racial discrimination (like doctrines of racial inequality). They have neglected the importance of everyday discrimination, and the features which racial discrimination shares with discrimination based upon gender, age, religion, social class, disability, etc. Many state officials have only a partial understanding of the scope of racial discrimination as it is defined in the Convention. The Committee has found that it is everywhere possible for a person to receive less favourable treatment because of his or her race, colour, descent, national or ethnic origin. Furthermore, everyday racial discrimination can be a precursor to group conflict of a more serious character.

The Committee’s General Recommendation XI(42), adopted on 9 March 1993, declared that it had observed that, on occasion, Article 1, paragraph 2, had been interpreted as exempting States Parties from any obligation to present reports on questions regarding legislation concerning foreigners. On this issue, the Committee stated that the States Parties are obliged to present a full report on the legislation regarding foreigners and on its application. Furthermore, it stated that Article 1, paragraph 2, should not be interpreted in such a way as to impair in any way the rights and freedoms recognized and set out in other instruments, in particular the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights.

One of the main objectives of the Convention is indeed to promote racial equality. As such, the Convention not only aims to achieve *de jure* racial equality, but particularly also *de facto* equality, which allows the various ethnic, racial and national groups to enjoy the same social development. The goal of *de facto* equality is central to the Convention.

The Convention recognizes that certain racial or ethnic groups may need special protection or may need to be assisted by special measures in order to achieve adequate development. Article 1(4) provides that such special measures shall not be considered racial discrimination provided they are not continued after the objectives for which they were taken have been achieved.

The Committee's General Recommendation XIV(42) observed that "a differentiation of treatment will not constitute discrimination if the criteria for such differentiation, judged against the objectives and purposes of the Convention, are legitimate or fall within the scope of Article 1, paragraph 4,... In considering the criteria that may have been employed, the Committee will acknowledge that particular actions may have varied purposes. In seeking to determine whether an action has an effect contrary to the Convention, it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin."

As the Committee has stated, "In accordance with the Convention, the primary obligation of every State Party is to adopt, and to put into effect without delay, a comprehensive national policy for the elimination of racial discrimination in all its forms, utilizing for that purpose all appropriate means. The Convention also provides clear guidelines, with which States Parties undertake to comply in the development and application of their respective national policies. Those policies must have as their aim the elimination of racial discrimination in all its forms – whether practised by public authorities, institutions or officials or by private individuals, groups or organizations. Moreover, they must aim not only at combating racial discrimination but also at promoting interracial understanding, tolerance and friendship. Toward these ends, States must be prepared to use both coercion and persuasion – utilizing the power of the law to prohibit and punish, as well as the power of education and information to enlighten and persuade".

In accordance with the general guidelines, and in light of Article 1 of the Convention, States Parties should provide three kinds of information. First, they should discuss the policy of the reporting State with regard to racial discrimination and the legal framework of such a policy. Secondly, they should provide information on how the Convention and the rights put forward in it become part of the domestic legal order. And thirdly, the report should provide general background information on the reporting State, and make special reference to the demographic composition of the population, and to any problems confronting different ethnic groups. It should provide detailed statistical information on demographic matters that are of interest to the Committee in pursuing the task entrusted to it by

the Convention. This part of the report should enable the Committee to obtain a clear understanding of the overall situation in the reporting State relevant to questions of racial discrimination, such as the existence and number of minority groups (migrant workers, refugees, etc.), and the standing of such groups in the social hierarchy and their political importance in the reporting State.

Pursuant to its General Recommendation XVI (1993), the Committee stated that it had observed that, on occasion, reports had referred to the situation in other states. In this regard, the Committee reminded States Parties of the provisions of Article 9 of the Convention concerning the content of their reports, also bearing in mind Article 11, which is the only means of proceeding available to states to draw the attention of the Committee to situations in which, in their judgement, other states are not applying the Convention's provisions.

Information gathered for reporting under other international instruments on rights of vulnerable groups should be consulted for its potential relevance under the present Convention. With regard to Article 1(4) of ICERD, those are in particular Articles 27 of ICCPR, 2(3) of ICESCR, 4 (temporary special measures) and 14 of CEDAW, and 22, 23 and 30 of CRC.

ARTICLE 2

Text of Article 2

- 1.** *States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races and, to this end:*
 - (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;*
 - (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;*

- (c) *Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;*
 - (d) *Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;*
 - (e) *Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.*
2. *States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were take have been achieved.*

Text of the general guidelines on Article 2

- A.** *Information on the legislative, judicial, administrative or other measures which give effect to the provisions of Article 2, paragraph 1, of the Convention, in particular:*
- (i) *Measures taken to give effect to the undertaking to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;*
 - (ii) *Measures taken to give effect to the undertaking not to sponsor, defend or support racial discrimination by any persons or organizations;*
 - (iii) *Measures taken to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;*

- (iv) *Measures taken to give effect to the undertaking to prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;*
- (v) *Measures taken to give effect to the undertaking to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.*

B. *Information on the special and concrete measures taken in social, economic, cultural and other fields to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms, in accordance with Article 2, paragraph 2, of the Convention.*

Commentary

According to paragraph 1 of this article and to the guidelines on it, reports must contain information on the ways and means by which States Parties are fulfilling the obligations of condemning racial discrimination, of pursuing policies of eliminating all forms of racial discrimination, and of promoting interracial understanding. States Parties' reports on Article 2(1) of the Convention, should therefore cover measures taken in the legislative, judicial and administrative area with the goal of abiding by the obligations contained in this article.

The Committee's General Recommendation XIII(42), adopted on 16 March 1993, recalled that, in accordance with Article 2(1), "States Parties have undertaken that all public authorities and public institutions, national and local, will not engage in any practice of racial discrimination; further, States Parties have undertaken to guarantee the rights listed in Article 5... to everyone without distinction as to race, colour or national or ethnic origin". It pointed out that the "fulfilment of these obligations very much depends upon national law enforcement officials who exercise police powers, especially the powers of detention or arrest, and upon whether they are properly informed about the obligations their state has entered into under the Convention. Law enforcement officials should receive intensive training to ensure that in the performance of their duties they respect as well as protect human dignity and maintain and uphold the human rights of all persons without distinction as to race, colour or national or ethnic origin."

Article 2.1(d) requires States to bring to an end “racial discrimination by any persons, group or organization”. It covers the private as well as the public sector. Many States have not yet taken sufficient action to prohibit discrimination in the private sector.

Whereas Article 2(1) expresses the general obligation of States Parties to refrain from and to end acts of racial discrimination and to pursue policies aiming at such an elimination and at the improvement of interracial relationships, Article 2(2) provides for the adoption of special and concrete measures to further the equal enjoyment of human rights among various parts of the population. This paragraph of Article 2 recognizes the reality that almost all States Parties have ethnic or minority groups, such as indigenous populations, tribes, nomads, migrant workers, refugees, etc. Consequently, attention must be paid to the socio-economic and political situation of these groups in order to ensure that their development in the social, economic and cultural spheres takes place on an equal footing with that of the general population.

It is therefore important to report in detail on both parts of this article, to discuss existing policies and practices, the functions of public institutions and authorities, and relevant laws and the scope of the legislation in force. Reports should also describe any special programmes adopted and projects initiated in the reporting State, and how they affect the goal of achieving racial equality among all segments of the population.

Other international instruments deal in related articles with non-discrimination, equality before the law, and the pursuit of general policies in these areas. Regarding Article 2(1) of ICERD, those articles are: 2(1), 3 and 26 of ICCPR, 2(2) and 3 of ICESCR, 2 and 15(1) of CEDAW, and 2(1) and 2(2) of CRC. Regarding Article 2(2) of ICERD (Implementation of the instrument), see also Article 5, first sentence, of ICERD, as well as Articles 2(2) of ICCPR, 2(1) and (3) of ICESCR, 3 of CEDAW, 2(1) of CAT, and 4 of CRC, dealing with the adoption of legislation in the implementation of those instruments. Temporary special measures (Articles 1(4) and 2(2) of ICERD) are in particular also provided for in Article 4 of CEDAW. Information gathered on any of these articles should be evaluated for its potential usefulness for reporting under the present Convention.

ARTICLE 3

Text of Article 3

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

Text of the general guidelines on Article 3 (excerpts)

- A.** *Information on the legislative, judicial, administrative or other measures which give effect to the provisions of Article 3 of the Convention, in particular, to the condemnation of racial segregation and apartheid and to the undertaking to prevent, prohibit and eradicate all practices of this nature in the territories under the jurisdiction of the reporting State.*

Commentary

Article 3 is an expression of international solidarity of the States Parties to the Convention with people living under racial segregation and *apartheid*. This article and the guidelines referring to it reflected the conviction that it was not possible to condemn the most brutal practice of racism, which was *apartheid*, and at the same time cooperate with a regime that maintained it as its national policy.

As the Committee has stated, "A State's concern for human equality and dignity cannot terminate abruptly at its national borders. Nor can a State's condemnation of racial discrimination and its formal undertaking to eliminate it within its own frontiers be compatible with its indifference to the practice of racial discrimination outside those frontiers – much less with policies which have the effect of giving encouragement or support to those abroad who openly practise racial discrimination and propagate racism. The unequivocal affirmation contained in the Convention's preamble, that States Parties are 'resolved... to build an international community free of all forms of racial segregation and racial discrimination' cannot be viewed as empty rhetoric: it is a solemn statement defining one of the objectives of the Convention". From 1972 through to the establishment of democratic government in South Africa, the Committee used every opportunity to insist that States should take every possible measure to reinforce an international community free from all forms of racial segregation.

At its 1125th meeting, held on 17 August 1995, the Committee adopted General Recommendation XIX(47). This reiterated that under the terms of Article 3, States Parties undertook to prohibit and eradicate practices of racial segregation and *apartheid*. The reference to *apartheid* may have been directed exclusively at South Africa, "but the article as adopted prohibits all forms of racial segregation in all countries". It added that "the obligation to eradicate the consequences of such practices of this nature includes the obligation to eradicate the consequences of such practices undertaken or tolerated by previous Governments in the State or imposed by forces outside the State". It observed that "while conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an unintended by-product of the actions of private persons. In many cities, residential patterns are

influenced by group differences in income, which are sometimes combined with differences of race, colour, descent and national or ethnic origin, so that inhabitants can be stigmatized and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds.”

In consequence, “the Committee affirms that a condition of racial segregation can also arise without any initiative or direct involvement by the public authorities. It invites States Parties to monitor all trends which can give rise to racial segregation, to work for the eradication of any negative consequences that ensue, and to describe any such action in their periodic reports.”

ARTICLE 4

Text of Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of this Convention, inter alia:

- (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;*
- (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;*
- (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.*

Text of the general guidelines on Article 4

- A.** *Information on the legislative, judicial, administrative or other measures which give effect to the provisions of Article 4 of the Convention, in particular measures taken to give effect to the undertaking to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, racial discrimination with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of the Convention – in particular:*
- (i) To declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;*
 - (ii) To declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and to recognize participation in such organizations or activities as an offence punishable by law;*
 - (iii) Not to permit public authorities or public institutions, national or local, to promote or incite racial discrimination.*
- B.** *Information on appropriate measures taken to give effect to **General Recommendation I**, of 24 February 1972, by which the Committee recommended that the States Parties whose legislation was deficient in respect of the implementation of Article 4 should consider, in accordance with their national legislative procedures, the question of supplementing their legislation with provisions conforming to the requirements of Article 4 (a) and (b) of the Convention.*
- C.** *Information in response to **decision 3 (VII)** adopted by the Committee on 4 May 1973 by which the Committee requested the States Parties:*
- (i) To indicate what specific penal internal legislation designed to implement the provisions of Article 4 (a) and (b) has been enacted in their respective countries and to transmit to the Secretary-General in one of the official languages the texts concerned, as well as such provisions of general penal law as must be taken into account when applying such specific legislation;*

- (ii) *Where no such specific legislation has been enacted, to inform the Committee of the manner, and the extent to which the provisions of the existing penal laws, as applied by the courts, effectively implement their obligations under Article 4 (a) and (b), and to transmit to the Secretary-General in one of the official languages the texts of those provisions.*

Commentary

In preparing their reports, States Parties should keep in mind that the Committee has always considered Article 4 of paramount importance for the implementation of the Convention, as it contains imperative provisions obliging States Parties to adopt legislation to criminalize and punish the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, acts of violence against any race or group of persons of another colour or ethnic origin, and assistance in such activities. States Parties must take legislative action to comply with their obligation under this article, irrespective of the actual existence of the prohibited activities or organizations. The Committee considers that Article 4 aims at prevention rather than cure. The penalty of the law is supposed to deter racism or racial discrimination as well as activities aimed at their promotion or incitement.

The Committee's General Recommendation XV(42), adopted on 17 March 1993, reiterated the paramount importance of Article 4, as emphasized when the Convention itself was adopted. It recalled that it had received "evidence of organized violence based on ethnic origin and the political exploitation of ethnic difference".

After the Committee has found that the legislation of a number of States Parties did not include the provisions envisaged in Article 4(a) and (b), it adopted its General Recommendation 1 of 24 February 1972, which was subsequently incorporated in the general guidelines.

In addition, the Committee is of the opinion that for a full implementation of Article 4, it is not sufficient to incorporate or transform the Convention as part of domestic law of the ratifying State, without enacting the necessary legislation ordained by Article 4. The article should not be interpreted as being self-executing. This reasoning led to the adoption of decision 3(VII) of 4 May 1973, which is also incorporated in the general guidelines. It was reaffirmed in a decision of 20 August 1985, in which the Committee recommended that "those States Parties whose legislation does not satisfy the provisions of Article 4(a) and (b) of the Convention take the necessary steps with a view to satisfying the mandatory requirement of that article".

In the aforesaid General Recommendation XV(42), the Committee pointed out that "Article 4(a) requires States Parties to penalize four categories of misconduct: (i) dissemination

of ideas based upon racial superiority or hatred; (ii) incitement to racial hatred; (iii) acts of violence against any race or group of persons of another colour or ethnic origin; and (iv) incitement to such acts". It recalled that Article 4(a) also penalized the financing of racist activities which, in its opinion, included all the aforementioned activities, in other words all activities based on ethnic or racial differences. The Committee asked States Parties to ensure that their national legislation, and the application thereof, satisfied this requirement.

In the said General Recommendation, the Committee affirmed that certain states had claimed that their legal procedures made it impossible to declare an organization illegal before its members had fostered or incited racial discrimination. The Committee's opinion was that Article 4(b) placed those states under a greater obligation to remain vigilant and act against such organizations as early as possible; that such organizations, as well as the activities and propaganda they organized, should be declared illegal and forbidden; and that belonging to such organizations should in itself be penalized.

In the same General Recommendation, the Committee stated that Article 4(c) outlined the obligations binding the public authorities at all levels, including the municipal level. It affirmed that States Parties should ensure that these authorities met those obligations and reported to that effect.

However, the mandatory requirements of Article 4(a) and (b) are still far from universally implemented, because of inadequate legislation and/or the weakness of the measures for its enforcement.

It should be pointed out that full compliance with Article 4 has been complicated by the belief that the freedoms of expression and of association could be jeopardized by this provision. However, this is an extreme position. The Convention allows for the fulfilment of the obligation contained in it "with due regard" to the fundamental human rights to freedom of expression, opinion and association (first sentence of Article 4).

The opinion of the Committee as well of States Parties holds that the rights to freedom of opinion, expression and association are not absolute, but subject to certain limitations. These limitations lie in the balance to be struck between the obligations deriving from Article 4 and the protection of these fundamental freedoms because, as the Committee has stated, "it could not have been the intention of the drafters of the Convention to enable States Parties to construe the phrase safeguarding the human rights in question as cancelling the obligations relating to the prohibition of the racist activities concerned. Otherwise, there would have been no purpose whatsoever for the inclusion in the Convention of the articles laying down those obligations".

Indeed, later in General Recommendation XV(42), the Committee stated that "the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible

with the right to freedom of opinion and expression. This right is embodied in Article 19 of the Universal Declaration of Human Rights and is recalled in Article 5(d)(viii) of the Convention [...] Its relevance to Article 4 is noted in the article itself. The citizen's exercise of this right carries special duties and responsibilities, specified in Article 29, paragraph 2, of the Universal Declaration, among which the obligation not to disseminate racist ideas is of particular importance. The Committee wishes, furthermore, to draw to the attention of States Parties Article 20 of the International Covenant on Civil and Political Rights, according to which any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

In summary, the compulsory character of Article 4 cannot absolve States Parties from complying with this obligation and therefore from passing the necessary domestic legislation to punish racial discrimination in the event of its occurrence.

Reports by States Parties should therefore endeavour to report in great detail on this provision, and include information on any specific cases that arose under this article.

Provisions regarding the punishability of certain offences exist in other international instruments as well. Particular attention is drawn to Articles 4 to 9 of CAT. Information assembled for reporting on those articles should be evaluated for its usefulness regarding the present Convention.

ARTICLE 5

Text of Article 5

In compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;*
- (b) The right to security of persons and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution;*
- (c) Political rights, in particular the rights to participate in elections – to vote and to stand for election – on the basis of universal and equal suf-*

frage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:

(i) The right to freedom of movement and residence within the border of the State;

(ii) The right to leave any country, including one's own, and to return to one's country;

(iii) The right to nationality;

(iv) The right to marriage and choice of spouse;

(v) The right to own property alone as well as in association with others;

(vi) The right to inherit;

(vii) The right to freedom of thought, conscience and religion;

(viii) The right to freedom of opinion and expression;

(ix) The right to freedom of peaceful assembly and association;

(e) Economic, social and cultural rights, in particular:

(i) The right to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;

(ii) The right to form and join trade unions;

(iii) The right to housing;

(iv) The right to public health, medical care, social security and social services;

(v) The right to education and training;

(vi) The right to equal participation in cultural activities;

(f) The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafés, theatres and parks.

Text of the general guidelines on Article 5

Information on the legislative, judicial, administrative or other measures which give effect to the provisions of Article 5 of the Convention; in particular, measures taken to prohibit racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law notably in the enjoyment of:

- (i) The right to equal treatment before tribunals and all other organs administering justice;*
- (ii) The right to security of persons and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution;*
- (iii) Political rights, in particular the right to participate in elections – to vote and to stand for election – on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;*
- (iv) Other civil rights, in particular those enumerated under Article 5(d), (i) to (ix) of the Convention;*
- (v) Economic, social and cultural rights, in particular those enumerated under Article 5(e), (i) to (vi) of the Convention;*
- (vi) The right to access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafés, theatres and parks.*

Commentary

Article 5 is of pivotal importance to the Convention. This article contains a long list of rights and freedoms in the enjoyment of which racial discrimination shall be prohibited and eliminated. Note should be taken that the rights and freedoms mentioned in Article 5 do not constitute an exhaustive list. In addition to the rights set forth in the Universal Declaration of Human Rights, the list contains certain rights not expressly contained in the Universal Declaration, such as the right to inherit and the right of access to any place or service intended for use by the general public. Furthermore, the Convention specifically lists among the rights in regard to which racial discrimination is prohibited, the right to work, the right to join trade unions and the right to housing. Most of the rights mentioned in Article 5 have been elaborated in the Covenants.

It should also be recalled that according to Article 29 of the Universal Declaration, in the exercise of these rights and freedoms everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the full requirements of morality, public order and the general welfare in a democratic society.

The Committee, on various occasions, discussed the scope of Article 5 and its possible interpretation for the purpose of the Committee's duties in considering States Parties' reports. Finally, at its 1147th meeting on 8 March 1996, the Committee adopted its General Recommendation XX(48) on Article 5.

According to this Recommendation, all States Parties are obliged to acknowledge and protect the enjoyment of human rights, but the manner in which these obligations are translated into the legal orders of States Parties may differ. Article 5 of the Convention, apart from requiring a guarantee that the exercise of human rights shall be free from racial discrimination, does not of itself create civil, political, economic, social or cultural rights, but assumes the existence and recognition of these rights. The Convention obliges States to prohibit and eliminate racial discrimination in the enjoyment of such human rights.

Whenever a State imposes a restriction upon one of the rights listed in Article 5 of the Convention which applies ostensibly to all within its jurisdiction, it must ensure that the restriction, neither in purpose nor effect, is incompatible with Article 1 of the Convention as an integral part of international human rights standards. To ascertain whether this is the case, the Committee is obliged to inquire further to make sure that any such restriction does not entail racial discrimination.

Many of the rights and freedoms mentioned in Article 5 are to be enjoyed by all persons living in a given State, such as the right to equal treatment before tribunals; some others are the rights of citizens, such as the rights to participate in elections, to vote, and to stand for election.

The States Parties are recommended to report about the non-discriminatory implementation of each of the rights and freedoms referred to in Article 5 of the Convention one by one.

The rights and freedoms referred to in Article 5 of the Convention and any similar rights shall be protected by a State Party. Such protection may be achieved in different ways, be it by the use of public institutions or through the activities of private institutions. In any case, it is the obligation of the State Party concerned to ensure the effective implementation of the Convention and to report thereon under Article 9 of the Convention. To the extent that private institutions influence the exercise of rights or the availability of opportunities, the

State Party must ensure that the result has neither the purpose nor the effect of creating or perpetuating racial discrimination.

When preparing information on the rights and freedoms contained in Article 5, and in the enjoyment of which racial discrimination is prohibited, reporting officers should bear in mind that relevant information on some or all of these rights and freedoms may have been collected for reporting under other instruments. The following cross references are intended to provide some guidance in assessing the usefulness of such information for reporting under ICERD.

The right to procedural guarantees (Article 5(a) of ICERD) is also dealt with in related Articles 14, 15, and 16 of ICCPR, 15(2) and (3) of CEDAW, and 12 to 15 of CAT, and 12(2), 37(d) and 40 of CRC. The right to liberty and security of the person (Article 5(b)) can be found also in Articles 9, 10, and 11 of ICCPR, and Article 37 of CRC. For political rights and access to public service (Article 5(c)), see also Articles 25 of ICCPR, and 7 and 8 of CEDAW.

The right to freedom of movement, the right of access to any public place, and expulsion and extradition (Articles 5(d)(i), (ii), and 5(f)) are also addressed by Articles 12 and 13 of ICCPR, 15(4) of CEDAW, 3 of CAT, and 10 of CRC. The right to a nationality (Article 5(d)(iii)) is contained in Article 24(3) of ICCPR, in Article 9 of CEDAW, and in Articles 7 and 8 of CRC. The right to marry and choice of spouse (Article 5(d)(iv)) is addressed by Articles 23 and 24 of ICCPR, 10 of ICESCR, and Articles 16, 12, and 4(2) of CEDAW, as well as 5, 16, 18 to 20, 22, 34 and 36 of CRC (on the right to found a family, the protection of the family, mother and children). The right to freedom of thought, conscience and religion (Article 5(d)(vii)) is dealt with in related Articles 17 and 18 of ICCPR, and 14 and 16 of CRC. Freedom of opinion and expression (Article 5(d)(viii), see also Article 4(a) and (c) of ICERD) are dealt with in Articles 19 and 20 of ICCPR, and 12 and 13 of CRC. The right to peaceful assembly and association (Article 5(d)(ix), see also Article 4(b) of ICERD) are contained in Articles 21 and 22 of ICCPR, and 15 of CRC. The right to own property and the right to inherit (Article 5(d)(v) and (vi)) are contained in Articles 13(b) and 15(2) of CEDAW (including the right to obtain financial credits).

For the right to work, and to just and favourable conditions of work (Article 5(e)(i), see also Articles 6(1) and 7 of ICESCR, and 11(1)(a), (b), (c), 11(1)(d), (f), 11(2) and 11(3) of CEDAW. Trade union rights (5(e)(ii)) are the subject of Article 22 of ICCPR, and of Article 8 of ICESCR. The right to housing (Article 5(e)(iii)) is addressed in Article 11 of ICESCR, and Article 27(3) of CRC. For the right to social security (Article 5(e)(iv)), see also Article 9 of ICESCR, Articles 11(1)(e) and 13(a) of CEDAW, and 26 of CRC. The right to education, and other cultural rights (Article 5(e)(v) and (vi)) are dealt with in Articles 13, 14, and 15 of ICESCR, in Articles 10 and 13(c) of CEDAW, and in Articles 28 to 31 of CRC.

ARTICLE 6

Text of Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Text of the general guidelines on Article 6

- (a) *Information on the legislative, judicial, administrative or other measures which give effect to the provisions of Article 6 of the Convention, in particular, measures taken to assure to everyone within the jurisdiction of the reporting State effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms;*
- (b) *Measures taken to assure to everyone the right to seek from such tribunals just and adequate reparation or satisfaction for any damage as a result of such discrimination;*
- (c) *Information on the practice and decisions of the courts and other judicial and administrative organs relating to cases of racial discrimination as defined under Article 1 of the Convention.*

Commentary

The Committee always held the opinion that legislative provisions in the State Party are necessary fully to comply with Article 6. Such provisions may already exist in domestic legislation, and satisfy the requirements of this article, or certain amendments may have been made upon or before ratification of or accession to the Convention by the State Party. It may also be that Article 6 can be directly invoked before the competent tribunals. The experience of the Committee indicates that a substantial group of States Parties has revised its legislation specifically taking into consideration the views expressed by the Committee.

In preparing their reports, States Parties should keep in mind that Article 6 offers a certain degree of flexibility in its implementation. In fact, according to the specific characteristics

of States, the measures of implementation of this article may be reflected in certain mechanisms of conciliation or mediation, in the establishment of administrative organs for investigation, in the action of a competent ministry or the Attorney-General, the Ombudsman, etc. Some of these mechanisms are functioning in certain States Parties without prejudice to civil or penal procedures. Sanctions also vary in degree, reaching from conciliatory meetings of the parties concerned to verbal or written reprimands, to the imposition of fines or prison penalties. The important element here is that Article 6 requires “effective protection and remedies”.

It has to be underlined that the scope of Article 6 covers all persons, “everyone”, under the jurisdiction of the State Party, nationals as well as non-nationals. This article further refers not only to the functions of tribunals, but also to those of other State organs, and that in addition to access to tribunals, it contains the provision of guaranteeing to protected persons the claim to just and adequate reparation or satisfaction.

The guidelines state in detail what kind of information the Committee seeks under this article. It should be kept in mind that this includes information on any court cases existing with regard to this article, and on the practice of other State organs in implementing this provision.

The right to an effective remedy is also contained in related Article 2(3) of ICCPR. Information assembled for reporting under that article should be assessed for its relevance for reporting under Article 6 of ICERD.

ARTICLE 7

Text of Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and this Convention.

Text of the general guidelines on Article 7

Information on the legislative, judicial, administrative or other measures which give effect to the provisions of Article 7 of the Convention, to General Recommendation V of 13 April 1977 and to decision 2 (XXV) of 17 March 1982, by which the Committee adopted its additional guidelines for the implementation of Article 7.

In particular, the reports should provide as much information as possible on each of the main subjects mentioned in Article 7 under the following separate headings:

- | | | |
|-----------------------------------|---|--|
| (a) Education and teaching | <i>Within these broad parameters, the information provided should reflect the</i> | <i>(i) To combat prejudices which lead to racial discrimination</i> |
| (b) Culture | <i>measures taken by the States Parties</i> | <i>(ii) To promote understanding, tolerance and friendship among nations and ethnic groups</i> |
| (c) Information | | |

(a) Education and teaching

This part should describe legislative and administrative measures, including some general information on the educational system, taken in the field of education and teaching to combat racial prejudices which lead to racial discrimination. It should indicate whether any steps have been taken to include in school curricula and in the training of teachers and other professionals, programmes and subjects to help promote human rights issues which would lead to better understanding, tolerance and friendship among nations and racial or ethnic groups. It should also provide information on whether the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and the International Convention on the Elimination of All Forms of Racial Discrimination are included in education and teaching.

(b) Culture

Information should be provided in this part of the report on the role of institutions or associations working to develop national culture and traditions, to combat racial prejudices and to promote intra-national and intra-cultural understanding, tolerance and friendship among nations and racial or ethnic groups. Information should also be included on the work of solidarity committees or United Nations Associations to combat racism and racial discrimination and the observance by States Parties of Human Rights Days or campaigns against racism and apartheid.

(c) Information

This part should provide information:

- (a) On the role of the State media in the dissemination of information to combat racial prejudices which lead to racial discrimination and to inculcate better understanding of the purposes and principles of the above-mentioned instruments;*
- (b) On the role of the mass information media, i.e. the press, radio and television, in the publicizing of human rights and disseminating information on the purposes and principles of the above-mentioned human rights instruments.*

Commentary

On 13 April 1977, the Committee adopted its General Recommendation V, by which it declared that the obligations under Article 7, "which are binding on all States Parties, must be fulfilled by them, including States which declare that racial discrimination is not practised on the territories under their jurisdiction". The Committee noted that few States Parties had included in their reports information on the measures adopted to implement Article 7. It also pointed out that information submitted under Article 7 had often been "general and perfunctory". Consequently, it requested every State Party to include in the periodic reports adequate information on the measures taken under Article 7.

The adoption of General Recommendation V led to a clear improvement in receiving relevant information. However, the Committee felt that States Parties did not always recognize the considerable importance of this article in the struggle against racial discrimination, and it expressed its concern in this regard. As a consequence, through its decision 2(XXV) of 17 March 1982, it included in its general guidelines an entire chapter on the form and contents of the information that States Parties have to supply in relation to this provision.

The Committee's General Recommendation XVII(42), adopted on 19 March 1993, specifically recommended that States Parties set up national commissions (see also Section C below) to achieve the following objectives, among others: a) to promote respect for human rights, and the exercise thereof, free from any discrimination, as expressly stated in Article 5 of the Convention; b) to examine official policy on protection against racial discrimination; c) to monitor whether laws comply with the provisions of the Convention; d) to educate the public as to the obligations which the States Parties assume under the Convention.

The Committee's General Recommendation XIII(42) called on States Parties "to review and improve the training of law enforcement officials so that the standards of the Convention as well as the Code of Conduct for Law Enforcement Officials (1979) are fully implemented" in the application of Article 7. It added that "they should also include respective information thereupon in their periodic reports."

Finally, it is important to remember that the information requested under Article 7 should cover actions taken by the State Party in both the domestic and international fields.

At their 6th meeting, in September 1995, the presidents of the bodies created under the treaties recommended that when the States Parties' reports are considered, significant attention be paid to whether they fulfil their numerous obligations regarding education, and whether they inform public opinion about human rights in general, and about human rights instruments and the bodies created under the treaties in particular. These bodies should first of all ascertain whether the said instruments have been translated into and published in the local languages, and whether the States Parties have organized adequate human rights training programmes for all relevant categories of public official. This recommendation applies particularly to the International Convention on the Elimination of All Forms of Racial Discrimination.

Preventive measures in implementing the Convention are required under several international instruments. See in particular Articles 5 of CEDAW, 10 and 11 of CAT, and 19(2) and 42 of CRC. Any existing information for reporting under these articles should be evaluated for its relevance regarding the present Convention.

B. CONSIDERATION OF REPORTS BY THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

(a) The Committee: its composition

The reports submitted by States Parties in accordance with Article 9 of the Convention are considered by the Committee on the Elimination of Racial Discrimination. Article 8 of the Convention deals with the establishment and composition of the Committee.

Text of Article 8

- 1.** *There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.*
- 2.** *The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.*
- 3.** *The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.*
- 4.** *Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.*

5. (a) *The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the Committee.*
- (b) *For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.*
6. *States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.*

According to the Convention, the eighteen members of the Committee are elected by secret ballot by the States Parties to the Convention. Nominees who obtain an absolute majority and the largest number of votes are elected. Members of the Committee serve for a term of four years and are eligible for re-election if renominated. Every two years, half of the members are up for election.

It is important to stress that the members of the Committee are not representatives or delegates of the States whose nationality they bear. Members serve in their personal and independent capacity. Before taking up their duties, members make a solemn and public declaration that they will perform their functions "honourably, faithfully, impartially and conscientiously".

In accordance with Article 10 of the Convention, the Committee adopts its own rules of procedure, and elects its officers from among its members, each serving a term of two years. The Committee elects a Chairperson, three Vice-Chairpersons, and a Rapporteur.

(b) The Committee: its method of work

Article 10(4) of the Convention provides that the "meetings of the Committee shall normally be held at the United Nations Headquarters". However, since the Centre for Human Rights was transferred to Geneva, both sessions of the Committee (one in spring and the other in summer) are now held at Geneva, considering also that the United Nations Office at Geneva is part of the United Nations Headquarters. To overcome the financial difficulties encountered by the Committee due to non-payment of contributions by the States Parties, an amendment to Article 8(6) of the Convention was adopted by the States Parties' 14th meeting and approved by the General Assembly of the United Nations, according to which expenses of the members of the Committee will be borne by the United Nations

regular budget. This amendment still is not in force awaiting the prescribed number of ratifications by States Parties.

The meetings of the Committee are held in public, unless the Committee decides otherwise, or it appears from the relevant provisions of the Convention that a meeting should be held in private (Article 14, for example). A majority of the members constitute a quorum. Decisions require a majority vote of two thirds of the members present and voting. Normally, however, members attempt to reach decisions by consensus before resorting to voting.

(c) Constructive dialogue

It is very desirable for representatives of the State Party to be present at the meeting when its report is examined. Generally, the representative of the State Party is invited to make an introductory statement to introduce or to complete the information contained in the report under consideration. The members of the Committee, during the examination of the report, make comments or pose questions to the representatives who intervene in the discussion, present additional information, or reply to the questions at the end of the debate.

In this way, an immediate and constructive dialogue is established between the reporting State and the Committee. Experience has shown that in asking questions, the members of the Committee are not limited to the information received from the State Party. As independent experts, they also use other reliable material at their disposal, both governmental and non-governmental, such as records of parliamentary debates, the legislation of the country concerned, opinions of scientists and their own knowledge. The members of the Committee wish to establish and to maintain a fruitful dialogue with the reporting State for the purpose of getting a complete picture of the country in matters related to racial discrimination and the full implementation of the Convention. The main contribution of the Committee has been in the influence it has exerted upon States Parties through the dialogue associated with the Committee's examination of their reports.

In order to achieve this goal it is desirable that the number, status and experience of the State's representatives present at the consideration of the report allow them to respond constructively to questions asked and comments made by the Committee on all matters considered during the examination of the report.

(d) Presentation and examination of reports

As a result of a recommendation made by the eleventh meeting of States Parties, the Committee decided at its thirty-eight session in 1990 that after the submission of an initial comprehensive report, States should submit further comprehensive reports every four years and brief updating reports in the intervening two-years periods. Some States have been discouraged from repeating information already included in the previous report.

Although the State Party's report is the principal basis for the Committee's review of the application of the Convention, Committee members may also consider other relevant information. This information includes, in addition to previous State reports, the summary records of the discussions and concluding observations, where relevant documentation of other treaty bodies, documentation of the Commission on Human Rights, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities and special rapporteurs of the Commission and the Sub-Commission, other documentation of the United Nations, and information of a governmental and non-governmental nature. It was formally clarified in decision 1(XL) at the fortieth session in 1991 that Committee members, as independent experts, must be able to use, in addition to reports submitted by States Parties, "all other available sources of information, including both governmental and non-governmental sources".

Beginning in 1988, the Committee began the practice of appointing country rapporteurs for State reports. The responsibility of a member so appointed is to prepare a thorough study and evaluation of each State report, to prepare a comprehensive list of questions to put to the representatives of the reporting State and to lead the discussion in the Committee. This procedure was adopted to increase efficiency in the functioning of the Committee by having a certain division of labour, while ensuring that at least one Committee member was thoroughly prepared to ask questions and make comments. Both the quality of dialogue and the effective use of time have increased significantly since the adoption of this system.

The country rapporteur takes the lead in asking a series of detailed questions concerning the report and, more generally, other issues relevant to the implementation of the Convention. Other Committee members also participate in the questioning process. The issues to be discussed are not normally defined in advance, thus allowing for a spontaneous, frank and wide-ranging discussion of issues Committee members raise. The country rapporteur may send in advance through the Secretariat to the State Party concerned a list of questions which are of particular interest, although in practice this procedure is not frequently used.

After Committee members have asked their initial series of questions, the representatives of the State Party then have an opportunity to respond. If questions have been asked which require the State Party to consult specialists who are not present, the State Party is asked to supply the information at a later time after consultation with the appropriate experts, possibly in writing.

In 1992, the Committee began the practice of adopting an opinion on the presentation of a state's report in the form of concluding observations. Prior to this, members expressed their individual opinions which were recorded in the summary records. The country rapporteur is responsible for drafting the concluding observations, which are then presented to the full Committee for discussion, amendment and adoption. The Committee adopts the concluding observations by consensus, although very exceptionally a particular member indicates that he or she is unwilling to join the consensus. Although concluding observations are currently discussed and adopted in proceedings open to the public, prior to 1996 the Committee discussed them in closed session and the summary records of these proceedings were similarly confidential.

The concluding observations have the following format: introduction, positive aspects, factors and difficulties impeding the implementation of the Convention, principal subjects of concern, and suggestions and recommendations. These concluding observations provide a general evaluation of the State Party's report and the exchange of views between the State Party's representatives and the Committee. The Committee may also recommend that the State Party avail itself of the advisory and technical services of the United Nations Centre for Human Rights including, where appropriate, the expertise of one or more Committee members to facilitate the application of the Convention.

The concluding observations for each State Party are published in a separate official document. The concluding observations for the reports of all States Parties examined during the year will continue to be published collectively in the Committee's annual report to the General Assembly, consistent with previous practice.

When considering a report submitted by a State Party under Article 9, the Committee first determines whether the report provides the information referred to in the relevant communications of the Committee, i.e. its general guidelines and the various decisions and recommendations incorporated therein. If a report, in the opinion of the Committee, does not contain sufficient information, the Committee may request the State to furnish additional information. If an additional report or further information is requested from a State Party, the Committee will indicate the manner as well as the time within which the additional report or further information shall be supplied. The reporting State receives a communication to this effect, and if, even after a reminder, the State Party does not submit the requested information, the Committee includes a reference to this effect in its annual report to the General Assembly.

For some years now, the Committee has examined several reports at the same time, in order to help States Parties meet their obligations. This practice has further simplified and rationalized the presentation and consideration of the reports.

On the basis of its examination of the reports and information supplied by States Parties, the Committee formulates its suggestions and general recommendations in accordance with Article 9, paragraph 2, of the Convention.

(e) Overdue reports

The timely submission of periodic reports is fundamental to achievement of the Convention's goals. Nevertheless, delays in reporting by some States Parties have been a very important source of concern to the Committee and the General Assembly. Problems of non-compliance with reporting obligations have been a major obstacle to both the Committee's work and the effective implementation of the Convention. The reasons which have been given for overdue reports include the cumulative burden of producing reports to several international human rights treaty bodies, the shortage of qualified government personnel and budgetary limitations, the lack of an efficient administrative structure which inhibits coordination between different administrative bodies with responsibility for similar issues, and a lack of political will to fully comply with the Convention's reporting obligations. As a result, the Committee has developed a number of practices to deal with this problem.

Written reminders are regularly sent by the Secretary-General to States Parties from which two or more reports are overdue. Defaulting States Parties are listed in the Committee's annual report to the General Assembly with an indication of when the various reports were due and the number of reminders sent to each State Party. At its thirty-ninth session in 1991, the Committee agreed that the reminders sent by the Secretary-General should indicate that all overdue reports could be submitted in one consolidated document.

At its thirty-ninth session in 1991, the Committee also decided that it would proceed to review the implementation of the Convention by States Parties whose periodic reports were significantly overdue, even in the absence of the submission of an up-to-date report. It was further agreed that this review would be based on the previous reports submitted by the States concerned. The adoption of this procedure has allowed the Committee to take more effective action, rather than simply reacting once States have submitted reports.

Implementation of this procedure began in 1991 when letters were sent to thirteen States whose periodic reports were overdue by five years or more, informing them that implementation of the Convention in their countries would be reviewed and inviting them to participate. A note verbale was subsequently sent before the session to inform the States

Parties of the date and time this review would take place. This procedure, which continues to be followed, is sometimes referred to as a "first round review".

In a number of cases, one or more of the States Parties concerned have reacted positively to this first-round review procedure and subsequently prepared an up-to-date report for consideration by the Committee, either for the scheduled session or at a subsequent session if postponement of the consideration of their report has been requested and granted. The Committee has been more ready to agree to a postponement when the report has been promised for a given date. In other cases, the States Parties have not reacted and the review has proceeded on the basis of previous reports submitted. In some cases, one or more representatives of the States Parties concerned have participated in the review.

When no report has been received from a State Party five years after the initiation of a review, a "second round review" has been instituted. In 1996 sixteen States were so notified they would be reviewed at the forty-eighth and forty-ninth sessions of the Committee. For these subsequent reviews, a note verbale is also sent to the States Parties concerned indicating the date and time of their review by the Committee, inviting one or more representatives of the States Parties concerned to participate.

This procedure of first round reviews and, if necessary, subsequent reviews of States Parties which continue to have substantially overdue reports is a measure to ensure a minimum level of review of all States Parties, to encourage a constructive dialogue with defaulting States Parties even in the absence of an up-to-date report submission, and to encourage these States Parties to eventually comply with the Convention's obligation for the periodic submission of reports.

The situation that arises when an initial report is seriously overdue is different in that Article 9.2 states that the Committee's "suggestions and general recommendations shall be based on the examination of the reports and information received from the States Parties". Since some initial reports were overdue by as much as nineteen years, the Committee decided in 1996 to notify States whose initial reports were overdue by five years or more that: (a) the Committee shall review implementation of the Convention in the States Parties concerned at a future session, and invite one or more representatives of these States Parties to participate in its consideration; and (b) in view of the absence of an initial report, the Committee shall consider as an initial report all information submitted by the State Party to other organs of the United Nations or, in the absence of such material, reports and information prepared by organs of the United Nations.

(f) The Committee powers and obligations

One author has rightly pointed out that “While the Committee has not been given general competence to interpret the Convention, as a treaty organ, the Committee may be competent to interpret the Convention insofar as is required for the performance of the Committee’s functions. Such an interpretation *per se* is not binding on States Parties, but it affects their reporting obligations and their internal and external behaviour”.

The Committee is a treaty organ with responsibility for the protection of the human rights enshrined in the Convention, and not an organ of the United Nations as such. However, the Committee maintains certain relations, provided for in large part by the Convention itself, with the Organization, especially through the submission of its annual report, which is considered by the Third Committee of the General Assembly. The debate of the report in the Third Committee is a positive contribution towards the implementation of the Convention’s objectives. The General Assembly usually adopts a resolution on the annual report of the Committee, expressing its opinion on the work accomplished during the time covered by the report.

The Committee, like other treaty bodies established under international human rights conventions, is neither a judicial, nor a quasi-judicial body with powers to absolve or condemn States Parties regarding the implementation of obligations assumed under the Convention. Rather, the Committee’s main function in the implementation process is to assist States Parties in their efforts to fulfil those obligations. Therefore, the comments made by the members of the Committee or the results of the dialogue must in no way be construed as a judgement passed on the level of compliance or non-compliance of a State Party with its obligations under the Convention.

In addition to its consideration of reports submitted under Article 9, the Committee also exercises other important functions. Among these, the Committee receives and considers communications (complaints) from individuals or groups of individuals on matters within the reach of the Convention. This optional procedure, laid down in Article 14, requires a declaration of a State Party to that effect. As of 30 September 1996, 22 out of 148 States Parties to the Convention had made such a declaration.

Another function of the Committee is laid down in Article 15, and regards the Committee’s role in the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. Since these functions only indirectly relate to the reporting process, they will not be dealt with in this chapter. However, it is necessary to recall that it is advisable that States Parties which administer trust or non-self-governing territories include in their periodic reports chapters dealing with the situation in those territories in relation to the implementation of the Convention’s objectives. For the preparation of these chapters, it is convenient to follow the same general guidelines.

(g) Follow-up

After the consideration of the report by the Committee, it is important that relevant follow-up procedures and activities are established at the national level. It is therefore important to take note of all the requests for information and questions asked during the constructive dialogue, and to prepare answers or furnish additional information as indicated by the Committee. In many instances, such information will be requested for the next periodic report.

It is essential that any issue considered by the Committee be put before the competent authorities – political, legislative, administrative or judicial – of the State Party with the purpose of adopting new measures, whenever necessary, to bring the *de facto* situation in the reporting State of matters relating to the elimination of racial discrimination into conformity with the obligations deriving from the Convention.

At the same time, material for the preparation of the next periodic report will have to be collected. Depending on the national administrative structures of a reporting State, this material is generally found in different agencies or institutions, and in order to accelerate and facilitate the collection of information for the report, it is advisable that the government officials in charge of the preparation of reports show a personal and direct interest in the task.

(h) Prevention of racial discrimination: early-warning measures and urgent procedures

At its 979th session, on 17 March 1993, the Committee approved a working paper to guide its future work on possible measures to prevent violations of the Convention and to react more effectively when these occur.

The Committee noted that the Secretary-General in his report to the General Assembly at its forty-seventh session on the work of the organization had emphasized the primary importance of preventing human rights violations before they occur. The report also identified “the need to consider ways to empower the Secretary-General and the expert human rights bodies to bring massive violations of human rights to the attention of the Security Council together with recommendations for actions”. The chairpersons of human rights treaty bodies, at their fourth meeting, expressed their full support for the statement of the Secretary-General and urged the treaty bodies to take all appropriate measures in response to such situations. They went on to say:

“...the treaty bodies have an important role in seeking to prevent as well as to respond to human rights violations. It is thus appropriate for each treaty body to undertake an urgent examination of all possible measures that it might take, within its competence, both to prevent human rights violations from occurring and to monitor more closely emergency situations of all kinds...”

The working paper adopted by the Committee in 1993 noted that both early-warning measures and urgent procedures could be used to try to prevent serious violations of the Convention. At its forty-fifth session in 1994, the Committee decided that preventive measures, including early-warning measures and urgent procedures, should become part of its regular agenda.

Early-warning measures are to be directed at preventing existing problems from escalating into conflicts and can also include confidence-building measures to identify and support whatever strengthens and reinforces racial tolerance, particularly to prevent a resumption of conflict where it has previously occurred. Criteria for early-warning measures could, for example, include the following situations: the lack of an adequate legislative basis for defining and prohibiting all forms of racial discrimination, as provided for in the Convention; inadequate implementation or enforcement mechanisms, including the lack of recourse procedures; the presence of a pattern of escalating racial hatred and violence, or racist propaganda or appeals to racial intolerance by persons, groups or organizations, notably by elected or other officials; a significant pattern of racial discrimination evidenced in social and economic indicators; and significant flows of refugees or displaced persons resulting from a pattern of racial discrimination or encroachment on the lands of minority communities.

Urgent procedures are to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention. Criteria for initiating an urgent procedure could include, for example, the presence of a serious, massive or persistent pattern of racial discrimination; or a situation that is serious where there is a risk of further racial discrimination.

Decisions, statements or resolutions are adopted and further action is taken by the Committee under the preventive framework of the early-warning measures and urgent procedures.

C. PERIODIC REPORTS: THE KEY ISSUES

The Committee has not adopted different guidelines for the preparation of initial and periodic reports. Periodic reports are to be prepared according to the same general guidelines discussed earlier in this chapter.

States Parties should always keep in mind that the submission of periodic reports is as much a treaty obligation as the submission of initial reports, and that therefore they should be prepared with the same diligence. The intent and the letter of the Convention establish an antidiscriminatory obligation for States Parties, aiming not only at coping with existing practices of racial discrimination, but also at guarding against such practices in the future. The request for detailed periodic reports reflects this commitment.

In the preparation of periodic reports, States Parties should in particular also endeavour to submit, in addition to information on any new developments that occurred since the submission of the previous report, information requested by the Committee during the consideration of any previous reports, and answers to questions not fully or exhaustively dealt with at these occasions.

Among the aims to be met by the national commissions, which the Committee suggested to be set up in accordance with its General Recommendation XVII(42), is that of helping governments to prepare their periodic reports. It further recommended that when these commissions were set up, they should be involved in report preparation, and perhaps included in official delegations in order to intensify the dialogue between the Committee and the State Party concerned.

The importance attached by the Committee to the reporting procedure has been stated very clearly in its decision adopted in March 1984. The Committee expressed the opinion that *“Failure of certain States Parties to submit the required reports under Article 9 is due either to difficulties resulting from unavailability of personnel with the requisite competence in the field of human rights reporting, or a lack of political will to fulfil obligations flowing from the Convention”*. It reiterated that *“The reporting system is the most decisive element in the monitoring process with which the Committee is charged, and it is the principal means by which pressure is brought to bear upon States Parties to fulfil the substantive obligations to eliminate racial discrimination in all its forms. The latent nature of racial discrimination, its persistence and its susceptibility to sudden flare ups and accentuation make it imperative that monitoring should be rigorous...”*

The Committee has been permanently concerned, as such delays hinder its monitoring of the extent to which States Parties comply with the Convention. It has observed that its warnings to the said states have had little effect, and it has urged the Secretary-General to draw the attention of States Parties, at their meeting, to the unfortunate consequences of these delays, and to encourage them to examine ways of ensuring that all States Parties fulfil their obligations under Article 9(1) of the Convention.

THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

by Zagorka Ilic and Ivanka Corti

The Convention on the Elimination of All Forms of Discrimination against Women (hereinafter, the "Convention") was adopted by the General Assembly of the United Nations with resolution 34/180 of 18 December 1979. It entered into force on 3 September 1981, in accordance with Article 27(1). As of 30 September 1996, the Convention had been ratified or acceded to by 154 States.

A. THE REPORTING PROCESS

(a) The Convention and its reporting requirements

The adoption of the Convention was the culmination of 30 years of work by the United Nations, and in particular by its Commission on the Status of Women. In its comprehensiveness the Convention encompasses earlier, more narrowly focused instruments on the subject. Its scope and reach make the Convention an international bill of women's human rights.

The preamble acknowledges that despite various United Nations efforts to promote the equality of rights of men and women, "extensive discrimination against women continues to exist" and that such discrimination "violates the principles of equality of rights and respect for human dignity". The preamble goes on to state that discriminatory practices are an obstacle to the equal participation of women in all aspects of the life of their countries, hampering the increased prosperity of society and family. The preamble recognizes women's great contribution to the welfare of the family and to the development of society, and states that changes in traditional roles for men and women in society and family are needed. By adopting the Convention, the international community expresses its determination to undertake the measures required for the elimination of discrimination against women in all its forms and manifestations.

Under Article 2 of the Convention, States Parties, in condemning discrimination against women in all its forms, “agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women”. Articles 2 and 3 contain detailed requirements for States Parties to take appropriate measures in implementing this instrument at the national level.

In addition to the treaty obligation to implement the Convention at the national level, States Parties also undertake the commitment to submit reports on the measures taken to achieve this goal, and on any factors and difficulties encountered in this effort. This obligation is set forth in Article 18 of the Convention. The reports are to be considered by a Committee on the Elimination of Discrimination Against Women (hereinafter, the Committee).

Text of Article 18

1. *States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:*
 - (a) *Within one year after the entry into force for the State concerned;*
 - (b) *Thereafter at least every four years and further whenever the Committee so requests.*
2. *Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.*

This article clearly shows that the submission of both initial and subsequent reports is a treaty obligation, binding States Parties to the Convention. The article also establishes the periodicity for the submission of reports. Initial reports are therefore due within a year after entry into force of the Convention in a given State, and thereafter at least every four years after the first report was due. The Convention also enables the Committee to request reports at its discretion or on an exceptional basis.

Article 18 indicates what kind of information reports are expected to provide. This includes information on the measures adopted and the progress made in the implementation of the Convention. Reports should also indicate any factors and difficulties encountered by States Parties in this regard.

(b) Guidelines for reporting under the Convention

In order to assist States Parties in fulfilling their treaty obligations, the Committee has adopted guidelines for the preparation of reports. These guidelines shall ensure that all the substantive articles of the Convention are covered in a report, and that the reports are presented in a uniform manner so that a complete picture can emerge regarding the implementation of the Convention and the progress achieved in the realization of the rights contained therein.

The Committee has adopted separate guidelines for the preparation of initial reports and for second and subsequent periodic reports.

(i) Text of the general guidelines regarding the form and contents of initial reports under Article 18

Part One should describe:

- (a) *As concisely as possible, the actual, general, social, economic, political and legal framework within which a State Party approaches the elimination of discrimination against women in all its forms, as defined in the Convention;*
- (b) *Any legal and other measures adopted to implement the Convention or their absence as well as any effects which ratification of the Convention has had on the State Party's actual, general, social, economic, political and legal framework since entry into force of the Convention for the reporting State;*
- (c) *Whether there are any institutions or authorities which have as their task to ensure that the principle of equality between men and women is complied with in practice, and that remedies are available to women who have suffered discrimination;*
- (d) *The means used to promote and ensure the full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms in all fields on a basis of equality with men;*
- (e) *Whether the provisions of the Convention can be invoked before, and directly enforced by, the courts, other tribunals or administrative authorities or whether the provisions of the Convention have to be implemented by way of internal laws or administrative regulations in order to be enforced by the authorities concerned.*

Part II should provide specific information in relation to each provision of the Convention, in particular:

- (a) *The constitutional, legislative and administrative provisions or other measures in force;*
- (b) *The developments that have taken place and the programmes and institutions that have been established since the entry into force of the Convention;*
- (c) *Any other information or progress made in the fulfilment of each right;*
- (d) *The de facto position as distinct from the de jure position;*
- (e) *Any restrictions or limitations, even of a temporary nature, imposed by law, practice or tradition or in any other manner on the enjoyment of each right;*
- (f) *The situation of non-governmental organizations and other women's associations and their participation in the elaboration and implementation of plans and programmes of the public authorities.*

It is recommended that the reports should not be confined to mere lists of legal instruments adopted in the country concerned in recent years but should also include information indicating how these legal instruments are reflected in the actual economic, political and social realities and general conditions existing in their countries. As far as possible, States Parties should make efforts to provide all data disaggregated by sex in all areas covered by the Convention and the general recommendations of the Committee.

States Parties are invited to submit copies of the principal legislative, judicial, administrative and other texts referred to in the report so that these can be made available to the Committee. It should be noted, however, that for reasons of expense those texts will not normally be reproduced for general distribution with the report except to the extent that the reporting State specifically so requests. It is desirable that when a text is not actually quoted in or annexed to the report, the report should contain sufficient information to be understood without reference to the text.

The reports should reveal obstacles to the participation of women on an equal basis with men in the political, social, economic and cultural life of their countries and give information on the types and frequencies of cases of non-compliance with the principle of equal rights.

The reports should also pay due attention to the role of women and their full participation in the solution of problems and issues which are referred to in the preamble and which are not covered by the articles of the Convention.

In reporting on reservations to the Convention:

- (a) Each State Party that has entered substantive reservations should include information on those reservations in each of its periodic reports;*
- (b) The State Party should indicate why it considered the reservation to be necessary; whether any reservations the State Party may or may not have registered on obligations with regard to the same rights set forth in other conventions are consistent with its reservations to the Convention on the Elimination of All Forms of Discrimination against Women; and the precise effect of the reservation in terms of national law and policy. It should indicate the plans that it has to limit the effect of reservations and ultimately to withdraw them and, whenever possible, specify a timetable for withdrawing them;*
- (c) States Parties that have entered general reservations which do not refer to a specific article of the Convention or reservations to Articles 2 and 3 should make particular effort to report on the effect and interpretation of those reservations. The Committee considers such reservations to be incompatible with the object and purpose of the Convention.*

The reports and supplementary documentation should be submitted in one of the working languages of the Committee (Arabic, Chinese, English, French, Russian or Spanish) in as concise a form as possible.

The first part of the reports thus should provide general background information relevant to the situation of women and the implementation of the Convention in the reporting State. Part One, paragraphs (a) to (e), of the guidelines give a detailed catalogue of issues that need to be addressed in this part of the report to enable the Committee to obtain a comprehensive picture of the facts that determine the situation of women in the reporting State. (Part One of the guidelines is now common to the reporting guidelines prepared for all the United Nations human rights treaty bodies. For the text of the **consolidated guidelines** for the initial part of the reports of States Parties, see the annex at the end of Part One of the Manual.)

The second part of the report should provide the information requested in Part Two, paragraphs (a) to (f) of the guidelines on an article-by-article basis. These paragraphs indicate precisely what kind of details the Committee seeks with regard to the implementation of each article of the Convention.

The Committee has decided, for those States Parties that have entered substantive reservations, to include in the concluding observations it prepares following the review of their periodic reports, a section in which the Committee's views on the reservations would be reflected.

(ii) Text of the guidelines for the preparation of second and subsequent periodic reports

1. *In preparing second periodic reports, States Parties should follow the general guidelines and include matters that were not covered in the initial report.*
2. *As a general rule, States Parties in their second periodic reports should focus on the period between the consideration of their latest report up to the date of preparation of their last one.*
3. *In their periodic reports, States Parties should have regard to the previous report and to the proceedings of the Committee concerning that report, and should include, inter alia, the following:*
 - (a) *Legal and other measures adopted since the previous report to implement the Convention;*
 - (b) *Actual progress made to promote and ensure the elimination of discrimination against women;*
 - (c) *Any significant changes in the status and equality of women since the previous report;*
 - (d) *Any remaining obstacle to the participation of women on an equal basis with men in the political, social, economic and cultural life of their country;*
 - (e) *Matters raised by the Committee and which could not be dealt with at the time when the previous report was considered.*

As these guidelines show, second and subsequent reports should focus on the developments that have taken place since the previous meeting between the Committee and the reporting State. The information requested, while covering the same articles of the Convention as the previous report, should be more detailed and specific and should in particu-

lar also address matters not sufficiently dealt with earlier. They should focus specifically on changes that occurred since the consideration of the previous report, i.e. on new laws adopted, on actual progress achieved in the elimination of discrimination against women, etc. The procedure for the consideration of periodic reports reflects these specific differences.

In addition to the guidelines, the Committee has to date adopted a number of **general recommendations**, observations and suggestions in accordance with Article 21 and concerning certain articles or specific subjects of the Convention. In general, they deal with matters that gave rise to particular concern in the Committee as a result of the consideration of reports. As a consequence, they recommend to States Parties to take certain actions in the implementation of the article or to submit certain kinds of information when reporting to the Committee. (These general recommendations and suggestions will mostly be dealt with below under “(c) Reporting on the substantive provisions”.)

It should be noted that the Committee has always emphasized the importance of including information on any factors or difficulties States Parties encounter in fulfilling their obligations under the Convention. The request for this specific kind of information is based on Article 18(2) of the Convention, and repeated in the general guidelines.

The Committee also always asks for statistical gender-disaggregated data so that it can properly appreciate the position of women and any improvements to it in the framework of the substantive provisions of the Convention.

In fact, the Committee addressed this matter in its **General Recommendation No. 9** (eighth session 1989), entitled “Statistical data concerning the situation of women”. It states that statistical information is “absolutely necessary” for the understanding of the real situation of women in reporting States, but that many of the reports received do not provide statistics. The Committee therefore:

“recommends that States Parties should make every effort to ensure that their national statistical services responsible for planning national censuses and other social and economic surveys formulate their questionnaires in such a way that data can be disaggregated according to gender, with regard to both absolute numbers and percentages, so that interested users can easily obtain information on the situation of women in the particular sector in which they are interested”.

The Committee further considers the existence of national machinery and publicity an important element in the implementation of the Convention at national levels. It dealt with

the matter in its **General Recommendations No. 6** (seventh session 1988), entitled "Effective national machinery and publicity". It recommends that States Parties:

- "1. Establish and/or strengthen effective national machinery, institutions and procedures, at a high level of government, and with adequate resources, commitment and authority to:
 - (a) Advise on the impact on women of all government policies;*
 - (b) Monitor the situation of women comprehensively;*
 - (c) Help formulate new policies and effectively carry out strategies and measures to eliminate discrimination;**
- 2. Take appropriate steps to ensure the dissemination of the Convention, the reports of the States Parties under Article 18 and the reports of the Committee in the language of the State concerned;*
- 3. Seek the assistance of the Secretary-General and the Department of Public Information in providing translations of the Convention and the reports of the Committee;*
- 4. Include in their initial and periodic reports the action taken in respect of this recommendation."*

Among the major international human rights treaties, the Convention is among those which have proven subject to high numbers of reservations. The Convention itself permits reservations at the time of accession or ratification. It specifies, however, that reservations incompatible with the object and purpose of the Convention shall not be permitted. Subsequently, it does not indicate which reservations should be considered incompatible or who should decide such questions.

The large number of reservations and of interpretative declarations made by many States Parties to the Convention on most of the substantive articles of the Convention has given rise to great concern among other States Parties, and some of them have objected to them without, however, ever declaring that the Convention not be in force between the State Party entering a reservation and the State Party expressing its concern.

The Committee itself, as well as the States Parties in their annual meetings and the General Assembly, have taken up the issue repeatedly. It is the opinion of many that such reservations could affect the full implementation of the Convention. The Committee has consistently encouraged reporting States to review any reservations made regarding the Convention and to withdraw them as soon as possible.

In preparation for the World Conference on Human Rights in 1993, the Committee has adopted **General Recommendation No. 20** (eleventh session, 1992). In this Recommendation the Committee raised the question of the validity and the legal effect of reservations to the Convention in the context of reservations to other human rights treaties, requested States Parties to reconsider such reservations with a view to strengthening the implementation of all human rights treaties and considered introducing a procedure on reservations to the Convention comparable with that of other human rights treaties.

This matter has been routinely discussed by members of the Committee during the general observations and comments made regarding States Parties' reports.

Further considering reservations, in its **General Recommendation No. 21** (thirteenth session 1994), the Committee asks States Parties to:

- “(a) Indicate the stage that has been reached in the country’s progress to removal of all reservations to the Convention, in particular to Article 16.”*

(c) Reporting on the substantive provisions

ARTICLE 1

Text of Article 1

For the purpose of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of man and woman, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field.

Commentary

Article 1 is of paramount importance as it gives the definition of what constitutes “discrimination against women” for the purpose of the Convention. It establishes that the Convention deals with discrimination directed against women, and not with discrimination based on sex. The Convention therefore does not address discriminatory practices experienced by men, since this problem is dealt with in other international human rights instruments. While other conventions preclude discrimination on the ground of sex, a special conven-

tion is necessary to deal with the many areas of law and social institutions which perpetuate the continuation of discrimination against women and prevent them from reaching full equality.

It is important to emphasize that the principle of equality of rights applies to all women, irrespective of their marital status, emphasized in General Recommendation No. 21 (thirteenth session 1994), on "Equality in marriage and family relations". (For text see under Article 16).

The definition of discrimination against women is of considerable breadth and encompasses a wide range of issues. It first establishes which practices ("any discrimination, exclusion or restriction") constitute discrimination. Unintentional as well as intentional ("effect and purpose") discrimination is prohibited. The definition also gives the fields ("political, economic, social, cultural, civil or any other") in which discriminatory actions are excluded, and covers public as well as private ("or any other") actions.

In its **General Recommendation No. 19** (eleventh session 1992), the Committee defined gender-based violence, that is, violence directed against a woman because she is a woman or that affects women disproportionately, as discrimination. Such violence includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of Article 1. These rights and freedoms, outlined in General Recommendation No. 19 (eleventh session 1992), include:

- (a) The right to life;*
- (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;*
- (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict;*
- (d) The right to liberty and security of person;*
- (e) The right to equal protection under the law;*
- (f) The right to equality in the family;*
- (g) The right to the highest standard attainable of physical and mental health;*
- (h) The right to just and favourable conditions of work."*

The Convention applies to violence perpetrated by public authorities, which may breach the offending State's obligations under general international human rights law and under other conventions in addition to this Convention. However, General Recommendation No. 19 emphasized that discrimination under the Convention is not restricted to action by or on behalf of Governments (see Articles 2(e), 2(f) and 5). For example, under Article 2(e) the Convention calls on States Parties to take all appropriate and effective measures to eliminate discrimination, whether in the form of a public or private act, against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation. In the specific recommendations of the General Recommendation No. 19, the Committee requests States Parties to take all legal and other measures necessary to provide effective protection of women against gender-based violence, including, *inter alia*:

- “(i) Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including inter alia violence and abuse in the family, sexual assault and sexual harassment in the work-place;*
- (ii) Preventive measures, including public information and education programs to change attitudes concerning the roles and status of women;*
- (iii) Protective measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence...”*

States Parties, according to General Recommendation No. 19, should report on all forms of gender-based violence, and such reports should include all available data on the incidence of each form of violence, and on the effects of such violence on the women who are victims. Reports should also include information on the legal, preventive and protective measures that have been taken to overcome violence against women, and on the effectiveness of such measures. Additionally, States Parties should encourage the compilation of statistics and research on the extent, causes and consequences of violence, and on the effectiveness of measures to prevent and deal with violence.

States Parties are expected to implement the Convention and to report on all their activities in this regard in light of the definitions and recommendations above.

ARTICLE 2

Text of Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of equality of men and women in their national constitutions and other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;*
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;*
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;*
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;*
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;*
- (f) To take all appropriate measures, including legislative, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;*
- (g) To repeal all national penal provisions which constitute discrimination against women.*

Commentary

The purpose of this article is to ensure that each State Party establishes appropriate constitutional and legal structures to guarantee equality, to provide remedies and sanctions for public and private acts of discrimination and to repeal overtly discriminatory laws. Most important in implementing Article 2 is for each State Party to examine whatever in practice

either risks threatening or actually threatens the enjoyment of the rights set forth in the Convention, and to take measures to eliminate such practices.

Reporting under this article should be indicative of the practical measures taken by the State Party to create the legal basis for the implementation of the Convention. Among others, the Committee seeks details on the legal and institutional framework within which the Convention is implemented. These include information on the existence of the principles of equality and of non-discrimination in the State's constitution or a similar document, the relationship between the provisions of the convention and the national laws, and the position of the Convention in the hierarchy of the national legal system. In its **General Recommendation No. 21** (thirteenth session 1994), the Committee asks States Parties to "set out whether their laws comply with the principles of Articles 9, 15 and 16 and where, by reason of religious or private law or custom, compliance with the law or with the convention is impeded."

More specifically, reports should indicate whether a public entity exists for the promotion and protection of women in the reporting State. This can include information on national machinery or an ombudsman created to oversee implementation of the Convention.

The Committee further seeks information regarding the existence of legal remedies against discrimination and their effectiveness, including available sanctions in case of non-compliance. It is important to report on who has the right to institute court proceedings, on the number of cases involving discrimination that have been brought before the courts during the reporting period, and the decisions handed down in such cases.

Under this article, States Parties should also report on the continuing existence of discriminatory laws, regulations, policies or practices; and on any time table that might have been established to modify or repeal such laws, including any activities currently under way in this regard.

In its first general recommendations on "Violence against women" (General Recommendation No. 12, (eighth session 1989)), the Committee interpreted and analysed the text and articles of the Convention in light of the many forms of violence against women. In this recommendation the Committee considers that States Parties are required under Articles 2, 5, 11, 12 and 16 to take appropriate steps to protect women against any kind of violence within the family, at the work place, or in any other area of social life. (For the text of the recommendation, see below under Article 11).

General Recommendation No. 19 (eleventh session 1992) revisits the issue of "Violence against women" and specifically recommends that States Parties ensure that laws against family violence and abuse, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protec-

tive and support services should be provided for victims. Furthermore, gender-sensitive training of judicial law-enforcement officers and other public officials is essential for the effective implementation of the Convention.

In its continuing discussion on violence against women, particularly para. (f) above, the Committee has adopted General Recommendation No. 19 (eleventh session 1992) linking traditional attitudes which regard women as subordinate to men or in stereotyped roles to widespread practices involving violence and coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks, and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. Such violence on the physical and mental integrity of women deprives them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment mainly addresses actual or threatened violence, the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to their low level of political participation and to their lower level of education, skills, and work opportunities. Finally, these attitudes also contribute to the propagation of pornography and other forms of commercial exploitation of women as sexual objects, rather than as individuals, which in turn contributes to gender-based violence. Para. (f) of Article 2 is of special importance and its connection to Articles 5 and 10 (c) should be kept in mind.

Other international instruments deal in related articles with non-discrimination, equality before the law, and the pursuit of general policies in these areas. When gathering information for the purpose of reporting under Article 2 of this Convention, reporting officers should assess the potential relevance of information assembled for Articles 2(1), 3, and 26 of ICCPR, 2(2) and 3 of ICESCR, 2(1) of ICERD and 2(1) and 2(2) of CRC. See also Article 15(1) of this Convention. Reporting officers should note certain additions concerning CEDAW in the listing of related articles in six major international human rights instruments at the end of Part Two of the Manual for purposes of cross referencing).

ARTICLE 3

Text of Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Commentary

Equality between men and women is a pre-condition for women's full enjoyment of these rights and freedoms. The kinds of measures that States Parties should take will largely depend on the specific field and on the institutional structure and level of progress within the reporting State. It is incumbent upon each State Party, with the assistance and guidance of the Committee, to identify priority areas to improve the status of women and to develop appropriate programs and measures such as access to education, training, employment, the establishment of a public institution or of national machinery to promote and supervise the advancement of women. It is the responsibility of States Parties, with the help of the Committee, to decide what action is required to fulfil the treaty obligation.

Articles 2 and 3 establish a comprehensive obligation to eliminate discrimination in all its forms in addition to the specific obligations under Articles 15-16 of this Convention.

Article 3 calls, *inter alia*, for the adoption of legislation to implement this Convention. See in this regard also related Articles 2(2) of ICCPR, 2(1) and (3) of ICESCR, 2(2) and 5, first sentence, of ICERD, 2(1) of CAT, and 4 of CRC which all require relevant information on the adoption of legislation or other measures in the implementation of those instruments.

ARTICLE 4

Text of Article 4

1. *Adoption by States Parties of temporary measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when objectives of equality of opportunity and treatment have been achieved.*
2. *Adoption by States Parties of special measures, including those measures contained in the present Convention aimed at protecting maternity, shall not be considered discriminatory.*

Commentary

Article 4 recognizes that for women to achieve genuine *de facto* equality, it is necessary not only to remove discriminatory barriers, but also to promote equality by positive action, in order to overcome the effect of stereotype role division (Article 5) and of the general undervaluation of women and their work and the neglect of their education and training. In other words, to create equality it may be necessary to adopt measures which discriminate

in a positive way. Maternity protection is not discriminatory in any sense. It is a recognition that this function, unique to women, requires special measures of protection for mothers and children.

Paragraph 2 of Article 4 specifies that the adoption of special measures aiming at the protection of maternity shall not be considered discriminatory. Measures to protect maternity are necessary because of the importance to the individual and to the community and because the interests of children require that the effect on the health, income and earnings of the mother be considered.

It is the responsibility of each State Party to decide which temporary special measures it wishes or needs to adopt under this article to be in compliance with its treaty obligations.

The committee has adopted two general recommendations regarding the implementation of Article 4. In its **General Recommendation No. 5** (seventh session 1988), after noting that significant progress has been made in repealing or modifying discriminatory laws, and stating that further action is required to promote *de facto* equality between men and women, the Committee:

“recommends that States Parties make more use of temporary special measures such as positive action, preferential treatment or quota systems to advance women’s integration into education, the economy, politics and employment.”

General Recommendation No. 8 (seventh session 1988). While addressing the implementation of Article 8 of the convention,

“recommends that States Parties take further direct measures in accordance with Article 4 of the Convention to ensure the full implementation of Article 8...”

These two recommendations suggest that the Committee considers affirmative action measures desirable to ensure that women can actually enjoy the rights to which they are formally entitled.

Reports should therefore describe in detail the existence of any temporary special measures, including preferential treatment, quota systems, etc., that have been adopted in the reporting State, and the existing discriminatory practices they are supposed to remedy. The Committee seeks information on policy statements, guidelines or similar measures issued in areas where inequality most often exists, such as in education, access to employment, and political and economic activities. It is also important to report on the effectiveness of such measures, on their enforceability, and on the procedures established for that purpose.

In its **General Recommendation No. 18** (tenth session, 1991), the Committee expressed special concern about the situation of disabled women who suffer from a double discrimination linked to their special living conditions, and recommended that States Parties provide information on disabled women in their periodic reports, and on special measures taken to deal with their situation, to ensure that they have equal access to education and employment, health services and social security and to ensure that they can participate in all areas of social and cultural life.

To the extent that Article 4 addresses the rights (and needs) of a discriminated group and provides for the adoption of temporary special measures, reporting officers should bear in mind that Article 27 of ICCPR, Article 2(3) of ICESCR, and Articles 22, 23 and 30 of CRC, contain provisions aimed at the protection and/or promotion of certain vulnerable groups. Article 1(4) of ICERD provides for the adoption of temporary special measures for the purposes of that Convention. See also Article 14 of this Convention, dealing with rural women. With regard to Article 4(2), see also Articles 12 and 16 of this Convention.

ARTICLE 5

Text of Article 5

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;*
- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.*

Commentary

Article 5(a) stipulates that States Parties endeavour to help men and women to overcome predetermined, sexually stereotyped role behaviour and false concepts of inferiority or superiority of either sex. This is probably one of the most difficult tasks for the States Parties to accomplish, as it will often be running counter to inherited traditions and customs that are not easy to change or to eradicate. This is a key provision which affects the progress to equality and the full participation of women in society. Therefore, concerted action by all segments of society is needed, especially in the up-bringing of children, in the design of textbooks and the conceptualization of education in general, the images created by the mass media, etc., to bring about a change in the thinking and attitudes of both men and women.

The Convention leaves it largely to the States Parties to decide what specific actions are required and appropriate to implement this provision of Article 5. Specific recommendations have been made, for example, 24 (f) of **General Recommendation No. 19** (eleventh session 1992) states that effective measures should be taken to ensure that the media respect and promote respect for women, in particular to eliminate the continued projection of negative and degrading images of women in the mass media.

Article 5(b) establishes that maternity has a social function. Family education in States Parties should therefore include appropriate measures to convey this concept. It further states that men and women have a common responsibility in the upbringing of their children and that parents, in fulfilling their responsibilities, should give priority to the interest of their children at all times.

The Committee adopted a **General Recommendation No. 3** (sixth session 1987) dealing with this article. It states that the consideration of reports has shown that stereotyped conceptions of women exist, caused by socio-cultural factors perpetuating discrimination based on sex, and constituting obstacles for the implementation of Article 5. The Committee therefore:

“urges all States Parties effectively to adopt education and public information programmes, which will help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women.”

According to **General Recommendation No. 12** (eighth session 1989), entitled “Violence against women,” States Parties are required under Articles 2, 5, 11, 12 and 16 to take appropriate steps to protect women against any kind of violence within the family, at the work place, or in any other area of social life. (For the text of the recommendation, see Article 11 below.)

Again, in its **General Recommendation No. 19** (eleventh session 1992), the Committee considered “Violence against women” and made the following further specific Recommendations 24 (e) and (f) for States Parties reporting under Article 5:

- “(e) ...reports should identify the nature and extent of attitudes, customs and practices that perpetuate violence against women, and the kinds of violence that result. They should report the measures that they have undertaken to overcome violence, and the effect of those measures;*
- (f) Effective measures should be taken to overcome these attitudes and practices. States should introduce education and public information programmes to help eliminate prejudices which hinder women’s equality (Recommendation No. 3, 1987);...”*

Reporting under this article should enable the Committee clearly to understand the roles assigned by tradition and custom to men and women in the reporting State. The Committee seeks information on any existing stereotypes that hamper the advancement of women. For that purposes, the information provided to the Committee should include the discussion of the role and function of education in changing stereotyped attitudes that may exist in the family, in employment, and in political and social activities. Important in this regard are any past or ongoing effects to revise school textbooks regarding sexual stereotyping, the continuation of gender-specific task assignments in schools and in the family, and the obstacles encountered in their elimination.

Reports should also contain information on the continuing existence of gender-specific job advertising and hiring practices, and on any laws or customs excluding women from holding certain jobs. Any existing or planned activities to remedy the situation should be reported. The Committee also seeks information on incidents of sexual harassment and on measures taken to prevent them, including the availability and effectiveness of legal procedures.

Reports should also include the existence of stereotyping in the media, and the number and influence of women on decision-making levels of the mass media and advertising business.

Under this article, reporting States are further expected to discuss traditional practices and the obstacles to overcoming them. Among others, States Parties should address discriminatory practices in connection with polygamy, dowry systems, repudiation of the wife, bride purchase, female circumcision, etc. The Committee seeks information on any education or guidance programmes that exist concerning such practices.

Reports should address the roles assigned to men and women in the family, the participation of both parents in the raising of children, and any differences that might exist between an urban and a rural environment regarding a stereotypical division of responsibility for child-rearing.

It is important that reports provide information on any measures taken by the government or any other social entity to combat stereotyping according to traditional sex roles. This should include information on special programmes and information campaigns, policy statements and directives, or any other measures aimed at modifying the social and, particularly, the cultural behaviour patterns of men and women, and of sexual stereotyping. Information on any study conducted on this matter or any aspect of it should also be included in the report.

At this point it should also be stressed that Articles 3, 4, and 5 must be considered when reporting under all other articles of this Convention.

To the extent that Article 5 deals with preventive measures in the implementation of the Convention, reporting officers should bear in mind that other instruments contain related articles calling for preventive measures. These are in particular Article 7 of ICERD, Articles 10 and 11 of CAT, and Articles 19(2), 33 and 35 of CRC.

ARTICLE 6

Text of Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

Commentary

In order to implement this article, the Convention calls for measures primarily directed against those who profit from the exploitation of women, including the exploitation of girl children.

The subject of prostitution receives due attention from the Committee in the consideration of reports, emphasizing the unacceptability of such a degrading condition for women everywhere. The Committee, however, stresses in particular the need for measures to combat conditions which very often are at the root of much female prostitution, namely underdevelopment, the so-called "transitional economy" period, poverty, illiteracy, lack of employment opportunities, etc., and subsequently the desirability of effecting change through

training, education, job opportunities, and other measures. As a result, the Committee looks for information on measures taken in these areas to combat prostitution. The extent of prostitution in a community is often an indicator of the economic and social status of women in that community. The implications of this article therefore need to be given careful examination.

In addition to established forms of trafficking, there are new forms of sexual exploitation, such as sex tourism, the recruitment of migrant workers and refugee women from developing countries to work in developed countries, and organized marriages between women from developing countries and foreign nationals. The Committee, in its General Recommendation No. 19 (eleventh session 1992), finds these practices incompatible with respect for women's rights and dignity and that they put women at special risk of violence and abuse.

In particular, prostitutes are especially vulnerable to violence because their often illegal status tends to marginalize them. They need equal protection of laws against rape and other forms of violence, frequent disappearances or even assassinations.

Finally, wars and armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women and therefore necessitate specific protective and punitive measures.

In its specific Recommendation 24(g) of the **General Recommendation No. 19** (eleventh session 1992), the Committee states that specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation. Specific Recommendation 24(p) of the same document recommends that measures to protect women from violence should include training and employment opportunities and the monitoring of the employment conditions of domestic workers.

Reports should describe the extent of all these problems and the laws in effect dealing with both trafficking in women and with prostitution. Regarding the latter, it is important to specify whether prostitution as such is criminalized, or whether only the exploitation of prostitution of others is outlawed; what sanctions are imposed; and whether the laws are strictly enforced. Reports should also describe the penal provisions and the preventive and rehabilitation measures that have been taken to protect women engaged in prostitution or subject to trafficking and other forms of sexual exploitation. The effectiveness of these measures should also be described. Where possible, effective complaints procedures, remedies and compensation should be provided.

In addition to the legal situation, reports should indicate the extent of prostitution existing in the reporting State, including the prostitution or procurement of minors and whether there exists any so-called sex tourism. Comprehensive information on measures taken

against pornography is requested. Reports should also address the question of violence against, and rape of, prostitutes. It is important to provide information on efforts to reintegrate prostitutes into society, in particular the availability of job training and job-referral programmes. Health matters regarding prostitution also need to be addressed, in particular the provision of health services and measures to prevent or combat AIDS.

In its **General Recommendation No. 15** (ninth session, 1990) on the "Avoidance of discrimination against women in national strategies for the prevention and control of acquired immunodeficiency syndrome (AIDS)," the Committee recommends:

- "(a) That States Parties intensify efforts in disseminating information to increase public awareness of the risk of HIV infection and AIDS, especially in women and children, and of its effects on them;*
- (b) That programs to combat AIDS should give special attention to the rights and needs of women and children, and to the factors relating to the reproductive role of women and their subordinate position in some societies which make them especially vulnerable to HIV infection."*

When gathering information on Article 6, reporting officers should assess the relevance of information that might have been assembled for reporting under related articles of other instruments, and in particular on Articles 6, 7, and 8 of ICCPR, Articles 1 and 16 of CAT, and Articles 6, 11, 19, 32 to 36 and 37(a) of CRC, dealing with the right to life, the right to physical and moral integrity, slavery, forced labour and traffic of persons.

ARTICLE 7

Text of Article 7

States Parties shall take all appropriate measures to eliminate the discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;*
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;*

- (c) *To participate in non-governmental organizations and associations concerned with the public and political life of the country.*

Commentary

It is a fundamental principle that real equality requires that there be an equal opportunity to influence law and policy, to ensure that matters of concern to women are accorded proper priority. This article reaffirms the principle that women have the same political rights as men concerning the right to vote and to be elected that are already contained in the Convention on the Political Rights of Women of 1952. Apart from confirming the right to vote in all elections, Article 7 adds the right "to participate in the formulation of government policy and the implementation thereof," thereby widening the scope of political rights of women to include an active sense of participation. The article also confirms women's rights to participate in the political and public life of the country at all levels of government, political parties, trade unions, and other associations.

When reporting under this article, States Parties should provide the Committee with an assessment of the participation of women in the overall political and public life of the country. Apart from a reference to the legal situation regarding women's right to vote and to be elected on equal terms with men, and the percentages of women voters and voting, this will include data on the percentage of women in parliament, in the various levels of central and local government bodies, in public elected and appointed offices, and in the judicial system. The Committee also seeks information on any gender restrictions regarding such posts, or whether any quotas have been set for women employees or appointees. Reports should also discuss employee performance-appraisal systems and their gender neutrality, as well as promotion rates, including whether pregnancy or maternity leave influences such schemes.

Reports should further provide data on women's participation and positions in political parties, management positions, trade unions, and other traditionally male fields, as well as their participation in other civic organizations and the economy in general. Information should be provided on any special government or private programmes to attract larger numbers of women to participate and to assume leadership roles in all aspects of public, political and economic life.

On its fifteenth session (January 15 to February 2, 1996), the Committee agreed to continue at its sixteenth session the preparation of general recommendations on Articles 7 and 8 of the Convention. These recommendations will be based on a working paper prepared at the fifteenth session.

Article 25 of ICCPR, and Article 5(c) of ICERD deal in related articles with political rights and access to public service. See also Article 8 of this Convention.

ARTICLE 8

Text of Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Commentary

This article addresses a specific aspect of the political rights of women.

The Committee has adopted two general recommendations dealing with the matter. In its **General Recommendation No. 8** (seventh session 1988) the Committee recommends that States Parties make use of temporary special measures as envisaged by Article 4 of the Convention:

“to ensure the full implementation of Article 8 of the Convention and to ensure to women on equal terms with men and without any discrimination the opportunities to represent their Government at the international level and to participate in the work of international organizations.”

In its **General Recommendation No. 10** (eighth session 1989) at the occasion of the tenth anniversary of the adoption of the Convention, one of the Committee's recommendations stated that States Parties should consider:

“encouraging action to ensure the full implementation of the principles of the Convention, and in particular Article 8, which relates to the participation of women at all levels of activity of the United Nations and the United Nations system.”

In their reports, States Parties should provide information on whether women have *de jure* equal access to diplomatic and international posts with men. They should further give the percentage of women at various levels of the diplomatic service and should report on possibilities for joint postings for spouses in the diplomatic service. The Committee seeks statistical information on women heading diplomatic missions and delegations, and on the number of women participating in delegations to international meetings and conferences, including their level of seniority. Reports should also provide information on the percentage of women proposed by the reporting State to fill vacancies within the United Nations system and other regional and international organizations.

Reports should further provide information on any special measures or programmes in the reporting State to increase the number of women in these functions and the results of such actions.

See also Article 7 of this Convention.

ARTICLE 9

Text of Article 9

- 1.** *States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of her husband.*
- 2.** *States Parties shall grant women equal rights with men with respect to the nationality of their children.*

Commentary

This article contains two basic ideas. One, that women, on an equal footing with men, shall have the right to acquire, change or retain their nationality, and that marriage or a change in the husband's nationality during marriage shall not automatically affect the woman's nationality. Two, that women shall have the same rights as men regarding the nationality of their children. In implementing this article, States Parties are obliged to establish the formal legal equality of men and women with regard to acquiring, changing, retaining or conferring their nationality upon the spouse or children.

The Committee affirmed in its **General Recommendation No. 21** (thirteenth session 1994) that nationality is critical to full participation in society. Without status as nationals or citizens, women are deprived of the right to vote or to stand for public office and may be denied access to public benefits and a choice of residence. An adult woman's nationality should not be arbitrarily removed because of marriage or dissolution of marriage or because her father or husband changes his nationality.

Reports should address in detail all aspects of the equal or differential treatment of men and women on nationality issues in domestic law. This should include information on the ability of either spouse to confer his/her nationality upon a foreign spouse, the legal situation regarding the automatic change or loss of nationality upon marriage with a non-national, the

procedures for acquiring or changing the nationality and any waiting periods for acquiring the spouse's nationality upon marriage.

Reports should also provide details on the relationship between either spouse and their children regarding nationality issues. Of particular interest is the ability of the mother to confer her nationality on the children on an equal footing with the father, the ability of minors to travel on the mother's passport, or only the father's, a woman's right and ability to obtain a passport without her spouse's permission, etc.

States Parties should also report whether any discriminatory laws still exist, and whether steps have been or are being taken to remedy the situation.

The right to a nationality is also dealt with in related Article 24(3) of ICCPR, Article 5(d)(iii) of ICERD, and Articles 7 and 8 of CRC. Information gathered for reporting under these articles should be evaluated for its potential usefulness regarding the present Convention.

ARTICLE 10

Text of Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;*
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;*
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging co-education and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;*

- (d) *The same opportunities to benefit from scholarships and other study grants;*
- (e) *The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;*
- (f) *The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;*
- (g) *The same opportunities to participate actively in sports and physical education;*
- (h) *Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.*

Commentary

This comprehensive and detailed article recognizes the importance of education in enabling women and men to participate on an equal footing in all aspects of the life of their countries. Girls should be given the same educational opportunities as boys to enable them to participate fully in society, to compete in the workforce on equal terms, and to have an equal opportunity to gain economic independence. Special measures are necessary to ensure that these opportunities are available, and that they are taken, and to provide for the needs of women who have not had access to equal opportunity in the past.

In cooperation with UNESCO, CEDAW issued a "Manifesto" entitled *Towards a Gender-inclusive Culture through Education* which states in its principles for action that:

"The right to education is a fundamental human right that must be guaranteed to all women and men by the State as a public service. Education is one of the inalienable rights of the human being. It is also one of the necessary pre-conditions that enable women to gain confidence in themselves and to have access to other rights: equality before the law, political participation, the right to work and the right to leisure. Only the State can guarantee the long-term commitment needed for the fulfilment of the right to education."

Statistics are necessary to monitor progress under this article. Equality also implies participation in the planning and implementing of educational policy.

When reporting under Article 10, States Parties should discuss their specific situation with regard to each individual paragraph and provide detailed information on the *de jure* and *de facto* situation, including gender-disaggregated data on the equality of access to, and the number of students at, the primary, secondary and university levels, as well as the percentage of students graduating at various levels. It should also be mentioned whether education is compulsory, and to what grade, including information on compulsory or voluntary co-education, and on differences in the curricula and quality of non-educational establishments.

The Committee seeks information on the access to vocational training and technical education for girls, and their representation in traditionally male-dominated sectors, including information on any programmes created or structures and procedures established to ensure the ongoing monitoring of teaching materials and methods, and of the allocation of grants and scholarships with the purposes of eliminating discriminatory practices and stereotypical behaviour. It should also be reported whether any quotas exist for school enrolment or scholarship allocation.

Reports should provide information on the overall illiteracy rate in the State Party, and the percentage of the illiterate women, as well as the school drop-out rates of girls, compared with those of boys, and information on the causes for such drop-outs. It is also important to provide a comparison in this regard between urban and rural areas, and to describe any programmes planned or under way to combat illiteracy and reverse early school drop-outs, and the existence of functional literacy and adult education programmes geared toward girls and women, and women's share in the pursuance of life-long education.

Reports should also describe the availability of educational information regarding the health and well-being of families, including specific information on the means and channels used to spread such information and the extent to which it is specifically geared toward and accessible to women. This part of the report should also address the availability of information and advice on family planning, and whether women can in practice take advantage of such information.

When reporting under this article, States Parties should endeavour to include – as indicated – information on programmes to eliminate any remnants of discrimination in the area of education, and also on any factors or difficulties, be they economic, traditional, or otherwise, encountered in this regard.

When gathering information regarding Article 10 of this Convention, reporting officers should bear in mind that related Articles 13, 14, and 15 of ICESCR, Article 5(e)(v) and (vi) of ICERD, and Articles 28 to 31 of CRC, deal with the right to education, and with other cultural rights. Any information already collected for purposes of reporting under these in-

struments could be useful under Article 10 of the present Convention as well. See also Article 13(c) below.

ARTICLE 11

Text of Article 11

1. *States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:*
 - (a) *The right to work as an inalienable right of all human beings;*
 - (b) *The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;*
 - (c) *The right to free choice of profession and employment; the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recruitment training;*
 - (d) *The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;*
 - (e) *The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;*
 - (f) *The right to protection of health and to safety in working conditions, including the safeguarding of the functions of reproduction.*
2. *In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work; States Parties shall take all appropriate measures:*
 - (a) *To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;*

- (b) *To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority of social allowances;*
 - (c) *To encourage the provisions of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;*
 - (d) *To provide special protection to women during pregnancy in types of work proved to be harmful to them.*
3. *Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.*

Commentary

Article 11 is divided into three main sections. A first section sets out women's equal rights in employment. The second part deals with necessary measures to eliminate discrimination in employment on the basis of marriage or maternity. The third part deals with the necessary periodic review of protective labour legislation in the light of new knowledge.

The Committee, in adopting its **General Recommendations No. 12 and 19** (eighth and eleventh sessions 1989 and 1992) on violence against women, included Article 11 among those that require States Parties to act to protect women against violence of any kind occurring, among others, at the work place. It therefore recommends to States Parties to include in their periodic reports information about:

- “1. *The legislation in force to protect women against the incidence of all kinds of violence in everyday life (including sexual violence, abuses in the family, sexual harassment at the workplace, etc.);*
- 2. *Other measures adopted to eradicate this violence;*
- 3. *The existence of support services for women who are the victims of aggression or abuses;*
- 4. *Statistical data on the incidence of violence of all kinds against women and on women who are the victims of violence”. (See also above under Articles 2 and 5.)*

In its General Recommendation No. 19 (eleventh session 1992) on violence against women, the Committee made special note of the harmful effects of gender-specific violence, such as harassment in the workplace, on equality in employment. In the recommendation, the Committee defines sexual harassment as including:

“such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions.”

Such conduct is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment and promotion, or when it creates a hostile work environment.

In its specific Recommendation 24(k) of the General Recommendation No. 19 (eleventh session 1992), the Committee recommends that reports include:

“...information on sexual harassment, and on measures to protect women from sexual harassment and other forms of violence or coercion in the workplace;...”

In its **General Recommendation No. 13** (eighth session 1989), entitled “Equal remuneration for work of equal value,” the Committee addressed this issue on the basis of the experience gained in the examination of a large number of States Parties’ reports. It recommended the following to States Parties:

- “1. In order to implement fully the Convention on the Elimination of All Forms of Discrimination against Women, those States Parties that have not yet ratified ILO Convention No. 100 (concerning Equal Remuneration for Men and Women Workers for Work of Equal Value) should be encouraged to do so;*
- 2. They should consider the study, development and adoption of job evaluation systems based on gender-neutral criteria that would facilitate the comparison of the value of those jobs of a different nature, in which women presently predominate, with those jobs in which men presently predominate, and they should include the results achieved in their reports to the Committee on the Elimination of Discrimination against Women;*
- 3. They should support, as far as practicable, the creation of implementation machinery and encourage the efforts of the parties to collective agreements, where they apply, to*

ensure the application of the principle of equal remuneration for work of equal value."

When reporting under Article 11, States Parties should endeavour to provide detailed information on the legal situation and the situation in practice of women in every aspect covered by this article, on the actual enforcement of such laws including a description of relevant court cases, on any programmes created to improve the situation of working women or their access to work, on remaining obstacles, and should also provide statistical information on the various aspects of the article.

With regard to the legal situation, reports should indicate whether the law excludes women from employment or from holding certain jobs, the reasons for such legislation, and on any efforts under way to remedy any discriminatory legislation. They should further discuss the laws regulating working hours, minimum wage, leave, benefits, social security, health, retirement, etc., with regard to any legal discrimination between men and women.

Information should be provided on the percentage of women in the total labour force, their representation in various sectors, the percentage of women in low-paying and in part-time employment, issues such as working conditions for women in the public and private sectors, the particular situation and problems of migrant women, and of domestic employees. It is also important to discuss women's participation and problems in the informal sector, as well as specific problems of female employment in urban and rural areas. Reports should indicate the percentage of female-headed households, and programmes available to deal with their particular problems of employment and child care. They should also include the percentage of unemployed women compared to that of men. When discussing remuneration, reports should provide information in particular on the realization of the principle of equal pay for work of equal value; reports should indicate whether women are paid less than men for work of equal value, and if so, how much less. It is also important to address the issue of stability of employment for men and women.

With regard to equal access to employment, reports should provide information on equal job opportunities, hiring practices and selection criteria, as well as any legal remedies available against discriminatory employment practices. This should further include information on the existence of vocational and professional training programmes and on retraining schemes and whether they are equally accessible to, and taken advantage of by, men and women.

Reports should provide information on the legal regulation, including sanctions in case of violation, of maternity protection, the availability and duration of maternity leave, job protection, and whether both parents are entitled to leave following childbirth. It is important to report on the availability of child care, and whether government or private support is provided to poor parents. Reports should indicate what programmes, if any, are available

to facilitate the reintegration of women into the work force after absence due to family responsibilities.

Reports should also mention whether any efforts are under way in the reporting State to assess the value of women's work in the home, its recognition in monetary and other forms, and its overall contribution to the wealth of the country. In this regard, the Committee adopted **General Recommendation No. 16** (tenth session 1991) which recommends that States Parties include information on the legal and social situation of unpaid women working in family-run enterprises, collect and report statistical data on these women who often work without payment, social security and social benefits, and take steps to ensure that these women receive the payment and benefits they deserve.

In light of paragraph 120 of the Nairobi Forward-Looking Strategies for the Advancement of Women, the Committee, in its **General Recommendation No. 17** (tenth session 1991) in regard to Article 11, affirmed that the measurement and quantification of the unremunerated domestic activities of women, which contribute to the development in each country, would help reveal the *de facto* economic role of women and assist the formulation of further policies related to the advancement of women. The Committee therefore recommends that States Parties:

- “(a) Encourage and support research and experimental studies to measure and value unremunerated domestic activities of women; for example, by conducting time-use surveys as part of their national household survey programmes and by collecting gender-disaggregated statistics on time spent in activities both in the household and on the labour market;*
- (b) Take steps, in accordance with the provisions of the Convention, to quantify and include the unremunerated domestic activities of women in the gross national product;*
- (c) Include in their reports submitted under Article 18 of the Convention information on research and experimental studies undertaken to measure and value unremunerated domestic activities, as well as on the progress made in the incorporation of the unremunerated domestic activities of women in national accounts.”*

The reporting State should further provide information on protective legislation, and the procedures established for its periodic review.

When reporting on Article 11(1)(a), (b), and (c), reporting officers should bear in mind that the right to work is also dealt with in related Article 6(1) of ICESCR, and in Article 5(e)(i) of ICERD. The right to just and favourable conditions of work, dealt with in Article 11(1)(d) and (f), and in Article 11(2) and (3) of this Convention, is also dealt with in related Article 7 of ICESCR, and in Article 5(e)(ii) of ICERD. The right to social security, dealt with in Article 11(1)(e), and 13(a) of this Convention, is also contained in Article 9 of ICESCR, in Article 5(e)(iv) of ICERD, and in Article 26 of CRC. Any existing information on these articles might be of relevance under the present Convention as well.

ARTICLE 12

Text of Article 12

- 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health-care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.*
- 2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the postnatal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.*

Commentary

The issue of women and health care is important on two different levels. The first relates to women's roles as health-care providers for their families, and the second relates to them as health-care users. Article 12 ensures women equal access to health-care services, including family planning services and advice. The article further seeks to ensure additional services to women in connection with pregnancy and childbirth.

General Recommendation No. 12 (eighth session 1989), already referred to above under Articles 2, 5 and 11, also applies to Article 12.

General Recommendation No. 19 (eleventh session 1992) stresses that violence against women, interpreted under Article 12, puts women's health and lives at risk. Furthermore, the recommendation notes that in some states the perpetuation of traditional cultural practices (see Article 5) are harmful to the health of women and children. These practices include dietary restrictions for pregnant women, preference for male children, and female circumcision or genital mutilation. The Committee requests in 24 (l) of the

above-mentioned recommendation that States Parties take measures to overcome such practices and should take into account the Committee's recommendation on female circumcision (see Recommendation No. 14 below) in reporting health issues.

In its **General Recommendation No. 14** (ninth session 1990), entitled "Female circumcision," the committee address the matter of the continuation of female circumcision and other traditional practices harmful to the health of women. It noted with satisfaction the importance given to this health problem by various governmental, non-governmental and intergovernmental bodies and by women themselves, but remained concerned about the continuation of certain cultural, economic and other pressures which help to perpetuate such harmful practices. The Committee therefore recommends:

- (a) That States Parties take appropriate and effective measures with a view to eradicating the practice of female circumcision. Such measures could include:*
 - (i) The collection and dissemination by universities, medical or nursing associations, national women's organizations or other bodies of basic data about such traditional practices;*
 - (ii) The support of women's organizations at the national and local levels working for the elimination of circumcision and other practices harmful to women;*
 - (iii) The encouragement of politicians, professionals, religious and community leaders at all levels including the media to co-operate in influencing attitudes towards the eradication of female circumcision;*
 - (iv) The introduction of appropriate educational and training programmes and seminars based on research findings about the problems arising from female circumcision;*
- (b) That States Parties include in their national health policies appropriate strategies aimed at eradicating female circumcision in public health care. Such strategies could include the special responsibility of health personnel to explain the harmful effects of female circumcision;*
- (c) That States Parties invite assistance, information and advice from the appropriate organizations of the United Nations system to support and assist efforts being deployed to eliminate harmful traditional practices;*

- (d) *That States Parties include in their reports to the Committee under Articles 10 and 12 of the Convention on the Elimination of All Forms of Discrimination against Women information about measures taken to eliminate female circumcision.*"

General Recommendation No. 15 (ninth session 1990), entitled "Avoidance of discrimination against women in national strategies for the prevention and control of acquired immunodeficiency syndrome (AIDS)," deals with this specific health issue and its repercussions for women. It recommends:

- "(a) That States Parties intensify efforts in disseminating information to increase public awareness of the risk of HIV infection and AIDS, especially in women and children, and of its effects on them;*
- (b) That programmes to combat AIDS should give special attention to the rights and needs of women and children, and to the factors relating to the reproductive role of women and their subordinate position in some societies which make them especially vulnerable to HIV infection;*
- (c) That States Parties ensure the active participation of women in primary health care and take measures to enhance their role as care providers, health workers and educators in the prevention of HIV infection;*
- (d) That all States Parties include in their reports under Article 12 of the Convention information on the effects of AIDS on the situation of women and on the action taken to cater to the needs of those women who are infected and to prevent specific discrimination against women in response to AIDS."*

When reporting under these articles, the reporting State should also discuss the health policy of the State, the overall health protection of the population, including life expectancy for men and for women, the availability to women on a non-discriminatory basis of general and specialized health care, its cost, the number of doctors, dispensaries and other facilities, and the progress made in providing basic health services. The distribution of such services between urban and rural areas should be addressed, as well as the non-discriminatory access to such services, and the existence of special services for women – for example in connection with their reproductive function – and the access to pre-natal and postnatal

care. It should be reported whether any programmes exist to further sensitize the population, and in particular women, to the role of hygiene and family health care, lactation, etc.

Reports should further include information on the legal regulation regarding abortion, its legality and the enforcement of the law, including any sanctions imposed, and any court cases registered in this regard. Reports should indicate how many abortions are performed annually in the reporting State, legally or otherwise, and under what conditions, and what the country's policy is on this matter. It is important to provide information on the number of teenage pregnancies, and the age brackets of teenage mothers. The Committee seeks information on the availability of family planning advice, its cost and accessibility, whether any obstacles exist for women using such services, and whether women alone can decide on the spacing of births.

Under this article States Parties should also provide statistical information on mortality and morbidity rates of mothers and children, and the average number of live births per woman. Information should be provided on incidences of work accidents and work-related diseases among women, and on the health needs of migrant women. Drug addiction among women and related problems, including information on programmes to prevent and combat drug addiction, should also be discussed and duly reported.

When gathering information on Article 12, reporting officers should also consult related Article 6(1) of ICCPR, Article 12 of ICESCR, Article 5(e)(iv) of ICERD and Article 24 of CRC regarding any information of relevance for reporting under the present Convention. See also Articles 4(2) and 16 of this Convention.

ARTICLE 13

Text of Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;*
- (b) The right to bank loans, mortgages and other forms of financial credit;*
- (c) The right to participate in recreational activities, sports, and all aspects of cultural life.*

Commentary

By including the rights contained in Article 13, the Convention creates the obligation for States Parties to eliminate discrimination and to facilitate women's access to benefits, rights and activities from which they might otherwise be excluded.

Reports should provide information on the availability of social services to single mothers, and whether any allowances are provided for children and single mothers. Information should be given on women's right to financial services, such as credits and loans, and whether they can pursue such services alone or need the consent of their fathers or husbands.

It should also be discussed whether women can and do freely participate in sports and other aspects of cultural life.

Reporting officers should bear in mind that Article 5(d)(v) and (vi) of ICERD deals with the right to own property and to inherit. See also Article 11(1)(e) of this Convention.

ARTICLE 14

Text of Article 14

1. *States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.*
2. *States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:*
 - (a) *To participate in the elaboration and implementation of development planning at all levels;*
 - (b) *To have access to adequate health-care facilities, including information, counselling and services in family planning;*
 - (c) *To benefit directly from social security programmes;*

- (d) *To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;*
- (e) *To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;*
- (f) *To participate in all community activities;*
- (g) *To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;*
- (h) *To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.*

Commentary

Article 14 of the Convention is of particular importance for a number of reasons. One, this is the first time that rural women are recognized in an international human rights instrument as a group with special problems and deserving special attention. Two, by explicitly extending the application of the Convention to this very large group of women in rural areas, States Parties recognize the importance of the work of rural women and their contribution to the well-being of their families and the economy of their countries. The Convention further enumerates the rights that are most important to this group of women: in particular access to land and credit, to education and training, to health and social services, etc. It also envisages the participation of rural women in the public and political life of their communities, and in particular their participation in the design and implementation of development planning.

In its **General Recommendation No. 19** (eleventh session 1992), the Committee states that rural women are at a greater risk of gender-based violence because traditional attitudes regarding the subordinate role of women tend to prevail in rural areas. Also important, girls from rural communities are at special risk of violence and sexual exploitation when they leave the rural community to seek employment in towns. In its specific Recommendation 24(o) relating to General Recommendation No. 19 concerning "Violence against women," the Committee requests:

"States Parties should ensure that services for victims of violence are accessible to rural women and that where necessary special services are provided to isolated communities".

States Parties therefore should report on the risks to rural women, the extent and nature of violence and abuse to which they are subject, their needs for and access to support and other services and the effectiveness of measures to overcome violence.

In a general observation arising from the fifth session of the Committee in 1986, many members of the Committee expressed an opinion following the consideration of reports and information from States Parties. The opinion states, *inter alia*:

“Since a high percentage of world population lives in the rural areas, it is important that States Parties include either in their initial reports or subsequent reports the following information:

- (a) Status of women in the rural areas to include percentage of total population of the State Party;*
- (b) Changes and developments in their status due to the implementation of the Convention;*
- (c) Programmes or legislative and administrative measures of general policy adopted in order to comply with Article 14 of the Convention, for example:*
 - (i) Preventive and full-time health services provided;*
 - (ii) Family planning;*
 - (iii) Literacy programmes and plans for formal and informal education;*
 - (iv) Training, self-help programmes and infrastructure building, such as co-operatives;*
 - (v) Credit and loan facilities (such as seed monies) extended to women as an independent entity; recognition of her signature and ability to enter into contracts under her own name without requisites of second persons, collaterals, as beneficiary or dependent;*
 - (vi) Ownership of land;*
 - (vii) Appropriate technology to facilitate working and living conditions of women.”*

In addition to the issues enumerated above as deserving attention in their reports, States Parties should also include information on the percentage of women in agriculture, including the availability of agricultural extension programmes designed especially for women, and women heads of households in rural areas. It is important to report on the structures

and procedures created or planned to enable and facilitate the participation of rural women in the economic, political, social and cultural life of their communities and their countries. Particular attention should be paid to measures taken to allow the participation of rural women in development planning, and their full integration into the development process of the country. This should include information on rural women, targets and beneficiaries of national and international development aid projects, and the States party's experiences in this area.

Reports should include statistics or other information to show the balance between rural and urban population, and the rate of shift for both men and women. There should also be information to show the different rate of progress of women in the urban and rural environment, and differences in their access to education, employment and health care.

The Committee has also adopted **General Recommendation No. 16** (tenth session 1991) concerning unpaid women workers in rural and urban family enterprises, recommending that reports should include information on the legal and social situation of such women and statistical data on women who work without payment, social security and social benefits in enterprises owned by a family member. Additionally, the recommendation urged States Parties to take necessary steps to guarantee payment, social security and social benefits for women working in such family-run enterprises.

To the extent that Article 14 deals with rural women as a vulnerable group, reporting officers should bear in mind that other instruments also contain provisions addressing the situation of such groups. Article 27 of ICCPR, Article 2(3) of ICESCR, Article 1(4) of ICERD and Articles 22, 23 and 30 of CRC are the related articles. See also Article 4 of this Convention.

ARTICLE 15

Text of Article 15

- 1.** *States Parties shall accord to women equality with men before the law.*
- 2.** *States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.*
- 3.**

States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. *States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.*

Commentary

Article 15 confirms the equality of women and men before the law. It then goes on to specify the areas of civil law in which women, especially married women, have traditionally most often been discriminated against, namely in the conclusion of contracts in their names, the administration of property, the freedom to travel and to choose a residence and domicile.

In its **General Recommendation No. 21** (thirteenth session 1994), the Committee outlined the importance of women's ability to enter into a contract and have access to financial credit in order to achieve legal and financial autonomy. Restrictions on women's legal capacity seriously limit a woman's ability to provide for herself and her dependants. The recommendation also addresses the concept of domicile in common-law countries. As in the case of nationality, the examination of States Parties' reports indicated that women were not always permitted by law to choose their domicile. The Committee states that domicile, like nationality, should be capable of change at will by an adult woman regardless of her marital status:

"Any restrictions on a woman's right to choose a domicile on the same basis as a man may limit her access to the courts in the country in which she lives or prevent her from entering and leaving a country freely and in her own right."

Finally, the Committee states in General Recommendation No. 21 (thirteenth session 1994) that migrant women who live and work temporarily in another country should be permitted the same rights as men to have their spouses, partners and children join them.

Reports should first describe the legal position of women as compared to men in the areas covered by Article 15. They should then provide information on the actual situation, such as treatment of women in the courts and other public bodies, the practical ability of women to enter into contractual relations alone and in their own right, their ability freely to administer their property, and to choose their residence and domicile, etc. Reports should provide information on how cases of disagreement between husband and wife in any of these

instances are being dealt with, either in court or by other means, and what the outcomes are in such cases.

The Committee also seeks information on women's ability to appear in court, as attorneys, judges, etc.; on women's ability to serve on juries, or to testify as witnesses; and on the weight given to their testimony.

When gathering information on Article 15(2) and (3), reporting officers should bear in mind that procedural guarantees are contained in related articles of other instruments, which are therefore of potential interest for reporting also under this Convention. Such articles are in particular: Articles 14, 15, and 16 of ICCPR, 5(a) of ICERD, 12 to 15 of CAT, and 12(2), 37(d) and 40 of CRC. With regard to Article 15(4) of this Convention, reporting officers should consider consulting information already gathered for Articles 12 and 13 of ICCPR, 5(d)(i) and (ii) and 5(f) of ICERD, 3 of CAT and 10 of CRC, dealing with the right to freedom of movement, the right of access to any public place, and with extradition and expulsion. With regard to Article 15(1), see also Article 2 of this Convention, and with regard to Article 15(2), see also Article 13(b).

ARTICLE 16

Text of Article 16

1. *States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:*
 - (a) *The same right to enter into marriages;*
 - (b) *The same right freely to choose a spouse and to enter into marriage only with their free and full consent;*
 - (c) *The same rights and responsibilities during marriage and at its dissolution;*
 - (d) *The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;*
 - (e) *The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;*

- (f) *The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;*
 - (g) *The same personal rights for husband and wife, including the right to choose a family name, a profession and an occupation;*
 - (h) *The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration;*
2. *The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.*

Commentary

The provisions of Article 16 cover very sensitive areas of private law that are often based on traditional or religious practices and on the concept of distinctive roles and rights for men and women. By their inclusion in the Convention, these matters are brought into line with the general thrust of the Convention regarding the equality of men and women in all areas, including marriage and family relations.

The Committee, in its **General Recommendation No. 21** (thirteenth session 1994) considers the various forms of family around the globe and concludes that whatever the form of the family, the legal system, religion, custom, or tradition within a country, the treatment of women in the family must accord with the principles of equality guaranteed to all people, as Article 2 of the Convention requires.

With regard to Article 16(1)(a) and (b), the Committee found that States Parties' reports disclosed countries which, on the basis of custom, religious beliefs or ethnic origins, permit forced marriages or where women are forced to marry out of financial necessity. Therefore the Committee states in its General Recommendation No. 21 (thirteenth session 1994):

"Subject to reasonable restrictions based for example on woman's youth or consanguinity with her partner, a woman's right to choose when, if, and whom she will marry must be protected and enforced by law."

On the issue of polygamous marriages, the Committee notes in its General Recommendation No. 21 (thirteenth session 1994) that some States Parties, whose constitutions otherwise guarantee equal rights, permit polygamous marriage in accordance with personal or customary law and concludes that this situation violates the constitutional rights of women, and breaches the provisions of Article 5(a) of the Convention.

The Committee, in its General Recommendation No. 21 (thirteenth session 1994), also considers Article 16(2) in light of the provisions of the Convention on the Rights of the Child and the Vienna Declaration and concludes that the minimum age for marriage should be 18 years for both men and women and that countries which allow different ages for marriage for men and women contravene the Convention. The Committee cites a World Health Organization study which found that when minors marry and have children, their health can be adversely affected and their education, and therefore their economic autonomy, impeded. With regard to marriage, the Committee states:

“States Parties should also require the registration of all marriages whether contracted civilly or according to custom or religious law. The State can thereby ensure compliance with the Convention and establish equality between partners, a minimum age for marriage, prohibition of bigamy and polygamy and the protection of the rights of children.”

In all societies, women who have traditionally performed their roles in the private or domestic sphere have long had those activities treated as inferior. In its General Recommendation No. 21 (thirteenth session 1994), the Committee found that the reports of States Parties disclosed that there are still countries where *de jure* equality does not exist. As a result, women are prevented from having equal access to resources and from enjoying equality of status in the family and society. Even where *de jure* equality exists, all societies assign women roles which are often regarded as inferior. Therefore the principles of justice and equality contained in Article 16 and also in Articles 2, 5 and 24 of the Convention are being violated.

With regard to Article 16(1)(c), the Committee notes in its General Recommendation No. 21 (thirteenth session 1994) that variations in law and practice relating to marriage, which often result in the husband being accorded the status of head of household, contravene the provisions of the Convention, namely restricting women's rights to equal status and responsibility within marriage. Additionally, the Committee states that women living in *de facto* unions should have their shared income, assets, and rights and responsibilities for the care and raising of dependent children or family members protected by law.

Concerning Article 16(1)(d) and (f), the Committee's General Recommendation No. 21 (thirteenth session 1994) reaffirms Article 5(b) of the Convention and the Convention on

the Rights of the Child, but notes that some countries do not observe the principle of granting parents of children equal status in the care, protection and maintenance of children. Expressing special concern for the rights of unmarried, divorced and separated mothers to partake in the care, protection and maintenance of their children and for the status given to children born out of wedlock, the Committee states:

“The shared rights and responsibilities enunciated in the Convention should be enforced at law and as appropriate through legal concepts of guardianship, wardship, trusteeship, and adoption. States Parties should ensure that by their laws both parents, regardless of their marital status and whether they live with their children or not, share equal rights and responsibilities for their children.”

Point 21 of Article 16(1)(e) of General Recommendation No. 21 (thirteenth session 1994) states that women are entitled to decide on the number and spacing of their children because childbirth and rearing have a direct impact on women’s lives and physical and mental health. In order to make an informed decision about safe and reliable contraceptive measures, women must have access to information about them, and guaranteed access to sex education and family planning services, as provided in Article 10(h) of the Convention. Such provisions improve the general quality of life and health of the population, and the voluntary regulation of population growth helps preserve the environment and achieve sustainable economic and social growth.

In its **General Recommendation No. 21** on Art. 16(1)(e) the Committee states that:

“The responsibilities that women have to bear and raise children affect their right of access to education, employment and other activities related to their personal development. They also impose inequitable burdens of work on women. The number and spacing of their children have a similar impact on women’s lives and also affect their physical and mental health, as well as that of their children. For these reasons, women are entitled to decide on the number and spacing of their children”.

In its General Recommendation No. 21, the Committee also states that fulfilment of Article 16(1)(g) is a necessary pre-condition for a stable family and makes the connection to Article 11(a) and (c) of the Convention.

Also in connection with Article 15(1) and (2) of the Convention, the Committee affirms the importance of Article 16(1)(h) to maintaining a woman’s financial independence and ability to provide for herself and her family. The Committee makes special note of women’s

unequal treatment under agrarian reform and land redistribution programs, and of the impact of discriminatory laws or customs that grant men a greater share of property at the end of a marriage or *de facto* relationship, or on the death of a relative, on a woman's practical ability to divorce her husband, support herself and her family, and live in dignity as an independent person. The Committee therefore recommends that all property laws and legal or customary provisions relating to inheritance laws that discriminate against married or unmarried women with or without children should be discouraged and revoked.

In considering the value of marital property, both financial and non-financial contributions, normally those of women, should be accorded the same weight. Specifically, the Committee notes that the provisions of the Convention and the Economic and Social Council resolution 884D(XXXIV) which guarantee equal entitlement for women to inheritance have generally not been implemented. Additionally, the Committee notes that even where laws do exist guaranteeing women an equal share of marital property and inheritance, women's practical ability to exercise these rights is limited by legal precedent or custom.

In its **General Recommendation No. 12** (eighth session 1989), the Committee states that States Parties are required to act to protect women against any kind of violence occurring, among other places, in the family. This general recommendation has already been discussed above under Articles 2, 5, 11 and 12. Relevant information should also be provided under Article 16.

The Committee, in its **General Recommendation No. 19** (eleventh session 1992) on "Violence against women" affirms that, in regard to (e) above, compulsory sterilization and abortion adversely affect women's physical and mental health, and infringes upon the rights of women to decide on the number and spacing of their children. In its specific Recommendation 24(m) of General Recommendation No. 19, the Committee states:

"States Parties should ensure that measures are taken to prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control;..."

Also in its General Recommendation No. 19, the Committee affirmed that family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships, women of all ages are subjected to violence of all kinds, including battering, rape, and other forms of sexual assault, as well as mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence and coercion. These forms of violence put

women's health at risk and impair their ability to participate in family life and public life on a basis of equality.

In the specific recommendations of its General Recommendation No. 19 (eleventh session 1992) the Committee stated that the following measures are necessary to overcome family violence:

- “(i) Criminal penalties where necessary and civil remedies in case of domestic violence;*
- (ii) Legislation to remove the defence of honour in regard to the assault or murder of a female family member;*
- (iii) Services to ensure the safety and security of victims of family violence, including refuges, counselling and rehabilitation programmes;*
- (iv) Rehabilitation programmes for perpetrators of domestic violence;*
- (v) Support services for families where incest or sexual abuse has occurred;...”*

States Parties should report on the extent of domestic violence and sexual abuse, and on the preventive, punitive and remedial measures that have been taken in this regard. Reports should also provide information on the legal situation and its enforcement with regard to any of the aspects covered by Article 16. For example, States Parties in their reports should state the extent of problems like coercion in regard to fertility and reproduction, and should indicate the measures that have been taken in this regard and their effect. Reports should also provide information on the reporting State's policy with regard to the institution of the family, on the practical situation in the areas covered by Article 16, on policy initiatives and on any programmes under way to remedy persisting situations of discrimination, and on any factors or difficulties encountered in this regard.

The Committee seeks information on the practical realities regarding the sharing of responsibilities in the family and the home, such as on leave taken to care for sick children or for other family members. Reports should also discuss the legal rights and the *de facto* situation of unmarried women living in union with their partners, and their rights upon their partner's death.

Information should be provided on the existence of polygamy, on women's position regarding divorce procedures, their right to initiate such procedures, the assessment and division of property upon divorce, women's rights to remarry, and rights to custody of children and to child support. Reports should also discuss women's and wives' rights to inheritance, and the rights of children born in and out of wedlock in this regard.

Reports should give information on the minimum age of marriage for males and females, whether betrothal, dowry, and similar practices continue to exist, and on any steps taken to repeal them.

When reporting on Article 16, the provisions of Articles 12 and 4(2) of this Convention should be taken into consideration. The right to marry and found a family, and the protection of the family, mother and children are dealt with also in related Articles 23 and 24 of ICCPR, Article 10 of ICESCR, Article 5(d)(iv) of ICERD, and Articles 5, 16, 18, 20, 22 and 36 of CRC. Information collected with regard to these articles might be useful also under this present Convention.

In its **General Recommendation No. 21** (thirteenth session 1994), the Committee expresses its alarm over the number of States entering reservations to the whole or part of Article 16, claiming that compliance may conflict with a commonly held vision of the family based, *inter alia*, on cultural or religious beliefs or on the country's economic or political status. Consistent with Articles 2, 3 and 24 of the Convention, the Committee requires that all States Parties gradually progress to a stage where, by its resolute discouragement of notions of the inequality of women in the home, each country will withdraw its reservations, in particular to Articles 9, 15 and 16 of the Convention. Furthermore, the Committee, in particular on the basis of Articles 1 and 2 of the Convention, requests that those States Parties whose national laws do not conform to the provisions of the Convention make necessary efforts to examine the *de facto* situation relating to the issues and to introduce the required changes to national legislation that still discriminates against women.

B. CONSIDERATIONS OF REPORTS BY THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

(a) The Committee: Its composition

In accordance with Article 18, reports submitted by States Parties are to be considered by a Committee on the Elimination of Discrimination against Women.

The Committee is a treaty body established according to Article 17 of the Convention. It consists of 23 members of high moral standing and competence in matters related to women and covered by the Convention. Members serve in their personal capacity.

Text of Article 17

1. *For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to adequate geographical distribution and to the representation of different forms of civilization as well as the principal legal systems.*
2. *The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.*
3. *The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.*
4. *Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.*
5. *The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine shall be chosen by lot by the Chairman of the Committee.*

6. *The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.*
7. *For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among the nationals, subject to the approval of the Committee.*
8. *The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.*
9. *The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.*

This article specifies that the main mandate of the Committee is the consideration of reports submitted by States Parties in accordance with Article 18. It may also make suggestions and general recommendations based on the examination of reports and information received from States Parties (Article 21).

Although members are nominated by States Parties to the Convention to serve on the Committee, once elected they serve in their personal capacity as experts and are under no circumstances delegates or representatives of the States whose nationalities they bear. Members are elected for a four-year term and can be re-elected if nominated. The Convention states that the Committee shall adopt its own rules of procedure, and shall elect its officers for a term of two years (Article 19). The Committee elects from among its members a Chairperson, three Vice-Chairpersons, and a Rapporteur. They are elected for two-year terms, and can be re-elected.

(b) The Committee: Its method of work

According to the Convention (Article 20), the Committee normally meets once a year for a period of not more than two weeks, usually in January. Since the Division for the Advancement of Women was relocated to New York in 1993, the Committee's sessions are held in the United Nations Headquarters in New York. In its **General Recommendation No. 22** (fourteenth session 1995), the Committee recommended that the States Parties con-

sider amending Article 20 to allow the Committee to meet “annually for such duration as is necessary for the effective performance of its functions under the Convention, with no specific restriction except for that which the General Assembly shall decide”.

Given the number of reports submitted by States Parties to the Convention, the Committee requested from and was granted by the General Assembly of the United Nations a certain number of meetings for a pre-sessional working group to prepare the expeditious consideration of second and subsequent periodic reports. This working group met for the first time prior to the Committee’s ninth session and is continuing to meet for a one-week period prior to each session.

Following the sixth session, the Committee set up two standing working groups that continue to work during the sessions. Working Group I considers and suggests ways and means to expedite the work of the Committee, while Working Group II considers ways and means to implement Article 21 of the Convention.

At its seventh session, the Committee decided to keep working-group membership flexible. At its eleventh session, the Committee decided that the working groups should be open only to members of the Committee. Specialized agencies and other bodies that could make substantive contributions to items under consideration by a working group could be invited to contribute to group deliberations.

Thus far the suggestions adopted by Working Group I have addressed primarily organizational and related matters. Working Group II is preparing general recommendations on the basis of analyses of different articles of the Convention and the results of their implementation. Working Group II has also prepared “Suggestions” for past and future U.N. World Conferences, such as those held in Vienna, Cairo, Copenhagen, and most recently Habitat II in Istanbul. To prepare the Committee’s document for the Fourth World Conference on Women in Beijing, the government of Spain sponsored an extraordinary one-week session of the entire Committee in which all the experts participated.

In its **General Recommendation No. 22** (fourteenth session, 1995), the Committee stated its concern over the workload of the Committee as a result of the growing number of ratifications, the existing backlog of reports awaiting consideration, and the fact that the Committee on the Elimination of Discrimination Against Women is the only human rights treaty body whose meeting time is limited by its Convention and that it has the shortest duration of meeting time of such bodies. The Committee therefore:

“Recommends that the States Parties favourably consider amending Article 20, paragraph 1 of the Convention in respect of the meeting time of the Committee, so as to allow it to meet annually for such duration as is necessary for the effective performance of its functions under the Convention, with no specific

restriction except for that which the General Assembly shall decide;

Recommends also that the General Assembly, pending the completion of an amendment process, authorize the Committee to meet exceptionally in 1996 for two sessions, each of three weeks duration and each being preceded by pre-session working groups;..."

The States Parties' meeting to consider the Committee's recommendations took place in May 1995 and adopted a resolution recommending the adoption of the above-mentioned amendment, which is to enter into force after the ratification of a two-thirds majority of States Parties to the Convention. General Recommendation No. 22 (fourteenth session 1995) was also endorsed by the Beijing Platform for Action.

The Committee, in its Decision II (fourteenth session 1995) reconsidered the advantage of women's human rights if they are integrated into the mainstream of the United Nations treaty bodies and requested that the Secretary-General relocate the Committee to Geneva with services to be provided by the Centre for Human Rights. Decision II recalled that the Vienna Declaration and Programme for Action recognize that the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. It also took into account the recommendation made by the third, fourth and fifth meetings of persons chairing the human rights treaty bodies that the Committee be relocated to Geneva, with services to be provided by the Centre for Human Rights of the Secretariat.

In its suggestion No. 7 (fourteenth session, 1995), the Committee adopted elements of an optional protocol to the Convention to be submitted to the Commission on the Status of Women for consideration. The Committee's proposal envisages both a communications and inquiry procedure and should serve as a basis for the eventual drafting of an optional protocol.

In its suggestion No. 8 (fourteenth session, 1995), the Committee proposed to explore the possibility of convening a meeting of the chairpersons of all the human rights treaty bodies to promote the exchange of information among them, as well as to coordinate with the relevant organs of the United Nations system as regards the follow-up to the Programme of Action of the International Conference on Population and Development and Beijing Platform for Action.

At its twelfth session (18 January to 5 February 1993), the Committee decided to include an item that permits the chairperson to brief the Committee on activities and events that have had a bearing on the Committee's work during the year. In the past, the chairperson

used to inform the Committee on the conclusions of the chairpersons' meeting and the Commission on the Status of Women and give indications of the deliberations during the session.

The Committee has adopted its own rules of procedure. These rules establish that meetings of the Committee are generally held in public. Twelve members constitute a quorum, and the presence of two thirds of the members is required for taking a decision. The rules of procedure establish that the Committee shall endeavour to reach its decisions by consensus. The practice confirms this rule.

Article 18 of the Convention states that States Parties shall submit reports "for consideration by the Committee". In its rules of procedure, the Committee has determined that this consideration shall take place in a public meeting, and that representatives of the reporting State shall be present. Such representatives "shall participate in discussions and answer questions" concerning the report under consideration. In order to enable the State Party to have its representative(s) attend the scheduled meetings, the State Party is notified of the date, place and time of the session in which the report is scheduled for consideration.

The Committee, through the Secretary-General of the United Nations, may send reminders to those States Parties whose reports are overdue. If a State Party does not submit its overdue report even after receiving such a reminder, the Committee includes a relevant reference in its annual report to the General Assembly.

At its twelfth session in 1993, the Committee adopted the decisions below to improve the efficiency of its work:

"Procedures for ensuring that States Parties present their reports:

It was decided to set 1 September of the year preceding the session as a formal deadline by which date a State Party that had been selected by the Committee to present its report should give its agreement in writing, preferably by fax. Any additional written information to be given to the Committee should also be provided by 1 September. If no written confirmation had been received by 1 September, it was to be assumed that the State Party did not wish to present its report at the following session and a State Party on the reserve list, in order of receipt of reports, should then be requested to present its report instead. The State Party on the reserve list should be requested to provide its agreement in writing by 15 September, also by fax.

Letters inviting States Parties to present their reports and indicating the deadlines should be issued by the Secretariat immediately after the Committee's session. Letters to States Parties on the reserve list should also be issued immediately after the session and should indicate the procedures to be followed and the State's position on the reserve list.

Substitution of outdated reports

The Committee decided that States Parties should be offered the opportunity of providing a revised or new report for the report(s) already submitted, if the national situation had changed sufficiently to warrant the substitution. In that case, members would review only the revised or new report and would disregard the report(s) thus qualified by the State Party as being outdated. Considering that, at the twelfth session, some reports had reached the Secretariat at a very late date, it was decided that the deadline of 1 September would apply to the receipt of any new material, and that any new information received after that date would not be processed.

Improving the circulation of relevant material

In view of the general six-week rule governing the distribution of pre-session documents for any United Nations meeting, by which time all documents had to be ready for issuance to all the participants, it was decided that all pre-session documents for a session should reach the members no later than four weeks before the date that the session was due to begin. It was also decided that the Secretariat should take steps to ensure that core reports and other human rights documents of general interest were sent to the members directly by the Centre for Human Rights, as soon as they had been issued.

Secretariat report on ways and means of improving the effectiveness of the Committee in considering the reports of States Parties

The Committee decided that the Secretariat should prepare every year, as a pre-session document, a report on ways and means of improving the work of the Committee, containing all the information that the Secretariat believed was necessary for the consideration of the item, arising from the Secretariat's ex-

perience from the previous year, the comments made by members to the Secretariat, or developments elsewhere in the human rights regime. It should also contain a list of States Parties whose reports could be considered at the subsequent session according to geographical representation and order of receipt of reports."

In the report of Working Group I of the fifteenth session (15 January to 2 February, 1996), the Committee requests that oral and/or written reports of the Special Rapporteur on Violence Against Women be made available to the Committee, and urges that the Special rapporteur consult regularly with the Committee in accordance with Commission on Human Rights resolution 1994/45 of 4 March 1994. The Committee also requests that reports of the Committee and information on violence against women received by the Committee from States Parties in their oral and written reports, be made available by the Secretariat to the Special Rapporteur to facilitate her work.

(c) Constructive dialogue

The presentation and examination of initial as well as subsequent reports aims at establishing and maintaining a constructive dialogue between the Committee and the reporting State. The publicity of the meetings, the participation of the representatives of the reporting State, and the question-and-answer sessions all are intended to create a constructive atmosphere in which information, experiences, ideas and suggestions are exchanged in a joint effort to implement the Convention in the reporting State. The consideration of reports is thus a contribution to the advancement of the *de jure* and the *de facto* situation of women in the reporting State, and more broadly, in all States Parties to the Convention.

In its **General Recommendation No. 22** (fourteenth session 1995), the Committee recommended that "the meeting of States Parties receive an oral report from the chairperson of the Committee on the difficulties faced by the Committee in performing its functions" and that the Secretary-General should "make available to the States Parties at their meeting all relevant information on the workload of the Committee and comparative information in respect of the other human rights treaty bodies."

In asking questions and raising a broad variety of issues, the Committee members as experts in their individual capacity are not limited to the information provided to them in the report submitted by the State Party. They can and do use other information, such as information reported by specialized agencies, other governmental or non-governmental sources, their own personal knowledge and other sources. The purpose of the consideration is, as was stated earlier, to contribute in a joint effort to the advancement of women and to the implementation of the rights contained in the Convention. In performing their duties, the experts are bound only by the Convention itself.

In its document for the Fourth World Conference on Women, the Committee emphasized the crucial challenge it faces in developing linkages. Effective steps must be taken so that the reporting process creates official and unofficial linkages to the domestic forum. Due primarily to the lack of sufficient meeting time, the Committee has not succeeded up to now in establishing regular contact with non-governmental organizations (NGOs) to discuss the meaning and importance of the Convention articles.

The Beijing Conference demonstrated just how much the Convention and the work of the Committee have permeated civil society. Some very important NGOs dedicated to the promotion of the Convention and the empowerment of women have been established and are using the Convention as a tool for their activities. Many NGOs have employed the Convention as a framework for equality, using it to campaign for women's human rights at all levels. During the Fourth World Conference on Women, NGOs organized 14 workshops dedicated to various aspects of the Convention and CEDAW's work. NGOs greatly aid CEDAW's experts in their work by sharing information about the situation of women in different countries and by supporting CEDAW's decisions in international fora. NGOs in different countries have developed their own experts on CEDAW and provide, on a regular basis, special reports on the countries on CEDAW's agenda. NGOs around the world have invited CEDAW experts to participate in various conferences they have organized on the Convention and its importance for the defence of the human rights contained in the Convention. The Committee considers the support of NGOs and women's human rights activists invaluable in the combined effort to promote and increase awareness of, and information on, women's human rights under the Convention.

The Committee deeply regrets that its few sessions and insufficient meeting time do not allow for the establishment of a more organic link with a greater number of NGOs, which would facilitate the global dissemination of information about the Convention so that women everywhere can use it in defence of their fundamental human rights. Nevertheless, at its fifteenth session (15 January to 2 February 1996) the Committee recommended that the Secretariat provide the Committee at its sixteenth session with detailed information on the links that other treaty bodies have forged with NGOs, to study the possibility of a more permanent cooperation with the NGOs.

(d) Presentation and examination of reports

The representative(s) invited to be present for the consideration of initial reports are first introduced by the Chairperson of the Committee and then invited to introduce the report. This introduction should not exceed 30 minutes, and the representative may take this opportunity to introduce additional information not contained in the report or to present new information obtained since the submission of the report to the Secretary-General. After this introduction, members of the Committee first make general observations and com-

ments on the report as a whole as well as on the reservations, if any, made by the State Party with respect to the Convention. They then proceed to the consideration of the report on an article-by-article basis, asking questions on the implementation of individual articles, requesting further information or clarifications, etc.

At the end of this period of questions and comments by the members of the Committee, the representative(s) of the reporting State may decide to reply immediately to some of the questions asked. Usually, however, he/she will provide answers to the points raised at a meeting scheduled for one or two days later. At that point, members of the Committee may ask further questions or they may suggest that the questions that remain unanswered or that were not sufficiently answered be dealt with in the next report of the State Party. The Committee may also ask that further information be sent to the Committee's Secretariat in New York before the next report is due. This is, however, a rather unusual step.

In a decision taken at its sixth session in 1987, the Committee decided to invite specialized agencies to submit reports to it on the implementation of the Convention in areas falling within the scope of their activities. This decision was taken to assist the Committee in its tasks and is in accordance with Article 22 of the Convention. The information thus sought by the Committee should cover the agencies' own programmes that might promote the implementation of the Convention, as well as information the specialized agencies may have received from States Parties that is within the framework of the Committee's mandate. Since this decision was taken, specialized agencies such as UNESCO, FAO, WHO, and ILO have regularly cooperated with the Committee.

The Committee decided at its fourteenth session (1995) to allocate two and a half meetings for the consideration of initial reports. It further decided that no formal time-limit should be placed on the introduction of States Parties' reports, since the main objective is to have a dialogue with the State Party and a time-limit might inhibit the State's presentation.

For its consideration of second and subsequent periodic reports, the Committee has established a pre-sessional working group, composed of five members, with the mandate of preparing a list of issues and sets of questions, based on the guidelines for the preparation of second and subsequent reports, to be sent in advance to the reporting State. The list of issues is arranged on an article-by-article or group of articles basis. The reporting State has thus the possibility to prepare replies for presentation at the same session at which its second or subsequent report is considered. Members of the Committee, however, are able to ask further questions of the representatives of the State Party during the examination of the report. This procedure contributes to a speedier consideration of subsequent reports and on average one meeting is scheduled for this purpose.

At its thirteenth session (1994), the Committee decided to adopt the practice of preparing concluding comments on the reports, so that those comments could be reflected in the

work of the Committee. The following procedures for preparing those comments were determined:

“At the outset of each session, the Chairperson should designate, for each report, two members of the Committee to draft concluding comments to be considered for adoption by the Committee. To the extent possible, at least one of those rapporteurs should be from the region of the reporting State. For second and subsequent periodic reports, they should consult with the members of the pre-session working group.

The comments should cover the most important points raised during the constructive dialogue, emphasizing both positive aspects of the reports and matters on which the Committee had expressed concern, and should clearly indicate what the Committee wished the State Party to report on in its next report. The comments should be as exhaustive as possible and should their form should first address depositive aspects, then areas of concern, and finally recommendations for the next report. For second and subsequent reports, the comments should take into account the findings of the pre-session working group as well as the constructive dialogue.

The drafts should be considered in closed meetings of the Committee scheduled periodically during the session, but at least one per week.

Once agreed, the concluding comments would be incorporated into the Committee’s report on the consideration of the State Party’s report.”

At its fifteenth session (15 January to 2 February 1996), the Committee decided to dispense with its published detailed summary of the discussions on reports submitted by States Parties under Article 18 of the Convention. Summary records will, however, be retained and the concluding comments and recommendations of the Committee will be preceded by a brief summary of the presentations of States Parties. The Committee also requested that the concluding comments be transmitted to the States Parties concerned immediately after the close of the session.

After the consideration of the report it is once again of utmost importance that the reporting State take the relevant measures at the national level to further implement the Convention. Depending on the points raised during the constructive dialogue, this will require legislative or policy steps, the publication of the report, other informational activities, etc.

The experience of the Committee shows that many States Parties encounter difficulties in gathering the relevant information, including gender-disaggregated statistical data, for initial and subsequent reports, and in providing the Committee with copies of the relevant laws and other materials translated into any of the official languages of the United Nations. Reminders sent to States Parties do not always have the desired effect.

In case a State Party wants to submit additional information not contained in the submitted report, it should reach the Committee's Secretariat at the United Nations Office in New York at least three months before the date scheduled for the consideration of the report so that the additional information can be translated and distributed to the members of the Committee. Difficulties are sometimes due to insufficient co-ordination between different ministries or other bodies that should be involved in the reporting process. This Manual attempts to address such issues. Other difficulties arise from inadequate skills and infrastructure. In such instances, training programmes offered by the United Nations, in particular its advisory services and technical assistance programme, might prove useful.

(e) Follow-up

The Committee reports on its activities annually, through the Economic and Social Council, to the General Assembly of the United Nations. The Committee's report is also transmitted to the Commission on the Status of Women, for its information. By adopting the general recommendations, the Committee signals to the States Parties the areas that, based on the examination of reports and other information obtained, gave rise to special concern within the Committee. Those issues usually are highlighted as deserving more and special attention by States Parties when reporting to the Committee.

In its **General Recommendation No. 6** (seventh session 1988) the Committee has stressed the need for an effective dissemination of the Convention and the activities of the Committee within States Parties (see above under (A)(b) Guidelines for reporting). It is indeed of utmost importance for the full and universal implementation of the Convention that all levels of government and society be aware of the Convention and the rights contained therein. States Parties should therefore endeavour to give the largest possible publicity to the Convention and to their reports to the Committee.

Since the purpose of the constructive dialogue is the further implementation of the Convention on the national level, it is most important that the reporting State carefully review the consideration of the report and take all necessary legislative, administrative and other steps to follow up on the questions asked and issues raised by members of the Committee. The competent government authorities and other bodies dealing with issues covered by the Convention need to be informed of the dialogue with the Committee and of its results,

so that the necessary measures can be adopted in the ongoing process of the *de jure* and *de facto* equality of men and women.

THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

by Joseph Voyame and Peter Burns

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the "Convention") was adopted by the General Assembly of the United Nations pursuant to resolution 39/46 of 10 December 1984. The Convention entered into force on 27 June 1987, upon 20 States ratifying it or acceding to it, in accordance with the requirements of Article 27(1). As of 30 September 1996, 99 States had become party to the Convention.

A. THE REPORTING PROCESS

(a) The Convention and its Reporting Requirements

Each State Party to the Convention must take effective legislative, administrative, judicial and other measures to prevent torture, as defined in Article 1(1), from occurring in its territory (Article 2(1)). As well, Articles 3-16 impose a number of obligations upon States Parties relating to the effective implementation of the Convention, including the prohibition against cruel, inhuman or degrading treatment and punishment (Article 16). We will turn to each of these provisions as they arise.

The essence of all the United Nations human rights monitoring bodies is the implementation, pursuant to the relevant treaty, of an effective system of reporting by the States Parties and oversight by the relevant treaty body. Article 19 of the Convention sets out the provisions in this respect:

Text of Article 19

- 1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit*

supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

- 2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.*
- 3. Each report shall be considered by the Committee which may make such General Comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.*
- 4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with Article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.*

Under this provision, States Parties must submit, within a year of the Convention's entry into force for the particular State, an initial report encompassing the matters referred to in Article 19(1), and every four years thereafter a periodic ("supplementary") report must be submitted dealing with new matters or those requested by the Committee to be dealt with.

(b) Guidelines for reporting under the Convention

The Committee has adopted guidelines for State reports that are similar to those of the other United Nations human rights monitoring bodies. They are designed to assist States in collecting material for the preparation of their reports. In very general terms, the reports should include information on the general legal framework pertinent to torture and other cruel, inhuman or degrading treatment or punishment and describe the way in which the State has complied with its obligation under each article of the Convention.

The guidelines are also designed to ensure uniform presentation of State reports, thus enabling the Committee to obtain a generalized view of the level of State Party compliance with the terms of the Convention.

(i) Initial reports**Text of the General Guidelines regarding the form and contents of initial reports.****Part I: information of a general nature**

This part should:

- (a) Describe briefly the general legal framework within which torture as defined in Article 1, paragraph 1, of the Convention as well as other cruel, inhuman or degrading treatment or punishment are prohibited and eliminated in the reporting State;*
- (b) Indicate whether the reporting State is a party to an international instrument or has national legislation which does or may contain provisions of wider application than those provided for under the Convention;*
- (c) Indicate whether the provisions of the Convention can be invoked before and directly enforced by the courts, other tribunals or administrative authorities or whether they have to be transformed into internal laws or administrative regulations to be enforced by the authorities concerned;*
- (d) Indicate what judicial, administrative or other competent authorities have jurisdiction over matters dealt with in the Convention and provide information on cases actually dealt with by those authorities during the reporting period;*
- (e) Indicate what remedies are available to an individual who claims to have been a victim of torture or other cruel, inhuman or degrading treatment or punishment and what rehabilitation programmes are available to victims of torture;*
- (f) Describe briefly the actual situation as regards the practical implementation of the Convention in the reporting State and indicate any factors and difficulties affecting the degree of fulfilment of the obligations of the reporting State under the Convention.*

Part II: information in relation to each of the articles in part I of the Convention

This part should provide specific information relating to the implementation by the reporting State of Articles 2 to 16 of the Convention, in accordance with the sequence of those articles and their respective provisions. It should include in relation to the provisions of each article:

- (a) The legislative, judicial, administrative or other measures in force which give effect to those provisions;*
- (b) Any factors or difficulties affecting the practical implementation of those provisions;*
- (c) Any information on concrete cases and situations where measures giving effect to those provisions have been enforced, including any relevant statistical data.*

The report should be accompanied by sufficient copies in one of the working languages (English, French, Russian or Spanish) of the principal legislative and other texts referred to in the report. These will be made available to members of the Committee. It should be noted, however, that they will not be reproduced for general distribution with the report. It is desirable therefore that, when a text is not actually quoted in or annexed to the report itself, the report should contain sufficient information to be understood without reference to it. The text of national legislative provisions relevant to the implementation of the Convention should be quoted in the report.

Commentary

The reports submitted by States Parties should always be divided into two parts.

The first part of the report should be of a general nature. It should provide basic information and describe the context within which the prohibition of torture is guaranteed in the reporting State. The following principal aspects ought to be addressed: the report should precisely indicate the status of the Convention in the domestic legal order, and in particular it should clarify whether for the Convention to become part of the domestic legal order it is necessary to be explicitly and completely reiterated in the Constitution or in another legislative act of the State Party. Should that be a requirement, the report should provide information on the legislative act incorporating the Convention in the domestic legal order and its impact. Otherwise, the report should specify whether ratification of or accession to the Convention in itself leads to the incorporation of the Convention and to the obligation for the State's agents to apply directly the provisions of the Convention, as well as to the possibility for individuals to invoke directly the rights conferred on them by the Convention. Fur-

thermore, the first part should describe the organizational structure of the State Party, namely the legislative, executive and judicial powers and their responsibilities. This part should report which judicial, administrative or other authorities are in charge of implementing the various provisions of the Convention. Finally, this part should assess the *de facto* situation with regard to torture in the reporting State, and should torture still exist, it should give the reasons why it could not yet be abolished completely. (Part One of the guidelines is now common to the reporting guidelines prepared for all the United Nations human rights treaty bodies. For the text of the **consolidated guidelines** for the initial part of the reports of States Parties see the annex at the end of Part One of the Manual).

The second part of the report should provide detailed information on an article-by-article basis on how the reporting State is implementing Articles 2 to 16 of the Convention. With regard to each individual article, the report should provide information on the legislative, administrative and judicial measures taken to give effect to the provisions of the article under consideration, as well as information on any concrete cases of the application of those measures. In all instances, available statistical information should be included.

Reports, however, must also mention any cases of violation of the Convention, and should describe the reasons for such violations and the measures taken to remedy the situation. In fact, it is important for the Committee to obtain a clear picture not only of the legal situation, but also of the *de facto* situation in the reporting State.

The report itself should contain the most important domestic legal provisions pertaining to the Convention so that they are easily accessible. It is also necessary to attach other relevant laws and regulations to the report, as well as the texts of any administrative or judicial decisions rendered or measures adopted in direct or indirect application of the Convention. To the extent possible, these texts must be submitted in one of the working languages of the Committee, i.e. English, French, Russian or Spanish.

(ii) Periodic reports

A State Party is obliged to prepare and present a periodic report to the Committee, pursuant to Article 19(1) of the Convention, every four years from the date of the initial report being due. Such a periodic report must, in general terms, cover new measures taken by the State Party since presenting the initial report.

Although there is no need to repeat the specific material contained in the initial report, it is useful for the periodic report to outline the general legal and administrative framework within which the Convention operates in the reporting State.

The periodic report should contain:

(a)

Information relating to measures adopted or proposed, since the initial report, to carry out the terms of the Convention;

- (b) Information pertinent to questions asked by the Committee when examining the initial report and left unanswered;
- (c) Any action taken as a result of conclusions and recommendations reached by the Committee at the time of the initial report;
- (d) Any factors and difficulties that have been found to impede the implementation of the Convention; and
- (e) A description of any progress made in implementing the Convention, since the initial report.

(iii) Additional reports

In some cases the report submitted by the State Party (as either an initial report or a periodic report) may not contain all the information needed by the Committee to carry out its terms of reference pursuant to Article 19(3). In such an instance the Committee may request an additional report containing specific information to be returned to it by a particular date.

(c) Reporting on the substantive provisions

ARTICLE 1

Text of Article 1

1. *For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.*
- 2.

This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

ARTICLE 2

Text of Article 2

- 1.** *Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.*
- 2.** *No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.*
- 3.** *An order from a superior officer or a public authority may not be invoked as a justification of torture.*

Commentary

Article 1 of the Convention defines torture for the purposes of the Convention. As the guidelines state, in light of this definition all relevant information should be provided on torture and on other cruel, inhuman or degrading treatment or punishment. Describe the measures taken to ensure that the crime of torture *as defined in Article 1(1)* has been incorporated into the domestic law. If capital or corporal punishment is a possible sentence for any crimes in the State concerned, describe the crimes such punishment covers, the nature of the punishment (including legal review opportunities) and annual data relating to it.

Article 2 obliges States Parties effectively to prevent torture from occurring, specifying that no circumstances whatsoever can justify torture.

When reporting under Article 2, States Parties should keep in mind that specific information regarding both legal punishability and preventive measures will be required later, especially under Articles 4, 10 and 11. Therefore, under Article 2, reporting States should provide information on the legislative, administrative and judicial measures they have taken to prevent torture from occurring, and they should indicate the effectiveness of these measures in preventing torture. It is particularly important to describe any cases (even if they were isolated) and circumstances under which torture did occur contrary to the provisions of the Convention.

If the legal system of the State Party permits the defence of superior orders, its range should be described, and it should be reconciled with the prohibition in Article 2(3).

When gathering information with regard to Article 2(1) of this Convention, reporting officers should bear in mind that other instruments require information on the adoption of legislation and other measures as well. The related articles are: Article 2(2) of ICCPR, Article 2(1) and (3) of ICESCR, Articles 2(2) and 5, first sentence, of ICERD, Article 3 of CEDAW, and Article 4 of CRC. When gathering information with regard to Article 2(2) and (3) of this Convention, reporting officers should bear in mind that public emergencies, the limitation of rights, and the derogation from rights are also dealt with in related Articles 4 and 5 of ICCPR, Articles 4 and 5 of ICESCR, and Articles 13(2), 14(2), 15(2) and 37 of CRC.

ARTICLE 3

Text of Article 3

- 1.** *No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.*
- 2.** *For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.*

Commentary

Article 3(1) prohibits the expulsion, refoulement or extradition of a person to a State where he risks torture, and Article 3(2) contains the standards for assessing the risk.

When reporting under this article, States Parties should describe the legislative or other measures that were adopted to give effect to the provisions of this article of the Convention. A report should describe which authority determines the extradition, expulsion or refoulement of a person. It should state whether a decision on the subject can be challenged, and what the procedures are for such a challenge. A report should also indicate what, if any, special training the competent authorities obtain to determine the likelihood that a person referred to in Article 3 might be subjected to torture if he were expelled, returned or extradited or indeed had been subjected to torture in his own country. Reports should further provide information on any cases in which the provisions of this article of the Convention were invoked and the decisions that were taken by the authorities in each case, as well

as information on the criteria for the decision taken by the competent authorities. As indicated earlier, statistical information should be provided where available. This article has provided the jurisdictional basis for an increasing number of personal communications to the Committee pursuant to Article 22 of the Convention.

When reporting on Article 3 of this Convention, reporting officers should evaluate existing information gathered for related articles in other international instruments, and in particular on Articles 12 and 13 of ICCPR, 5(d)(i), 5(d)(ii), and 5(f) of ICERD, 15(4) of CEDAW, and 10 of CRC dealing with the right to freedom of movement, the right to access to any public place, and with expulsion and extradition.

ARTICLE 4

Text of Article 4

- 1.** *Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.*
- 2.** *Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.*

Commentary

Articles 4 to 9 of the Convention deal with various aspects of States Parties' obligations to implement the Convention by asserting jurisdiction over and rendering the offences referred to in Article 4 punishable under domestic criminal law.

Article 4(1) contains the obligation for each State Party to make torture – including attempted torture and participation in torture, such as the instigation to torture and the complicity in its commission – punishable under criminal law. The article further indicates that “appropriate penalties” must be imposed for the commission of these offences.

Reports should provide the text of the criminal laws that give effect to Article 4. They should elaborate on the various acts referred to in Article 4(1) and in particular also on the differences between offences such as attempted acts of torture, the commission of torture or the order to commit torture by a person in authority, and the exact penalties imposed for any of these offences, including disciplinary measures. The Committee seeks information on the number and the nature of the cases in which these laws were applied and on the outcome in these cases; reports must describe the penalties imposed or, as the case may be,

the reasons for acquittal. Attached to their reports, States Parties should provide examples of judgements based on these laws. Should there be a large number of such cases, the most typical judgements should be attached.

It is implicit in the reporting obligations imposed by this article that each State shall enact a crime of torture in terms consistent with the definition in Article 1(1). Otherwise, it is impossible for statistical and reporting purposes to disaggregate the crime of torture from that of murder, manslaughter, assault, etc.

Apart from this, the Committee has consistently expressed the view that the crime of torture is qualitatively distinguishable from the various forms of homicide and assault and therefore should be separately defined as a crime in the domestic law of States Parties.

ARTICLE 5

Text of Article 5

- 1.** *Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in Article 4 in the following cases:*
 - (a) When the offences are committed in any territory under its jurisdiction or on board of a ship or aircraft registered in that State;*
 - (b) When the alleged offender is a national of that State;*
 - (c) When the victim is a national of that State if that State considers it appropriate.*
- 2.** *Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to Article 8 to any of the States mentioned in paragraph 1 of this article.*
- 3.** *This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.*

Commentary

Article 5 concerns the exercise of jurisdiction with regard to acts referred to in Article 4 and, in paragraph 2, it establishes a quasi-universal jurisdiction for such offences.

Reports should provide the Committee with the text of the legislative and other measures taken by the reporting State to implement each provision contained in Article 5 to establish its jurisdiction over the offences in question. In particular, they should also discuss whether such acts are considered universal crimes under national law, covering the offences in question wherever they occurred, and whatever the nationality of the perpetrator or the victim. They should describe in detail any cases where those laws were applied, including the results. The most important judgements and decisions handed down under these measures should be attached to the report.

ARTICLE 6

Text of Article 6

- 1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in Article 4 is present shall take him into custody or take legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such a time as is necessary to enable any criminal or extradition proceedings to be instituted.*
- 2. Such State shall immediately make a preliminary inquiry into the facts.*
- 3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.*
- 4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in Article 5, paragraph 1, of the fact that such a person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall*

promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Commentary

Article 6 requires States Parties to adopt appropriate procedures to ensure that a person suspected of any act referred to in Article 4 is held for the time necessary to initiate criminal or extradition proceedings.

Reports should provide the text of the legislative measures taken under this article and describe any actual cases of their application. They should provide information on the authorities in charge of applying the various aspects of this article, and indicate how a person held in custody is assured of the guarantees provided for in Article 6(3).

ARTICLE 7

Text of Article 7

- 1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in Article 4 is found shall in the cases contemplated in Article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.*
- 2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in Article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in Article 5, paragraph 1.*
- 3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in Article 4 shall be guaranteed fair treatment at all stages of the proceedings.*

Commentary

On the basis of Article 7, those States Parties who do not extradite a person found on their territory and suspected of having committed a torture-related offence are required to bring the matter before their competent authorities for appropriate criminal proceedings in instances identified by Article 5 above. Thus there is an obligation to initiate prosecutions re-

lating to acts of torture that may have occurred beyond the territorial jurisdiction of the State Party, if the State Party is unwilling or unable to extradite the alleged offender to stand his trial. The universal jurisdiction to prosecute the alleged offender is found in Article 5(2) of the Convention.

Reports should therefore provide information on the measures taken to implement Article 7, and provide practical examples of their application. They should also describe how the guarantees provided for in paragraphs 2 and 3 are ensured. Examples of judgements rendered under this article should be attached to the report.

ARTICLE 8

Text of Article 8

- 1.** *The offences referred to in Article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.*
- 2.** *If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.*
- 3.** *States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.*
- 4.** *Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with Article 5, paragraph 1.*

Commentary

Article 8 is aimed at facilitating the extradition of persons suspected of any acts described in Article 4 above.

Reports should state the laws and regulations that govern extradition in the reporting State and they should provide the text of the measures adopted to implement Article 8. Reports should also describe any actual cases under this article.

ARTICLE 9

Text of Article 9

1. *States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in Article 4, including the supply of all evidence at their disposal necessary for the proceedings.*
2. *States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.*

Commentary

On the basis of Article 9, States Parties engage to the greatest extent possible in mutual judicial assistance in all matters of criminal procedure regarding cases of torture.

Reports shall describe the national provisions that apply to mutual judicial assistance. They shall provide information on any actual cases in which Article 9 of the Convention was applied either directly or indirectly.

Article 9 concludes the series of articles dealing with various aspects of the obligation to make torture, and other acts referred to in Article 4(1), an offence punishable by law.

When reporting on Articles 4 to 9 of this Convention, reporting officers should keep in mind that the legal punishability of certain offences is required under other international instruments as well. Particular attention is drawn to Article 4 of ICERD. Information assembled for reporting on that article should be assessed for its relevance regarding the present Convention.

ARTICLE 10

Text of Article 10

- 1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.*
- 2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.*

Commentary

According to this article, education and information regarding the prohibition of torture must constitute an integral part of the training of civil and military personnel in charge of law enforcement, of medical personnel, of public officials and of other persons involved in the custody, interrogation or treatment of arrested, detained or imprisoned persons in the reporting State.

Reports must provide detailed information on the measures taken to implement this article, and in particular report on the training programmes for persons charged with the different functions enumerated in Article 10. The Committee seeks information on the content of such programmes, including information on training for medical personnel in the recognition of torture, and also in the recognition of after-effects of physical or psychological torture. Reports should discuss the effectiveness of the various programmes. The Committee is also interested in information regarding the involvement and participation of non-governmental organizations in training and information efforts.

Pursuant to Article 16, the same provisions apply as well to other cruel, inhuman or degrading treatment or punishment.

ARTICLE 11

Text of Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in the territory under its jurisdiction, with a view to preventing any cases of torture.

Commentary

This article requires the systematic surveillance of interrogation methods and of the provisions regarding the custody and treatment of arrested, detained or imprisoned persons.

Reports must give information on the measures taken to put this systematic surveillance in place effectively, and in particular must report on the laws, regulations and instructions to monitor the proper treatment of persons referred to in Article 11, on the procedures in place to apply these norms, and on their effective application. Reports should describe in detail any machinery or mechanism established to that end. The information provided by reporting States under this article should cover in particular the mechanics of review of the conduct of police, prison personnel and the armed forces, and the inspection of prisons and other places of detention. Under this article, it should also be reported which authority is competent to receive complaints from detainees and prisoners, and the procedures for dealing with such complaints. In so far as the initial part of the report does not cover the rights of and guarantees for prisoners, States Parties should address this matter under Article 11.

Pursuant to Article 16, the same provisions apply as well to other cruel, inhuman or degrading treatment or punishment.

When gathering information for Articles 10 and 11 of this Convention, reporting officers should keep in mind that related Articles 5 of CEDAW, 7 of ICERD, and 19(2), 33 and 35 of CRC also require information on preventive measures taken to implement those instruments. Existing information in that regard could be relevant also under the present convention.

ARTICLE 12

Text of Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Commentary

On the basis of this article, an immediate impartial investigation has to occur when there is reason to believe that an act of torture has been committed.

Reports must identify who the authorities referred to in Article 12 are, what their responsibilities are, and the procedures applicable in the case of an investigation under this article. They should describe the cases in which the provision of this article has in fact been applied and the results of the investigation, and as far as applicable, give the reasons why an inquiry did not take place in cases that had come to the attention of a competent authority.

Pursuant to Article 16, the same provisions apply as well to other cruel, inhuman or degrading treatment or punishment.

ARTICLE 13

Text of Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Commentary

Article 13 ensures that anybody who claims to have been subjected to torture has the right to complain to competent authorities, who must immediately and impartially examine his case.

Reports should provide the text of those legal provisions that ensure the implementation of Article 13. This should include, in particular, information on the availability of criminal and/or administrative procedures and on the competent authorities to investigate an alleged situation of torture, on the guarantees that provide for an independent and impartial investigation, on the criteria used by the prosecutor in investigating claims of torture and on the reasons, if any, for which a competent authority may refuse to investigate a case, and what recourse mechanisms are available. The Committee seeks detailed information on how the rights of the complainant and the witnesses referred to in Article 13 are protected.

Information should be provided on the cases where Article 13 was applied and on the results of the procedures resulting therefrom. Should any cases of violation of the obligations of Article 13 exist, the report must give the reasons for such violations.

Pursuant to Article 16, the same provision applies as well to other cruel, inhuman or degrading treatment or punishment.

ARTICLE 14

Text of Article 14

- 1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to a fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.*
- 2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.*

Commentary

This article ensures that a victim of an act of torture has the right to obtain just and adequate redress, including proper reparation, which has to include the necessary means for his rehabilitation; in case of the victim's death, his dependants have this right to compensation.

Reports should provide the text of the legal and other measures taken at the national level that reflect the implementation of Article 14. They should indicate whether such measures are available only for nationals, or also for other groups, such as refugees. Reports should describe the procedures in place for obtaining rehabilitation and compensation. Furthermore, reports should describe any programmes of rehabilitation that exist for victims of torture, and whether rehabilitation includes only financial compensation, or also medical and psychological rehabilitation. The Committee seeks information regarding any existing limits for compensation under statutory law. It is also necessary to describe the cases where Article 14 was applied, and to provide details of the circumstances of the cases and the rehabilitation that was granted. Any decisions taken by judicial or administrative authorities under this provision should be attached to the report.

In particular, the Committee is interested to learn if separate criminal injury compensation funds are available, or whether the only recourse is to prosecute or sue the offender. Moreover, is the State legally responsible for the offender's conduct?

ARTICLE 15

Text of Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Commentary

According to Article 15, a statement obtained under torture can under no procedure be used as element of proof.

Reports must provide the text of national legislative or common-law provisions that implement this article, and should discuss the general rules on inadmissible evidence. They must cite any cases where Article 15 was applied, and the respective decisions must be attached to the report.

When gathering information for Articles 12 to 15 of this Convention, reporting officers should bear in mind that relevant information on the right to procedural guarantees is also requested under related Articles 14, 15 and 16 of ICCPR, 5(a) of ICERD, 15(2) and (3) of CEDAW, and 12(2), 37(d) and 40 of CRC.

ARTICLE 16

Text of Article 16

- 1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in Articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.*
- 2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.*

Commentary

Article 16 stresses that, in addition to torture as defined in Article 1, the Convention encompasses also other cruel, inhuman or degrading treatment or punishment. It underlines that in particular with regard to the preventive measures contained in Articles 10 and 11, and the rights to procedural guarantees contained in Articles 12 and 13, States Parties have an obligation to extend those measures and rights also to situations that do not amount to torture as defined in Article 1.

For reasons of expediency it is advisable that reporting States take into consideration these extended obligations when reporting under each individual article. To date, the Committee has not yet had an occasion upon which to give meaning to the term "other acts of cruel, inhuman or degrading treatment or punishment".

Reporting officers should bear in mind that Articles 1 and 16 of this Convention require information that may be of relevance for related articles in other instruments, and in particular for reporting on Articles 6, 7 and 8 of ICCPR, Article 6 of CEDAW, and Articles 6, 11, 19, 32 to 36 and 37(a) of CRC, dealing with the right to life, the right to physical and moral integrity, and with slavery, forced labour and traffic in persons.

B. CONSIDERATION OF REPORTS BY THE COMMITTEE AGAINST TORTURE

(a) The Composition of the Committee

It was mentioned earlier that under Article 19 of the Convention, reports submitted by States Parties are to be considered by the Committee against Torture.

The Committee against Torture is established pursuant to Article 17 of the Convention.

Text of Article 17

- 1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.*

- 2.** *The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its nationals. States Parties shall bear in mind the usefulness of nominating persons who are members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.*
- 3.** *Elections of the members of the Committee shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.*
- 4.** *The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.*
- 5.** *The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.*
- 6.** *If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.*

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Although nominated and elected by the States Parties, the members of the Committee are in no way representatives or delegates of the States whose nationality they bear. The members of the Committee serve as experts in their personal capacities and as such, they cannot receive instructions from any government. Furthermore, before assuming their responsibilities, each member makes a solemn declaration that he/she will exercise the duties and functions "honourably, faithfully, impartially and conscientiously" (rule 14 of the rules of procedure).

The Committee elects its officers – the Chairperson, three Vice-Chairpersons, and a Rapporteur – for a period of two years.

(b) The Committee: its Method of Work

Of the various United Nations human rights treaty bodies, the Committee has the most wide-ranging monitoring powers and functions. Apart from receiving reports from states describing their steps taken to implement the Convention (Article 19), receiving individual communications in certain cases (Article 22), mediating disputes between parties as to the claim that one of them has breached the terms of the Convention (Article 21), the Committee may engage in confidential on-site enquiries where it has received reliable information revealing well-founded indications that torture is being systematically practised in the territory of a State Party (Article 20).

Generally, the committee holds two sessions per year of two weeks each in Geneva, one in April and one in November. The meetings scheduled for the examination of States Parties' reports are normally public, and they are usually attended by representatives of non-governmental organizations. This does not apply to meetings dealing with inquiries initiated by the Committee in accordance with Article 20 of the Convention, with inter-State communications (Article 21), or individual communications (Article 22): all meetings convened for these purposes are held in private.

On the basis of Article 18(2) of the Convention, six members constitute a quorum, and decisions are taken by majority vote of the members present. However, the Committee endeavours to reach consensus and has only been unable to do so upon one occasion.

The Committee has adopted its own rules of procedure, in accordance with Article 18(2) of the Convention. For further reference, they are contained in document CAT/C/3/Rev.1.

Non-governmental organizations have a very special and close working relationship with the Committee. Pursuant to Rule 62(1) of the Committee's Rules of Procedure, the Com-

mittee may invite *inter alia* NGOs in consultative status with the Economic and Social Council, to submit to it information, documentation and written statements, as appropriate, relevant to the Committee's activities under the Convention.

Any NGO may also submit material to any member of the Committee who may use it or not in carrying out his or her functions under the Convention. NGO source material together with that of the State Party, the United Nations and other reliable sources thus becomes part of the collective information upon which the Committee bases its work.

(c) Constructive Dialogue

The Committee is not a judicial tribunal. The purpose of the presentation and the examination of a report is to start a constructive dialogue with the reporting State. The Committee wants to establish the *de jure* and the *de facto* situation in the reporting State with regard to torture, and it endeavours to assist the reporting States in abiding by the obligations assumed with ratification of or accession to the Convention. The Committee therefore expects its observations to be duly transmitted by the representatives of the reporting State participating in the dialogue to all relevant national authorities involved in the implementation of the Convention.

However, in some respects the Committee has a declaratory function both in general terms pursuant to the examination of state reports and in particular with regard to Articles 3, 20, and 22 of the Convention. In each case, however, the Committee's findings and declarations are designed to promote a cooperative response from the State Party concerned.

(d) Presentation and Examination of Reports

Those States Parties whose reports are scheduled for consideration are duly informed of the date of the meeting. The reporting State is invited to be present at the meeting with a delegation whose members should be in a position to answer the questions of the Committee regarding all areas covered by the Convention.

The presentation and examination of a report requires approximately three hours. During the morning meeting, the delegation of the reporting State introduces the report and the Committee asks additional questions. The delegation is asked to answer these questions during the afternoon meeting. In conclusion, the members of the Committee make observations and concluding comments and, if required, take any necessary decisions.

The representative who introduces the report in a statement that should not exceed 15 to 20 minutes may wish to outline the main content of the report; however, he/she should en-

deavour to provide additional information, in particular with regard to new legislative developments and other facts that occurred after the submission of the report.

Prior to the consideration of each report, the Committee or its Chairperson designate a country rapporteur and an alternative. The members so designated, as well as the other members of the Committee, make initial observations and address additional questions to the representatives. The questions may be based on information contained in the report itself or in its attachments, or on any other source of information. In fact, the Committee is free to use any information at its disposal, whether from intergovernmental or non-governmental sources, from the media or from individuals. The Committee may also request that additional documents be provided.

To the extent that the delegation sent by the reporting State is adequately constituted, it should generally be in a position to answer all the questions asked by the Committee. If that is not the case, the reporting State may provide written answers within the time frame set by the Committee. The same applies also for the submission of new documents.

In preparing and adopting its collective conclusions and recommendations based on its consideration of a State report, the Committee, through its country rapporteur, covers the following matters: (a) Introduction; (b) Positive Factors; (c) Factors and Difficulties Impeding the Application of the Provisions of the Convention; (d) Subjects of Concern; and (e) Recommendations.

In cases where a report and the additional information presented by the representatives of the reporting State do not provide the Committee with a sufficiently detailed picture of the existing situation in that State, the Committee may require an additional report for examination at a future session. In such a case, the Committee generally invites the State Party to have its representative attend the meeting scheduled for the purpose. See *Additional Reports, supra*.

Article 19(4) of the Convention enables the Committee to include at its discretion any observations and comments in its annual report to the States Parties and to the General Assembly of the United Nations. This has so far been the usual practice of the Committee.

(e) Follow-up

It was mentioned earlier that the representatives of the reporting State who participate in the constructive dialogue with the Committee ought to report duly to their government on the questions asked and comments made by the members of the Committee. As a consequence, the State Party in question ought to take those legislative, administrative and other measures that are required to ensure full national compliance with the provisions contained

in the Convention. Those steps ought to be recorded adequately for inclusion in the next report to be submitted to the Committee.

It is also necessary that the States Parties in their entirety and the public in general be informed about the state of torture in the world and about the means created by the Convention to prevent and to combat it. That is why the reports are normally presented and discussed in public meetings. For the same reason, the observations and conclusions of the Committee are in general contained in its reports to the States Parties and to the General Assembly of the United Nations.

C. THE COMMITTEE'S INVESTIGATIVE FUNCTION PURSUANT TO ARTICLE 20 OF THE CONVENTION

Pursuant to Article 20 of the Convention, if the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite the State Party to cooperate in the examination of the information.

ARTICLE 20

Text of Article 20

- 1.** *If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.*
- 2.** *Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.*
- 3.** *If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the cooperation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.*

4. *After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Committee shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.*
5. *All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the cooperation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report in accordance with Article 24.*

Pursuant to Article 28 of the Convention, only those States who did not declare against the Committee's jurisdiction under Article 20, at the time of signature or ratification of the Convention or accession thereto, are bound by this provision.

To date, only two investigations pursuant to Article 20 have been undertaken by the Committee and in one instance a summary account of the results of the proceedings relating to its enquiry was published in its annual report to the States Parties and to the General Assembly (Official Records of the General Assembly, 48th Session, Addendum to Supplement No. 44 (A/48/44/add.1)). The investigations are carried out in private and all proceedings leading up to any published report are confidential.

THE CONVENTION ON THE RIGHTS OF THE CHILD

By Marta Santos Pais

The Convention on the Rights of the Child (hereinafter, the "Convention"), was adopted by the General Assembly of the United Nations with Resolution 44/25 of 20 November 1989. It entered into force on 2 September 1990 in accordance with Article 49. As of 30 September 1996, the Convention had been ratified or acceded to by 187 States.

The Convention was adopted following ten years of a long negotiation in a working group of the Commission on Human Rights. It reflects the political compromise between different legal systems and cultural traditions, in respect of universally recognized human rights. But it soon further became an instrument of consensus, entering into force less than a year after its approval and being widely accepted by an unprecedented number of States from all the regions of the world.

A. THE REPORTING PROCESS

(a) The Convention and its reporting requirements

Under Article 2 of the Convention each State Party commits itself to "respect and ensure the rights set forth in the Convention", namely those dealt with in Articles 1 to 40, to each child within its jurisdiction. The State is thus expected to abstain from adopting those measures that may preclude the exercise of the rights of the child and, at the same time, it should act in such a way that the adequate conditions for the effective enjoyment of those same rights may be ensured. The State is further required to guarantee the realization of such rights without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

For the implementation of the rights recognized by the Convention, States have to adopt all appropriate measures of legislative, administrative or other nature, in the light of Article 4 of the Convention. In the case of economic, social and cultural rights, States undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

The State is naturally free to decide on the opportune time and on the nature of the measures to be implemented. But its freedom of choice is not unlimited. In fact, in accordance with Article 4, the State is bound to adopt *all* measures that may be necessary to the implementation of children's rights, such measures must be *appropriate* to the implementation of each of the rights recognized by the Convention, and not contrary to their realization. In this endeavour, the State must always be guided by the best interests of the child, which is to be considered as a primary consideration, pursuant to Article 3 of the Convention.

The State is bound to implement the provisions of the Convention to ensure the full realization of the rights of the child. The obligation to report is therefore a treaty obligation and a means of promoting such implementation and of assessing the progress made by each State Party. Conversely, failure to report in a regular, thorough and timely manner constitutes a violation of international obligations. The reporting obligation is set in Article 44 of the Convention which states:

ARTICLE 44

Text

1. *States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:*
 - (a) *Within two years of the entry into force of the Convention for the State Party concerned;*
 - (b) *Thereafter every five years.*
2. *Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention, Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.*
3. *A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article repeat basic information previously provided.*
- 4.

The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. *The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.*
6. *States Parties shall make their reports widely available to the public in their own countries.*

Commentary

These reports should contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in every country concerned. Comprehensive in the sense that it should cover all the areas addressed by the Convention, as well as consider the situation of all groups of children under the jurisdiction of the State.

Thus, reports should inform about all the measures adopted by the State Party to bring national law and practice in line with the provisions of the Convention, indicate positive developments occurred and the progress made in the enjoyment of the rights of the child (Article 44 para. 1). Moreover, reports should identify the factors and difficulties the State Party has encountered in the implementation of the Convention (Article 44 para. 2). For the Committee it is very important to receive information on the measures specifically adopted by the Government, but also on the steps undertaken by other entities actively involved in the realization of children's rights, including courts, the Parliament, national institutions on children's rights, including the Ombudsperson and NGOs. The report should in fact picture the national process followed in each country to make the Convention a reality, allowing the Committee to evaluate the extent to which children's rights have become a priority and a commitment for the society as a whole. This will in turn allow the Committee to assist the State Party in an effective manner.

In the implementation reports, the national reality should be described with objectivity and the information provided should be based on complete, reliable and specific data. *Complete* in the sense that it should consider all the different areas covered by the Convention and it should identify their situation at the central, provincial or local levels; *reliable*, since it should be objective, accurate and not politicized; *specific* since only on the basis of disaggregated data and meaningful indicators will it be possible to evaluate the effective enjoyment of each right recognized by this international instrument (see below "(b) guidelines for reporting under the Convention").

The Committee may request additional information or additional reports from the State Party, including a progress report (in the light of Article 44 of the Convention and as re-

flected in rules 66 to 69 of the Rules of Procedure). For that purpose, the Committee indicates the time-limit within which such additional information or report should be supplied. These requests will be addressed particularly in situations where the State Party's report lacks sufficient information about the implementation of the provisions of the Convention or when the situation has evolved or changed in such a way that the information previously submitted is no longer appropriate.

The request for specific or urgent information may further contribute to prevent the occurrence of violations of children's rights or the deterioration of the situation of children's rights. For this reason, the Committee has developed an **urgent procedure** in the general framework of the reporting obligations of States Parties. On the basis of such an urgent procedure, the Committee may request from a State Party a report on the implementation of specific provisions of the Convention or additional information relevant to its implementation. The Committee may also suggest a visit to the country concerned. All these initiatives are intended to enable the State Party to provide the Committee, in the spirit of dialogue and cooperation that guides the reporting process, with a comprehensive understanding of the implementation of the Convention and in particular of those provisions where a specific concern was expressed. They may play an important role as an early warning and thus contribute to preventing the deterioration of a particularly serious situation or to limiting the scale of existing violations of children's rights.

Article 45 of the Convention and rule 70 of the Rules of Procedure also foresee the possibility for the Committee to invite the specialized agencies, the United Nations Children's Fund and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities. It further allows the Committee to invite those bodies and other competent bodies, including NGOs, to provide it with expert advice on areas falling within their respective mandates (see also "methods of work" below).

These important and unique provisions of the Convention stress the need for a close cooperation between the Committee, as a treaty monitoring body, and other entities competent and active in the field of children's rights. The flow and convergence of information on the implementation of the Convention arising therefrom, together with an integrated consideration of the complementary measures adopted by States and those pursued by specialized agencies and other competent bodies, including NGOs, will pave the way for a deeper knowledge of the national reality and will enable the consideration of solutions that better address the prevailing difficulties. Only through such a meaningful partnership which allows for the consideration and implementation of programmes of international cooperation and technical assistance, will it be possible to seriously and effectively foster the realization of children's rights.

This dynamic process reflects the nature and importance of the work of the Committee, acting not as a passive or as a bureaucratic supervisory body, but rather as the catalyst for action and progress, enhancing international solidarity and cooperation in favour of children.

At the same time, it has paved the way for the recognition of the Convention as a decisive reference for the work of United Nations bodies and specialized agencies. As stressed by the final document of the World Conference on Human Rights, matters relating to human rights and the situation of children should be regularly reviewed and monitored by all relevant United Nations organs and mechanisms and by the supervisory bodies of the specialized agencies in accordance with their mandates, and the rights of the child should be a priority in United Nations system-wide action on human rights. To illustrate this reality, mention could be made of the UNHCR Policy on Refugee Children which meaningfully states that “a United Nations Convention, (the Convention on the Rights of the Child) constitutes a normative frame of reference for UNHCR’s action”. Similarly, the recently adopted Mission Statement of UNICEF is an undeniable example of this approach. In this document, the organization stresses *inter alia* that it “is guided by the Convention on the Rights of the Child and strives to establish children’s rights as enduring ethical principles and international standards of behaviour towards children”.

(b) Guidelines for reporting under the Convention

In order to give guidance to Governments in the preparation of their initial reports, the Committee has adopted General Guidelines regarding the form and content of those reports. These guidelines are intended to assist States Parties in minimizing the risk of submitting insufficient information and in ensuring uniformity to the form and content of the reports. In view of the thematic approach followed by the guidelines, they furthermore constitute an important reference for States in the collection of information on children and with a view to ensuring consistency to the implementation process of the different rights recognized by the Convention. Moreover, they provide States the opportunity of appreciating clearly how the obligations under the Convention are carried out world-wide and in a particular country, allowing for such information to be used as a source of inspiration for their own action, in particular with a view to following positive experiences and avoiding solutions that have proved to be ineffective or detrimental to children’s rights.

At the same time, Guidelines are an important tool to assist the Committee in the performance of its duties, allowing it to consider the situation of the different States Parties in a uniform manner.

But, as stressed by the Committee in the Introduction to its General Guidelines (CRC/C/5), these are also designed to underline the relevance of the reporting process

and emphasize that it is not a simple formal obligation States Parties fulfil on a periodic basis. In fact, reporting should be envisaged as a process, through which States reaffirm their international commitment to respect and ensure the rights of the child, as well as to establish an open and meaningful dialogue with the Committee on the way they ensure the implementation of the Convention.

The essential aim of the international monitoring system is, in fact, to strengthen the **national capacity** to ensure and monitor the realization of the rights of the child and not to replace it. It therefore also contributes to enhancing popular participation in policy-making and encouraging public scrutiny of Governmental policies. The transparency of this process enhances the realization of children's rights since it encourages social mobilization and provides a meaningful opportunity for governmental officials, private institutions and independent advocates to act together for the improvement of the situation of children.

It is in this spirit that the Convention sets an important and innovative follow-up system to the reporting process, by establishing an obligation in Article 44 para. 6, according to which States Parties have to make their reports widely available to the public in their own countries. It is also with the same aim that the Committee systematically recommends that States Parties ensure the publication of their reports together with the summary records of the dialogue held with the Committee and with the concluding observations adopted thereafter (see below "presentation and examination of reports").

It is interesting to note that the innovative approach taken by the Committee on the Rights of the Child, emphasizing the national component of the monitoring process, was recognized by the World Conference as a model to be followed (A/CONF.157/23, II.E.para. 89).

The Committee has adopted its guidelines for the initial reports of States Parties, to be submitted in accordance with Article 44 para. 1 of the Convention. It will soon finalize the set of guidelines for periodic reports (see below C.).

According to a decision of the Committee taken at its first session, States Parties should in their initial reports submit a general part containing information of a general nature on the human rights situation of each country concerned. This general part constitutes a "core document" of the State and should be prepared in accordance with the "**Consolidated Guidelines** for the initial part of the reports of States Parties" (document HRI/1991/1) as well as with paragraph 5 of the Committee's Guidelines (see below para. 5). Moreover, States should submit a second part which includes more precise information on the implementation of the Convention and which should be prepared in accordance with the following guidelines:

Text of the Guidelines for the initial reports of States Parties

INTRODUCTION

1. *Article 44, paragraph 1, of the Convention on the Rights of the Child provides that:*

“States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

 - “(a) Within two years of the entry into force of the Convention for the State Party concerned:*
 - “(b) Thereafter every five years”.*
2. *Article 44 of the Convention further provides, in paragraph 2, that reports submitted to the Committee on the Rights of the Child shall indicate factors and difficulties, if any, affecting the fulfilment of the obligations under the Convention and shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.*
3. *The Committee believes that the process of preparing a report for submission to the Committee offers an important occasion for conducting a comprehensive review of the various measures undertaken to harmonize national law and policy with the Convention and to monitor progress made in the enjoyment of the rights set forth in the Convention. Additionally, the process should be one that encourages and facilitates popular participation and public scrutiny of government policies.*
4. *The Committee considers that the reporting process entails an ongoing reaffirmation by States Parties of their commitment to respect and ensure observance of the right set forth in the Convention and serves as the essential vehicle for the establishment of a meaningful dialogue between the States Parties and the Committee.*
5. *The general part of States Parties’ reports, relating to matters that are of interest to monitoring bodies under various international human rights instruments, should be prepared in accordance with the “Consolidated guidelines for the initial part of the reports of States Parties”, as contained in document HRI/1991/1. The present guidelines, which were adopted by the Committee on the Rights of the Child at its*

22nd meeting, held on 15 October 1991, should be followed in the preparation of the initial reports of States Parties relating to the implementation of the Convention on the Rights of the Child.

- 6. The Committee intends to formulate guidelines for the preparation of periodic reports that are to be submitted pursuant to Article 44, paragraph 1(b), of the Convention in due course.*
- 7. Reports should be accompanied by copies of the principal legislative and other texts as well as detailed statistical information and indicators referred to therein, which will be made available to members of the Committee. It should be noted, however, that for reasons of economy they will not be translated or reproduced for general distribution. It is desirable, therefore, that when a text is not actually quoted in or annexed to the report itself, the report should contain sufficient information to be understood without reference to those texts.*
- 8. The provisions of the Convention have been grouped under different sections, equal importance being attached to all the rights recognized by the Convention.*

I. GENERAL MEASURES OF IMPLEMENTATION

- 9. Under this section, States Parties are requested to provide relevant information pursuant to Article 4 of the Convention, including information on:
 - (a) The measures taken to harmonize national law and policy with the provisions of the Convention:*
 - (b) Existing or planned mechanisms at the national or local level for coordinating policies relating to children and for monitoring the implementation of the Convention.**
- 10. In addition, States Parties are requested to describe the measures that have been taken or are foreseen, pursuant to Article 42 of the Convention, to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.*
- 11. States Parties are also requested to describe those measures undertaken or foreseen, pursuant to Article 44, paragraph 6, of the Convention, to make their reports widely available to the public at large in their own countries.*

II. DEFINITION OF THE CHILD

- 12.** *Under this section, States Parties are requested to provide relevant information, pursuant to Article 1 of the Convention, concerning the definition of a child under their laws and regulations. In particular, States Parties are requested to provide information on the age of attainment of majority and on the legal minimum ages established for various purposes, including legal or medical counselling without parental consent, end of compulsory education, part-time employment, full-time employment, hazardous employment, sexual consent, marriage, voluntary enlistment into the armed forces, conscription into the armed forces, voluntarily giving testimony in court, criminal liability, deprivation of liberty, imprisonment and consumption of alcohol or other controlled substances.*

III. GENERAL PRINCIPLES

- 13.** *Relevant information, including the principal legislative, judicial, administrative or other measures in force or foreseen, factors and difficulties encountered and progress achieved in implementing the provisions of the Convention, and implementation priorities and specific goals for the future should be provided in respect of:*
- (a) Non-discrimination (art. 2);*
 - (b) Best interests of the child (art. 3);*
 - (c) The right to life, survival and development (art. 6);*
 - (d) Respect for the views of the child (art. 12);*
- 14.** *In addition, States Parties are encouraged to provide relevant information on the application of these principles in the implementation of articles listed elsewhere in these guidelines.*

IV. CIVIL RIGHTS AND FREEDOMS

- 15.** *Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force: factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention and implementation priorities and specific goals for the future in respect of:*
- (a) *Name and nationality (art. 7),*
 - (b) *Preservation of identity (art. 8);*
 - (c) *Freedom of expression (art. 13);*
 - (d) *Access to appropriate information (art. 17);*
 - (e) *Freedom of thought, conscience and religion (art. 14);*
 - (f) *Freedom of association and of peaceful assembly (art. 15);*
 - (g) *Protection of privacy (art. 16);*
 - (h) *The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 37 (a)).*

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

- 16.** *Under this section, States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force, particularly how the principles of the “best interests of the child” and “respect for the views of the child” are reflected therein: factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention: and implementation priorities and specific goals for the future in respect of:*
- (a) *Parental guidance (art. 5);*
 - (b) *Parental responsibilities (art. 18, para. 1 and 2);*
 - (c) *Separation from parents (art. 9);*
 - (d) *Family reunification (art. 10);*
 - (e) *Recovery of maintenance for the child (art. 27, para. 4);*
 - (f) *Children deprived of a family environment (art. 20);*
 - (g) *Adoption (art. 21);*

- (h) *Illicit transfer and non-return (art. 11);*
 - (i) *Abuse and neglect (art. 19), including physical and psychological recovery and social reintegration (art. 39);*
 - (j) *Periodic review of placement (art. 25).*
- 17.** *In addition, States Parties are requested to provide information on the numbers of children per year within the reporting period in each of the following groups, disaggregated by age group, sex, ethnic or national background and rural or urban environment: homeless children, abused or neglected children taken into protective custody, children placed in foster care, children placed in institutional care, children placed through domestic adoption, children entering the country through intercountry adoption procedures and children leaving the country through intercountry adoption procedures.*
- 18.** *States Parties are encouraged to provide additional relevant statistical information and indicators relating to children covered in this section.*

VI. BASIC HEALTH AND WELFARE

- 19.** *Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force: the institutional infrastructure for implementing policy in this area, particularly monitoring strategies and mechanisms: and factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention, in respect of:*
- (a) *Survival and development (art. 6, para. 2);*
 - (b) *Disabled children (art. 23);*
 - (c) *Health and health services (art. 24);*
 - (d) *Social security and child-care services and facilities (art. 26 and art. 18, para. 3);*
 - (e) *Standard of living (art. 27, para. 1-3).*
- 20.** *In addition to information provided under paragraph 9 (b) of these guidelines, States Parties are requested to specify the nature and extent of cooperation with local and national organizations of a governmental or non-governmental nature, such as institutions of social*

workers, concerning the implementation of this area of the Convention. States Parties are encouraged to provide additional relevant statistical information and indicators relating to children covered in this section.

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

- 21.** *Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force: the institutional infrastructure for implementing policy in this area, particularly monitoring strategies and mechanisms, and factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention, in respect of:*
- (a) Education, including vocational training and guidance (art. 8);*
 - (b) Aims of education (art. 29);*
 - (c) Leisure, recreation and cultural activities (art. 31);*
- 22.** *In addition to information provided under paragraph 9 (b) of these guidelines, States Parties are requested to specify the nature and extent of cooperation with local and national organizations of a governmental or non-governmental nature, such as institutions of social workers, concerning the implementation of this area of the Convention. States Parties are encouraged to provide additional relevant statistical information and indicators relating to children covered in this section.*

VIII. SPECIAL PROTECTION MEASURES

- 23.** *Under this section, States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force: factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention: and implementation priorities and specific goals for the future in respect of:*
- (a) Children in situations of emergency:*
 - (i) Refugee children (art. 22);*

- (ii) *Children in armed conflicts (art. 38), including physical and psychological recovery and social reintegration (art. 39);*
- (b) *Children in conflict with the law:*
 - (i) *The administration of juvenile justice (art. 40);*
 - (ii) *Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings (art. 37 (b), (c) and (d));*
 - (iii) *The sentencing of juveniles, in particular the prohibition of capital punishment and life imprisonment (art. 37 (a));*
 - (iv) *Physical and psychological recovery and social reintegration (art. 39);*
- (c) *Children in situations of exploitation, including physical and psychological recovery and social reintegration (art. 39):*
 - (i) *Economic exploitation, including child labour (art. 32);*
 - (ii) *Drug abuse (art. 33);*
 - (iii) *Sexual exploitation and sexual abuse (art. 34);*
 - (iv) *Other forms of exploitation (art. 36);*
 - (v) *Sale, trafficking and abduction (art. 35);*
- (d) *Children belonging to a minority or an indigenous group (art. 30).*

24. *Additionally, States Parties are encouraged to provide specific statistical information and indicators relevant to the children covered by paragraph 23.*

Commentary

In view of the comprehensive nature of the Convention and in order to facilitate the task of Governments, the Committee grouped the articles of the Convention by thematic clusters in the reporting guidelines. Recalling however that the Convention does not establish any hierarchy between the rights recognized therein, the Committee further stressed that all rights in the Convention were interrelated, each one of them being equally important and fundamental to the dignity of the child.

The Committee also highlighted the need for every report to be accompanied by the principal legislative and other texts as well as detailed statistical information and indicators re-

ferred to therein. Such information will in fact be of decisive importance to allow for the consideration of the way each particular right is effectively enjoyed in the different areas of the country and by the different groups of children. National averages, although relevant, are not sufficient to assess the level of implementation of individual rights. In this spirit, the Committee insists on specific and disaggregated information, including by sex, age, ethnic or national background, rural and urban environment.

Reporting reflects the continuing action of States to ensure and respect children's rights, the national process of implementation and monitoring. For this reason, States having submitted a comprehensive initial report to the Committee need not repeat basic information previously provided (Article 44 para. 3). Similarly, information submitted to other treaty bodies or other United Nations bodies need not be treated in a detailed manner. Cross reference is thus encouraged in these circumstances as an effective manner of providing adequate information while reducing the State's burden in its reporting obligations before different United Nations instances.

The Committee has decided to prepare **General Comments** based on the articles and provisions of the Convention with a view to promoting its further implementation and assisting States Parties in fulfilling their reporting obligations (Rule 73 of the Rules of Procedure). The preparation of these General Comments will soon be initiated, based on the experience gained by the Committee in the consideration of States Parties' reports. They will make this experience available to other countries, United Nations organs, specialized agencies and other competent bodies including NGOs, thereby contributing to the enhancement of children's rights. Once adopted, the General Comments will be included in the reports of the Committee to the General Assembly.

With the same purpose, the Committee has organized different **thematic discussions** on some articles or topics addressed by the Convention (Rule 75 of the Rules of Procedure). Such discussions allow for an in-depth consideration of the principles and provisions of the Convention, thereby providing guidance for States on their implementation and reporting. These thematic debates have so far been devoted to the consideration of important areas, namely: the participation of children in armed conflicts; the economic exploitation of children, including through labour; the role of the family in the promotion of children's rights; the situation of the girl child and the administration of juvenile justice (see below "Reporting on substantive provisions").

It is also important to recall the **suggestions and recommendations** the Committee specifically addresses to States Parties in the framework of the consideration of their reports, and based on information received pursuant to Articles 44 and 45 of the Convention (Rules 71 and 72 of the Rules of Procedure). Incorporated in the concluding observations, the Committee adopts at the end of the dialogue with the State, and included in the Committee's reports to the General Assembly, they will be an important reference for States

and United Nations bodies, as well as for other competent bodies, in their action for the realization of children's rights.

(c) Reporting on substantive provisions

As previously mentioned, the Committee followed a thematic approach to the different articles of the Convention when it grouped them in the Guidelines. It was felt that it would be more logical and meaningful to envisage such an approach than the traditional consideration of article by article followed by other treaty bodies. In fact, the thematic clusters of articles makes it possible to take into consideration the comprehensive nature of the Convention, which incorporates rights of a civil, political, economic, social and cultural nature and covers different areas of a child's life, as well as to guide States Parties both in their reporting obligations and in the shaping of their policies aimed at better protecting and promoting children's rights. For this reason, the substantive consideration of the provisions of the Convention, included in the present section, will also follow the different clusters of the Guidelines of the Committee (see (b) above).

I. General measures of implementation – Articles 4, 42 and 44 para. 6

This chapter constitutes one of the basic areas for the implementation of the Convention. It makes it possible to assess the way the Convention has been used as an overall framework for action and how the philosophy of the Convention has been perceived as a tool for change and progress, both by governmental institutions and by the society as a whole. The general measures of implementation ensure visibility to children, stress the accountability for action in their best interests and show the key role played by advocacy to ensure and respect their fundamental rights.

ARTICLE 4

Text

States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

Commentary

This article sets an important general obligation of conduct for States Parties and relates to each and every right recognized by the Convention. It stresses that upon ratification or accession, States Parties commit themselves to act, to take steps towards the realization of children's rights. They should therefore not simply remain passive, but rather adopt *all appropriate measures* designed to ensure and protect children's rights.

These measures may be of a legislative nature, thus ensuring full conformity between national law and the principles and provisions of the Convention – by incorporating the Convention into the domestic legislation or giving it a constitutional rank, as well as by revising the existing laws and complementing them with a view to ensuring their effective compatibility with the international standards set by this international instrument.

Legislative measures constitute an essential reference to ensure and respect the rights recognized by the Convention, including by providing adequate remedies in case of non-compliance by States. Legislation is however not sufficient to ensure the effective implementation of the Convention. To confirm it, Article 4 stresses that “legislative, administrative *and* other measures” are required. By such expression, a variety of measures is envisaged, including of an economic, social, budgetary or judicial nature. The guidelines adopted by the Committee reaffirm this approach by stating that reports should include information on “the measures taken to harmonize national law *and policy* with the provisions of the Convention.” In fact, as clearly illustrated by some other articles, a wide range of measures becomes essential if the realization of children's rights is to be ensured. In this spirit, both Article 19, concerning the right of the child to be protected against any form of violence, abuse or neglect, and Article 32, on the protection of the child against economic exploitation, specifically emphasize the need for the adoption of legislative, administrative, social and educational measures. In the first case, additional reference is made to “social programmes” to provide support for the child, as well as for prevention, identification, reporting, referral, investigation, treatment and follow-up” as well as when appropriate “for judicial involvement”.

The Guidelines give further indication about these other measures, when clearly mentioning “existing or planned mechanisms at national or local level for coordinating policies relating to children and for monitoring the implementation of the Convention”. It is in fact essential to ensure a comprehensive approach to the implementation of children's rights, as well as an integrated and multidisciplinary action by all those entities which are competent in this field. In this connection, the cooperation between different governmental departments, as well as between central, regional and municipal authorities are of essential importance, either to ensure a reliable assessment of the reality, or to prevent an undesirable overlapping of activities or the misuse of resources, so often already too meagre. The coordination of their efforts can further enable persisting disparities between regions in the

country or between various groups of children to be effectively addressed and overcome, paying due regard to those in greater need. The cooperation with non-governmental organizations working in the fields covered by the Convention may also play an essential role in this regard by promoting an ongoing dialogue with the civil society, encouraging a widely shared action in favour for children and enhancing the national capacity to promote and protect children's rights (see above (b) Guidelines for reporting under the Convention).

With this in mind, several countries have established a national focal point on children's rights – an inter-ministerial commission, working group or task force, within which a continuous flow of information and a systematic monitoring function are ensured.

Article 4 further indicates specific requirements for the implementation of economic, social and cultural rights. In this case, all appropriate measures shall be undertaken by States "to the maximum extent of their available resources and, where needed, within the framework of international cooperation".

This formulation is not intended to give the impression that only economic, social and cultural rights have a resource component. The implementation of Article 7 of the Convention, concerning birth registration, might be quoted as one meaningful example, among others, of a civil right in relation to which the lack of economic resources, in particular to establish registration offices in rural areas and to adequately train registration officers, constitutes a frequent factor encountered by various countries. It does not mean either that there is only an obligation for States to implement economic, social and cultural rights when adequate resources are available for that purpose – in fact, States are in any circumstance required to take steps towards the realization of these rights and to act in the best interests of the child – for instance by adopting the necessary legislation and providing for the necessary remedies in case of non-compliance and by ensuring non-discrimination to every child under their jurisdiction. The reference to availability of resources indicates that the full implementation of economic, social and cultural rights may not be immediately achieved, rather ensured over time. But it further means that in any case States have to act as expeditiously and effectively as possible towards the realization of such rights, with a view not to depriving the obligations arising from the Convention from any meaningful content, thus ensuring the realization of a minimum level of each fundamental right, a minimum which is compatible with the human dignity of every human being.

This understanding is confirmed by the fact that, contrary to Article 2 of the Covenant on Economic, Social and Cultural Rights which addresses a similar reality, Article 4 of the Convention does not qualify the realization of economic, social and cultural rights as *progressive*. It is true that some specific rights refer to such a progressive implementation, as in the case of the right to education (Article 28 para. 1) and the right to health (Article 24 para. 4). Being an umbrella provision, however, Article 4 stresses the general obligation for States to adopt all necessary and appropriate measures to the maximum extent of their

available resources to achieve the realization of economic, social and cultural rights. It therefore reflects the principle of “first call for children” as proclaimed by the World Summit for Children, which requires that “the essential needs of children should be given priority in the allocation of resources, in bad times as well as in good times, at national and international as well as family levels”.

The Convention does not qualify the nature of resources that should be affected to their maximum extent. The expression should therefore be interpreted in a broad sense so as to cover any kind of resources that may be appropriate to the realization of economic, social and cultural rights, including of financial, budgetary, technological, organizational or human nature. At the same time, national resources, as those included in central, provincial or local budgets, as well as resources arising from international cooperation should be allocated to their maximum extent for the implementation of economic, social and cultural rights of children.

In the field of international cooperation, it is also important to recall that the Convention provides some specific examples of various forms of this cooperation. In fact, in the spirit of Articles 55 and 56 of the Charter of the United Nations, it stresses the special needs of developing countries in the fields of health (Article 24 para. 4) and education (Article 28 para. 3), calls for the exchange of appropriate information with the aim of enabling States to improve their capabilities and skills and widen their experience as in the case of disabled children (Article 23 para. 4) or with a view to contributing to the elimination of ignorance and illiteracy and facilitating access to scientific and technical knowledge and modern teaching methods, in the area of education and, in some other cases, suggests the conclusion of international agreements or the accession to existing ones for instance to secure the recovery of maintenance for the child and thus ensure his or her right to an adequate standard of living (Article 27 para. 4).

ARTICLE 42

Text

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Commentary

This provision of the Convention is unique in human rights texts. Never before such a strong call for advocacy for human rights had been expressed in a binding international instrument. Yet, every one recognizes the fundamental importance of such a measure which promotes the understanding of the ethical values and legal obligations of the Convention, while paving the way for its wider respect and implementation and constituting an essential tool for changing lasting negative attitudes and prevailing prejudices detrimental to the enjoyment of the rights of the child. Being of fundamental relevance for the realization of children's rights, it can only prove to be effective if envisaged as a process and not only as a formal obligation which will be easily fulfilled in a single action, for instance through the mere publication of the text of the Convention in the official gazette.

This article mentions both the provisions and principles of the Convention, thus stressing that within this text there are underlying values that inspire its implementation. The Committee has identified such basic ideas, grouping them in a separate section of its guidelines – “general principles”. Non-discrimination (Article 2), best interests of the child (Article 3), respect for the views of the child (Article 12) and right to life, survival and development (Article 6) constitute, in the opinion of the Committee, the core message of this Convention and should always guide the way each individual right should be ensured and respected (see below under “general principles”).

As in Article 4, the provisions contained in Article 42 underline the obligation of the State to be **active**. Measures adopted in this regard are therefore neither a simple reflection of good will, nor a mere aspiration or goal. But it is further stressed that the State should use **adequate** means in the dissemination of information on the Convention. In fact, not all means are necessarily appropriate to make the provisions and principles of the Convention **widely known**. According to the wording of this provision, the State has to impart information in such a manner that the Convention becomes understood by the population at large.

For this purpose, both written and oral materials might be required, a variety of versions with the formal text and complementary indications thereon might be needed, and the translation into the different languages used in the country might be essential, including indigenous or minority languages. But the reference to “adequate means” gains an additional value if related to the special and different needs and capacities of adults and children, who, according to Article 42, should be **equally** addressed.

In fact, children naturally require the use of means that are attractive, meaningful and simple. Printed material, specially lively events, media programmes as well as any other form of accessible information on children's rights should therefore be developed. These measures will decisively contribute to prepare children for an individual and responsible life in a

free society, while paving the way for them to become active defenders of their rights, including by preventing their possible violation. Actions may be required in this connection at the family and community levels as well as within the school system. In this specific area, the incorporation of the Convention in the school curricula may play a decisive role, constituting by the same token a meaningful illustration of human rights education, as required by Article 29 of the Convention.

Advocacy campaigns are naturally also needed for adults – for parents and for family members in general, with a view to enhancing their responsibilities in the upbringing and development of the child, but also for professionals working with and for children. In this regard, the inclusion of the Convention into training curricula, as well as the development of training activities on children's rights become of essential value and are systematically encouraged by the Committee, particularly in relation to teachers, law enforcement officials, judges, lawyers, social workers, immigration officers or personnel of institutions where children may be placed for care, protection or treatment. Similarly, the consideration of children's rights in their respective codes of conduct clearly enhances their responsibility for children, while giving a renewed sense to their action.

Information, education and awareness on the rights of the child are also very relevant in relation to non-governmental organizations active in this field, as well as to the personnel of international organizations involved in children's rights activities. They may in fact ensure, through their different activities, effective consideration and implementation of the principles and provisions of the Convention. Similarly, they may promote in turn an important advocacy function.

ARTICLE 44 para. 6

Text

- 6.** *States Parties shall make their reports widely available to the public in their own countries.*

Commentary

This article is considered in detail in other sections of the Manual (see below section B: (e) Follow-up). It is however important to stress at this stage that the wide dissemination at the national level of States Parties' reports on the implementation of the Convention constitutes a meaningful measure to ensure transparency to governmental policies, while encouraging the participation of the civil society in the consideration and implementation of children's policies and the public scrutiny of governmental policies. It is an essential tool for enhancing national capacity to address and overcome possible difficulties encountered in

the implementation process and widening the social movement in favour of children's rights. Moreover, it clearly paves the way for the follow-up to the consideration by the Committee on the Rights of the Child of the report submitted by the State Party, thus stressing that the international monitoring system may only be successful when effectively reflected at the national level.

For this reason, the involvement of non-governmental organizations in the process of preparing the report is of evident importance. Similarly, the organization of a parliamentary debate on the national strategy for children's rights may facilitate and indeed enhance the adoption of measures to ensure their realization, namely of those for which the Parliament is primarily competent, including the enactment of new laws and the budgetary allocation of adequate resources. For its part, the media impact of this process will contribute to strengthening the interest in, and movement for, children and their rights.

II. Definition of the child – Article 1

ARTICLE 1

Text

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

Commentary

This article establishes a definition of the child in so far as the implementation of the Convention is concerned. It is therefore not intended to establish a general definition of the child, rather designating by a simple term the population group in whose favour the rights recognized by the Convention are to be realized. The wording of Article 1 does not specifically address the question of the moment at which "childhood" should be considered to begin, thus intentionally avoiding, in view of the prevailing diversity of national legal solutions, a single solution common to all States.

By avoiding a clear reference to either birth or the moment of conception, the Convention endorses a flexible and open solution, leaving to the national legislation the specification of the moment when childhood or life begins.

Article 1, however, sets a general upper benchmark at eighteen years. This age limit should thus be used by States Parties as a rule and a reference for the establishment of any other

particular age for any specific purpose or activity. This provision further stresses the need for States Parties to ensure special protection to every child below such a limit. The child is forming his or her personality and has capacities which are still evolving. For this reason the child needs, as the Convention recognizes in various provisions, to be protected, as well as given care, assistance, direction and guidance. The minimum level of protection set by the Convention as a whole should therefore be ensured by the State to the child for as long as possible, and in principle until 18 years. Otherwise, the Convention itself will make a clear reference to another younger age, as in the case of Article 38, where the age of 15 years is mentioned as the minimum for the purpose of recruiting children into the armed forces or allowing for their direct participation in hostilities (see below).

In the light of Article 41 of the Convention, however, Governments can always set a higher standard aiming at applying to the child more conducive solutions, as foreseen in national legislation or in applicable international law. And in fact several Governments have made use of such a provision to raise the minimum age referred to by Article 38 to eighteen, having declared upon ratification or accession that 15 years was too a low an age level. This reality has gained an additional importance since it was used by the Committee on the Rights of the Child as important argument to propose the drafting of an optional protocol to the Convention to raise to eighteen the minimum age for the child's recruitment or participation in armed conflicts, a text that hopefully will soon be adopted by the Commission on Human Rights.

The wording of Article 1 of the Convention also allows for a certain degree of flexibility in the set up of minimum ages for certain purposes. Some provisions do it specifically, as in the case of Article 32 which requests States to provide for a minimum age or minimum ages for admission to employment, or of Article 40 para. 3(a) which calls for the establishment of a minimum age below which children are presumed not to have the capacity to infringe the penal law. In some other areas, the Convention does not impose a specific solution and leaves it to the State to decide, for instance, in relation to the end of compulsory education (see Article 28), to access to medical and legal counselling without parental consent (see Articles 24 para. 2(e) and 37(d) and 40 respectively), to deprivation of liberty (see Article 37(b) or to give testimony in court – realities that States Parties' reports are required to address as stressed by the Guidelines.

It would be in fact unrealistic to set a single uniform age for all these possible purposes which would apply in all countries in the world. Yet, in the light of the principles and provisions of the Convention, such limits cannot be set at an unreasonably low level or on the basis of arbitrary criteria. They particularly have to take the best interests of the child as a primary consideration, pursuant to Article 3, and never give rise to discrimination as determined by Article 2. Moreover, in the light of Article 41, the most conducive solution for the child should always prevail, which would always prevent lowering the minimum level of protection provided by the Convention as a whole or depriving from all meaningful content

the obligations arising therefrom. In this spirit, the Committee has often expressed its deep concern in relation to national legal texts where the attainment of the age of puberty is used as a criterion in civil or criminal matters. Based on a subjective, purely physical and often vague concept, serious consequences may be applied to children, particularly girls as in the case of the assessment of the minimum age for criminal responsibility

The establishment of a minimum age should further respect the provisions of Article 12 which addresses another general principle of the Convention. In fact, one of the fundamental features of the Convention is to stress the quality of the child as a full-fledged person and a subject of rights, including the right to express views and having those views being given due weight (Article 12), to have access to information and ideas of all kinds (Article 13), to freedom of thought, conscience and religion (Article 14), freedom of association and peaceful assembly (Article 15). The exercise of these rights clearly calls for an increasing degree of autonomy and independence of the child, in a manner that may be consistent with the child's age and maturity. For this reason, the definition of the child in the national legislation has also to reflect this fundamental dimension of the Convention, thus reflecting the need for the child to be prepared to live an individual and responsible life in society, as recognized by the Preamble and the text of the Convention itself. Adulthood and maturity can only be responsibly attained through a process where there is chance to experience decision making in a growing manner and benefiting from an equally evolving direction and guidance of parents, legal guardians or others responsible for the child, who are required to act in a manner consistent with the evolving capacities of the child (Article 5).

While setting a general upper limit at 18, Article 1 allows for the child's majority to be attained earlier under the law applicable to the child. Such expression should in no way be interpreted as a general escape clause, nor should it allow ages to be established which might be contrary to the principles and provisions of the Convention.

For instance by establishing a different age for girls and boys in relation to access to school, end of compulsory education or for marriage. In fact, those solutions would clearly be contrary to the principle of non discrimination on the basis of gender, as set forth in Article 2. As mentioned above, they should not encompass either any option that might be unreasonable or arbitrary, or otherwise contribute to preventing the child from benefiting from the protection generally afforded by the Convention or from enjoying the rights recognized therein. Similarly to what was reflected in one General Comment adopted by the Human Rights Committee, a State Party cannot absolve itself from its obligations under the Convention regarding persons under the age of 18, notwithstanding that they have reached the age of majority under domestic law.

III. General principles – Articles 2, 3, 6 and 12

The Convention stresses the importance of inspiring fundamental principles in the process of realization of the rights of the child. Such principles constitute a constant reference for the implementation and monitoring of children's rights. According to the Committee, non discrimination, best interests of the child, participation of children as well as the right to survival and development are in fact underlying values that should guide the way each individual right is ensured and respected. And they are decisive criteria to assess progress in the implementation process of those same rights, which explains the special attention paid to them by the Committee in the process of examining States Parties' reports.

ARTICLE 2

Text

1. *States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*
2. *States Parties shall undertake all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of the child's parents, legal guardians or family members.*

Commentary

Article 2 contains a general obligation for States Parties to ensure and respect the rights set forth in the Convention to each child within the jurisdiction of the State. Thus, States are first of all required to act towards a certain aim, which is to ensure and to respect children's rights. The obligation to **ensure** implies an affirmative and immediate obligation to take all necessary measures to enable individuals to enjoy and exercise the relevant rights, including the removal of possible obstacles to the enjoyment of those rights. For its part, the obligation to **respect** requires the State to abstain from adopting measures that may preclude the exercise of such rights or may violate them. The limitation arising from the expression "the rights set forth in the present Convention" indicates that the obligation of the State does not in principle apply to rights other than the ones recognized by this instrument. It is important to note that Article 2 and Article 4 are closely linked. In fact, while the first constitutes an important obligation of result, the second sets an obligation of conduct, men-

tioning the means by which the aims identified in Article 2 should be achieved by States Parties. Both together define the core obligation established by the Convention.

Article 2 further defines the extent of the responsibility of the State, by stressing that the obligation to respect and ensure will apply to all children **within the jurisdiction of the State**. Thus, the approach of the Convention is broad and in the light of the *travaux préparatoires* intended not to be restricted to the criteria of territory or nationality. For this reason, States Parties are bound to secure the rights recognized by the Convention to all children under their actual authority and responsibility, on whom they are able to exercise a certain power, including nationals, as well as aliens, refugees, asylum seekers or stateless children.

But Article 2 also sets another important obligation which reflects one of the basic principles of the Convention – the principle of non discrimination. The Convention does not include a definition of discrimination but, in the light of its provisions and guided by other relevant international standards, it may be considered that non-discrimination means that no child should be injured, privileged, punished or deprived of any right on the ground of his or her race, colour, sex, language, religion, political or other opinion, national, social or ethnic origin, property, disability, birth or other status. This principle implies therefore that girls and boys, rich or poor children, living in urban or rural areas, belonging to a minority or an indigenous group should be given the opportunity of enjoying the same fundamental rights as recognized by the Convention.

It is important to stress that, as it has been recognized in relation to the International Covenant on Civil and Political Rights, not every differentiation of treatment constitutes a discrimination if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Convention.

The list of criteria mentioned in Article 2, on the basis of which children may not be discriminated against, is not an exhaustive one. In fact, they are merely indicative and the inclusion of the reference to “or other status” was intended to cover any other possible distinction, or to use the equally valid French official version “toute autre considération”.

Thus, the Convention has followed a very wide approach, being intended to cover any possible situation that may raise a risk for the child to be discriminated against, or punished, on the basis of criteria mentioned by this provision. Moreover, such criteria should be taken into consideration in relation to the child, but also to the child’s parents, legal guardians or, in the light of paragraph 2, even family members. Such broad perspective shows the emphasis put by the Convention on the prevention of any possible form of discrimination, punishment or sanction affecting the child.

Paragraph 2 of this article introduces another important aspect. It establishes an obligation for States Parties to **effectively protect** the child against any form of discrimination or punishment, or sanction, if we take into consideration the official French version. The State's pro-active intervention to this end is therefore required. In fact, its action is not even limited to the rights recognized by the Convention, as in the case of paragraph 2 (see above), rather applying to "all forms of discrimination".

To ensure the implementation of this principle of non discrimination it is required, pursuant to Article 4, to fully reflect it in the national legislation, policy and practice. However, even the legal recognition has not always been ensured by States Parties. Sometimes, the constitutional provisions vaguely refer to this principle, often without endorsing the open approach of the Convention and merely referring to some of the criteria mentioned therein. It is however essential that this basic obligation as set forth in the Convention be reflected in the national law.

Moreover, some prevailing **legislative solutions** do not fully take this principle into consideration, as illustrated by the different minimum age for marriage between boys and girls, a distinction which is purely based on the notion of physical maturity and which in fact often hinders the full enjoyment of different fundamental rights of the girl, including the right to education.

To address the persisting situation of discrimination, more than legislative measures are required. Very often there is a need to identify certain groups of children, to ensure their visibility, thus enabling their situation to be addressed. The fact is however that there are groups of children who live in extremely precarious situations which are decisively aggravated by the fact that they have an invisible presence and their existence lacks any kind of assessment or recognition. Working children, domestic servants, children involved in prostitution or affected by armed conflicts, children placed in institutions, children who are forced to live and/or work in the street, children who are abandoned or who are not even registered and therefore not recognized as persons, all belong to a world where discrimination, punishment or sanction may be the persisting rule.

However, in some situations, specific positive measures have to be considered to address and correct the situation of children in a disadvantaged situation, disabled children who become marginalized, or even stigmatized and often lack special care; unaccompanied minors seeking asylum or family reunification, who are systematically ignored. In other cases, there is a need to bridge social and geographical disparities prevailing in the country, as in the case of children living in rural areas or of children belonging to minorities to allow them to effectively enjoy the fundamental rights recognized by the Convention.

Moreover, discrimination in relation to certain groups of children may arise from social and religious prejudices or traditional attitudes or beliefs – as in the case of female genital mutilation of girls, or in relation to disabled children or children born out of wedlock.

To address these situations effectively, States Parties have to launch awareness and information campaigns on the rights of the child, sensitizing the population and countering those prevailing negative attitudes and ensuring adequate training to relevant professional groups working with and for children. In this connection, it is important to stress the role that legislation may also play as a framework for such campaigns, by clearly prohibiting discrimination on such grounds.

ARTICLE 3

Text

- 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, court of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*
- 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her and, to this end, shall take all appropriate legislative and administrative measures.*
- 3. States Parties shall ensure that the institutions, services and facilities responsible for the care and protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.*

Commentary

The principle of the best interests of the child reflected in this article is, like the three other general principles of the Convention, an umbrella provision which indicates the approach to be followed in the realization of all rights of the child recognized by the Convention. It reflects the new ethics of the Convention that children should be provided for, and always given the best.

In the light of Article 3, para. 1 of the Convention, the best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. Thus, in each and every circumstance, in each and every decision affecting the

child, it is necessary to consider the various possible solutions and give due weight to the child's interest.

Such an approach shall prevail in **all** cases, where there is a direct relation between the State and those subject to its jurisdiction, and also those where the State only intervenes to regulate the general conditions following which children's rights should be enjoyed, including in a private context of family life.

When legislative bodies are to adopt or review national laws, it is essential to consider whether the solutions proposed are the best possible ones for the benefit of children. When a court is settling a conflict of interests, it has, as often recognized by the Human Rights Committee, "the right and duty to decide in the best interests of the child." When administrative authorities intervene, confirming the State responsibility to ensure and protect children's rights, including when local authorities decide upon the traffic regulations and safety places for children to walk or play, they should act on behalf of the child and safeguarding his or her best interests. Similarly, when budget allocation is decided, special attention should be clearly given to children's policies and to their impact on children's lives. Resources should be allocated to their maximum extent possible.

Pursuant to Article 3, the best interest of the child is not even confined to public undertakings, since it should also be a basic guideline when private institutions undertake actions concerning children, including when they decide upon standards relating to health, safety, number and suitability of their staff or on the competent mechanisms of supervision.

This principle further constitutes a guiding reference for the way parents exercise their responsibility of upbringing and ensuring a harmonious development of the child. For this reason, Article 18 of the Convention stresses that "the best interest of the child should be the parents' basic concern".

Having been incorporated in the Convention, the concept of the best interests of the child has helped to crystallize the perception of children as real persons in their own right and not simply in a vacuum.

At the same time, constituting an underlying value to the Convention as a whole, it clearly shows that there is no right recognized therein to which this principle is not relevant, no reality addressed by the Convention where it may be meaningless.

Since it is to be considered in **all actions** affecting children, as stressed by Article 3 of the Convention, it may even be decisive, in the light of paragraph 2 of this same provision, in relation to situations not clearly covered by the Convention, but which are necessary for **the child's well-being**.

Article 3 considers “the best interests of the child” as *a primary consideration*, one reference amongst many others, and not as *the primary one*. In fact, being an umbrella provision, Article 3 purports to present a general and guiding principle. However, there are specific situations where the Convention deliberately adopts the expression “*the primary consideration*” to underline the absolute priority of the best interests of the child. This is for instance the case in Article 18, in relation to the responsibilities of parents, where the best interest of the child is presented as their basic concern; in Article 21 on adoption, where the best interests of the child shall be the paramount consideration; the same spirit prevails in the area of the administration of juvenile justice in Articles 37 and 40.

Some voices have criticized the lack of a clear definition of best interests of the child arguing that it leads to the exercise of a broad administrative and judicial discretion, by nature subjective and arbitrary. But the Convention in its holistic nature provides the broad and ethical framework that is often claimed to be the missing ingredient which would give the greater degree of certainty to the content of best interest. The Convention does not and could not seek to provide a definitive statement of how a child’s best interests would be best served in any given situation, since the precise implications of the principle will vary over time and from one society with its own cultural, social and other values to another. It will vary from child to child and according to each individual child’s situation. And it has to be considered in relation to the rights of the child that may be at stake, within the broader context of the Convention as a whole.

As an illustration of the essential value recognized to this principle, it is interesting to mention the recommendations included in the concluding observations of the Committee addressed to States Parties in the area of the implementation of Article 22 of the Convention. The Committee has recommended that particular attention be paid to the principle of the best interests of the child in all matters relating to the protection of refugee and immigrant children, including in deportation proceedings. It has further suggested that every feasible measure be taken to facilitate and speed up the reunification of the family in cases where one or more of its members have been considered eligible for refugee status, to avoid expulsions causing the separation of families, in the spirit of Article 9 of the Convention and to ensure that deprivation of liberty of children, particularly unaccompanied children, for security or for other purposes is only be used as a measure of last resort in accordance with Article 37 of the Convention.

The “best interests” is also a basic criteria to settle possible conflicts of interests to ensure that due regard is given to the child’s interests. This principle is therefore to prevail in any case where there is a conflict of interests between the child and those who are responsible for him or her, including the parents. In fact, the best interests of the child may compete with the interests of the family, which regards the child as an asset and a blessing, but also as a helping hand in times of poverty and economic crisis affecting the family as a whole; and it may still compete with the interests of other children within the same social or family

group and even in the nuclear family, where differences may exist between younger and weaker children and older who are in better health conditions, between brother and sister. It is then necessary to determine the best interests of each child in relation to the others living in the same conditions.

As it was pointed out by one State's Party report submitted to the Committee: "Conflicts of interest exist, but must be settled in the context of full implementation of the Convention. Conflicts may end or grow less serious if social welfare facilities were more effective, if information for parents was better thought out and more readily available, and if children themselves were more aware of their rights and could practise the systems of protecting one another."

The principle of the best interests of the child can also be decisive to settle a conflict between different rights of the child. Thus, while Article 7 of the Convention recognizes the right of the child to be cared for by his/her parents, Article 9 stresses that, in the best interests of the child, the child might be separated from them. This will be the case where parents abuse or neglect the child, or lead him or her to be involved in any form of exploitation or servitude. In fact, in case such a separation would not take place, among others, the right of the child to a physical, mental, spiritual, moral and social development would be compromised.

In the same line, while recognizing that deprivation of liberty should only be used as a measure of last resort and for the shortest possible period of time, in cases where such measure is absolutely necessary children should be separated from adults (Article 37b) and (c)). In their best interests, however, it might be advisable to keep them together – as in the case of deprivation of liberty of a whole family having broken the law of immigration, under which the separation of children from their parents would be an additional sanction for the latter, being in a foreign country, where different languages and cultural traditions would prevail.

The best interests of the child can, for its positive approach and invitation to always find the best possible solution for every child, further help identifying, *a contrario*, those realities which, being contrary to human value and dignity of the child, in fact prevent and compromise the realization of the fundamental rights of children. In its thematic discussion on the economic exploitation of children, the Committee on the Rights of the Child identified in fact a list of activities which must be strictly forbidden and in relation to which there can be no compromise. The Committee qualified as such any activity involving any form of cruel, inhuman or degrading treatment, the sale of children or a situation of servitude; activities that involve discrimination, particularly with regard to vulnerable and marginalized social groups, dangerous or harmful activities to the child's harmonious physical, mental or spiritual development, activities that jeopardize the education of child, or those which are performed under the minimum ages referred to in Article 32 of the Convention on the Rights of the Child and in particular those recommended by ILO.

Being of essential importance to guide the implementation of the Convention, as well as to solve arising conflicts, principle of the best interests of the child further stresses the commitment of States to act on behalf of children to ensure the realization of the rights recognized by the Convention. In fact, and to use as an illustration Article 32 of the Convention relating to the field of child labour, Article 3 reaffirms the duty of States Parties to take legislative, administrative, social and educational measures to ensure the protection of children from economic exploitation and from performing any work that is likely to be hazardous, to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

This explains the number of recommendations made by the Committee in this specific area upon the examination of States Parties' reports, for a comprehensive legal review, an effective enforcement of existing standards, the establishment of complaints and inspection procedures, the consideration of programmes of rehabilitation for child victims of any form of exploitation in an environment which fosters the health, self-respect and dignity of the child, as well as the effective implementation of the right to compulsory free education for all.

But such a commitment to act also lies with the United Nations system-wide. In fact, in Article 45 of the Convention on the Rights of the Child international cooperation is recognized as an essential tool to foster the implementation of this legal instrument. In the same spirit, the World Conference on Human Rights recognized the realization of the rights of the child as a priority, and recommended that the human rights and the situation of children be regularly reviewed and monitored by the supervisory bodies of the specialized agencies, in accordance with their mandates.

This explains the existing partnership between the Committee on the Rights of the Child and UN bodies and specialized agencies, and the importance attached to the establishment of programmes of technical assistance in relation to countries where a particular area of concern has been identified.

Similarly, the best interests of the child should also lead, as it has been recognized by the Committee, to a serious consideration and adequate action, by international and regional financial institutions, of the way children's rights should be protected in programmes of economic reform and under strategies of structural adjustment.

ARTICLE 6

Text

1. *States Parties recognize that every child has the inherent right to life.*
2. *States Parties shall ensure to the maximum extent possible the survival and development of the child.*

Commentary

Article 6 addresses the third general principle of the Convention, on the right to life, survival and development. According to paragraph 1 States Parties recognize the right to life inherent to every child, thus endorsing the right as set forth in the Convention and committing themselves to act with a view to ensuring and respecting it through the adoption of all appropriate measures. Such measures may be of a positive nature and thus designed to protect life, including by increasing life expectancy, diminishing infant and child mortality, combating diseases and rehabilitating health, providing adequate nutritious foods and clean drinking water. And they may further aim at preventing deprivation of life, namely by prohibiting and preventing death penalty, extra-legal, arbitrary or summary executions or any situation of enforced disappearance. States Parties should therefore refrain from any action that may intentionally take life away, as well as take steps to safeguard life.

States' action should promote life which is compatible with the human dignity of the child. Or, to use the language of the Convention, that fully ensures the right to an adequate standard of living, including the right to housing, nutrition, to the highest attainable standard of health, to information and education in the basic use of preventive health-care measures, to develop respect for the natural environment.

But Article 6 further addresses the areas of survival and development of the child, indicating that States Parties are required to ensure them "to the maximum extent possible". States should therefore do their utmost to secure this aim giving the highest priority to the action undertaken in this regard.

The combination of "survival and development" in this provision is also intended to stress the essential value of States Parties action. Adding a new dimension to life, it clearly stresses the need to enhance children's health, to ensure preventive health-care measures, including immunization, the provision of adequate information or knowledge on nutrition, hygiene and environmental sanitation. But it is in no way limited to a physical perspective, rather further emphasizing the need to ensure a full and harmonious development of the child, including at the spiritual, moral and social levels, where education will play a key role.

The promotion of survival and development therefore means to gain another and deeper challenge of self-betterment of the child, ensuring the capacity of developing talents and abilities to their fullest potential, preparing the child for responsible life in a free society and ensuring him or her the essential feeling of belonging to a world made of solidarity where there is no place for indifference or passivity.

In this spirit, as various other areas of the Convention, both national and international action are required. As an illustration of the first, mention could be made of the need for States to identify the number and assess the extent of children belonging to the most disadvantaged groups, as those living below a minimum poverty line. Only by understanding the dimension of this reality will it be possible to shape an adequate strategy to assist them as required. In this framework, the establishment of an effective system of birth registration may often be an instrumental step. Yet, such an important system is still lacking for many children around the world, either because they live in rural or remote areas, because the number of registration officers is insufficient or even because the national law does not provide for any legal status for children who have been abandoned.

In relation to the second area, international cooperation and solidarity may be indispensable to ensure the exchange of necessary information, the training of relevant professionals or the provision of necessary goods and services. As the World Summit for Children recognized "Fortunately, the necessary knowledge and techniques [...] exist. The financial resources required are modest in relation to the great achievements that beckon. And the most essential factor – the provision to families of the information and services necessary to protect their children – is now within reach in every country and for virtually every community. There is no cause which merits a higher priority than the protection and development of children, on whom the survival, stability and advancement of all nations – and indeed of human civilization – depends."

ARTICLE 12

Text

- 1. States shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*
- 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.*

Commentary

This article sets one of the fundamental values of the Convention and probably also one of its basic challenges. In essence it affirms that the child is a fully fledged person having the right to express views in all matters affecting him or her, and having those views heard and given due weight. Thus the child has the right to participate in the decision-making process affecting his or her life, as well as to influence decisions taken in his or her regard.

At the first sight it might be considered that Article 12 is basically addressing the same reality as Article 13 on freedom of expression and information. It is true that they are closely connected. But the fact they were both incorporated in the Convention and coexist in an autonomous manner, has to be interpreted as to mean that while Article 13 recognizes in a general way freedom of expression, Article 12 should prevail in all those cases where the matters at stake affect the child, while stressing the right of the child to be heard and for the child's views to be taken into account.

Pursuant to the provisions of this article, States Parties have a clear and precise obligation to assure to the child the right to have a say in situations that may affect him or her. The child should therefore not be envisaged as a passive human being or one that can be allowed to be deprived of such right of intervention, unless he or she would clearly be incapable of forming his or her views. This right should therefore be ensured and respected even in situations where the child would be able to form views and yet be unable to communicate them, or when the child is not yet fully mature or has not yet attained a particular older age, since his or her views are to be taken into consideration "in accordance with the age and maturity of the child". This latter expression indicates that there is no uniform and single stage from where all children would necessarily be capable of forming their views. In fact, the degree of development of the child and the child's capacities should be taken into consideration. This same essential notion is reflected in Article 5 (see below).

Recognizing that the child evolves in his or her capacities, parents, and where appropriate the members of the family or the community, should give **appropriate direction and guidance**, or on the basis of the equally valid French version of the Convention, orientation and advice, in the exercise by the child of his or her rights, thus not undermining his or her ability to exercise the rights set forth in the Convention. The older the child, the wider self-determination and responsibility he or she should be granted.

The child has the right to express views **freely**. He or she should therefore not suffer any pressure, constraint or influence that might prevent such expression or indeed even require it. It also means that the child should be provided with the necessary information about the possible existing options and the consequences arising therefrom. In fact, a decision can only be free once it is also an informed decision. Thus, for the child to act in a free

way it is important to create the appropriate atmosphere and space for the child to feel confident and at ease.

The right recognized in Article 12 is to be assured in relation to **all matters** affecting the child. It should apply in all questions, even those that might not be specifically covered by the Convention, whenever those same questions have a particular interest for the child or may affect his or her life. The right of the child to express views therefore applies in relation to family matters, for instance in case of adoption, in school life, for instance when a decision of expulsion of the child is under consideration, or in relation to relevant events taking place at the community level, such as when a decision is taken on the location of playgrounds for children or the prevention of traffic accidents is being considered. The intention is therefore to ensure that the views of the child are a relevant factor in all decisions affecting him or her and to stress that no implementation system may be carried out and be effective without the intervention of children in the decisions affecting their lives.

But it is not sufficient to allow children to express their views. The all point of Article 12 is that these views to be duly taken in consideration. The child should be listened to and his or her views listened to with appropriate attention, in a manner compatible with the age and the maturity of the child, as well as with the nature of the question or of its importance for the life of the child. Children's views should not be simply ignored, nor automatically endorsed, but should genuinely be able to influence the decision to be taken. A process of dialogue and exchange should therefore be encouraged to increasingly prepare the child for a responsible life in a spirit of tolerance and understanding, and support him or her in the process of becoming active, tolerant and democratic. Combining assistance, direction and guidance with respect for the views of the child, giving the child the opportunity and capacity to understand why a particular option, and not another, was followed, why a particular decision was taken and not another one the child might have preferred.

For all these reasons, Article 12 is perceived as establishing participatory rights for children, thus providing them the opportunity to participate in the decision-making processes affecting their lives – as pointed out above, either within the family, the school system or in the life of the community.

States have to adopt measures to ensure and respect this right. On the one hand, they are naturally required to reflect it in the national legislation, ensuring that there are effective opportunities for children to have a say, to be heard, and thus influence decisions. Law can in fact play an important role both in safeguarding this fundamental right, and in influencing attitudes of the population at large. On the other hand, information campaigns and the education system are important tools to guide children and enhance their capacity to express views and influence decisions, learning how to participate responsibly, accepting with tolerance when their options are refused, as well as when they are followed. Similarly, the implementation of this right calls for the training and mobilization of those who live and

work with children, preparing them to give children the chance of freely and increasingly participating in society and of gaining democratic skills.

Moreover, it calls for the establishment of mechanisms where children can experience and enhance their capacity of participation – either through an ongoing process of consultation and exchange within family life, by intervening in school councils for matters relating to their education, or by influencing life at the community level through their participation in local councils.

It is important to stress, however, that this right as recognized by Article 12 may not necessarily prevail in all possible situations. In some circumstances the best interests of the child, which should constitute a primary consideration in all actions affecting the child, pursuant to Article 3, may in fact lead the child not to express his or her views, or the child's views not to be taken into account. And in any case, the freedom of the child to express views should never be perceived as a duty to take a stand on a particular issue on the ground that it may be important for his or her life.

Paragraph 2 illustrates the general provisions of paragraph 1. The expression "in particular" shows that only some examples are provided in this section, but there is in any case an obligation to provide an opportunity for the child to be heard. The child is therefore entitled to express views and have those views taken into consideration, or, to say it in a different manner, it is not a favour or a gift to allow the child to be heard.

The child shall thus intervene in judicial or administrative proceedings affecting him or her. This expression should be interpreted in a broad manner so as to include all those situations where the proceedings may affect the child, both when he or she initiates them, for instance by introducing a complaint as a victim of ill treatment, and when the child intervenes as a party to it, for instance when a decision must be taken on the child's place of residence in view of the separation of the child's parents, or in the case of change of the child's name. The Convention gives some specific examples of such proceedings where the participation of the child should be ensured. In fact, Article 9 (see below section relating to family environment and alternative care) when referring to the possibility of the child to be separated from his or her parents stresses that "all interested parties shall be given an opportunity to participate in the proceedings" (paragraph 2); Article 21, on the child's adoption, foresees that the persons concerned in the process of adoption "have given their informed consent"; and in an indirect manner, Article 28 on education states that the school discipline shall "be administered in [...] conformity with the present Convention", thus also including the safeguards foreseen by Article 12.

The child may be heard in various ways, according to this paragraph: directly, through a representative, or through an appropriate body. All these forms are possible alternatives, each and all of them being designed to provide the child with the best possible way of ex-

pressing his or her views in a free and informed manner. “Representative” may be a person generally responsible for the child, including parents or legal guardians, but it may also be someone specifically appointed for a particular matter affecting the child – this will be the case when the proceeding concerns a conflict of interests between the child and the parents, as illustrated by Article 9 paragraph 1 of the Convention. “Appropriate body” means any individual or institution, even of a non-governmental nature, which will be in a position to intervene on behalf of the child and will be guided by his or her best interests. In some cases, an Ombudsman for children has been established at the national level for this purpose – a solution already suggested by the Riyadh Guidelines “to ensure that the status, rights and interests of young persons are upheld”.

The reference to “procedural rules of national law” is intended to stress the need for the national law to include specific procedures to allow for the implementation of the right as recognized by Article 12, and naturally not to be interpreted as a means of allowing possible inadequate solutions contained in the procedural law to prevent the full enjoyment of this fundamental right. In fact, such an interpretation would again be contrary to Article 4 of the Convention.

IV. Civil rights and freedoms – Articles 7, 8, 13 to 17 and 37(a)

ARTICLE 7

Text

- 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*
- 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.*

Commentary

This article addresses several important rights, some of which have been previously recognized by other international instruments – this is mainly the case of the right to birth registration, to a name and a nationality. But even in relation to already recognized rights, the Convention has introduced new important elements to reinforce their effective enjoyment – this is specially the case of the right to a nationality to be ensured “in particular where the child would otherwise be stateless”. Moreover, the Convention sets forth a new right, the right for the child “to know [...] his or her parents.

Birth registration should be ensured by States Parties to every child under their jurisdiction, including to non-nationals, asylum seekers, refugee and stateless children, as mentioned above in relation to Article 2. It constitutes a decisively important step to further ensure that children are recognized as persons, and thus that they effectively enjoy the range of rights set forth in the Convention and are not deprived of them. In fact, birth registration becomes instrumental to allow children to enjoy their fundamental rights, including the right to benefit from health services, as recognized by Article 24 of the Convention, the right to education pursuant to Article 28 and to social security in the light of Article 26. It further helps to prevent any form of abduction and sale of, as well as traffic in children for any purpose and in any form, as required by Article 35. For this reason, and with a view to stressing its urgent and priority nature, the Convention determines that “children should be registered **immediately after birth**”. Such an expression should be interpreted in such a way as to imply action as prompt as possible.

In some situations, however, practical difficulties may be encountered in the registration of children. States Parties' reports have shown that this is often the case in relation to children born from nomadic groups, in rural or remote areas where birth registration offices may be lacking and access to them may, in view of their distance, pose additional problems to children's families. Similar problems may arise in situations of emergency, including armed conflicts. In such circumstances, States have to adopt solutions which, being designed to ensure the implementation of this right, are also appropriate to the specific particularities of such situations. In this regard, the establishment of mobile registration offices has often proved to be an effective option.

The child should also have a name “from birth”. This important element of the child's identity should, as stressed by Article 8, be “preserved” by the State “without unlawful interference”. Thus, possible unlawful changes of the child's name should be avoided, for instance with a view to facilitating his or her trafficking or illegal adoption. The child should further have a name at all times, and should not “be deprived of his or her name [...] unless the child thereby acquires a new name”, as stressed by the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally.

The child's name may further be an essential element to allow for the child to know his or her origins when the child has been separated from his or her family, thus ensuring the implementation of the right of the child "to know his or her parents". This new reality introduced by the Convention is of particular relevance for the stability of the child, as pointed out during the drafting process of the Convention. The expression "as far as possible" shows that this right is not absolute. In some situations, in fact, where the child has been abandoned or is the result of medically assisted procreation, it may be difficult to ensure access to the origins of the child. But in such cases, steps have nonetheless to be taken with a view to ensuring that it is "as far as possible" implemented by the State Party as a meaningful right and that it does not become unduly limited, namely by contravening the general principles of the Convention, including the best interests of the child.

The child has also the right "to be cared for by his or her parents" as far as possible. Although this reality echoes the general consideration that children are entitled to the protection and assistance of parents, as arising from the two Covenants on human rights, it is much more than the simple reaffirmation of such reality. In fact, the wording of this provision was included with a view to meaningfully replace a proposal stating that "children belong to their parents". It therefore stresses the essential value of the child in his or her individuality, although benefiting from the appropriate protection, care, direction and guidance from parents.

This article further recognizes the right of the child to acquire a nationality. It is a right inherent to the dignity of the child that should thus be granted, protected, preserved and, whenever appropriate, re-established (Article 8).

Implicitly admitting that nationality may be obtained on the basis of any criteria, including *ius soli*, *ius sanguinis* or both, and that the State has no general obligation to give its own nationality to the child, the Convention stresses however the particular obligation of States to ensure the implementation of such right, by national or international action, in order to prevent statelessness. This concern is further emphasized by Article 8 which stresses that States "undertake to respect the right of the child to preserve his or her [...] nationality". Again, as expressed in Article 8 of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, a "child should at all times have [...] a nationality" and should not be deprived therefrom "as a result of foster placement, adoption or any alternative regime", unless the child thereby acquires a new one.

ARTICLE 8

Text

1. *States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.*
2. *Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.*

Commentary

The considerations made in relation to Article 7 apply generally to Article 8. But it is important to stress that this provision is an innovative one, introduced with the aim of contributing to the prevention of situations of enforced disappearances and related cases of irregular adoptions. In many aspects, this provision paved the way for the drafting and eventual adoption in 1992 of the United Nations Declaration on the Protection of all Persons from Enforced Disappearance.

The identity of the child is not defined in this article, but the illustrative examples given therein – nationality, name and family relations – show that the main intention behind these provisions was to ensure the largest possible respect for the protection of the child's identity and prevent any possible "illegal deprivation" of some or all of its elements which might endanger the life or hinder the enjoyment of the child's fundamental rights.

In fact, as recognized later by Article 2 of the 1992 United Nations Declaration mentioned above, "any act of enforced disappearance places persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, *inter alia*, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman and degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life".

States Parties are required to preserve the child's identity (paragraph 1), as well as to provide to a child illegally deprived of his or her identity, "appropriate assistance and protection" with a view to re-establishing such identity in a speedy manner (paragraph 2). This may encompass legislative measures, including in the civil and penal areas – for instance to annul any adoption based on an irregular situation, such as the child's abduction, or to penalize such possible offences. In this spirit, the UN 1992 Declaration on Enforced Disappearance determines that "the abduction of children of parents subjected to enforced

disappearance or of children born during their mother's enforced disappearance, and the act of altering or suppressing documents attesting to their true identity, shall constitute an extremely serious offence, which shall be punished as such." Moreover, States' action may imply the establishment of mechanisms to re-establish the child's identity, such as a national data bank where changes made in the elements of the identity of children (including the name, nationality and family relations) may be kept and, when appropriate, acceded to.

ARTICLE 13

Text

1. *The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.*
2. *The exercise of this right may be subject to certain restrictions, but these shall be such as are provided by law and are necessary:*
 - (a) *for the respect of the rights or reputations of others; or*
 - (b) *for the protection of national security or of public order (ordre public), or of public health or morals.*

Commentary

Articles 13 to 17 constitute an important chapter of the Convention which clearly indicates the need to envisage the child not simply as a vulnerable and weak human being, but also as an active subject of rights. Freedom of expression, freedom of thought, conscience and religion, freedom of association and of peaceful assembly, as well as the right to privacy and to have access to information are therefore essential elements of the child's personality. States are required to recognize them in the law and to determine therein how their exercise may be ensured. It is therefore not sufficient for the Constitution simply to include them as fundamental rights. In fact, constitutional and/or legal provisions should further indicate how these rights specifically apply to children, which mechanisms have been established to protect them in an effective manner and which remedies are provided in case of their violation. It is important to stress that these rights had already generally been recognized by previous international instruments to "every human being", thus also including children. The prevailing reality was however, and to a certain extent still is, that children, in view of their evolving maturity, are in practice not recognized as having the necessary ca-

capacity or competence to exercise them. By their clear incorporation in the Convention, an undeniable statement is made as to their entitlement and ability to fully enjoy such fundamental freedoms. In fact, as stressed by Article 5 of the Convention, parents or others responsible for the child should provide “direction and guidance” which is appropriate to the child and consistent with the evolving capacities of the child, and with a view to ensuring “the **exercise by the child** of the rights recognized by the Convention”.

This general reality may explain the fact that various reports submitted to the Committee on the Rights of the Child on the implementation of the Convention lack detailed information on the way these rights are enjoyed, as well as on possible difficulties encountered in their implementation. States Parties are however required to pay equal attention to these areas.

Article 13 closely follows the provisions of Article 19 of the International Covenant on Civil and Political Rights, including in relation to the restrictions to which this right may be subjected. In fact, and similarly to the Covenant, these limitations have to be provided by law and will only be accepted if and when necessary for the purposes identified by paragraph 2 of this article. In fact, when in the drafting process a proposal was made to add to this list, it was pointed out that extra restrictions were to be avoided and that “it would seem unfair to impose it on children alone”.

The right to freedom of expression includes, but is not limited to, “freedom to seek, receive and impart information”. The inclusion of such provision reaffirms the consideration of the child as an **active** person, and not as a simple recipient of ideas or of information. It reflects the natural curiosity of children and their wish to “seek” information, while stressing the important corresponding entitlement of the child to receive such information.

ARTICLE 14

Text

- 1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.*
- 2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.*
- 3. Freedom to manifest one's religion or beliefs may be subject only to such imitations as are prescribed by law and are necessary to protect*

public safety, order, health or morals, or the fundamental rights and freedoms of others.

Commentary

In the light of this provision, the child's right to freedom of thought, conscience and religion should be respected by the State. Freedom of religion implies the right to have or not to have a religion. The respect for this right and for the right to privacy, as recognized in Article 16 of the Convention, implies that no child should be compelled to reveal his or her religion. This may assume a special importance as a means of preventing discrimination of children on the basis of their religion or of the religion of their parents, legal guardians or family members, as recognized by Article 2. As reflected by the wording of paragraph 3 of this article, freedom of religion further includes the right to manifest one's religion or beliefs. And although no detailed indication is given by the Convention on the content of such a right, in the light of other relevant international standards it should be interpreted as including the freedom to manifest it individually or in community with others, in public or in private, in worship, observance, practice and teaching. In fact, the same interpretation arises from Article 30 of the Convention, which recognizes the rights of children who are indigenous or belong to religious minorities to profess and practice their own religion, in the light of Article 30.

The article also recognizes the rights and duties of parents to "provide direction to the child in the exercise" of this right. The child is therefore here again recognized as the main actor, in his or her individuality, in the realization of this right, although parents are to assume their responsibilities in assisting the child. Such assistance should however be provided in the light of Article 5 of the Convention, here reaffirmed, with a view to ensuring that parents' direction should be compatible with "the evolving capacities of the child", or, to use a similar expression as reflected in Article 12, taking into account the age and maturity of the child.

Limitations included in paragraph 3 of this article only apply to the freedom "to manifest a religion", and not generally to the right to freedom of thought, conscience and religion as recognized in paragraph 1.

ARTICLE 15

Text

1. *States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.*
2. *No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.*

Commentary

Article 15 recognizes two fundamental rights of children, to freedom of association and to freedom of peaceful assembly. Having closely followed the wording of Articles 21 and 22 of the International Covenant on Civil and Political Rights, they further reflect an important illustration of participatory rights as generally set forth in Article 12 of the Convention (see above).

Freedom of association includes the right to create and the right to join associations, as well as the right not to associate. The right to freedom of peaceful assembly may be exercised for cultural, social or other purposes, including of a political nature. The establishment of children's associations, as well as their participation in peaceful assemblies, may constitute important steps to encourage the assumption of responsibilities by the child in areas of concern to him or her, including in relation to school or community life. It may further contribute to the development of the child's values, including of the child's respect for others, for tolerance and understanding, in the light of Article 29. The recognition of these rights by the State implies its recognition in the national legislation, including on the specific way children may enjoy them and undue restrictions by the public authorities.

Restrictions to these rights may only be those which are imposed in conformity with the law, which are necessary in a democratic society and only for the specific purposes that the Convention itself clearly lists – national security, public order, protection of health or morals or the rights and freedom of others. As in relation to the other fundamental freedoms recognized by the Convention, there are no additional restrictions imposed on children other than those generally imposed by the International Covenant on Civil and Political Rights. In general, they should be compatible with the Convention as a whole, clearly needed and proportionate to the aim legitimately pursued.

ARTICLE 16

Text

1. *No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.*
2. *The child has the right to the protection of the law against such interference or attacks.*

Commentary

Article 16 recognizes the right of the child not to be subjected to any arbitrary or unlawful interference, as well as to be protected in case of such an attack or interference. This right is designed to ensure the protection of the child against any interference from competent authorities whose intervention is permitted by law, in the cases expressly envisaged and in accordance with the specific circumstances considered thereby. Unlawful and arbitrary interference is not admitted in cases where the child has been placed for treatment, care and protection and should be respected by all those interacting with the child, including by staff in institutions. In case of disrespect, adequate complaint procedures should be provided for, the use of which should not entail any adverse consequence for the child.

The provisions contained in this article, which follow closely Article 17 of the International Covenant on Civil and Political Rights, also apply to family life. Clearly they do not prevent parents from giving appropriate direction and guidance to their children in a manner consistent with the evolving capacities of the child, as determined by Article 5 of the Convention. But they do forbid any interference, including with the privacy and correspondence of the child, which is not admitted by the law or is arbitrary, including in the case of being excessive, unreasonable or disproportionate in view of the specific aims to be pursued.

ARTICLE 17

Text

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) *Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of Article 29;*
- (b) *Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;*
- (c) *Encourage the production and dissemination of children's books;*
- (d) *Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;*
- (e) *Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of Articles 13 and 18.*

Commentary

Article 17 addresses in an innovative way the important area of the role of mass media, and of information in general, in the realization of children's rights. It is closely related to Article 13 of the Convention (see above).

States should adopt the necessary measures to ensure children's access to information and material. Such information and material should therefore be available, either from national or international sources, thus contributing to ensure that the child has the freedom to choose amongst the existing ones – as was stated in Article 13, the child has "the right to seek and receive [...] information and ideas [...] regardless of frontiers [...] through any other media of the child's choice". Article 17 puts particular emphasis, in this regard, on the information designed to promote the well-being and health of the child, including as a means of providing the child with the necessary skills to become responsible in a free society and to develop in an harmonious and full manner, in the light of Article 29, and to be supported in the use of basic knowledge of child health, pursuant to Article 24.

In the light of this article, States Parties are particularly required to act in relation to the mass media (in subparagraphs (a) and (d)), in the area of international cooperation (subpara. (b)), producing literature for children (subpara. (c)) and protecting children from injurious material or information (subpara. (e)).

- Mass media may play an important role in the promotion of children's rights and States should recognize their action. They can intervene in different ways, including through the written press, radio, television or cinema or, to use an equivalent language in Article 13, "orally, in writing or in print, in the form of art, or through any other media of his or her choice". Through the dissemination of information to children or by creating spaces for children to seek, receive and impart information, including by allowing children to make their views known, in the light of Article 12, mass media should be encouraged by States to take the aims of education, as determined by Article 29 of the Convention, as a guiding reference. They should therefore promote, *inter alia*, the development of the child's personality, talents and mental and physical abilities to their fullest potential, respect for human rights, for tolerance, understanding and friendship among all peoples and groups. In their action, mass media should further pay particular attention to the linguistic needs of children belonging to minority or indigenous groups, with a view to ensuring that, in the light of Article 30 of the Convention and the principle of non discrimination, they enjoy their own culture and use their language. It is further important to recall in this regard the provisions of Article 42 and its call for the principles and provisions of the Convention to be made widely known to children by active and appropriate means – which, as considered above, may also imply its presentation in accessible and simple language and its translation into minority languages.
- International cooperation is of an instrumental relevance to ensure the access of the child to information from all sources, national and international, and regardless of frontiers. As recognized in other articles of the Convention, it may further promote the exchange of appropriate information (Article 23) and contribute to the elimination of ignorance and illiteracy, facilitating access to scientific and technical knowledge and modern teaching methods (Article 28), thus promoting, as stressed by Article 17 itself, the child's "social, spiritual and moral well-being and physical and mental health".
- States Parties should also encourage the production and dissemination of children's books. This provision, when incorporated in the Convention, was designed to stress that children's books should take into account children's recreational and cultural needs, and not only be designed to educate the child. Such literature should therefore be appropriate to the child's age while contributing to develop the child's personality and abilities to their fullest potential, promote the child's creativity and artistic spirit and provide the child with the necessary skills to allow him or her to participate responsibly and freely in society.
- But information can also be injurious or detrimental to the child's development. For this reason, States should encourage the "development of appropriate guidelines for the protection of the child" from such information, bearing in mind Articles 13 and 18" of the Convention. The reference to Article 13 reflects the need to

ensure an appropriate balance between freedom of expression and information that may be contrary to the child's well-being or development, and indeed against the child's best interests. In this regard, particular reference might be made to information inciting to violence, hate or discrimination, as specifically reflected in Article 20 of the International Covenant on Civil and Political Rights or to information that may induce children to engage in unlawful or sexual activity, in the light of Article 34 of the Convention. For its part, the reference to Article 18 particularly stresses the primary responsibility of parents for the upbringing and development of the child, as well as the need for the best interests of the child to be their basic concern.

By referring to the "development of guidelines for the protection of the child", the Convention further stresses the importance of the various professional groups involved in the production, exchange and dissemination of information, including journalists, editors and actors, to consider the adoption of codes of conduct reflecting the basic values of the Convention. Their free and responsible adherence to the philosophy of this international instrument may in fact be of an undeniable importance to foster respect for children's rights at the national and international levels.

ARTICLE 37(a)

Text

States Parties shall ensure that:

- (a) No child shall be subject to torture or other cruel, inhuman or degrading treatment or punishment.*

Commentary

Article 37 ensures, in its subparagraph (a), the right to freedom from torture or other cruel, inhuman or degrading treatment or punishment. The prohibition of torture applies to all circumstances of children's lives, including, but not limited to, situations where children are placed in institutions for treatment, care or protection.

By presenting it as a general and absolute right, the Convention shows that any of the forms of treatment or punishment covered by this article should be prevented and combated at all moments and in all circumstances, including within family life or in the school system.

Article 37(a) does not include a definition of the realities it addresses. But to understand its scope, it is important to consider its provisions in addition to others of the Convention addressing connected situations. This is particularly the case of Article 19, covering any form of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, and Article 28 para. 2, on school discipline which prohibits any form of such discipline which may be inconsistent with the human dignity of the child or incompatible with the Convention as a whole. The combination of these different provisions indicate a wide variety of situations, but also shows a constant and decisive willingness to ensure and respect the physical and personal integrity of the child.

To ensure the implementation of this article, States Parties have to adopt all appropriate measures of legislative, administrative, judicial or other nature. For this purpose, a clear legal prohibition of torture or other cruel, inhuman or degrading treatment or punishment should be introduced. Complaint procedures should be made available, and the prompt and thorough investigation of such cases ensured, the identification of those found responsible and their effective punishment carried out with a view to preventing their impunity. Moreover, States Parties have to ensure a pro-active campaign of public awareness and information with a view to preventing any form of torture or cruel, degrading or inhuman treatment or punishment. Such campaigns should include systematic training activities on children's rights of those working with and for children, particularly law enforcement and correctional officials.

The consideration of States Parties' reports on the implementation of the Convention have shown that some groups of children become particularly vulnerable to situations of torture or cruel treatment or punishment. Children who are forced to live and/or work in the streets, sometimes abandoned by their families, often become victimized by the arbitrary arrest and torture and other inhuman or degrading treatment by authorities, as well as subject to coercion, disappearance or even murder by criminal groups. Particularly to these children, the adoption of appropriate measures gains a special urgency, including with a view to ensuring their physical and psychological recovery and social reintegration in an environment which fosters the health, self-respect and the dignity of the child, pursuant to Article 39 of the Convention.

V. Family environment and alternative care – Articles 5, 18 para. 1 and 2, 9, 10, 27 para. 4, 20, 21, 11, 19, 39 and 25

The various provisions covered by this cluster of the guidelines are, like many others in the Convention, closely interrelated. For this reason, they are hereafter considered in a combined manner. When appropriate, specific observations are made in relation to some of them. The cluster addresses questions such as the responsibilities of parents, which combine rights and duties deriving therefrom, to be implemented in so far as the interests of the child so require (particularly Articles 5, 9, 10 and 18), the participation of children in decision making within the family (in particular Articles 5, 9, 10 and 21), the right to physical and personal integrity (particularly Articles 19 and 39), situations where the child is separated from one or both parents (Articles 9, 10, 11 and 27 para. 4), cases where the child is temporarily or permanently deprived of family environment and an alternative solution has to be envisaged (Articles 20 and 21) and situations where the child has been placed for the purposes of care, protection or treatment (Article 25).

ARTICLE 5

Text

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided by the local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

ARTICLE 9

Text

- 1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary in the best interests of the child. Such determination may be necessary in a particular case*

such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

- 2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.*
- 3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contacts on a regular basis, except if it is contrary to the child's best interests.*
- 4. Where such separation results from any action initiated by a State Party, such as detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.*

ARTICLE 10

Text

- 1. In accordance with the obligation of States Parties under Article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.*
- 2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under Article 9, paragraph 1, States Parties shall respect the right of the child*

and his or her parent to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

ARTICLE 18

Text

- 1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.*
- 2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.*
- 3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.*

Commentary

This chapter reaffirms the essential value, recognized by the United Nations, of the family as the natural and fundamental group of society, entitled to the widest possible protection and assistance, both for its establishment and for the fulfilment of responsibilities for the care and education of dependent children. It was in this spirit that the General Assembly proclaimed 1994 the International Year of the Family reiterating that the "widest possible protection and assistance should be accorded to the family". And for this reason the Committee on the Rights of the Child devoted one of its thematic discussions to the role of the family in the promotion of the rights of the child.

In the international instruments adopted before the Convention, children were often considered as a reflexive, sometimes even invisible reality within the overall context of the fam-

ily, emphasis being essentially put on the responsibility, freedom or right of parents. The prevailing consideration was that children should be cared for, protected and guided by their parents within the unity, harmony and privacy of the family, being assumed that there was a natural coincidence of interests between parents and their children, and that the child had no legitimate interests other than those of the family as a whole.

With the Convention, children's rights are given autonomy – not with the intention of affirming them in opposition to the rights of adults or as an alternative to the rights of parents, but in order to bring into the scene a new dimension: the consideration of the perspective of the child within the framework of the essential value of the family. The child is therefore recognized in his or her fundamental dignity and individuality, with the right to be different and diverge in his or her assessment of reality.

In the framework of the Convention, the family is affirmed as the natural environment for the well-being and the full and harmonious development of the child, who should grow up in an atmosphere of happiness, love and understanding (preamble, para. 5 and 6). Parents have the primary responsibility for the upbringing and development of the child (Article 18 para. 1), they have the right to care for their children and not to be separated from them against their will (Articles 7, 9 and 10), they are entitled to special assistance from the State, including the establishment of institutions, facilities and services for the care of children, or the provision of social security and material support (Articles 18 para. 2 and 27 para. 3). The State must respect the responsibilities, rights and duties of parents (Article 5), as well as preserve family relations (Article 8). The value of the family is of such a fundamental relevance for the development of the child that, even when separated in different countries, the child or one or both of his or her parents may apply for entering or leaving a country for the purpose of family reunification, and such applications have to be dealt with by States Parties in a positive, humane and expeditious manner (Article 10 para. 1), guided by the best interests of the child and without any form of adverse consequences for the applicants and for the members of their family.

The Convention on the Rights of the Child does not define the content of parents' responsibilities, rights or duties. But in view of the importance they assume, it stresses the joint and shared responsibility for children, underlining the common parenting role to be played by mother and father (Article 18), as well as the equal importance of their role.

The upbringing by both parents should be a guiding principle even in situations of the separation of the parents. In fact, the child should maintain personal relations and direct contacts with both mother and father on a regular basis, even when the parents or the child live in different countries (Articles 9 para. 3 and 10 para. 2). The best interests of the child are recognized as their basic consideration (Article 18 para. 1). It is a standard intended to give guidance for parents, defining situations of parental responsibility and justifying state intervention when families are dysfunctional.

Parents (and where applicable, members of the extended family or community, legal guardians or other persons responsible for the child) are expected to provide appropriate direction and guidance to the child. But in this endeavour they are required to act in a manner that takes into consideration the evolving capacities of the child, his or her age and maturity. In the light of Article 12, a system of shared, positive and responsible dialogue should thus prevail. In fact, parents are particularly well placed to build the capacity of children to intervene in a growing manner in the different stages of decision, to prepare them for responsible life in a free society, informing them, giving the necessary guidance and direction, while assuring children the right to express views freely and to give those views due weight (Articles 12 and 13). Children's opinions will thus be taken into account, although not necessarily endorsed, and children will be given the possibility of understanding the reasons for a different decision being taken. Children will become active partners, with appropriate skills to participate, rather than a passive reflection of parents' wishes.

The family, in its different models including the nuclear, extended, biological or adoptive forms, is the first social environment the child knows and the one that most deeply affects him or her. The vision of the world is coloured by the atmosphere of love, understanding and confidence or of fear, anguish and misery the child faces while his or her personality is being formed. This explains the particular responsibility of the family and the assistance it should receive from the State to assume its responsibilities. The family is also particularly well placed to be the first democratic reality the child experiences – a reality shaped by the values of tolerance, understanding, mutual respect and solidarity, which strengthens the child's capacity for informed participation in the decision-making process.

ARTICLE 19

Text

- 1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*

2. *Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore and, as appropriate, for judicial involvement.*

ARTICLE 39

Text

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Commentary

Children should be protected from all forms of abuse, neglect, injury or violence while in the care of parents (Article 19). In cases where such situations occur, the principle of the privacy of the family gives way to the intervention of the State in order to ensure that the best environment for the harmonious development of the child prevails, including through the separation of the child from his or her parents in the child's best interest (Article 9 para. 1).

It is important to stress the comprehensive responsibility of the State to implement the provisions of Article 19. In the light of Article 4 of the Convention (see above), the State is in fact required to adopt all appropriate measures of legislative, administrative, social and educational nature, to prevent any situation where the physical integrity of the child may be at stake, including any form of physical or mental violence, abuse, neglect, injury or exploitation, to protect the child, treat him or her and, pursuant to Article 39, to ensure the physical and psychological recovery and social reintegration of those who have been victims of such acts. State's action should be decisive and appropriate with a view to ensuring that such recovery and reintegration take place in an environment which fosters the health, self-respect and dignity of the child.

An essential step in this area is the clear legal prohibition of any form of ill-treatment of children, including within family life, that might lead to encourage, accept or uphold forms of education and discipline of children based on any form of physical punishment. Expressions such as “punishment in moderation”, “reasonable chastisement” or “treatment without excessive harshness” should therefore be avoided in the law, since they lack precision and clarity, and leave room for possible discretionary or arbitrary interpretations which are contrary to the best interests and to the human dignity of the child. The Committee has often pointed out that the provisions of Article 19 are intended to encourage the adoption of measures designed to break cycles of violence in society, often perpetuated under the cover of tradition and custom. In this context, “public educational campaigns should be launched to emphasize the child’s right to physical integrity. Such measures would assist in creating a climate of opinion so as to change societal attitudes to non-acceptance of the use of physical punishment in the family and to acceptance of the legal prohibition of the physical punishment of children”.

ARTICLE 20

Text

- 1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.*
- 2. States Parties shall in accordance with their national laws ensure alternative care for such a child.*
- 3. Such care could include, inter alia, foster placement, Kafalah of Islamic law, adoption, or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.*

ARTICLE 21

Text

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) *Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;*
- (b) *Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;*
- (c) *Ensure that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;*
- (d) *Take all appropriate measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved in it;*
- (e) *Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour within this framework to ensure that the placement of the child in another country is carried out by competent authorities or organs.*

Commentary

Special assistance and protection are required from the State in situations where the child is deprived of his or her family environment – States Parties are in fact called upon to ensure alternative care for such a child in accordance with their national laws (Article 20, para. 2). Alternative care measures are envisaged in the light of the best interests of the child, and should pay due regard to the natural environment of the child and his or her identity or, as stated by Article 20, para. 3, to the “desirability of continuity in the child's upbringing and to the child's ethnic, religious, cultural and linguistic background”.

Such measures include placement within the natural family, foster placement, *kafalah*, adoption in the country of origin of the child and, only as a measure of last resort, intercountry adoption (Articles 20 and 21). They show the essential importance attached by the Convention to family-like solutions, rather than the institutionalization of children, listed as a last solution by Article 20 paragraph 3 and only to be envisaged “if (considered) neces-

sary". As stressed by the Preamble, the child "should grow up in a family environment" and life in an institution creates natural difficulties in developing the ties of trust and affection a family usually fosters and develops and which are crucial for the evolving participation of the child in life.

One reference should still be made to situations covered by this chapter where an international dimension exists. Intercountry adoption is one such example. In this regard, the Convention has encouraged, in paragraph (e) of Article 21, the conclusion of bilateral or multilateral agreements. It is therefore to be welcomed that, inspired by the Convention on the Rights of the Child and guided by its general principles, the Hague Conference of Private International Law has adopted the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. The effective implementation of this instrument will certainly make it possible to ensure that the child enjoys safeguards and standards and that the child's placement does not in any way result in improper financial gain, as stressed by subparagraphs (c) and (d) of the Convention on the Rights of the Child.

ARTICLE 11

Text

- 1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.*
- 2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.*

ARTICLE 27, para. 4

Text

- 4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.*

Commentary

The provisions of Article 11 further address the important areas of illicit transfer and non-return of children. For its part, Article 27, para. 4 considers the recovery of maintenance for the child. In the two situations, the conclusion of, or accession to, bilateral or multilateral agreements are encouraged.

Both realities show the challenges arising from situations where children are born from a mixed marriage or parents become separated and reside in different countries. In the first case, children may be abducted by one of the parents and are usually not permitted to return home, even when a previous judicial authority had already decided on the custody and place of residence of the child, as well as on the visiting rights of the parent with whom the child should no longer live. The situation often tends to permanently prevent the child from having access to the parent with whom the child used to live or with whom the child had direct and regular contacts and personal relations (see Articles 9, para. 3 and 10, para. 2). It also shows how important it is to be guided by the best interests of the child and in ensuring, as a general rule, that both parents continue to assume their responsibilities for the upbringing and development of the child, even when separation or divorce has intervened.

In the second case, the Convention foresees the adoption of measures to ensure that the child always benefits from an adequate standard of living and that such a situation is not endangered by the separation of parents. In this regard, recalling that both parents have the responsibility to take care of the child, including at a financial level, paragraph 4 of Article 27 states that all appropriate measures should be undertaken by State to secure the recovery of maintenance for the child from separated parents or even from other persons having financial responsibility for the child. Such measures may be particularly required in those cases where the child lives in a different country, thus implying, as in the previous cases, the conclusion of, or accession to, relevant agreements.

ARTICLE 25

Text

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Commentary

Article 25 determines the obligation for States Parties to recognize the right of the child placed in foster care or in an institution or facility for treatment, care or protection, to have the decision of placement periodically reviewed. This provision calls for the recognition of this right by the national legislation, as well as for its effective implementation through the adoption of all appropriate measures. It applies to all situations where the child might have been placed for treatment, care or protection. The placement might have been decided to treat the child, for instance because the child is temporarily or permanently, physically or mentally sick (Article 24), or has any kind of disability (Article 23). It might also have been decided to ensure the child's care or protection, for instance in cases where the child is deprived of his or her family environment (Articles 20 and 21), has been the victim of abuse or neglect (Articles 9 and 19), is an unaccompanied child seeking asylum (Article 22), or has been placed in an institution for infringement of the penal law (Article 40).

The periodic review of the placement of the child is designed to ensure the evaluation by the competent authorities, on a regular basis, of the causes that might have led to the child's placement, the specific conditions of placement and the treatment provided to the child, as well as any other circumstance relevant to it. In the case of placement decided in the light of Article 40 and where such a situation implies the deprivation of liberty, the revision of the decision should be made by a court or other competent, independent and impartial authority, in the light of Articles 37(d) and 40 para. 2(b) (v).

The review of placement becomes particularly important to ensure that such a situation does not simply perpetuate or become forgotten and that, at all stages, the solution is guided and considered in the best interests of the child. In this regard, it is further important to recall Article 3 paragraph 3 of the Convention, which stresses the need for institutions, services and facilities responsible for the care or protection of children to conform with the standards established by competent authorities, particularly in the areas of safety, health, suitability of the staff, and competent supervision.

VI. Basic health and welfare – Articles 6, para. 2, 18, para. 3, 23, 24, 26, 27 para. 1, 2 and 3

ARTICLE 6, para. 2

Text

- 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.*

For the consideration of these provisions, see above chapter on the general principles and in particular the principle of survival and development of the child.

ARTICLE 18, para. 3

Text

- 3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.*

Commentary

This provision reflects the recognition of the fundamental value of the family and the need for States to provide assistance to it, particularly to parents, in the performance of their child-rearing responsibilities (see above chapter on family environment). It further reveals a concern for the conciliation between the responsibilities of parents for the upbringing of their children and their working activities.

ARTICLE 23

Text

- 1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child's active participation in the community.*

2. *States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.*
3. *Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health-care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.*
4. *States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.*

Commentary

This article addresses in a specific manner the rights of disabled children. It covers both mental and physical disability. It is important to recall that, according to Article 2 of the Convention, no discrimination is admitted on the basis of disability. In the light of such provision, States Parties are bound to ensure and respect all the rights set forth in the Convention to disabled children within their jurisdiction. Pursuant to Article 4, they are further required to adopt all appropriate measures for that purpose. Article 23 should thus be perceived in addition to those general provisions and should be implemented in the light of the general principles of the Convention, particularly non-discrimination, the best interests of the child and participation of the child.

In this spirit, reports should include information, *inter alia*, on the legal prohibition of discrimination and the recognition of the fundamental rights of disabled children, the existence of a system designed to assess the extent and monitor the situation of children affected by disabilities, their nature and seriousness, the facilities and services available at the national, local, urban and rural levels, the resources available and the extent to which they are allocated to their maximum extent and the specific training provided to those who are responsible for the care of those children.

In accordance with Article 23, disabled children should enjoy "a full and decent life". Moreover, they should, as paragraph 1 stresses, live in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community. Disabled children should therefore not be stigmatized or socially excluded, should gain confidence to be real actors in life. For that purpose, and as indicated by paragraph 3, disabled children should have effective access to education, training, health care and rehabilitation services, and participate in activities "conducive to the child's achieving the fullest possible social integration and individual development".

In view of their special needs, disabled children are also entitled to special care and assistance. Such assistance is to be provided within available resources and upon application. It should be established in the light of the specific conditions and needs of the child and the circumstances of the parents or of others caring for the child. Whenever possible they should even be free of charge.

Article 23 further stresses the importance of international cooperation to promote the rights of disabled children. Such international cooperation will facilitate the exchange of appropriate information, including in the fields of methods of rehabilitation, education and vocational services, and will provide medical, psychological or functional treatment to disabled children. Thus, it will not only provide adequate treatment to children, but also improve the State's capabilities and skills to assist them.

ARTICLE 24

Text

- 1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health-care services.*

2. *States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:*
 - (a) *To diminish infant and child mortality;*
 - (b) *To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;*
 - (c) *To combat disease and malnutrition including within the framework of primary health care, through inter alia the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution;*
 - (d) *To ensure appropriate pre-natal and postnatal health care for mothers;*
 - (e) *To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;*
 - (f) *To develop preventive health care, guidance for parents and family-planning education and services.*
3. *States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.*
4. *States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.*

Commentary

The right to health is recognized by other international instruments, including Article 12 of the International Covenant on Economic, Social and Cultural Rights. Article 24 is therefore naturally influenced by such standards. But it further includes additional elements specifically related to the situation of children, while enhancing the importance of prevention. When considering implementation of this article, it is also important to take into account the relevant chapters of the Declaration and Plan of Action from the World Summit for Children, particularly in view of the fact that specific time-framed goals to be achieved by the year 2000 have been identified.

In the light of Article 24, States Parties should submit information on the different measures undertaken to ensure that every child benefits from the “highest attainable standard of health”, both physical and mental, is adequately treated whenever sick, and is ensured the necessary rehabilitation. Furthermore, all children should have access to the needed health-care services and never be deprived therefrom, – boys as well as girls, whether they are living in urban, rural or remote areas, poor or rich, should be ensured access to and benefit from such services. In this regard, reports should indicate, *inter alia*, the network of existing health services and health personnel and their distribution in relation to urban and rural areas, the percentage of the population having access to such services and the situation of the most disadvantaged groups of children.

The expression “highest attainable standard of health” clearly indicates the need to ensure the best possible health condition to every child, and not just the minimum acceptable level. To achieve such a purpose, States are required to adopt all appropriate measures including those illustrated in paragraph 2. In fact, as its wording clearly reflects, the list provided therein is not intended to be exhaustive.

In the light of this second paragraph, States are expected to submit information about three main areas. Firstly, on the measures adopted to diminish infant and child mortality and ensure the provision of medical assistance and health care. In this regard, it is important to provide information about existing programmes of universal immunization, on the level of implementation of vaccination programmes, on the balance between curative and preventive health programmes, as well as on the incidence of the most common diseases. In fact, preventable childhood diseases are responsible for the great majority of the world’s deaths of children under five, and disability of many millions every year. Effective action should thus be taken to combat them.

Secondly, reports should indicate the measures undertaken to provide health care for mothers, both pre-natal and postnatal, including information on the percentage of attendance and accessibility of pregnant mothers to hospital care and delivery. The role of the mother is in fact of decisive importance, as the Plan of Action of the World Summit for Children has clearly stressed: “maternal health, nutrition and education are important for the survival and well-being of women in their own right and are key determinants of the health and well-being of the child in early infancy. The causes of the high rates of infant mortality [...] are linked to untimely pregnancies, low birth-weight and pre-term births, unsafe delivery, high fertility rates, etc. To redress such tragedy, special attention should be given to health, nutrition and education for women”.

Thirdly, and perhaps more meaningfully, reports should include information about the measures adopted to prevent disease and malnutrition, to inform and support all segments of society in the use of basic knowledge of child health and nutrition, including breastfeeding or, in general, the prevention of accidents. Moreover, they should indicate how

parents are guided in their joint parenting responsibilities, how family-planning education and services are made available and provided, and in this regard inform about the extent of teenage pregnancies. A clear importance is thus attached to preventive action and to dissemination of information as a decisive strategy to give to the family, particularly parents, and the community, the necessary skills to avoid preventable diseases, avoidable under-nourishment and unnecessary child mortality. In this regard, the World Summit for Children has identified some meaningful goals to be achieved, including the access by all couples to information and services to prevent pregnancies that are too early, too closely spaced, too late or too many; dissemination of knowledge and supporting services to increase food production to ensure household food security and the increased acquisition by individuals and families of the knowledge, skills and values required for better living, made available through all educational channels, including the mass media, other forms of modern and traditional communication and social action, with effectiveness measured in terms of behavioural change.

In this area of prevention, special attention should be paid to steps taken to promote information and education on AIDS among the population in general and high-risk groups in particular. Similarly, public campaigns should be launched with a view to preventing discrimination against children infected with HIV or that have become orphans because of their parents' infection. As the World Summit for Children has stressed, "the consequences of HIV/AIDS go well beyond the suffering and death of infected children and include risks and stigmas that affect parents and siblings and the tragedy of "AIDS orphans".

The Convention also pays particular attention to environmental problems and their impact on health. In fact, mention is made of the dangers and risks of environmental pollution for children's health, as well as the importance of dissemination of information on environmental sanitation as a means of protecting the environment and preventing its degradation. In this connection, it is important to recall the important role that education may also play, which explains the reason for the Convention to identify, as one of the aims of education, "the development of respect for the natural environment".

Paragraph 3 of this article includes an important provision calling for the abolishment of traditional practices prejudicial to the health of children. To achieve such a purpose, States have to adopt all necessary measures which prove to be not only appropriate but also effective. Thus, in countries where those customs or traditions still prevail, States are required to report on the legislative provisions adopted in order to clearly prohibit such practices, as well as reporting on their enforcement and on the campaigns launched to inform and create awareness about their negative effects, indicating the extent to which community and religious leaders are involved.

This is an area that has received reaffirmed attention from the United Nations. As an illustration, mention can be made of the final document of the World Conference on Human

Rights, urging States to repeal existing laws and regulations and remove customs and practices which discriminate against and cause harm to the girl child.

Article 24 also addresses the area of international cooperation in its paragraph 4, emphasizing the particular attention that should be paid to the needs of developing countries. In the spirit of Article 4 of the Convention, it stresses the commitment of States Parties to foster international cooperation with a view to progressively achieving the full realization of the right of the child to the enjoyment of the highest attainable standard of health. As previously mentioned, such an undertaking may be reflected in different ways, including by supporting the activities of relevant United Nations bodies and other relevant international organizations, or in the framework of bilateral cooperation through which allocation of resources is ensured by richer countries within the framework of their development aid policy. Such steps will be decisive either in strengthening the national capacity of developing countries or in providing needed goods, including nutritious foods or vaccinations, or readily available technology. States Parties' reports should therefore indicate the portion of their budget allocated for international cooperation and especially for health, as well as the programme supported thereby.

ARTICLE 26

Text

- 1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.*
- 2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.*

Commentary

The right to social security, considered by this article, is also reflected in other international instruments, including Article 9 of the International Covenant on Economic, Social and Cultural Rights. The wording used in the Convention is, however, somewhat different and more detailed. In fact, instead of the right **to** social security, as recognized by the majority of human rights conventions, including the Covenant, reference is made to the right of the child to **benefit from** social security.

This specific wording might lead to interpret Article 26 of the Convention as indicating that children have only an indirect right to social security, and are entitled to benefit from social security schemes that, although required on their behalf and for their well-being, would be granted not so much in recognition of the child's own right to social security as within the framework of the right of someone who is responsible for the child, particularly the child's parents or legal guardians. Such interpretation would seem to illustrate the concern expressed by the Convention that the State should render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities.

Paragraph 2 of Article 26, however, clearly stresses that both the child and someone on his or her behalf are entitled to make the relevant applications for the social benefits to be granted. Moreover, it states that consideration should be given to the "resources and circumstances of the child" and not only of the persons having responsibility for the child. In this spirit, the provisions of Article 26 should not be interpreted in a narrow manner nor envisage the child as a simple beneficiary of social security, but rather as the subject of such fundamental right. Thus, the child is entitled to be granted the social benefits his or her condition requires, even in cases where parents, or others representing the child, would not apply for them or would use them for purposes other than the maintenance of the child.

ARTICLE 27, para. 1, 2, and 3

Text

- 1.** *States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.*
- 2.** *The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.*
- 3.** *States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.*

Commentary

This article recognizes the right of the child to an adequate standard of living. It implies the right to a standard that is compatible with the human dignity of the child and which allows

for the child's full and harmonious development, including at the physical, mental, spiritual, moral and social levels (para. 1). Such "adequate standard of living" should be reflected *inter alia* with regard to nutrition, clothing and housing (paragraph 3).

The primary responsibility for the implementation of this right lies with parents or others responsible for the child (para. 2). In fact, the child should as far as possible be cared for by the parents (Article 7), who have common responsibilities for the upbringing and development of the child (Article 18). But parents are further required to act within their abilities and financial capacities (para. 2 of Article 27), thus ensuring that children are provided with all the support and assistance necessary to allow them to develop physically, mentally, spiritually and socially. In fact, as stressed by Article 18 of the Convention, the best interests of the child should be their basic concern. In this endeavour, parents will be however assisted by the State which, in case of need, will also provide material assistance and support programmes, particularly in the areas of nutrition, clothing and housing. Such areas in fact further reflect the fundamental rights of children to food, which is also addressed by Article 24, to clothing and to housing. Such a position has been reaffirmed by the Committee also in its formal contribution to the United Nations Conference on Human Settlements (Habitat II).

This article covers an area where the indivisibility and interdependence of children's rights are clearly highlighted. For instance the lack of housing may in some cases prevent children from enrolment in school or from benefiting from health services. It may further lead the authorities to consider that such a sign of extreme poverty raises deep concern as to the way parents have the necessary abilities and capacities to ensure their child-rearing responsibilities, and pave the way for the child's placement outside the family. As the Committee has often stated, children belonging to the most disadvantaged groups in the population appear more likely to be placed in care, thus also more at risk of being deprived of their natural family environment. However, such solutions should only be decided in the light of the best interests of the child and not on the basis of the resources, *i.e.* the "property" of the child's parents which, pursuant to Article 2 of the Convention, would entail a discrimination. Moreover, paragraph 3 of Article 27 specifically stresses the responsibility of States Parties to assist and support parents who may be in need, with a view to allowing them to promote the upbringing and development of the child.

VII. Education, leisure and cultural activities – Articles 28, 29 and 31

ARTICLE 28

Text

- 1.** *States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:*
 - (a) Make primary education compulsory and available free to all;*
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;*
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;*
 - (d) Make educational and vocational information and guidance available and accessible to all children;*
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.*
- 2.** *States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.*
- 3.** *States Parties shall promote and encourage international co-operation in manners relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.*

Commentary

The provisions included in this article, in particular those contained in paragraph 1, follow closely the wording of Article 13 of the International Covenant on Economic, Social and

Cultural Rights, and reflect relevant provisions of the Universal Declaration on Human Rights and of the Convention against Discrimination in Education, adopted within the framework of UNESCO. But as in various other areas, this article also includes some important innovations, namely in relation to the promotion of international cooperation and to the administration of school discipline in a manner consistent with the child's human dignity.

Paragraph 1 illustrates some of the measures States Parties are required to adopt to ensure the implementation of the right to education. The list contained herein is not supposed to be considered as an exhaustive agenda, but rather as merely indicative. Although recognizing education as a fundamental right, this paragraph stresses that its achievement is to be ensured progressively. However, as stressed above in relation to Article 4 of the Convention, such an expression should not be interpreted as undermining States Parties' obligation to act as expeditiously and effectively as possible and to adopt all necessary and appropriate measures, to the maximum extent of their available resources, to ensure the realization of this right.

The right to education is to be achieved on the basis of equal opportunity. Such an expression reaffirms the essential importance of the principle of non-discrimination in the specific area of education. All children, boys as well as girls, rich as well as poor, living in urban or in rural areas, disabled, belonging to indigenous or minority communities, and any other child under the jurisdiction of a State Party should effectively and equally enjoy this fundamental right as a means to becoming a responsible and active member of society, being free to make informed choices in life. In this regard, States Parties' reports should submit detailed information on the way children, and particularly those belonging to the most vulnerable groups, have access to school, are encouraged to attend school regularly and are prevented from dropping out. Similarly, they should provide relevant disaggregated data, taking into account the different – primary, secondary and higher – stages of the education system.

According to the Convention, primary education, being the initial and thus decisive stage, should be made free and compulsory. For its part, secondary education should be available and accessible to all children through the adoption of all appropriate measures, including free education and financial assistance to those in need, while higher education should be made accessible "by every appropriate means". The consideration of these subparagraphs, and the different wording used, indicates an increasing degree of latitude for States to decide on the measures they should adopt to ensure these different stages of education. The Convention seems in fact to give a much more precise guidance in relation to primary education, which should be free and compulsory, than to the subsequent degrees. However, the interpretation of the various provisions should always take into due consideration the "chapeau" of this article, particularly its reference to a progressive achievement, which should encourage the adoption of increasingly demanding steps to ensure the enjoyment

of this right, in all its components, to every child under the jurisdiction of the State. Even in relation to higher education, States are required to act by "every appropriate means", which may in fact include, and should aim at, the provision of such education free of charge.

Mention should therefore be made in States Parties' reports about the number of years of compulsory education and its age limit, the measures undertaken to ensure that primary education is made compulsory and available free of charge for all children, as well as to introduce free secondary education. It is also important to indicate the real cost for a family to have a child in school in those different levels and the measures adopted to allow for children belonging to poor families to have access to and continue their education.

Proactive measures to support girls gain a special importance in the field of education, as the general discussion held by the Committee on the Rights of the Child and the Fourth World Conference on Women, held in Beijing, have clearly stressed. In fact, discrimination against girls often arises from the traditional distribution of roles within the family which contribute to entrust them with responsibilities within the household and prevents them from acceding to school or from being retained therein. Such a reality is particularly visible in rural and remote areas, where the distance from school, the lack of separate classes for girls or the insufficient number of women teachers often contribute to strengthen prevailing and discriminatory attitudes and pave the way for a still extremely high level of illiteracy among girls. In this connection, the Platform for Action adopted by the 1995 Beijing Conference on Women meaningfully recognizes that girls often have poor scholastic performance, the percentage of their enrolment in secondary school remains significantly low in many countries and they are often not encouraged or given the opportunity to pursue scientific and technological training and education, which limits the knowledge they require for their daily lives and their employment opportunities. Thus, as the Committee has often stressed, it becomes urgent to ensure the effective access of girls to the educational and vocational system, to enhance their rate of school attendance, while reducing their drop-out rates. Stereotypes in educational materials should be eliminated and all those involved with the educational system should be adequately trained on the Convention and on the fundamental rights of both boys and girls. Reports should therefore indicate the percentage of girls at each level of the education system, school attendance and drop-out rates as well as the measures adopted to encourage their increasing participation in school life.

Vocational information and guidance are mentioned by this article, thereby being recognized as important components of the preparation of children for an individual and responsible life in society. States are therefore requested to undertake appropriate measures to ensure the availability and accessibility of such information and guidance, so that children may benefit from it in a progressive manner and on the basis of equal opportunity.

In this connection, particular attention should be paid to the situation of children in remote or rural areas who should have access to such vocational information and guidance on an equal footing. It is important to stress that very often children drop out at an early stage of their lives because they feel tempted to enter the illegal labour market, having difficulty in perceiving the value of education for their future professional roles. This shows how relevant vocational information and guidance may be as a means of providing the necessary skills for a future profession, widening the child's spectrum of choices and contributing to the prevention of situations where experience is gained through clandestine and exploitative labour. In this regard, it becomes specially important to ensure that there is an equal age for ending compulsory education and having access to employment, and such an age is not established at too low a level.

As has been previously mentioned, paragraph 2 of Article 28 constitutes an important innovation of the Convention. It stresses the need for school discipline to be administered in a manner consistent with the child's human dignity and in conformity with the provisions and principles of the Convention. States Parties should therefore adopt appropriate legislative and other measures, including awareness campaigns and training activities for teachers, with a view to banning corporal punishment in public and private schools or any other attitude that may hamper the fundamental right of the child to physical integrity or which may be contrary to the child's dignity. Similarly, steps should be undertaken to promote and ensure the effective exercise of the right of the child to express views freely on all matters affecting him or her, and to provide him or her with an effective opportunity to participate in any proceeding relevant to his or her school life – including in decisions of suspension or expulsion from school.

Paragraph 3 addresses the important area of international cooperation. It reaffirms the call made in Article 4 for a movement of international solidarity in favour of children, while stressing the special needs of developing countries. In this regard, it is important to recall the Principle 20/20 endorsed by various United Nations bodies, according to which States should allocate 20% of their national budget, as well as 20% of the portion received from development assistance, to the social sector, including education. Likewise, recent United Nations Conferences have made an important call for the fulfilment of the agreed target of 0.7% of the gross national product for overall official development assistance and for the share of funding for social development programmes to be increased, which should inspire State's development aid policies.

International cooperation should be promoted and it should particularly aim at, although not being limited to, the elimination of ignorance and illiteracy, the access to scientific and technical knowledge and to modern teaching methods. Programmes of international technical cooperation should therefore include in their agenda the training of teachers, their acquisition of modern pedagogic skills and the improvement of their competence. They may in fact play an instrumental role in fostering the value of education, as well as in creating

awareness and a deeper understanding about the values of the Convention, including with a view to increasing the recruitment of women teachers, encouraging the participation of girls in school life, replacing stereotyped materials, as well as eradicating discipline methods that may hamper the human dignity of the child or generally promoting the aims of education as considered by Article 29 of the Convention.

ARTICLE 29

Text

1. *States Parties agree that the education of the child shall be directed to:*
 - (a) *The development of the child's personality, talents and mental and physical abilities to their fullest potential;*
 - (b) *The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;*
 - (c) *The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;*
 - (d) *The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;*
 - (e) *The development of respect for the natural environment.*
2. *No part of the present article or Article 28 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 the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.*

Commentary

This article stresses the importance for education to be guided by a set of fundamental values that will decisively contribute to ensure that the child not only gains formal knowledge and skills, but further develops in an harmonious way, at the spiritual, moral, social and physical levels. Such values, which are described in paragraph 1, apply both to the content of education and to the way it is transmitted, calling for a particular attitude in the way teaching and learning are ensured.

It is interesting to note that, differently from other provisions in the Convention, paragraph 1 emphasizes a consensus around the aims of education, thus using the expression "States Parties agree" and not, as usually, "States Parties recognize". They stress the fundamental importance of a child-centred approach that may decisively contribute to the development of the child's abilities to their fullest potential, stimulating his or her creativity and capacity, preparing him or her for a responsible life in a free society. At the same time, it promotes the child's respect for those who are different and for the diversity of cultures, values, languages and civilizations around the world, thus encouraging mutual understanding and friendship. Hence, although stressing the relevance of developing respect for one owns culture, values and nation, the Convention further indicates the need for an open and broad-minded attitude which may foster awareness and tolerance in relation to all the others.

Paragraph 1 further stresses the essential relevance of developing respect for human rights and the need for States Parties to include human rights and fundamental freedom in the school curricula. As previously mentioned, such a reality has led the Committee to encourage States Parties to use the Convention on the Rights of the Child as an illustration of teaching on human rights and to consider including it in the school curricula, and in the training curricula for teachers.

In a very innovative way, a reference is also made to the development of respect for the natural environment. Thus, the Convention clearly shows the close link existing between a healthy environment and the enjoyment of fundamental rights, while indicating the relevance of promoting the preservation and protection of the environment from a very early stage in life. Having stressed, in Article 24, the risks and dangers arising to the child's health from environmental pollution, and having called for the dissemination of information on environmental sanitation and on the prevention of accidents, it now emphasizes the importance of including the protection of environment as an essential element within the school curricula.

ARTICLE 31

Text

1. *States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.*
2. *States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.*

Commentary

The provisions of this article stress the fundamental importance of ensuring to each and every child the right to be a child, to play and have recreation which is compatible with the child's age, to rest and to leisure, as well as to participate freely in cultural life and arts.

The rights recognized by this article should be seen in their autonomous value as a means of promoting the creativity and spirit of curiosity of children and ensuring a needed space for them to rest and enjoy the happiness of being children. But it should also be considered in combination with other relevant articles of the Convention, which will lead to recognize that the right to play and recreation should be taken into account in the framework of the right to education, thus contributing to the development of the child's abilities to their fullest potential. Similarly, in those specific circumstances, activities and ages under which children below 18 may work, in the light of Article 32, the right to rest and leisure should be equally and necessarily ensured. In situations covered by Article 39 relating to the recovery and social reintegration of the child victim of any form of neglect, exploitation and abuse, torture or armed conflicts, the engagement in play and recreational activities may further gain an instrumental and healing role by promoting the child's self-esteem and trust and his or her growing participation in life.

Activities developed within the framework of this article should be appropriate to the child's age. Hence, they should not be excessive, entail any inadequate risk or in any way be harmful to the development, health or education of the child or involve any form of exploitation, including in areas which may seem to be primarily designed to promote the child's well-being, as in the case of sports activities or competitions.

States Parties are bound not only to recognize and respect the rights set forth in this article, but further to adopt, in the light of paragraph 2, all appropriate measures to promote the full participation of the child in cultural and artistic life. They should therefore act taking in

consideration the child's age and the diversity of activities in which he or she is entitled to freely participate. They should provide appropriate opportunities on an equal footing to all children, including those who live in remote and rural areas, disabled children or children belonging to other vulnerable groups. Reports should therefore indicate *inter alia* the steps undertaken to create special places for cultural, artistic, recreational and leisure activities of children, the various activities developed, their national coverage and the portion of the budget allocated thereto, as well as the rate of children effectively benefiting therefrom.

VIII. Special protection measures

(a) Children in situations of emergency – Articles 22, 38 and 39

ARTICLE 22

Text

- 1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.*
- 2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.*

Commentary

Article 22 addresses in a specific manner the situation of refugee children, of children who are asylum seekers, as well as unaccompanied children. The emphasis put by its provisions should not be interpreted as to mean that no other article of the Convention would apply to them.

In fact, Article 22 itself already indicates that States Parties have to ensure to this group of children the “appropriate protection and humanitarian assistance”, as well as to take appropriate measures to ensure that they enjoy “the applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments”. Moreover, Article 2 stresses, as already mentioned, the responsibility of States Parties to ensure and protect the rights recognized by the Convention to “each child within their jurisdiction”, and to further ensure that no discrimination is admitted on any ground, including on the basis of the national origin of the child, his or her colour, race, language or any other status, thus clearly also covering refugee children and asylum seekers. The fundamental rights of children, as set forth in the Convention, should therefore also be enjoyed by these children, including the right to be registered at birth, to a name and acquire a nationality, to be cared by their parents and to have their applications for the purpose of family reunification dealt with by States in a positive, humane and expeditious manner, to freedom of expression, to health and education as well as to benefit from special protection against any form of exploitation, including through child labour or military recruitment below the minimum age as set forth by the Convention. Similarly, deprivation of liberty should only be used as a measure of last resort and for the shortest period of time possible.

The general principles of the Convention should equally guide the upbringing, development and care of these groups of children. Thus, in the light of Article 2 of the Convention, boys and girls in refugee camps should enjoy the right to education on an equal footing between them and in relation to any other child, and all appropriate measures should be adopted to prevent any kind of stigmatization or abuse in relation to children belonging to a particular ethnic or religious group. The best interests of the child should be a primary consideration in all decisions affecting children, including to decide on applications for family reunification even when submitted by an unaccompanied child, to allow for the child to remain in a host country in cases where repatriation to the country of origin might endanger the life of the child. Finally, the participation of the refugee child or of the asylum seeker should be promoted and ensured, with a view to allow for the child’s perspective to be taken into account in relevant proceedings, including in relation to asylum seeking, family reunification or deportation of one of the parents. Participation should, as required by Article 12 of the Convention, allow for the child to make his or her views known either directly or through a representative or an appropriate body – the decision on the modality to be followed should naturally be guided by the principle of the best interests of the child. The presence of a representative will clearly be of a decisive importance in cases where the child is unaccompanied.

National legislation and practice should therefore reflect these various concerns and values. The fact that in a particular State no refugees exist should not be an argument not to adopt appropriate laws. In fact, Article 4 of the Convention calls for the adoption of legislative measures “for the implementation of the rights recognized in the Convention”, and the rights of refugee or asylum seeking children should not be an exception. The existence of a legal framework may in fact ensure an important preventive tool and guiding reference for emergency situations where the State would be confronted with a wave of refugees.

International action is naturally also required to ensure the implementation of Article 22 and generally the enjoyment of their fundamental rights by children who are refugees or seeking refugee status. Paragraph 2 addresses this reality in detail, stressing the importance of cooperation with United Nations bodies, intergovernmental organizations and non-governmental organizations cooperating with the United Nations. Their combined action is in fact essential to protect and assist the child, particularly when there is a need to trace the parents or other members of the child’s family with a view to promote family reunification.

ARTICLE 38

Text

- 1.** *States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.*
- 2.** *States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities.*
- 3.** *States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest.*
- 4.** *In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.*

Commentary

Article 38 addresses the situation of children affected by armed conflicts. It is the result of a long debate in the drafting group of the Commission on Human Rights and is still today the basis for important studies and negotiations designed to enhance the level of protection of children caught by such situations.

The provisions of this article stress two main ideas – first, they recognize that international humanitarian law applicable in situations of armed conflicts is also relevant to children and should therefore be applied by States (paragraph 1), including with a view to ensuring the protection of the civilian population in general and children in particular (paragraph 4); second, they specifically address the conditions under which children may become soldiers or participants in the hostilities (paragraphs 3 and 2).

The reality of children affected by armed conflicts has for a long time raised deep concern, having gained a renewed interest after the adoption of the Convention. The fact that this was the first topic to which the Committee devoted its thematic discussions has in part contributed to give relevance to it. Since then, and on the basis of the specific recommendations adopted by the Committee two main actions have been undertaken within the United Nations system – on the one hand, the Commission on Human Rights decided to establish a working group to draft an optional protocol to the Convention raising the age of recruitment and of participation of young people in hostilities to 18 years; on the other hand, an expert appointed by the Secretary-General is undertaking a major study on the impact of armed conflict on children. Both initiatives have been developed within the framework of the Convention and guided by the fundamental rights of children. Once achieved, they will surely strengthen the protection of children caught in armed conflicts but they are already decisively contributing to raise increasing awareness of the situation.

The importance of the protection of children's rights in situations of war has been identified as a priority for the action of different organizations within the United Nations system. This is the case of UNICEF which adopted an "Anti-war Agenda" in its 1996 State of the World's Children Report, as well as of UNHCR through its continuing field action in situations of emergency. For their part, States have recognized in the Platform for Action adopted at the Beijing Fourth World Conference on Women that violations of human rights in situations of armed conflicts are violations of fundamental principles of international human rights and humanitarian law. Recently, at the International Conference of the Red Cross and Red Crescent Movement held in Geneva in December 1995, they recommended by consensus that parties to conflict refrain from arming children under the age of 18 and take every feasible step to ensure that children under the age of 18 do not take part in hostilities.

The general discussion held by the Committee is an important reference to identify States Parties' obligations in this area. It noted the commitment by States to ensure and respect all the rights recognized by the Convention to every child under their jurisdiction (Article 2)

and to adopt all appropriate measures to reach that objective (Article 4). It further noted that States should be guided in their action by the general principles of the Convention, including the best interests of the child, and that none of these provisions admit derogation in time of war or emergency. It was particularly important to stress that all rights of the child may be at stake in wartime and that all appropriate measures of an even more urgent nature, should in fact be undertaken to ensure their effective realization and the required humanitarian assistance and relief to children, *inter alia* by developing corridors of peace and days of tranquillity.

One of the basic questions raised by Article 38 concerns the minimum age for recruitment or participation in hostilities. In this regard, the Committee considers that the provisions of Article 41 of the Convention should be considered by States as a means of ensuring permanent application of the norms most conducive to children. Upon ratification or accession, States may also make declarations committing themselves not to recruit children under 18 years of age. In this context, while calling for the effective implementation of the Convention, the Committee further encourages the improvement of existing standards and the future conclusion of an optional protocol raising the minimum age for the involvement of children in armed conflicts.

The Committee has also emphasized that the involvement in hostilities of persons who have not attained the age of 18 is harmful for them physically and psychologically, and affects the full enjoyment of their fundamental rights. For this reason, persons under 18 should never be involved in hostilities. In fact, participation in armed conflicts either of a direct or indirect nature, raises serious risks for the life of children and hampers their harmonious development and the realization of the rights which are inherent to their human dignity (including the rights to a family environment, to education and health, to a nationality, or not to be subject to ill-treatment or exploitation). It is important to recognize that in a situation of emergency, it is very difficult to draw the line between what is to be considered direct and indirect participation. Risks encountered and fundamental rights denied are similar in both cases, and any situation undermining respect for the rights of the child should be clearly avoided. For this reason, a clear prohibition of participation in hostilities of persons below the age of 18, either directly or indirectly, should be reflected in the optional protocol.

Moreover, States Parties should not recruit persons under the age of 18 into their armed forces. The same rule should apply as a matter of principle to voluntary enlistment. Reality shows that emergency situations often pave the way for the instrumentalization of children, and lead to great risks for them. For this reason, voluntary enlistment in the armed forces should never be used as an excuse to allow for the possible direct or indirect participation in hostilities of persons under the age of 18. Even in those situations where voluntary enlistment would be accepted by States, the training of such persons should incorporate and pay due regard to education on humanitarian and human rights, in the

light of the Convention on the Rights of the Child and in particular of the provisions of Articles 28, 29 and 42.

It is important to note that the implementation of Article 38 also calls for the adoption of measures designed to ensure the prevention of conflicts or the attenuation of its effects, including through measures of mediation and conciliation, education and training on children's rights for the military and generally education in a spirit of understanding, solidarity and peace in the light of Article 29 of the Convention.

ARTICLE 39

Text

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Commentary

In the light of Article 39 of the Convention, child victims of war should benefit from programmes for their physical and psychological recovery and social reintegration in an environment which fosters their health, self-respect and dignity. In this area, while emphasizing the importance of the cooperation between United Nations bodies and non-governmental organizations and the need for them to act in accordance with an integrated plan, the Committee stressed, in its thematic discussion on armed conflicts, that the programmes for the recovery and reintegration of the child required the implementation and monitoring of adequate strategies and should be based on the reinforced involvement of the family and the local community.

**(b) Children in conflict with the law –
Article 37 (a), (b), (c) and (d), Articles 40 and 39**

Articles 37 and 40 are considered together, both addressing fundamental rights and legal safeguarding of children in the administration of juvenile justice. Together with Article 39, relating to the recovery and reintegration of children, they have been considered by the Committee within the framework of a general discussion held in November 1995. The conclusions arising from the thematic discussion, presented hereafter, provide important guidance for States Parties in the implementation of these provisions.

ARTICLE 37^{*}

Text

States Parties shall ensure that:

- (a) [...] Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons under eighteen years of age;*
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;*
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;*
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.*

* For Article 37a) see also section IV of the Guidelines on Civil Rights and Freedoms.

ARTICLE 40

Text

1. *States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.*
2. *To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:*
 - (a) *No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;*
 - (b) *Every child alleged as or accused of having infringed the penal law has at least the following guarantees:*
 - (i) *To be presumed innocent until proven guilty according to law;*
 - (ii) *To be informed promptly and directly of the charges against him or her and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;*
 - (iii) *To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;*
 - (iv) *Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;*

- (v) *If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;*
 - (vi) *To have the free assistance of an interpreter if the child cannot understand or speak the language used;*
 - (vii) *To have his or her privacy fully respected at all stages of the proceedings.*
- 3.** *States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law and, in particular:*
- (a) *the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;*
 - (b) *whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.*
- 4.** *A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.*

Commentary

The area of the administration of juvenile justice is of practical and current relevance for the different legal systems. In fact, the challenging and innovative philosophy arising from the Convention on the Rights of the Child and other United Nations standards adopted in the field – the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty – call for a child-oriented system that recognizes the child as a subject of fundamental rights and freedoms and ensures that all actions concerning him or her are guided by the best interests of the child as a primary consideration. Such values stress the need for States Parties to adopt all necessary measures to ensure full compliance of their national law and practice with the Convention on the Rights of the Child, in particular in the light of its Article 4.

In this area, the Convention reconciles two essential values: on the one hand, respect for human rights and legal safeguards which are inherent to the human dignity of every individual; on the other, consideration of the best interests of the child and of his or her special needs, in the light of the child's age, evolving nature of his or her personality and the willingness to promote the assumption by the child of a constructive and responsible role in society. In this framework, some essential principles are identified by the Convention:

- the **principle of humanity** – in view of this principle, the Convention clearly forbids torture (see above chapter on civil rights and freedoms), death penalty and life imprisonment without possibility of release for persons below the age of 18, while limiting the use of situations of deprivation of liberty to a last resort measure and for the shortest period of time possible (Article 37(a) and (b). And in those situations where deprivation is absolutely necessary, the child should always be treated with humanity and in a manner that takes into account the needs of persons of his or her age;
- the principle of the essential **role of the family** which will require a frequent contact between the child deprived of liberty and his or her family, through visits and correspondence (Article 37(d), and the presence of the child's parents when the child is informed of the charges against him or her (Article 40 para. 2b(ii)) and when the child's matter is decided by a competent, independent and impartial authority or judicial body (Article 40 para. 2b(iii));
- the **principle of privacy**, to be respected at all stages of the proceedings affecting the child, and according to which the child is entitled to communicate in private with his or her counsel, to the respect by the personnel of the institutions where the child has been placed of all matters concerning the child or his or her family learned as a result of their professional capacity, as well as to a confidential individual file;
- the **principle of judicial intervention** to determine the legality of the deprivation of liberty of the child (Article 37 (d), to determine the matter in a fair hearing according to law (Article 40 para. 2b(iii)) and to review the decision recognizing the child as having infringed the penal law (Article 40 para. 2b(v));
- the **principle of the inviolability of the defence**, according to which legal and other appropriate assistance is ensured to the child when deprived of liberty (Article 37d), to prepare and present his or her defence (Article 40 para.2(b)(ii)) and to be present when the matter affecting the child is determined in a fair hearing according to law (Article 40 para.2(b)(iii))
- and the **principle of celerity** in the proceedings in which the child participates, as a means of ensuring prompt access to legal and other appropriate assistance (Articles 37(d) and 40 para. 2 b(ii)), a prompt decision on the legality of the deprivation of the liberty of the child (Article 37(d)), as well as of ensuring that the child is

informed promptly of the charge against him or her (Article 40 para.2(b)(ii)) and that the matter is determined without delay (Article 40 para. 2(iii)).

All these principles will contribute to envisage solutions which, being less rigid and formal, will in any circumstance provide that human rights and legal safeguards are fully respected.

Like in other areas, States Parties should adequately reflect the general principles of the Convention both in law and in practice. Respect for non-discrimination would in fact prevent the use of prevailing criteria of a subjective and arbitrary nature to determine the criminal responsibility of children, such as the attainment of puberty, the age of discernment or the personality of the child. It would further prevent that the social exclusion and stigmatization of children living and/or working in the streets, pave the way to their victimization and abuse, including by law enforcement officials, and to a frequent situation of impunity.

The principle of the best interests of the child is reaffirmed by the Convention in the context of the administration of juvenile justice, particularly when it stresses that the child should be treated in a manner consistent with the promotion of his or her sense of dignity and worth, which reinforces the respect for the child's human rights and fundamental freedoms and takes into account the child's age and special needs. However, insufficient measures have often been adopted to ensure respect for such principle. In fact, autonomous juvenile justice systems very often do not exist, judges, lawyers, social workers or personnel in institutions often lack any special training, and information on the fundamental rights and legal safeguards children are entitled to. To ensure full conformity with the Convention, deprivation of liberty should only be used as a measure of last resort or for the shortest period of time possible, contacts with the family should be maintained, access to a legal and other assistance should be provided and free legal aid established.

Similarly, the right of the child to participate in the proceedings affecting him or her require children to be provided with sufficient understanding of their rights and to benefit from the assistance of a legal counsel. In cases of ill-treatment, sexual abuse or of violation of their fundamental rights children have the right to lodge complaints.

In the area of the right to survival and development, in its comprehensive physical, spiritual, moral and social dimension, the Committee has noted with deep regret that death penalty is still admitted in some countries for persons below the age of 18, that whipping and flogging are used as educational and punitive measures, while insufficient attention is paid to the need for the promotion of an effective system of physical and psychological recovery and social reintegration of the child, in an environment that fosters his or her health, self-respect and dignity. States Parties should therefore adopt all appropriate measures to adequately address these realities.

In the light of Article 42 of the Convention on the Rights of the Child, and in the spirit of the United Nations Decade on Human Rights Education, a systematic campaign of informa-

tion and awareness on the rights of the child is therefore required. States should develop particular efforts to provide accessible information to children, including through the school system, as a means of helping to prevent violation of their fundamental rights or neglect of fundamental legal safeguards, and to ensure systematic training activities to relevant professional groups working with and for children in this area, including judges, lawyers, social workers, law enforcement officials, immigration officers and correctional officials. In addition, the incorporation of the Convention on the Rights of the Child within training curricula, as well as of its basic values in relevant Codes of Ethics would decisively contribute to ensure respect for children's rights when involved with the system of juvenile justice.

In the light of Article 37(b) of the Convention, deprivation of liberty should never be unlawful or arbitrary and should only be used once any alternative solutions have proved to be inadequate. When deprived of liberty, every child should always have the right to prompt legal or other appropriate assistance, and the right to challenge the deprivation of liberty before a court or other impartial and independent body (Article 37(d)). In this spirit, the Committee has expressed its concern about the placement of children in institutions under a welfare pretext, when such placement is not guided by the best interests of the child and in contravention of the fundamental safeguards recognized by the Convention, including the right to challenge the decision of placement before a judicial authority, to a periodic review of the treatment provided to the child and all other circumstances relevant to the child's placement (Articles 37(d) and 25).

Pursuant to Article 40 para. 4 of the Convention, States should develop alternatives to institutional care and adopt adequate measures to ensure transparency to institutions where children are placed, including through the establishment of independent mechanisms, at the national and international levels, to ensure periodic visits and an effective monitoring of such institutions. In this connection, the Committee has stressed the important role played by judges and has encouraged States to give consideration to the establishment of an Ombudsperson-type body to ensure respect for the rights and interests of young persons and to investigate complaints made by them.

ARTICLE 39

Text

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Commentary

Article 39 has been considered in relation to other provisions of the Convention, including Articles 19, 37(a) and 38. It stresses that when children are victims of any form of neglect, abuse, exploitation, or suffer the effects of armed conflicts, they obtain visible and invisible scars that need to heal for the child to develop harmoniously. For this reason, measures should be taken to ensure both physical and psychological recovery, while contributing to the social reintegration of the child. All strategies and programmes should take place in an environment which fosters not only the child's health, but also his or her self-respect and dignity.

In the administration of juvenile justice, the process of reintegration of the child should also take these concerns into consideration. As stressed by Article 40 paragraph 1, however, it should further promote the child's sense of dignity and worth, the child's respect for human rights and fundamental freedoms of others and the child's assuming a constructive role in society. Activities and programmes should thus be designed to foster the sense of responsibility of children and encourage attitudes and skills that assist them in developing their potential as members of society. In this regard, school education, vocational training in occupations likely to prepare them for future employment, as well as working opportunities whenever possible within the local community, should therefore be provided.

(c) Children in situations of exploitation, including physical and psychological recovery and social reintegration – Articles 32, 33, 34, 35, 36 and 39

ARTICLE 32

Text

- 1.** *States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.*
- 2.** *States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:*

- (a) *Provide for a minimum age or minimum ages for admissions to employment;*
- (b) *Provide for appropriate regulation of the hours and conditions of employment;*
- (c) *Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.*

Commentary

This article addresses the right of the child to protection from economic exploitation, as well as from any work which is hazardous or which may be contrary to the child's education, to the child's health or in any way be harmful to the development of the child, be it physical, mental, spiritual, moral or social. These provisions clearly stress the importance of ensuring a full and harmonious development of the child and respect for his or her fundamental rights, including the right to education and health, leisure, recreation and play. A holistic approach to the human rights of children is therefore required to ensure the realization of these rights.

States Parties have to take all necessary measures of a legislative, administrative, social and educational nature, to prevent the involvement of children in situations which may be exploitative, hazardous or harmful, to ensure the effective protection of working children and to promote the physical and psychological recovery, as well as the social reintegration of child victims of such activities. They should take into consideration accepted standards as set forth in relevant international instruments, particularly those adopted by ILO, and in this spirit particularly provide for minimum ages for admission to employment, for appropriate regulation of hours and conditions of employment, as well as for appropriate penalties and sanctions. In this field, it is also important to recall the Programme of Action for the Elimination of the Exploitation of Child Labour adopted by the Commission on Human Rights in 1993, which has envisaged a comprehensive strategy for States to eradicate child labour and specially the most odious or degrading forms of the child's exploitation. In all these standards, both preventive and repressive measures are envisaged and valued as equally necessary.

Information and education campaigns as well as training activities play a decisive role as effective means of preventing the involvement and recruitment of children into situations of economic exploitation, of ensuring respect for the human dignity of the child, of eradicating discriminatory attitudes, of marginalization and stigmatization of children as well as their invisible existence in situations of enslavement and exploitation.

The Committee has in its concluding observations often addressed the area of economic exploitation of children, including through labour and has recommended that the minimum age of access to employment be raised and established at the same level as the age for

compulsory education. In view of their particular vulnerability, it has called attention to the situation of children working in the informal sector, in agriculture or as domestic servants. It has further stressed the need for the national legislation to ensure its full conformity with the Convention and for it to be effectively enforced, including through the establishment of effective complaints procedures, the development of adequate services of monitoring and inspection of the situation of working children, and the establishment of adequate sanctions. Reports should therefore indicate the measures adopted in these various fields.

Recognizing the fundamental importance of this area, the Committee devoted its second thematic discussion to the consideration of the economic exploitation of children, including through labour, child prostitution, child pornography and sale of children. It then stressed that only through comprehensive and concerted action by all entities relevant in the field of the rights of the child it would be possible to improve and effectively ensure adequate policies of prevention, protection and reintegration of economically exploited children. It called for the establishment of a national coordinating and monitoring mechanism where the various national competent bodies might be represented and which might be in a position to ensure a global and multidisciplinary strategy to prevent and combat situations of economic exploitation of children. Such a mechanism, that should cooperate closely with non-governmental organizations, should also be able to gather all relevant information, in the light of meaningful indicators, so as to provide a periodical evaluation of the existing situation and define demanding but realistic benchmarks that may be used to steadily improve the situation of children and the respect for their fundamental rights. States Parties' reports should therefore indicate steps taken to reflect these measures under their jurisdiction.

As pointed out by the Committee, however, States Parties should in any circumstances clearly forbid and effectively prevent and combat the following activities:

- those which jeopardize the development of the child or are contrary to human values or to the dignity of the child;
- those involving cruel, inhuman or degrading treatment, the sale of children or situations of servitude;
- those which involve discrimination, particularly with regard to vulnerable and marginalized social groups;
- those which are dangerous or harmful to the child's harmonious physical, mental and spiritual development or are liable to jeopardize the education and training of the child;
- all those activities under the minimum ages referred to in paragraph 2 of Article 32 of the Convention, and in particular those recommended by ILO;
- as well as all activities which use the child for criminal acts, including drug trafficking.

ARTICLE 33

Text

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances

Commentary

This article addresses the specific reality of drugs and is designed to ensure the protection of children against their illicit use, as well as the prevention of the use of children in their illicit production or trafficking. Having been a hidden problem for long, the inclusion of these provisions in the Convention reflects a growing concern in sparing children from the severe and negative impact of drugs. With this aim, and in view of the complex character of the situation, States Parties are required to adopt all appropriate measures, including of a legislative, administrative, social and educational nature, and to reflect them, together with any strategy developed in this area, in their reports.

One of the questions covered by this article is the possible use of children in the production and trafficking of narcotic or psychotropic substances. The same concern was echoed by the Eighth Congress on Crime Prevention and Treatment of Offenders and later reflected in the Programme of Action for the Elimination of the Exploitation of Child Labour, adopted by the Commission on Human Rights. In this document, States are encouraged to take preventive and curative measures to combat the phenomena of the exploitation of child labour, such as the use of children for illegal, clandestine or criminal purposes, including traffic in narcotic drugs. At the legislative level, they should introduce an absolute prohibition of the employment of children in "work concerned with trafficking in and production of illicit drugs".

ARTICLE 34

Text

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) *The inducement or coercion of a child to engage in any unlawful sexual activity;*
- (b) *The exploitative use of children in prostitution or other unlawful sexual practices;*
- (c) *The exploitative use of children in pornographic performances and materials.*

Commentary

The provisions of this article stress the right of the child to be protected against all forms of sexual exploitation and sexual abuse. To implement such provisions, States have to take all necessary steps with a view to preventing and combating the occurrence of any of such forms, including, although not being limited to, measures to prevent the inducement or coercion of the child to engage in unlawful sexual activities, and the exploitative use of the child in prostitution or pornographic performances and materials.

For this purpose, States Parties are requested to adopt legislation forbidding such phenomena and ensuring that all such cases are thoroughly investigated, those found responsible are punished and impunity effectively fought. Legislative measures should further provide for available remedies for the child victim of these practices, including a system of complaints and compensation. In the spirit of Article 42 of the Convention, information and awareness campaigns should be launched to the public at large as well as to relevant groups, including the media, travel and tourism agencies; educational programmes should be developed within the school system to inform children about their fundamental rights and about the risks they may face by becoming involved in such sexual practices; and adequate training activities should be promoted to relevant professional groups working with and for children, either on the fundamental rights of the child or on the child's specific needs in situation of sexual exploitation. Through such training activities, it will be possible to establish specialized liaison officers, in law enforcement agencies as well, who will be particularly prepared to follow cases of child abuse, prostitution or pornography and assist children affected thereby. In the light of Article 4 of the Convention, necessary resources should be allocated to their maximum extent possible for necessary strategies and programmes, including those aiming at the child's physical and psychological recovery and social reintegration. Reports should therefore reflect measures adopted in this regard.

It is important to recall that the realization of the rights set forth in this article calls for the recognition of the child as a human person, whose human dignity should be fully respected, and who should never be perceived as a mere commodity.

Sexual abuse and exploitation of children know no geographical, cultural or social boundaries, constituting a form of violence and humiliation with long-term effects on children's lives. They constitute hidden and clandestine phenomena, whose invisibility should be fought by the systematic gathering of information by all relevant entities, in governmental departments and non-governmental organizations, based on relevant disaggregated data as a means to allow for the consideration of an integrated approach and the implementation of adequate policies and strategies to protect the child against his or her sexual exploitation or abuse.

Here, as in other provisions of the Convention, the general principles of the Convention should inspire the steps taken by States. The best interests of the child should be a primary consideration in all actions taken and should enable the development of policies with a child-centred approach; children should be provided with an opportunity to express their views when these phenomena occur, particularly within the framework of any administrative or judicial proceeding affecting them, as well as to make sure that they express themselves in a reassuring environment which will not further traumatize or stigmatize them. Moreover, children should be protected against any form of discrimination, namely with a view to preventing vulnerable groups of children from becoming the most common victims of such practices.

These practices, particularly child prostitution and pornography, often have a transnational dimension. For this reason, the Convention stresses the need for States to adopt national measures, which should also include the extension of national jurisdiction to nationals and legal residents who commit such offences abroad, while further calling for the adoption of bilateral and multilateral measures. To combat child prostitution and pornography, it is also essential to promote the conclusion of bilateral and multilateral agreements which may reinforce the effectiveness of national authorities. In this connection, the close cooperation between national polices and national judicial authorities, and the ongoing exchange of information, may become of decisive relevance to ensure the effective prosecution and punishment of perpetrators, or to ensure their extradition as appropriate, as well as the necessary protection, assistance and reintegration of child victims of such forms of sexual exploitation. Moreover, such cooperation will facilitate the confiscation of products as well as the criminalization of money laundering arising from the sexual exploitation of children. Steps undertaken in this regard should therefore be indicated in reports submitted by States to the Committee.

ARTICLE 35

Text

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Commentary

According to this provision, States Parties are requested to adopt all appropriate measures at the national, bilateral and multilateral levels to prevent any form of abduction and sale of children, as well as their trafficking. States are therefore requested to take all necessary steps designed to prevent and suppress the occurrence of such acts, including awareness campaigns, training activities of the professional groups more directly involved, such as law enforcement officials and members of the judiciary, the enactment of national legislation forbidding any of these offences, the allocation of adequate resources to put in place adequate strategies for the protection of the child or the consideration of programmes intended to promote the physical and psychological recovery and social rehabilitation of the child in the light of Article 39 of the Convention. But it is important to recognize that the practices addressed by this article, by envisaging the child as a commodity rather than a person, generally endanger the enjoyment of the child's fundamental rights, including the right to be cared for by his or her parents, to a family environment or to the preservation of the child's identity.

Abduction and sale of, as well as trafficking in children are often linked to the change of elements of the child's identity and pave the way for the illegal adoption of children, including intercountry adoption, to the child's disappearance, to the use of the child in criminal activities, as well as to the inducement or coercion of the child into prostitution and pornography. For whatever purpose they may be carried out, all these forms should be prevented and suppressed.

Although with a prevalent criminal perspective, child abduction has similar consequences to those arising from the illicit transfer of children, mentioned by Article 11 of the Convention, equally contributing to the separation of the child from his or her family. Sale of children may occur in different circumstances, including the involvement of the child in bonded labour, often as a means of paying for his or her parents' debts. Trafficking in children may be carried out for various purposes, including that of allowing the child to be sold or illegally given for adoption. But all of these forms are clearly inconsistent with the human dignity of the child and, as recognized by the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography, they constitute modern forms of slavery.

In view of the transnational nature of these practices, the Convention also calls for action at bilateral and multilateral levels. It is in fact important to ensure that agreements are envisaged and concluded as a means of strengthening cooperation between law enforcement agencies and judicial authorities, ensuring their effective training and sensitization, as well as establishing a system of constant exchange of information, *inter alia* on suspects involved and perpetrators condemned. Such measures will make it possible to act quickly and often in time to prevent the abduction, sale and trafficking in children, as well as to ensure a thorough investigation of these cases whenever necessary and the punishment of those found responsible.

ARTICLE 36

Text

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Commentary

This article is designed to cover all possible forms of exploitation of children which have not been specifically addressed in previous articles, in particular Articles 32 to 35. It stresses the need to protect the child under any circumstance from any kind of exploitation that may be prejudicial to any aspects of the *welfare* of the child, including situations which may not have been specifically recognized as children's rights by the Convention. In this regard, this provision echoes the notion reflected in Article 3 para. 2 of the Convention, which also calls for State action to ensure "such protection and care as is necessary for the well-being" of the child.

States Parties' reports should therefore identify existing cases of exploitation prejudicial to children's welfare, as well as the measures and policies adopted to prevent and suppress them, to ensure the child's harmonious development and promote the child's recovery and rehabilitation. As in relation to other provisions, State action may encompass, *inter alia*, advocacy and awareness campaigns to the public in general and to specific target groups, including the media, training activities of professional groups working with and for children, enactment of legislation, allocation of adequate resources or the consideration of comprehensive strategies designed to promote the recovery and social reintegration of the child victim of such forms of exploitation.

ARTICLE 39

Text

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

For the implementation of this article see observations above, particularly those made in relation to Articles 19, 37a, and in the present chapter on Special Protection Measures.

(e) Children belonging to a minority or an indigenous group – Article 30

ARTICLE 30

Text

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Commentary

Article 30 closely follows the wording of Article 27 of the International Covenant on Civil and Political Rights. It has however included some important new elements. In fact, in addition to ethnic, religious or linguistic minorities, it has specifically mentioned “persons of indigenous origin” clearly indicating that they should be considered as a distinct group entitled to enjoy its culture, to manifest its religion and to use its language. Moreover, by replacing the plural used in the Covenant “**persons** belonging to such minorities” by a reference to the **child**, it has emphasized the individual nature of the rights recognized in this article, even if they are to be enjoyed “in community with other members” of the child’s group.

The Convention does not provide a definition for minority or indigenous groups. Like the Covenant, it only stresses the responsibility of the State to protect the rights of individuals belonging to those groups when they exist in the country. An open question is therefore left in relation to the objective criteria upon which the existence of such groups should be acknowledged. It is clear however that this article should not be interpreted as allowing any State to avoid the recognition of the fact that minorities or persons of indigenous origin live within their jurisdiction as a means of preventing the enjoyment of the fundamental rights of their individual members.

This article is designed to ensure the protection of children belonging to a group and sharing the same culture, religion or language, children subject to the jurisdiction of the State and, as stressed in relation to Article 2 of the Convention, who *inter alia* may be nationals, residents, stateless or refugee children.

It addresses three main areas where the enjoyment of children's rights should not be denied and in relation to which the identity of the specific community to which the child belongs should be preserved – the right to enjoy one's culture, the right to profess and practice one's religion and the right to use one's language. States should therefore provide information in their implementation reports on the existence of minorities and indigenous persons subject to their jurisdiction and on the specific measures adopted to ensure the effective implementation of the rights recognized by this provision.

The recognition of the rights of a child who belongs to a minority or who is of indigenous origin further reflects the right to be different from the majority prevailing in a country, to coexist with such a majority and other different minority groups and to have one's own identity respected and preserved.

In this spirit, the Convention stresses that education should aim at promoting a spirit of mutual understanding and respect "among all peoples, ethnic, national and religious groups and persons of indigenous origin", and at the same time develop the child's own cultural identity, language and values. Likewise, Article 20, para. 3 stresses the need to pay due regard to the child's ethnic, religious, cultural and linguistic background when deciding on any measure of alternative care for children deprived of family environment, as a means of ensuring continuity in the child's upbringing; and Article 8, addressing the question of the identity of the child, emphasizes the importance of preserving the elements of such identity, which are clearly not to be limited to the child's nationality, name and family relations, as previously noted.

In the light of Article 30, it is not sufficient to recognize the rights set forth in the legislation. States also have to adopt all appropriate measures to ensure their effective realization. As an illustration, reference could be made to the right of the child to use his or her own language. The implementation of this right will call, *inter alia*, for the consideration of specific

measures either to allow for its utilization in the school system, thus enabling children from indigenous or minority groups to adequately participate in school life and become prepared for a responsible existence in a free society; or to use it within the framework of the system of administration of juvenile justice – thus enjoying an effective right to understand the charges brought against him or her, preparing and presenting his or her defence, benefiting from a fair hearing.

B. CONSIDERATION OF REPORTS BY THE COMMITTEE ON THE RIGHTS OF THE CHILD

(a) The Committee and its composition

Pursuant to Article 43 para. 1 of the Convention, a Committee on the Rights of the Child has been established for the purpose of monitoring the progress made by States Parties in achieving the realization of the obligations undertaken by the Convention.

The Committee consists of ten experts of high moral standing and recognized competence in the field covered by the Convention. The Secretary-General convenes a meeting of States Parties in which the members of the Committee are elected by secret ballot from a list of persons nominated by States Parties from among their nationals. In this election, consideration is given to equitable geographical distribution, as well as to the principal legal systems. The members of the Committee are elected for a term of four years. They are eligible for re-election if they are re-nominated.

By Resolution 50/155, of 21 December 1995, the General Assembly approved the decision of the Conference of States Parties to amend the Convention, in the light of Article 50, and enlarge the number of members of the Committee to 18. For this amendment to enter into force, it also needs to be accepted by a two-thirds majority of States Parties.

The members of the Committee, although elected by representatives of States Parties, are in no way delegates of the State, rather serving in a personal capacity (Article 43 para. 2). In fact, as stressed by the Committee, they do not represent their Government, their country or any organization to which they may belong. Their mandate derives from the principles and provisions of the Convention and they are solely accountable to the children of the world.

If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member will be invited by the Secretary-General to appoint another expert from among its nationals to serve for the remainder of the term. The same situation will apply when, in the

unanimous opinion of the members of the Committee, a member has in fact ceased to carry out his or her functions – for instance, when a member is constantly absent. The appointment of a replacing member by the State is, in any circumstance, subject to the approval of the Committee (Article 43 para. 7). In fact, as reaffirmed in its Rules of Procedure (Rule 14), the Committee will, by secret ballot, express its endorsement or refusal of the proposal made, based on the name and the curriculum vitae of the appointed expert.

This important and unique system is intended to strengthen the independence of the Committee members and to prevent any kind of manipulation of the work of the Committee by Governments appointing persons who do not have the necessary competence in the field of children's rights or lacking the ability to act in a devoted, independent and impartial manner.

(b) The Committee: its methods of work

The Committee was entrusted with important tasks in the field of promoting and protecting children's rights, all of which are essential to its monitoring functions. Some are designed to ensure a better understanding of the principles and provisions of the Convention – as in the case of the formulation of **General Recommendations** and **General Comments**, the organization of **thematic discussions** on specific topics or rights of the Convention, or the request for studies on the rights of the child in the light of Article 45(c) of the Convention. Some others are linked with the activities of the Committee as a supervisory body. Within this framework, the Committee assesses the progress made by States Parties in the implementation of the Convention through a system of constructive dialogue, and assists them in the identification of problems and in the consideration of possible solutions. Moreover, pursuant to Article 45(a) and (b), the Committee acts as a catalyst in the area of international cooperation, encouraging a combined effort of States, United Nations bodies and other competent bodies to foster the realization of children's rights at national level.

According to Article 43, para. 10 of the Convention, the Committee shall normally meet annually. But in view of the unprecedented number of ratifications and accessions to the Convention, it soon became clear that one session a year would be insufficient for the Committee to face the workload arising from the reports submitted by States Parties in the light of Article 44 of the Convention. For this reason, the General Assembly endorsed a proposal made by the Committee to that effect and adopted resolution 47/112 (of 16 December 1992) thereby approving the organization of the work of this treaty body on the basis of two sessions a year of up to three weeks' duration each, as well as the establishment of a pre-sessional working group.

At its fourth session, the Committee once more reaffirmed its concern at its increasingly heavy workload and, recognizing the need to adopt urgent and adequate solutions to deal

with this situation and prevent the risk of building up an undesirable backlog in the consideration of States Parties' reports, decided to convene a special session in 1994 pursuant to Rule 3 of its Rules of Procedure. At its fifth session, recalling the extent of ratifications to the Convention and the subsequent submission of country reports, stressing that it was vital to have an adequate amount of time to ensure its continued effectiveness in future years, the Committee further requested the Secretary-General to convene a meeting of States Parties to review the duration of the meetings of the Committee, pursuant to Article 43 para. 10 of the Convention, and to determine that the number of annual sessions as from 1995, together with the number of the pre-sessional working groups, be increased to three.

Since then, the Committee has thus held three formal sessions a year, in January, May/June and September/October, each of them being preceded by a working group. So far, the Committee has always met in Geneva although, in the light of Article 43 para. 10 of the Convention, it may determine any other place for its meetings. Six members of the Committee constitute a quorum and decisions are made by a majority of the members present. However, the members of the Committee have expressed the view that its method of work should normally allow for attempts to be made to reach decisions by consensus before voting, provided that the Convention and the rules of procedure are observed (Rule 52 of the Rules of Procedure). This in fact has been the rule since the very beginning of the activities of the Committee.

The formal sessions take place in public and usually in the presence of representatives of the State Party concerned. To that end, the State is informed in advance of the date of the consideration of its report and invited to send representatives preferably with experience in the fields covered by the Convention with a view to ensuring a fruitful dialogue with the Committee – this aspect gains additional importance in view of the comprehensive and multidisciplinary nature of the provisions of the Convention.

The State is further encouraged to send representatives with effective capacity for influencing policy-making and enhancing the promotion and protection of children's rights. Aiming at ensuring a deeper understanding of the reporting process and of the importance and purpose of the dialogue to be held between the Committee and the State Party, the Committee establishes informal contacts with the permanent missions of the States whose reports are scheduled for consideration.

Since its first session, the Committee has also decided to establish a pre-sessional working group designed to facilitate its work and in particular to allow for the preliminary review of States Parties' reports and the identification of the main issues that need to be further discussed with the representatives of the reporting States, as well considering questions relating to technical assistance and international cooperation. Such a method of work increases the efficiency of the reporting process and facilitates the task of States Parties by providing

them in advance with a list of the main issues which might be raised during consideration of their reports.

The list of issues does naturally not prevent the Committee from addressing other questions relating to the implementation of the Convention in the country concerned and which may be of interest to the realization of children's rights. In this spirit, the Committee sends a note accompanying the list of issues to the permanent mission of the country concerned stating that "the list is not intended to be exhaustive and it should not be interpreted as limiting or in any other way prejudicing the type and range of questions which members of the Committee might wish to pose".

To allow sufficient time for the State Party to prepare written answers to the list of issues in a comprehensive manner and to ensure their translation into the different working languages of the Committee, the pre-sessional working group meets approximately two months in advance of each formal session. It takes place in private but the Committee may invite representatives of the United Nations bodies, specialized agencies and other competent bodies, including non-governmental organizations, to participate in these meetings (Rule 34 of the Rules of Procedure).

Their presence will allow the Committee to clearly understand the situation in the country concerned and to better assist the Government. For this reason and in the spirit of Article 45 of the Convention, at its very first session the Committee suggested the establishment of a Technical Advisory Group to assist and advise it on a continuous basis and composed of individuals belonging to those different bodies. Their participation will further allow for the consideration of possible future areas of technical assistance and international cooperation to be developed at national level.

Always guided by the need to assist Governments in the implementation of the Convention, the Committee needs in fact to be informed about areas where such assistance might be lacking or where some programmes may exist but reveal some difficulties or insufficiency. Only on the basis of such serious consideration will the system of international cooperation be capable of addressing the real needs and aspirations of children, in line with the spirit of the Convention (see below "(e) Follow-up").

In this framework, it is extremely positive to note that some United Nations bodies have decided to ensure the presence of their regional or national representatives at the meetings of the pre-sessional working group and/or at the sessions of the Committee during which the report of the country concerned is examined. Their participation will undoubtedly facilitate and strengthen the implementation and follow-up to the recommendations of the Committee in the programmes to be carried out at the national level. Once again, the decisive importance of the national implementation process becomes evident.

For their part, non-governmental organizations play an equally important role. In fact, apart from their relevant contribution to awareness raising and advocacy on the Convention, its principles and provisions, they have decisively enhanced the capacity to use the reporting process at the national level as an occasion to mobilize attention on the situation and rights of children, to assess progress and prevailing difficulties. The expert advice provided to the Committee, as well as the reports submitted by them on the implementation of the Convention have proved to be extremely useful, particularly during the pre-sessional working group.

For this reason, international, regional, national or local NGOs are, as appropriate, invited to participate in these meetings and to provide factual information on specific aspects of each State Party report under consideration, in compliance with the guidelines for reporting adopted by the Committee.

The cooperation with NGOs has been particularly effective in implementation of the Convention. This is explained first of all by the fact that the Convention specifically addresses them under the expression "other competent bodies". This apparently formal aspect gains an additional importance if we recall that the Convention is the single human rights treaty clearly identifying them in the process of implementation.

But it is further important to stress that the wide mobilization around children and their fundamental rights experienced in the last decade has been meaningfully echoed by the establishment of the NGO Group for the Convention on the Rights of the Child. Through its coordinator, who is in permanent contact with the Committee, this NGO Group acts as an effective interface between the treaty body and non-governmental organizations at large.

It brings together international organizations involved in the implementation of the Convention, encourages the creation and development of national and regional coalitions for children's rights and facilitates the flow of information between the Committee and the NGO community. Moreover, it decisively contributes to the wide dissemination at the national level of the process of implementation of the Convention and the work of the Committee.

It is meaningful and encouraging to note the importance recognized by States Parties to the involvement of NGOs in the implementation of the Convention and in its reporting process. Information on activities developed by the non-governmental community in the country concerned is often provided by the State's Party report and in some cases, the national delegation has even included non-governmental representation.

The Committee bases its study of the States Parties' reports on the information contained in the country file organized by the Secretariat. To perform its functions in an effective manner it is in fact essential that the Committee may have access to all relevant sources of

information pertaining to its functions and concerning each State Party whose report is scheduled to be considered. For this purpose, an analytical study of all available information is prepared, following the structure of the guidelines for reporting adopted by the Committee (see above A. "(b) Guidelines for reporting under the Convention").

Consideration will be given to relevant material compiled from reports submitted by the State Party to other treaty bodies, information submitted to the Commission on Human Rights or the Subcommission on Prevention of Discrimination and Protection of Minorities, any material received from the specialized agencies, United Nations and other competent bodies including NGOs, from the media or from individuals.

Since its first session, the Committee has stressed the need and decisive importance of organizing meetings outside Geneva. They were perceived as essential to make the principles and provisions of Convention better known and to create wider awareness about the activities of the Committee as a treaty-monitoring body and as a catalyst for the improvement of the situation of children's rights world-wide. These informal meetings soon became a unique method of work of the Committee and they have since then constituted an important and rewarding experience.

Holding meetings at the regional and country level constitutes an essential means of providing Committee members with a deeper understanding of the specific realities of a given region or State Party, shedding light on difficulties encountered or progress achieved and on the effective living situation of children. They therefore place the Committee in a better position to assist the Government concerned once its report has been examined.

At the same time, the presence of the Committee in a region or country naturally calls attention to its mandate and functions. The wide coverage of these meetings by local, national and international media has paved the way for a great mobilization of the public opinion in favour of children and their fundamental rights and for a national debate on government policies – thus carrying out an important **advocacy** function, either when the Convention has already been ratified or while supporting its universal ratification as recommended by the World Conference on Human Rights.

The meetings organized during these visits further allow for the dissemination of information on the form, content and relevance of the implementation reports, to Governmental officials, national institutions on children's rights, non-governmental organizations or the media. Such contacts have often paved the way for the submission of States Parties' reports which had previously been long due or were to have been submitted shortly. They thereby encourage the fulfilment of a **treaty obligation** and contribute to a more effective implementation of this international instrument.

But the realization of such meetings also **foster international cooperation** in the field of the rights of the child. In fact, they provide an important opportunity for United Nations bodies, specialized agencies and other competent bodies, including NGOs, to meaningfully combine their efforts in implementing the Convention at the regional and national level, using its holistic approach as a constant guide for all their activities, while ensuring a continuing flow and exchange of information about actions undertaken, problems faced or successes achieved.

Such an experience has also proved to be of essential relevance in cases where the visits take place after the report of the country concerned has been examined by the Committee. In such cases, the presence of the Committee has an important **follow-up** function by providing the opportunity of encouraging and supporting the implementation of the suggestions and recommendations formulated by the Committee and thus enhancing popular participation and public scrutiny of governmental policies on children (see below "(e) Follow-up").

Encouraged by the success of this method of work, the Committee has recently decided to envisage the possibility of undertaking future trips by smaller groups of its members to different countries, playing due regard to the reporting obligations of States Parties and their specific needs.

(c) Constructive dialogue

The Convention has a non-adversarial approach to children's rights. Thus the implementation provisions, while underlying the Government's accountability for the policies pursued, stress the need for dialogue rather than a punitive attitude. This is also the guiding perspective of the Committee on the Rights of the Child in the performance of its functions and in particular within the framework of the examination of States Parties' reports.

In this spirit, and as indicated by the General Guidelines of the Committee, the purpose of the reporting process is not to simply to condemn, accuse or to be confrontational, but to serve as a vehicle for the establishment of a meaningful dialogue between the Committee and States Parties. In fact, although benefiting from a wide range of written information submitted by the State itself, United Nations bodies and other competent bodies, including NGOs, previously included in the respective country file (see above "(b) Methods of work"), the Committee deeply believes in the potential provided by an open discussion with State representatives.

A frank dialogue will in fact make it possible to have a better understanding of the situation in the country, identifying difficulties encountered and assisting the State in the search for the best solutions to promote and protect children's rights. It provides a meaningful oppor-

tunity to guide the State in the interpretation and understanding of the principles and provisions of the Convention and to make the successful experiences of other countries available. At the same time, it makes it possible to consider areas for international technical advice and assistance whenever they may be appropriate.

The importance attached to a constructive dialogue with States Parties is reflected in various ways and stages of the reporting process. In fact, once a State Party's report has been scheduled for consideration, the Committee informally meets the representatives of the permanent mission of the country concerned (see above "(b) Methods of work"). For the examination of the report or of additional information sought by the Committee, the State is invited to send a delegation to participate in the meetings. And to ensure that their presence paves the way for a constructive and fruitful dialogue, it stresses that those representatives should be able to answer questions put to them by the Committee and make statements on reports already submitted or submit further information (Rule 68 of the Rules of Procedure). Even in situations where the State Party has not submitted reports or additional information pursuant to Article 44 of the Convention, the Committee sends a reminder to the State concerned recalling its international obligation and undertakes "any other efforts in a spirit of dialogue between the State concerned and the Committee" (Rule 67 of the Rules of Procedure). It is also in this same spirit that, as already mentioned, the Committee addresses urgent situations where children's rights may be seriously at stake (see above A. "(a) The convention and its reporting requirements").

(d) Presentation and examination of reports

With a view to making the reporting procedure pursuant to the general guidelines adopted for initial reports more transparent and readily accessible, the Committee has issued a document containing an overview of such reporting procedures. The overview has been disseminated to entities involved in the implementation of the Convention and cooperating with the Committee in the reporting process. Thus, they are naturally transmitted to States Parties, usually in the informal meetings organized by the Committee with representatives of the permanent mission of the country whose report has been scheduled for consideration (see above "(b) Methods of work"), as well as to United Nations bodies and other competent bodies such as non-governmental organizations.

The State Party's report is discussed in public, usually during three meetings where only State representatives and Committee members take the floor. United Nations organs and specialized agencies are represented. The NGO Group on the Convention is also present, very often accompanied by representatives of national non-governmental organizations. International and national media often follow the discussions, which are in any case covered by the United Nations Department of Public Information for the purpose of issuing widely available press releases of the meetings.

The meeting starts with a short introduction to the report by the representative of the State. In this introductory statement, reference may be made to major aspects of the State's Party report or of its written answers to the list of issues submitted by the Committee (see above "(b) Methods of work"). Information may also be provided about relevant developments that have occurred since then. After this introduction, the State delegation is asked to address the subjects identified in the list of issues, starting with the first section of the General Guidelines and, thereafter, going on to each section in turn. Each of the thematic clusters of the Guidelines is therefore considered by Committee members as the basis for asking further questions, making comments on the report or on the answers submitted either in writing or orally, or giving guidance on the way the Convention should be implemented. During this period of questions and answers the dialogue becomes lively and naturally also more fruitful for the realization of the rights of the child.

This public debate is designed to emphasize the areas where the national process of implementation of the Convention constitutes an illustration of positive and innovative experiences that may be a reference for future action in other countries, and it is also used to identify problems that need to be seriously and urgently addressed by the State Party concerned. The dialogue will therefore consider, *inter alia*, the legislation enacted and the way it reflects or incorporates the principles and provisions of the Convention, the administrative, budgetary, social, educational or other measures adopted, the mechanisms established to gather information, to evaluate progress or to promote the coordination of the various governmental departments competent in the field of children's rights, the way the Convention is used by and before national courts or which specific remedies are available in case of violation of rights that it recognizes.

In view of the preparation of the discussion of the report by the pre-sessional working group, and in the light of written answers to the list of issues previously submitted by the State Party, the Committee is in a position to allocate more time to the subjects which have been insufficiently addressed or even neglected by the Government's action, and to focus on those areas where priority should be given and where the Committee's assistance may be of greater assistance in improving the situation of children in the country concerned. For this reason, and taking into consideration the particular situation of each country, the Committee may decide to address the various sections of its Guidelines in a different order.

In the light of Article 44 para. 2 of the Convention, the answers of the State Party's representatives should be as precise as possible to provide the Committee with a comprehensive understanding of the national implementation process.

At the end of the examination of the report, and on the basis of the information available and dialogue held, the members of the Committee summarize their observations on the report and on the discussion itself, thus presenting their concluding observations. They then emphasize the positive aspects, the factors and difficulties impeding implementation and

the principal subjects of concern, as well as any suggestions or recommendations they deem appropriate, also in the area of international technical advice or assistance. If the Committee considers that a number of issues should be clarified further, it invites the State to submit additional information or an additional report, including a progress report, on the implementation of the Convention (see above A. "(a) The convention and its reporting requirements)". Lastly, the State delegation is invited to make a final statement.

The concluding observations adopted by the Committee are then reflected in a written document and made public on the last day of the same session, constituting a chapter of its report. In view of their important role as an authoritative statement of the Committee to the State concerned and as a guiding reference for action to be undertaken by States Parties in general, the concluding observations are issued as official documents of the Committee and integrated in the report that the Committee submits every two years to the General Assembly.

While reflecting the major aspects of the situation in every country, the concluding observations also indicate issues requiring a specific follow-up, which can also be carried out through programmes of international cooperation (see below "(e) Follow-up"). Furthermore, they will serve as a starting point for future reports to be submitted at a later stage (see below "C. Periodic reports").

(e) Follow-up

The publication and wide dissemination of the dialogue held between the Committee and States Parties on the reports submitted pursuant to Article 44 of the Convention, of the reports adopted at each session of the Committee and of the reports submitted every two years to the General Assembly, allow the United Nations system, States, NGOs and the public at large to access and take into due consideration the experience gained.

In order to ensure that this information is widely publicized and readily available so that it may influence and foster the realization of children's rights, the Committee has adopted a formal recommendation requesting the Secretary-General to ensure that the United Nations Information Centres or, in their absence, the UNDP country offices, make freely available and on a routine basis the reports of the Committee, the report of the State in whose territory the information centre or UNDP country office is located, the summary records and concluding observations relating to them.

The direct impact of this process at the national level is naturally of decisive importance. In fact, the success of the reporting process is assessed by its capacity to improve the situation at the country level, encourage progress and strengthen the national capacity to assess problems and shape adequate strategies to solve them.

The Convention stresses this fact in a particularly meaningful way in its Article 44, para. 6. According to this provision, States Parties are required to make their reports widely available to the public in their own countries. This measure will ensure that the commitment undertaken by the State Party to protect and respect the rights of the child is reflected in national action, while giving society at large the possibility of being informed and of evaluating the efforts made by the State in this endeavour. Such a follow-up mechanism will promote wider awareness of children's rights and encourage popular participation and public scrutiny of governmental policies. As often stressed by the Committee, it is an important means to encourage open debate at national level on the policies adopted in the field of the rights of the child.

In the light of this provision of the Convention, the Committee systematically includes a section in its concluding observations calling for the publication and wide dissemination of the State Party's report together with the respective summary records of the discussion and the concluding observations. Very often it has also recommended that these documents be brought to the attention of the Parliament and that the suggestions and recommendations for action contained therein be followed up. In some cases it has encouraged the special dissemination of the result of the discussion to governmental officials, to professionals working with and for children, to NGOs, the media and to children themselves. And when various languages are spoken in the country, it has further recommended the translation and dissemination of these documents as widely as possible.

As previously mentioned, the reporting system also provides an excellent occasion to identify and suggest programmes of international technical advice and assistance to be implemented at the country level. In fact, pursuant to Article 45b of the Convention, the Committee may consider a specific request made to that effect in the State Party's report, or recommend a particular programme in view of any specific need it might have identified during examination of the report. In such a case, the Committee transmits the report of the State, with any suggestions and recommendations the Committee deems appropriate, to competent United Nations bodies including international financial institutions, specialized agencies, and other competent bodies such as NGOs. These bodies will then have a reinforced legitimacy to negotiate with the State concerned the programme of assistance to be provided thereafter, while meaningfully contributing to the improvement of the situation in the country.

The Committee's suggestion concerning programmes of technical advice and assistance has been echoed by the action of the United Nations system, as well as by other competent bodies. It has allowed for national legislation to be reviewed in areas where it was not in conformity with the principles and provisions of the Convention – as in the case of the administration of juvenile justice, child labour or refugee law. It has encouraged the ratification of relevant international conventions in the field of children's rights, including the minimum age for employment and inter-country adoption. It has supported campaigns of

information, training and advocacy on the Convention to ensure that it is effectively respected and implemented. It has, in a word, built an international alliance for children's rights effective at national level, bringing together the efforts of United Nations bodies, non-governmental organizations and donor countries.

These programmes of international cooperation, including those provided for by the Programme of Advisory Services and Technical Assistance of the Centre for Human Rights, are designed to support the national process of implementation in the respect for human rights, combining assistance with accountability. They are therefore not intended to replace the monitoring system of children's rights or to exempt the State from the international scrutiny inherent in it.

In certain cases, the Committee has arranged visits to States Parties upon consideration of their reports (see above "b) methods of work"). These follow-up visits are a particularly important and unique method of work adopted by the Committee and have proved to be of decisive relevance to support effective national implementation of the Committee's concluding observations.

The working meetings which are organized during these visits with high level officials, members of parliament and the judiciary, representatives of national institutions and NGOs active in the field of the rights of the child, as well as of the donor community, are a special occasion to create awareness about the Convention and its reporting process, to reaffirm the concerns expressed by the Committee, and to provide information and encouragement on possible ways of addressing them, including through programmes of technical assistance. The presence of the Committee in the country raises very special and unique public interest in the Convention and in the potential of its reporting process, thus constituting an undeniable tool for progress.

C. PERIODIC REPORTS

The first set of periodic reports on the implementation of the Convention on the Rights of the Child, to be submitted pursuant to Article 44 para. 1b, will be due only after September 1997. The Guidelines for these reports were recently adopted by the Committee at its thirteenth session, on 11 October 1996, and will be available to States Parties in due course in document CRC/C/58.

The submission of periodic reports reflects a dynamic and progressive approach to children's realities, making it possible to link the past with the present in anticipation of the future. The implementation of the Convention is, in fact, an ongoing process designed to enhance the level of realization of children's rights, promoting social progress and better standards of life in conditions of greater freedom. Periodic reports should therefore accurately picture this evolving reality and, as Articles 43 and 44 of the Convention indicate, they constitute an opportunity for States to ensure progress and are a tool for measuring its extent.

In fact, periodic reports enable achievements made at different stages of a continuing cycle to be compared, in principle, every five years and they make it possible to assess how the commitment of each State Party has been reaffirmed through a creative and effective action in favour of children. Periodic reports are an important occasion to evaluate the positive and negative changes that have occurred in the jurisdiction of the State Party in the period covered by the report. They also provide the opportunity to identify the difficulties and factors encountered and the capacity evidenced to overcome them, as well as to consider opportunities that have been provided and the extent to which they have been used to benefit the realization of children's rights.

In this framework, the concluding observations adopted by the Committee at the end of the consideration of States Parties' initial reports play a clear catalytic role. Setting an agenda for priority action by States, they constitute an important reference to assess the attention paid to the areas of concern identified by the Committee, as well as the follow-up ensured for its suggestions and recommendations.

They make it possible to evaluate the impact that the dialogue with the Committee has had on the situation of children and on the national action undertaken to improve it.

To achieve these aims, it is essential that periodic reports provide, just as initial reports do, comprehensive and detailed information on the measures adopted by the State and on the progress effectively made towards the enjoyment of children's rights. Thus, the gathering of complete, reliable and specific data, both of a quantitative and qualitative nature, on the various areas addressed by the Convention continues to be of decisive importance. These

data must be based on appropriate statistics and on the identification of meaningful indicators in relation to each and every right set forth by the Convention.

Periodic reports do not need to repeat information previously submitted to the Committee, but should indicate in a more precise and in-depth manner how the situation has evolved, what new legislative, administrative, economic, social, educational or other measures have been adopted by the State to ensure the implementation of the Convention; and how such measures have proved to be appropriate to achieve progress in the light of existing opportunities. States Parties are naturally required to be more demanding now that the initial stage of implementation of the Convention has been reached and their periodic reports should reflect this continuing search for betterment.

ANNEX 1:

REPORT-WRITING PROCEDURES WITHIN THE ILO

REPORT-WRITING PROCEDURES WITHIN THE ILO

Overview and interactions with human rights report-writing procedures within the framework of the United Nations

By Alessandro Chiarabini

I. General aspects: the standard-setting system and supervisory machinery within the International Labour Organization

1. THE ILO AND ITS STANDARD-SETTING SYSTEM

Although no mention is made of the expression “human rights” in the ILO Constitution, the objectives of the Organization are largely directed to the promotion and defence of fundamental human rights, in particular economic and social rights. Recognition of the need to protect the **fundamental rights of all workers**, to build a civil society and to avoid all pernicious forms of international competition was the basis for the creation of the ILO.

Founded in 1919, the International Labour Organization is composed of a general assembly, the International Labour Conference, which meets annually and one of whose main activities is the adoption of international labour standards; an executive council, the Governing Body; and a permanent secretariat, the International Labour Office. The Organization also works through subsidiary bodies such as regional conferences, industrial committees and panels of experts.

The ILO draws its uniqueness from the fact that it is the only international organization with a tripartite structure bringing together governments, employers and workers with the aim of promoting social justice. Employers’ and workers’ representatives, enjoying equal status with those of governments, join with them in all discussions and decision making¹. This active participation of employers and workers also characterizes each step in the

Organization's standard-setting activity, both in terms of drawing up standards and in its supervisory procedures.

Another feature of the Organization is indeed its standard-setting function. By this is meant that the adoption of international labour standards constitutes an essential part of the ILO's activity, written into its Constitution and governed by a specific procedure. This standard-setting activity, resulting in the adoption of Conventions and Recommendations, may be qualified as systematic, regular and relatively swift. When a member State ratifies a **Convention**, it has legally binding obligations. The **Recommendations** are not open to ratification but set general and technical directives; they often complement the Conventions. Between 1919 and 1996, the ILO Conference adopted 177 Conventions which were complemented, where necessary, by 184 Recommendations. Some of these instruments have been revised in order to adapt them to changing needs and concepts. On 1 January 1996, more than 6,200 ratifications of Conventions had been registered by the ILO.

The standard-setting activity of the ILO covers all different areas of employment and social protection, in particular: fundamental human rights, employment policy and human resources development, industrial relations, social policies, general working conditions, safety, hygiene and well-being at work, the employment of children and young people, the employment of women and the protection of workers with family responsibilities, migrant workers, labour inspection, seafarers, and indigenous and tribal peoples.

2. FUNDAMENTAL HUMAN RIGHTS STANDARDS²

Standards relating to fundamental social rights are at the heart of all those adopted by the International Labour Conference. Conventions concerning fundamental social rights have resulted in the largest number of ratifications and have greatly contributed to the promotion of such rights.

These can be grouped under four headings: freedom of association, the abolition of forced labour, protection against discrimination at work, and child labour. These subjects are also covered by five of the six main United Nations human rights instruments, namely the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of

1. Except for the Finance Committee of the International Labour Conference.

2. For Recommendations corresponding to the various Conventions mentioned in this section, as well as for the respective dates of Conventions and Recommendations, see the publication "Handbook of procedures relating to international labour Conventions and Recommendations", ILO, Geneva, 1995.

Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child.

The ILO Conventions mentioned below are those dealing specifically with these four topics. However it must be added that numerous other Conventions address the questions of discrimination, freedom of association, forced labour and child labour. Furthermore, the Conventions dealing with subjects such as occupational safety and health, labour administration, and the protection of special groups of workers (women, children and adolescents, indigenous and tribal peoples) are essential for a full implementation of international human rights standards.

(a) *Freedom of association and collective bargaining*

The fundamental principle of freedom of association was affirmed from the outset in the texts of the ILO Constitution and then strongly confirmed in the Philadelphia Declaration which, in 1944, reaffirmed and stated the Organization's objectives. The two main ILO Conventions concerning freedom of association are:

- Convention (No. 87) on the freedom of association and protection of the right to organize (establishes the right, freely exercised, of workers and employers, without distinction, to organize for furthering and defending their interests);
- Convention (No. 98) on the right to organize and collective bargaining (protection of workers who are exercising the right to organize; non-interference between workers' and employers' organizations; promotion of voluntary collective bargaining).
- These basic Conventions are complemented by a further series of Conventions dealing with specific aspects of freedom of association, namely:
- Convention (No. 11) concerning the rights of association and combination of agricultural workers (aims to secure to all persons engaged in agriculture the same rights of association and combination as to industrial workers);
- Convention (No. 84) concerning the right of association and the settlement of labour disputes in non-metropolitan territories;
- Convention (No. 135) concerning workers' representatives (protection of workers' representatives in the undertaking; facilities to be afforded to them);
- Convention (No. 141) concerning organizations of rural workers (freedom of association for rural workers; encouragement of their organizations; their participation in economic and social development);
- Convention (No. 151) concerning labour relations in the public service (protection of public employees exercising the right to organize; non-interference by public authorities; negotiation or participation in the determination of terms and conditions of employment; guarantees for settling disputes);

- Convention (No. 154) concerning the promotion of collective bargaining (aims to promote free and voluntary collective bargaining).

(b) Forced labour

The issue of protection against forced labour has been the subject of two ILO Conventions. Convention (No. 29) on forced labour provides for the gradual abolition of forced labour in all its forms within the shortest possible period. Subsequently, the suppression of forced labour as a means of political coercion or for economic purposes was the object of Convention (No. 105).

(c) Protection against discrimination in employment

Since its creation, the International Labour Organization has been actively concerned with the question of discrimination. More than forty international labour Conventions and Recommendations contain either general provisions on equal opportunities and treatment, or against discrimination, or specific provisions aimed at discrimination based on reasons such as race, nationality, indigenous origin, marital status, trade union membership and disability. The most complete instrument in regard to protection against discrimination is Convention (No. 111) concerning discrimination in employment and occupation. The other basic instrument on this subject is Convention (No. 100) concerning equal remuneration for men and women workers for work of equal value. Mention should also be made of Convention (No. 156) concerning workers with family responsibilities, the aim of which is to create effective equality of opportunity and treatment for men and women workers with family responsibilities.

(d) Child labour

It is important to note the recent developments taking place within the ILO regarding standards on child labour. In 1994, the 75th anniversary of the Organization, a consensus emerged at the Conference on the fact that "the principles and fundamental values of the ILO [...] include forced labour and **child labour**, freedom of association and discrimination"³. The various actions recently taken by the Conference, the Governing Body and the Office within the context of the campaign to promote fundamental social rights are based on the recognition of **seven fundamental ILO Conventions**⁴, a concept which, for the

3. See GB.264/LILS/5.

4. C.No. 29 on forced labour, C.No. 87 on freedom of association and protection of the right to organize, C.No. 98 on the right to organize and collective bargaining, C.No. 100 on equal remuneration, C.No. 105 on the abolition of forced labour, C.No. 111 concerning discrimination (employment, occupation), C.No. 138 on the minimum age.

first time, includes Convention (No. 138) on the minimum age for admission to employment or work. Furthermore, the Governing Body has decided to include on the agenda for the 86th Labour Conference (1998) an examination of new instruments aiming at the elimination of the most intolerable forms of child labour.

3. SUPERVISING THE APPLICATION OF STANDARDS

The ILO has established a comprehensive supervisory system which has become more refined and diversified over the years. It includes two categories of machinery: on the one hand, **regular supervision** based on an examination of governments' periodic reports and, on the other hand, controls based on the lodging of representations or complaints⁵.

Governments' periodic reports submitted within the framework of regular supervision are first of all examined by the Committee of Experts on the Application of Conventions and Recommendations and, subsequently, by the tripartite Conference Committee on the Application of Conventions and Recommendations.

The Committee of Experts on the Application of Conventions and Recommendations⁶, is composed of twenty members appointed in their personal capacity from among impartial persons having the required technical competence and independent standing. Members are drawn from all parts of the world in order that the Committee may enjoy first-hand experience of different legal, economic and social systems. The Committee meets in private and its deliberations are confidential. When the Committee deals with instruments or matters related to the competence of other specialized agencies of the United Nations system, representatives of those agencies may be invited to attend the sitting. The Committee examines some 2,000 government reports each year. Its final findings take the form of reports destined for the International Labour Conference that are prepared as follows:

- *Part One*: A general report (giving an overview of the Committee's work and drawing the Governing Body's, the Conference's and member States' attention to matters of general interest or special concern);
- *Part Two*: includes observations, published in the report, above all on the application of ratified Conventions in the member States; in addition, the report lists the questions addressed directly to certain governments;

5. This latter machinery does not involve the preparation of reports and consequently will not be dealt with in this annex.

6. Government reports are not the sole source of information for this Committee, which also has at its disposal legislation, legal decisions, statistics, comments from employers' and workers' organizations, etc.

- *Part Three*: a general survey of national law and practice in regard to the instruments on which reports have been supplied on unratified Conventions⁷.

The comments made by the Committee of Experts are forwarded to the governments of member States.

Subsequently, the reports drawn up by the Committee of Experts are submitted to the International Labour Conference where they are examined by the **Committee on the Application of Conventions and Recommendations**, a tripartite body. Reports by the Committee of Experts are referred to this Committee each year. After selecting a given number of cases which it considers to be important, the tripartite Committee discusses them with the governments concerned in order to seek solutions to the differences encountered. The results of these discussions and the conclusions reached by the Committee are the subject of a report which is then submitted to the Conference.

In parallel with this mechanism of regular supervision, the ILO Constitution also provides for two forms of special procedures: the **representations procedure**, which can be set in motion by an employers' or workers' organization; and the **complaints procedure** which can be set in motion either by another member State which has ratified the Convention concerned, by any delegate to the Conference or again by a decision of the Governing Body. Furthermore, a **complaints concerning the violation of trade union rights procedure**, which does not depend on the ratification of the Conventions in question by the States, was created in 1950 in agreement with the United Nations. Complaints may be lodged within the framework of this procedure either by governments or by employers' or workers' organizations.

II. Procedures for the drafting and submission of reports

The ILO Constitution contains provisions under the terms of which the governments of member States are required to submit reports to the ILO: a) on the measures taken to submit newly adopted standards to the competent authorities for possible ratification; b) on the state of their legislation and practice as regards unratified Conventions and Recommendations; c) on the measures taken to implement ratified Conventions. [We are mainly concerned here with the obligation to provide reports in the context of points b) and c).]

1. **REPORTS ON SUBMISSION**

7. See below the procedures relating to unratified Conventions.

In virtue of the provisions of Article 19 of the ILO Constitution, all member States are required to submit the Conventions and Recommendations adopted by the International Labour Conference to the authorities which, in each country, have power to legislate or take measures in order to give effect to these instruments. The instruments must be submitted to the competent authorities within one year of the closure of the Conference session at which they were adopted. The obligation to submit them to the competent authorities does not imply any obligation for governments to propose the ratification or application of the instrument in question. Governments have complete freedom as to the nature of the proposals to be made when submitting Conventions and Recommendations to the competent authorities. States must inform the Director-General of the submission and the decisions subsequently taken as a result. The reports are examined by the Committee of Experts and the Conference Committee on Application.

2. REPORTS ON RATIFIED CONVENTIONS

(a) *Obligation to report.*

Article 22 of the Constitution provides:

Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request.

(b) *Reporting system.*

The following system of reporting was approved by the Governing Body in November 1993, and came into force in 1996 for a trial period of five years:

- (i) *First and second reports.* A first *detailed* report is requested the year following that in which a Convention comes into force in a given country. A second *detailed* report is requested two years after the first (or one year after, if that is the year when a periodic report is in any event due from all States bound by that Convention).
- (ii) *Periodic reports.* Subsequent reports are requested periodically on one of the following bases, on the understanding that the Committee of Experts on the Application of Conventions and Recommendations may request detailed reports outside the normal periodicity.
 - (1) *Two-yearly reports.* *Detailed* reports are automatically requested every two years on the following ten Conventions, regarded as *priority Conventions*:

- *freedom of association*: Nos. 87 and 98;
- *abolition of forced labour*: Nos. 29 and 105;
- *equal treatment and opportunities*: Nos. 100 and 111;
- *employment policy*: No. 122;
- *labour inspection*: Nos. 81 and 129;
- *tripartite consultation*: No. 144.

- (2) *Five-yearly reports.* *Simplified* reports are requested every five years on other Conventions according to the table below. A detailed report is nevertheless required:
- where the Committee of Experts has made an observation or direct request calling for a reply; or
 - where the Committee of Experts considers that a *detailed* report should be communicated on account of possible changes in legislation or practice in a member State which might affect its application of the Convention.
- (iii) Non-periodic reports. Non-periodic *detailed* reports on the application of a ratified Convention are required:
- (1) when the Committee of Experts, on its own initiative or on that of the Conference Committee on the Application of Standards, so requests;
 - (2) when the Committee of Experts is called on to consider the follow-up to proceedings instituted under Articles 24 or 26 of the Constitution⁸ or before the Committee on Freedom of Association⁹;
 - (3) when comments have been received from national or international employers' or workers' organizations and the Committee of Experts considers that a detailed report is warranted in the light of the government's comments in reply or the fact that the government has not replied;
 - (4) when no report is supplied or no reply is given to comments made by the supervisory bodies (given that, where there is repeated failure to reply or the reply is manifestly inadequate, the Committee of Experts may examine the matter on the basis of available information).

(c) Contents of reports

(i) Detailed reports

A detailed report must be presented according to the **form approved by the Governing Body for each Convention**. This form sets out the substantive provisions of the Convention on which information has to be supplied and it includes specific questions about certain provisions. A typical report form also contains questions on the following matters¹⁰:

8. Art. 24 "Representations of non-observance of Conventions", art. 26 "Complaints of non-observance".

9. See above page 5.

- laws, regulations (all relevant texts, legislative or other);
- permitted exclusions, exceptions or other limitations to the application of the Convention of which the State intends to make use;
- detailed information on the implementation of the Convention;
- effect of ratification as regards national law;
- information and measures taken following the comments of supervisory bodies;
- authorities responsible for the enforcement of the relevant laws, regulations, etc.;
- judicial or administrative decisions;
- general appreciation by the government on how the Convention is applied with official supporting documents;
- observations of employers' and workers' organizations.

(ii) *Simplified reports*

These will contain only:

- information on whether any changes have occurred in legislation and practice affecting the application of the Convention;
- implementation of the Convention: statistical information or other information and communications prescribed by the Convention in question (including required information on any permitted exclusions);
- observations of employers' and workers' organizations.

3. REPORTS ON UNRATIFIED CONVENTIONS AND ON RECOMMENDATIONS

(a) *Obligation to report on unratified Conventions.*

Under Article 19, paragraph 5 (e), of the Constitution, a member State undertakes, in respect of any Convention which it has not ratified, to:

Report, to the Director-General of the International Labour Office at appropriate intervals as requested by the Governing Body, the position of its law and practice in regard to the matters dealt with in the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective

10. For more detailed information on the typical structure of such forms, see the publication "Handbook of procedures relating to international labour Conventions and Recommendations" ILO, Geneva, 1995.

agreement or otherwise and stating the difficulties which prevent or delay the ratification of such Convention.

(b) Obligation to report on Recommendations.

Under Article 19, paragraph 6 d), of the Constitution, member States undertake to:

Report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice in their country in regard to the matters dealt with in the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as it has been found or may be found necessary to make in adopting or applying them.

Choice of instruments for reports. The Governing Body selects the instruments on which reports are to be called for each year on the following basis:

- (i) Conventions and Recommendations selected are grouped by subject-matter;
- (ii) in order not to overburden either national administrations having to prepare reports or the ILO's supervisory procedures, only a small number of instruments are selected;
- (iii) subjects chosen are of current interest.

(c) Special reports

Within the context of the campaign to promote fundamental social rights, the Governing Body has decided that a special report should be submitted annually concerning difficulties of ratification for each of the four categories of human rights Conventions: in 1997 for Conventions Nos. 29 and 105, in 1998 for Conventions Nos. 87 and 98, in 1999 for Conventions Nos. 100 and 111, and in 2000 for Convention No. 138. After this date, the cycle will be repeated.

(d) Form of reports.

The Governing Body has adopted a standard form of questionnaire for reports on unratified Conventions and on Recommendations. In some cases, it adopts instead a special report form asking specific questions as to the instruments in question.

4. ROLE OF EMPLOYERS' AND WORKERS' ORGANIZATIONS

Under Article 23, paragraph 2, of the Constitution, governments are required to communicate copies of all reports on ratified Conventions, unratified Conventions and on Recommendations to representative organizations of employers and workers and indicate, when

forwarding their reports to the ILO, the organizations to which communication has been made.

Those or any other employers' and workers' organizations, whether or not they have received copies of government reports, may at any time transmit any comments they wish on the subjects in question. Supervisory bodies have stressed the value of such comments as a means of assisting them, in particular, in assessing the effective application of ratified Conventions.

III. Brief comparison between regular ILO supervisory machinery and conventional United Nations machinery

It is difficult to make a comparison between the two supervisory systems owing to their different objectives, institutional development and the historical context in which they have emerged; for these same reasons, any comparison can only be partial. Examining the two systems from a single viewpoint can sometimes lead to a better interaction and exploitation of their respective advantages.

The ILO's regular supervisory system is largely based on the provisions set forth in the Organization's Constitution which were the starting point for subsequent developments determined by the Organization's competent bodies. In this sense, the ILO has a single protection system. The conventional United Nations machinery for the protection of human rights, on the other hand, derives directly from the provisions of the instruments themselves and differs from one Convention to another.

One of the original features and one of the advantages of the ILO supervisory system lies in the fact that the principle of tripartism is systematically applied¹¹. In the United Nations machinery, it is possible for non-governmental organizations to make their contribution on an *ad hoc* basis¹².

Another remarkable feature of the ILO supervisory system is the obligation for governments to submit reports on unratified instruments¹³. Such machinery does not exist for United Nations human rights instruments.

11. See above.

12. See sections dealing with this topic in the Handbook.

13. See above.

The regular supervisory machinery of the ILO consists of two successive authorities set up by a resolution of the International Labour Conference in 1926. The first, the Committee of Experts, whose members are appointed by the Governing Body at the proposal of the Director-General, ensures, *inter alia*, a highly technical investigation of government reports and other available sources of information. The second, the Committee on the Application of Conventions and Recommendations, a tripartite body, bases its approach on consultation and dialogue with the governments concerned in order to seek solutions to the differences encountered¹⁴. Within the framework of the conventional United Nations system, each Convention (with the exception of the International Covenant on Economic, Social and Cultural Rights¹⁵) provides for the establishing of a Committee, consisting of experts elected by the States Parties to the Convention. The approach adopted by these bodies in examining government reports derives from their own practice and is subject to constant change. Thus far, the approach of all the Committees rests essentially on dialogue, encouragement and persuasion and bears no relation to a jurisdictional procedure.

Unlike the ILO's Committee of Experts, the examination sessions of the United Nations treaty bodies are not as a rule held in private.

Other differences exist between the two systems, concerning their working methods, the nature of the Secretariat's role, etc.

IV. Coordination between the ILO's and United Nations supervisory machinery

United Nations human rights instruments cover a wide range of subjects which are also covered, in whole or in part, by certain ILO Conventions. In order to reduce overlapping between the reports required by the two supervisory systems, and in order to take full advantage of reports already submitted by governments on a given subject, links exist between the two systems. Indeed, governments can use information contained in reports intended for the ILO in the preparation of reports to be submitted under United Nations instruments¹⁶. The reverse is also true.

14. See above.

15. The Committee on Economic, Social and Cultural Rights was established by resolution 1985/17 of ECOSOC.

16. It should be remembered here that this practice is provided for explicitly by Article 17, paragraph 3 of the International Covenant on Economic, Social and Cultural Rights, which sets out that "where [...] information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice".

Furthermore, when examining government reports, the Committee of Experts of the ILO, as well as United Nations treaty bodies, may use information provided by other intergovernmental organizations. Thus, at the meeting of the chairs of United Nations treaty bodies in 1988, it was recommended that the Secretariat should provide the members of each committee with statistics from intergovernmental organizations that were likely to be of assistance when examining reports from States Parties.

The participation of the ILO in the work of United Nations bodies created under conventional instruments generally consists in preparing a report for each one, in which the Office indicates the relevant international labour Conventions which have been ratified by the State in question, and presents any observations that the ILO supervisory bodies have made as to their application. The report also contains information on the special technical assistance that the ILO provides for these countries. The Office may also take part in general discussions held by certain committees. Often, the points raised by the ILO are reflected in the conclusions of the committees which, moreover, have on numerous occasions recommended that the countries should ratify or apply the relevant ILO Conventions.

The Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child are the two bodies for which the ILO's contribution has been most productive.

Committee on Economic, Social and Cultural Rights. Of international human rights instruments, the International Covenant on Economic, Social and Cultural Rights is the most closely linked to international labour standards. Articles 6 and 10, in particular, share an affinity with a very large number of ILO Conventions. When the Committee, established to ensure supervision of the application of the Covenant, is preparing to examine the report of a State Party, it receives from the ILO comments from the Organization's supervisory bodies concerning the Conventions linked to each article of the Covenant. An exchange then takes place between the Committee and the ILO, before the government report is examined, with the aim of assisting the Committee in drawing up its list of questions and ensuring that the two organizations have received consistent information. If necessary, the ILO takes part in the sittings to examine the Committee's reports.

Committee on the Rights of the Child. The ILO has taken a very active part in the preparation of the project for the Convention on the Rights of the Child. In particular, this participation has found expression in the adoption of a broad definition of the term "child" and the inclusion of provisions established in international labour Conventions. In this respect, Article 32 of the Convention under the terms of which States must protect children against economic exploitation and all forms of work that are prejudicial to their development, refers to the measures that must be taken in order to achieve this end "having regard to the relevant provisions of other international instruments".

Under the terms of Article 45 a) of the Convention, the ILO:

- shall be entitled to be represented at the sessions of the Committee: the ILO has been represented at all sessions of the Committee and takes an active part in the meetings of the Pre-sessional Working Group, which is responsible for preparing the Committee's sittings;
- is invited to provide advice or to submit reports in areas falling within the scope of its mandate. Information on the application of international labour Conventions relevant to the rights of the child, as well as on technical cooperation programmes developed by the ILO, is regularly transmitted to the Committee before each session. In addition, opinions concerning the interpretation of the provisions of the Convention in particular have been transmitted to the Committee¹⁷ either at its request or spontaneously.

The Committee recommends that States which have not already done so ratify the relevant ILO standards, especially Convention No. 138 concerning the minimum age for admission to employment or work, and also that they have recourse to the technical expertise of the ILO in order to find solutions to their problems. The Recommendations of the Committee are made known through the external services of the ILO for consideration and, if necessary, appropriate action. A follow-up of the implementation of these Recommendations has been ensured since 1995 following a special meeting of the Committee dedicated to this subject.

Human Rights Committee. In the early '80s, a consensus was reached within the Human Rights Committee in order that all useful information from specialized agencies be regularly made available to the members of the Committee. Since then the ILO, before each session of the Committee, sends information notes on the situation concerning the state of ratification of the relevant Conventions in the countries whose reports are to be examined and the comments of the ILO supervisory bodies. In practice, these information notes are used by the members of the Committee as a basis for their comments and questions to governments. Since 1995, and contrary to the practice of previous years, the ILO has been represented in the Pre-sessional Working Group, with the purpose of discussing the information notes it has submitted and assisting the Committee in the preparation of questions that the latter wishes to raise with the State Party whose report is being examined. The Human Rights Committee has expressed its satisfaction regarding this collaboration and is currently examining ways of exploiting still further the information provided by the ILO.

17. For example: "Protection of children against economic exploitation", IVth session of the Committee on the Rights of the Child (Sept./Oct. 1993).

Committee on the Elimination of Discrimination Against Women. In a decision adopted at its sixth session, in 1987, taken in accordance with Article 22 of the Convention, the Committee decided to invite specialized agencies to submit reports on their programmes which could encourage application of the Convention. Furthermore, in 1991, the Committee decided that the preliminary analysis of each government report by the Secretariat should use all available information from United Nations agencies. The Committee also encouraged the full participation in its work of experts from specialized agencies, concerning, *inter alia*, the interpretation of the provisions of the Convention, as well as in the activities of its working groups.

Committee on the Elimination of Racial Discrimination. In accordance with decision 2 (VI) of 21 April 1972 of the Committee on the Elimination of Racial Discrimination, the ILO has for many years collaborated in its work. As with other bodies created by virtue of United Nations Conventions, the collaboration of the ILO generally consists in preparing information notes indicating the relevant international labour Conventions which have been ratified by the States under consideration, and submitting any comments that the ILO supervisory bodies have made as to their application. Thus the Committee is regularly informed of the most recent comments made by the Committee of Experts in relation to Convention No. 111 concerning discrimination (employment and occupation), Convention No. 107 on indigenous and tribal populations and Convention No. 169 on indigenous and tribal peoples. It should be noted that the Committee of Experts of the ILO often refers in its own comments to information provided by governments for the Committee on the Elimination of Racial Discrimination. If necessary, the ILO is also represented at the sessions of the Committee.

RELATED ARTICLES IN SIX MAJOR INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

	ICESCR	ICCPR	ICERD	CEDAW	CAT	CRC
	Article No.	Article No.	Article No.	Article No.	Article No.	Article No.
Right to self-determination	1	1				
Public emergencies; limitation of rights; derogation from rights	4; 5	4; 5	1(2); 1(3)		2(2); 2(3)	13(2); 14(3); 15(2); 37
Non-discrimination; equality before the law; general policy	2(2); 3	2(1); 3; 26	2(1); 5(a)	2; 15(1); 9-16		2(1); 2(2)
Implementation of the instrument; preventive measures			7	5; 5a	10; 11	19(2); 33; 35
Implementation of the instrument; adoption of legislation	2(1); 2(3)	2(2)	2(2); 4; 5, first sentence	3; 2(a)	2(1)	4
Implementation of the instrument; legal punishability of offences			4(a); 4(b)	(2b); 11(2a)	4; 5; 6; 7; 8; 9	
Right to an effective remedy		2(3)	6	2(c)	14	37(d); 39
The right to procedural guarantees		14; 15; 16	5(a)	15(1); 15(2); 15(3)	12; 13; 14; 15	12(2); 37(d); 40

	ICESCR	ICCPR	ICERD	CEDAW	CAT	CRC
	Article No.	Article No.	Article No.	Article No.	Article No.	Article No.
The right to life; the right to physical and moral integrity; slavery, forced labour and traffic in persons		6; 7; 8		6	1; 16	6; 11; 19; 34; 32; 35 33, 36; 37(a)
The right to liberty and security of the person		9; 10; 11	5(b)			37
The right to freedom of movement; the right to access to any public place; expulsion and extradition		12; 13	5(d-i); 5(d-ii); 5(f)	15(4)	3	10
The right to privacy; the right to freedom of thought, conscience and religion		17; 18	5(d-vii)			14; 16
Freedom of opinion and expression		19; 20	5(d-viii); 4(a); 4(c)			12; 13
The right to peaceful assembly and association		21; 22	5(d-ix); 4(b)			15
The right to marry and found a family; protection of the family, mother and children	10	23; 24	5(d-iv)	16; 12; 4(2); 5(b); 11(2)		5; 16; 18; 19; 20; 22; 23; 33; 34; 36; 38
The right to a nationality		24(3)	5(d-iii)	9		7; 8

	ICESCR	ICCPR	ICERD	CEDAW	CAT	CRC
	Article No.	Article No.	Article No.	Article No.	Article No.	Article No.
The right to education; other cultural rights	13; 14; 15	27	5(e-v); 5(e-vi)	10; 13(c); 14(2-d)		28; 29; 30; 31

**BIBLIOGRAPHY
AND
SHORT NOTES ON CONTRIBUTORS**

BIBLIOGRAPHY

(A) Selected materials on human rights reporting

Books

- Alston, P.: *The Convention on the Rights of the Child: A Commentary* (Oxford, Clarendon Press, 1997), 950 pp.
- , (ed.), *The United Nations and Human Rights, A Critical Appraisal* (Oxford, Clarendon Press, 1992), 765 pp.
- Banton, M.: *International Action Against Racial Discrimination* (Oxford, Clarendon Press, 1996), 362 pp.
- Bossuyt, M.J.: *Guide to the “Travaux préparatoires” of the International Covenant on Civil and Political Rights* (Dordrecht, Boston, Lancaster, Nijhoff Publishers, 1987), 851 pp.
- Burgers, J.H.: and Danelius, H., *The United Nations Convention against Torture: a Handbook on the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (Dordrecht, Boston, Nijhoff Publishers, 1988), 271 pp.
- Detrick, S., (ed.): *The United Nations Convention on the Rights of the Child: A Guide to the ‘Travaux Préparatoires’* (Dordrecht, Martinus Nijhoff, 1992), 712 pp.
- Dormenval, A.: *Procédures onusienne de mise en oeuvre des droits de l’homme: limites ou défauts* (Paris, Presses universitaires de France, 1991), 277 pp.
- Hannum, H., (ed.): *Guide to International Human Rights Practice*. (Philadelphia, University of Pennsylvania Press, 2d ed., 1992). 308 pp.
- Henkin, L., (ed.): *The International Bill of Human Rights: The Covenant on Civil and Political Rights* (New York, Columbia University Press, 1981), 523 pp.
- Henkin, L. and Hargrove, J.L. (eds.): *Human Rights: An Agenda for the Next Century* (Washington DC, American Society of International Law, 1994), 524 pp.
- Himes, J., (ed.): *Implementing the Convention on the Rights of the Child: Resource Mobilization in Low-Income Countries* (The Hague, Martinus Nijhoff, 1995), 262 pp.

- Human Rights – Status of International Instruments*, (New York, 1987), United Nations Publication, Sales No. E.87.XIV.2., 336 pp.
- Human Rights: A Compilation of International Instruments*. (New York, 1994), United Nations Publication, Sales No. E.94.XIV.1., 950 pp.
- Jabine, T. and R. Claude, (eds.): *Human Rights and Statistics, Getting the Record Straight* (Philadelphia, University of Pennsylvania Press, 1992). 458 pp.
- LeBlanc, L.: *The Convention on the Rights of the Child: United Nations Lawmaking on Human Rights* (Lincoln, University of Nebraska Press, 1995), 337 pp.
- Lerner, N.: *The UN Convention on the Elimination of all Forms of Racial Discrimination* (Alphen aan der Rijn, Sijthoff and Noordhoff, 2nd edition, 1980), 259 pp.
- Lijnzaad, L.: *Reservations to UN-Human Rights Treaties* (Dordrecht, Martinus Nijhoff, 1995), 448 pp.
- McGoldrick, D.: *The Human Rights Committee*, Oxford, Clarendon Press; (New York, Oxford University Press, 1991), 576 pp.
- Meron, T.: *Human Rights Law-Making in the United Nations* (New York, Oxford University Press, 1986), 351 pp.
- Nowak, M.: *Commentary on the U.N. Covenant on Civil and Political Rights* (Kehl am Rhein, N.P. Engel, 1993) 948 pp.
- O’Flaherty, M.: *Human Rights and the UN: Practice Before the Treaty Bodies*, London, Sweet and Maxwell, 1996), 286 pp.
- Robertson, A., and Merrills, J.: *Human Rights in the World*. (Manchester, Manchester University Press, 3rd ed., 1989), 314 pp.
- Symposium: The Implementation of the International Covenant on Economic, Social and Cultural Rights*. Human Rights Quarterly 9(2), (1987), pp. 121-287.
- Symposium: Limitation and Derogation Provision in the International Covenant on Civil and Political Rights*. Siracusa 1984, Human Rights Quarterly, 7(1), (1985), 157 pp. Craven, M. *The International Covenant on Economic, Social and Cultural Rights* (Oxford, Clarendon Press), 413 pp.
- Tyagi, Y.K.: *The Law and Practice of the Human Rights Committee* (Dordrecht, Martinus Nijhoff, 1993).
- United Nations Action in the Field of Human Rights*. (New York, 4th ed.), United Nations Publication, Sales No. E.94.XIV.11, 417 pp.

Vasak, K. and P. Alston, (eds.): *The International Dimensions of Human Rights*. 2 vols. (Westport, CT, Greenwood Press); Paris, United Nations Educational, Scientific and Cultural Organization, 1982.

Verhellen, E., (ed.): *Monitoring Children's Rights* (The Hague, Martinus Nijhoff, 1996), 940 pp.

Williams, P.: *Treatment of Detainees: Examination of Issues Relevant to Detention by the United Nations Human Rights Committee* (Geneva, Henry Dunant Institute, 1990), 267 pp.

Articles

Alston, P.: "Out of the Abyss: the Challenges Confronting the New United Nations Committee on Economic, Social and Cultural Rights". *Human Rights Quarterly*, 9(3), 1987, pp. 332-382.

Bossuyt, M.J.: "Le règlement intérieur du Comité des droits de l'homme". *Revue Belge de droit international*, 14, 1978/79, pp.104-56.

Brudner, A.: "The Domestic Enforcement of the International Covenants on Human Rights: a Theoretical Framework". *University of Toronto Law Journal*, 35(3), 1985, pp. 219-254.

Burgenthal, T.: "Implementing the UN Racial Convention", *Texas International Law Journal*, 12(1), 1977, pp.187-221.

Byrnes, A.C.: "The 'Other' Human Rights Treaty Body: the Work of the Committee on the Elimination of Discrimination against Women". *Yale Journal of International Law*, 14(1), 1989, pp.1-67.

Cancado Trindade, A.A.: "Co-existence and Co-ordination of Mechanisms of International Protection of Human Rights (at Global and Regional Levels)." Hague Academy of International Law, *Recueil des cours*, 202(2), 1987, pp. 9-453.

Chanet, C.: "La convention des Nations Unies contre la torture et autres peines ou traitements cruels, inhumains ou dégradants". *Annuaire français de droit international*, 30, 1984, pp. 625-636.

Gomez del Prado, J.L.: "United Nations Conventions on Human Rights: the Practice of the Human Rights Committee and the Committee on the Elimination of Racial Discrimination in Dealing with Reporting Obligations of States Parties." *Human Rights Quarterly*, 7(4), 1985, pp. 492-513.

–, “Organos y mecanismos internacionales de supervisión establecidos por las convenciones de las Naciones Unidas sobre derechos humanos.” *Revista IIDH*, 6(Jul./Dec.), 1987, pp. 21-46.

Harvey, P.: “Monitoring Mechanisms for International Agreements Respecting Economic and Social Human Rights.” *Yale Journal of International Law*, 12(2), 1987, pp. 396-420.

Henckaerts, J-M.: “The Coming of Age of the International Covenant on Economic, Social and Cultural Rights: Normative Clarification of Covenant Rights Through the Work of the International Committee on Economic, Social and Cultural Rights”, in Nikken, P. and Cançado Trindade, A. (eds.), *The Modern World of Human Rights: Essays in Honour of Thomas Buergenthal*, (San José, Inter-American Institute of Human Rights), 1996, pp.267-83.

Jhabvala, F.: “Domestic Implementation of the Covenant on Civil and Political Rights.” *Netherlands International Law Review*, 32(3), 1985, pp. 461-486.

Schmidt, M.: “The Complementarity of the Covenant and the European Convention on Human Rights: Recent Developments”, in Harris, D. and Joseph, S. (eds.), *The International Covenant on Civil and Political Rights and United Kingdom Law*, (Oxford, Clarendon Press, 1995), p. 629-659.

Tomuschat, C.: “National Implementation of International Standards on Human Rights.” *Canadian Human Rights Year Book 1984/1985*, 1985, pp. 31-61.

Major United Nations resolutions and documents in the field of human rights reporting

General Assembly resolutions relating to reporting obligations: 40/116 of 13 December 1985; 41/121 of 4 December 1986; 42/105 of 7 December 1987; 43/115 of 8 December 1988; 44/135 of 15 December 1989; 45/85 of 14 December 1990; 46/111 of 17 December 1991; 47/111 of 16 December 1992; 48/120 of 20 December 1993; 49/178 of 23 December 1994; 50/170 of 22 December 1995; 51/87 of 12 December 1996.

Reports of the Meeting of the Chairpersons of Human Rights Treaty Bodies: (1) A/39/484 (1984); (2) A/44/98 (1988); (3) A/45/636 (1990); (4) A/47/628 (1992); (5) A/49/537 (1994); (6) A/50/505 (1995); (7) A/51/482 (1996).

A/51/18 Report of the Committee on the Elimination of Racial Discrimination.

A/51/38 Report of the Committee on the Elimination of Discrimination against Women.

A/51/40 Report of the Human Rights Committee.

A/51/41 Report of the Committee on the Rights of the Child.

A/51/44 Report of the Committee against Torture.

E/1996/22 Report of the Committee on Economic, Social and Cultural Rights.

A/44/668: Effective Implementation of International Instruments on Human Rights. Note by the Secretary-General. (Expert study on possible long-term approaches to enhancing the effective operation of existing and prospective bodies established under United Nations human rights instruments. 8 November 1989, 82 pp.)

A/44/539: effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights. Report of the Secretary-General (contains draft consolidated guidelines).

E/C.12/1989/3: Implementation of the International Covenant on Economic, Social and Cultural Rights. List of articles showing the nature and extent of overlapping under six international human rights instruments. Report of the Secretary-General.

A/CONF.157/PC/62/Add.11/Rev.1, World Conference on Human Rights: Interim report on updated study by Mr. Philip Alston, 22 April 1993, 98 pp.

Selected journals and periodicals focusing on human rights

Australian Journal of Human Rights. Sydney, University of New South Wales Human Rights Centre.

Canadian Human Rights Yearbook. Toronto, Carswell.

Columbia Human Rights Law Review. New York, Columbia University School of Law.

Harvard Human Rights Journal. Cambridge, MA, Harvard Law School.

Human Rights Law Journal. Kehl am Rhein, N.P. Engel.

Human Rights Quarterly. Baltimore, MD, Johns Hopkins University Press.

International Journal of Children's Rights. Dordrecht, Martinus Nijhoff Publishers.

International Journal of Refugee Law. Oxford. Oxford University Press.

Israel Yearbook on Human Rights. Tel Aviv, Tel Aviv University Faculty of Law.

Netherlands Quarterly of Human Rights. Utrecht, Netherlands Institute of Human Rights (SIM).

New York Law School Journal of Human Rights. New York, New York Law School.

The Review. Geneva, International Commission of Jurists.

Revista IIDH. Instituto Interamericano de Derechos Humanos, San José, Costa Rica.

South African Journal on Human Rights. Johannesburg, Centre for Applied Legal Studies, University of Witwatersrand.

(B) Selected materials on international human rights law

Books

Alston, P., (ed.): *Promoting Human Rights Through Bills of Rights, Comparative Perspectives*. Oxford, Clarendon Press, 1997, 512 pp.

Boyle, A. and Anderson, M.: *Human Rights Approaches to Environmental Protection*, Oxford, Clarendon Press, 1996, 313 pp.

Brownlie, I.: *Treaties and Indigenous Peoples*. Oxford, Clarendon Press; New York, Oxford University Press, 1992. 105 pp.

Buergenthal, T.: *International Human Rights in a Nutshell*. St. Paul, MN, West Pub. Co., 2nd. Ed., 1995, 358 pp.

Cassese, A.: *Human Rights in a Changing World*. Philadelphia, Temple University Press, 1990. 245 pp.

Clapham, A.: *Human Rights in the Private Sphere*, Oxford, Clarendon Press, 1993, 385 pp.

Clark, R.: *The United Nations Crime Prevention and Criminal Justice Program*, Philadelphia, University of Pennsylvania Press, 1994, 331 pp.

Claude, R.P.: and Burns, H.W., (eds.), *Human Rights in the World Community: Issues and Action*. Philadelphia, University of Pennsylvania Press, 1989, 376 pp.

Cook, R. (ed.): *Human Rights of Women: National and International Perspectives*, Philadelphia, University of Pennsylvania Press, 1994, 634 pp.

Crawford, J.: *The Rights of Peoples*. Oxford, Clarendon Press; New York, Oxford University Press, 1992. 236 pp.

- Degener, T. and Koster-Dreese, Y., (eds.): *Human Rights and Disabled Persons: Essays and Relevant Human Rights Instruments*, Dordrecht, Martinus Nijhoff, 1995, 757 pp.
- Diemer, A. et al.: *Philosophical Foundations of Human Rights*. Paris, United Nations Educational, Scientific and Cultural Organization, 1986. 340 pp.
- Donnelly, J.: *International Human Rights*. Boulder, CO, Westview Press, 1993. 206 pp.
- Eide, A. et al., (eds.): *The Universal Declaration of Human Rights: A Commentary*, Oslo, Scandinavian University Press, 1992, 474 pp.
- Forsythe, D.P.: *Human Rights and World Politics*, 2nd ed., Lincoln, University of Nebraska Press, 1989, 316 pp.
- Gros Espiell, H.: *Los Derechos Económicos, Sociales y Culturales en el Sistema Interamericano*. San José, Costa Rica, Asociación Libro Libre, 1986, 248 pp.
- Hannum, H., (ed.): *Guide to International Human Rights Practice*. Philadelphia, University of Pennsylvania Press, 2nd ed. 1992, 310 pp.
- Laviña, F.: *Sistemas internacionales de protección de los derechos humanos*. Buenos Aires, Ediciones Depalma, 1987, 249 pp.
- Lawson, E., (ed.): *Encyclopedia of Human Rights*. New York, Taylor & Francis, 2nd ed. 1996.
- Lillich, R. and Hannum, H.: *International Human Rights, Problems of Law, Policy, and Practice*. 3rd ed. Boston, Little, Brown Company, 1995, 1160 pp.
- Mahoney, K. and Mahoney, P.: *Human Rights in the Twenty-First Century: A Global Challenge*, Dordrecht, Martinus Nijhoff, 1993, 1028 pp.
- Marie, J.B.: *La Commission des Droits de l'Homme de l'ONU*. Paris, Pedone, 1975, 352 pp.
- McDougall, M., H. Lasswell and L. Chen: *Human Rights and World Public Order*. New Haven, CT, Yale University Press, 1980. 1016 pp.
- Newman, F., and Weissbrodt, D.: *International Human Rights, Law, Policy and Process*. Cincinnati, Anderson Pub. Co., 2nd ed. 1996, 812 pp.
- Nikken, P.: *La protección internacional de los derechos humanos: su desarrollo progresivo*. Madrid, Editorial civitas S.A., 1987, 321 pp.

Ramcharan, B.G., (ed.): *Human Rights: Thirty Years after the Universal Declaration*. The Hague, Nijhoff, 1979, 274 pp.

Rodley, N.: *The Treatment of Prisoners Under International Law*. Paris, United Nations Educational, Scientific and Cultural Organization; Oxford, Clarendon Press; New York, Oxford University Press, 1987. 374 pp.

Rubellin-Devichi, J. and Frank, R.: *L'Enfant et les conventions internationales*, Lyon, Presses universitaires de Lyon, 1996, 492 pp.

Sieghart, P.: *The International Law of Human Rights*. Oxford, Clarendon Press, 1983. 569 pp.

Simma, B. et al. (eds.). *The Charter of the United Nations, A Commentary*. Oxford. Oxford University Press, 1994. 1258 pp.

Steiner, H. and Alston, P.: *International Human Rights in Context: Law, Politics, Morals*, Oxford, Clarendon Press, 1996, 1245 pp.

Thornberry, P.: *International Law and the Rights of Minorities*. Oxford, Clarendon Press; New York, Oxford University Press, 1991. 451 pp.

Tolley, H.: *The U.N. Commission on Human Rights*. Boulder, Westview Press, 1987. 300 pp.

Van Bueren, G., *The International Law of the Rights of the Child*, Dordrecht, Martinus Nijhoff, 1994, 434pp.

Yearbook of the Human Rights Committee:

1977-1978, Vols. I and II, (CCPR/1 and Add.1)

1979-1980, Vols. I and II, (CCPR/2 and Add.1)

1981-1982, Vols. I and II, (CCPR/3 and Add.1)

1983-1984, Vols. I and II, (CCPR/4 and Add.1)

1985-1986, Vols. I and II, (CCPR/5 and Add.1)

1987, Vols. I and II, (CCPR/6 and Add.1)

Official Records of the Human Rights Committee:

1987/1988, Vols. I and II, (CCPR/7 and Add.1)

1988/1989, Vols. I and II, (CCPR/8 and Add.1)

1989/1990, Vols. I and II, (CCPR/9 and Add.1)

1990/1991, Vols. I and II, (CCPR/10 and Add.1)

1991/1992, Vols. I and II, (CCPR/11 and Add.1)

1992/1993, Vols. I and II, (CCPR/12 and Add.1)

SHORT NOTES ON CONTRIBUTORS

THEO VAN BOVEN is professor of international law at the University of Limburg, Netherlands. He was previously Director of the United Nations Division of Human Rights in Geneva from 1977 to 1982. He was representative of the Netherlands to the United Nations Commission on Human Rights from 1970 to 1975. Professor van Boven was a member of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities from 1975 to 1977, and again since 1986.

PHILIP ALSTON is professor of international law at the European University Institute in Florence. He has previously taught at the Australian National University, Harvard Law School and the Fletcher School of Law and Diplomacy. From 1992 to 1994 he was also Discrimination Commissioner for the Australian Capital Territory (Canberra). He was Rapporteur of the Committee on Economic, Social and Cultural Rights from 1987 to 1990 and has been Chairperson of the Committee since 1991.

CECIL BERNARD is head of the Office of the Corporate Secretary, BWIA International Airways Corporation, the national airline of Trinidad and Tobago. From 1985 to 1989, he served as senior state counsel in the Chambers of the Attorney-General of Trinidad and Tobago, where he was responsible primarily for human rights issues, including the preparation and drafting of his country's human rights reports under the Covenant on Civil and Political Rights.

PETTER WILLE is Counsellor at the Permanent Mission of Norway in Geneva. He was Head of Division in the Legal Department of the Ministry of Foreign Affairs from 1989 to 1995 and is a former Deputy Judge at a town court.

FAUSTO POCAR is professor of international law and Director of the Postgraduate School of International Law at the University of Milan, Italy, and is also currently the University's Vice-Rector. He has served as expert on human rights and international law issues in numerous international conferences and seminars. Professor Pocar has been a member of the Human Rights Committee (since 1985) and served as its Vice-Chairperson, Rapporteur and Chairman from 1991 to 1992.

LAURIE WISEBERG is the founder of Human Rights Internet, an international non-governmental communications network and clearing house on human rights with universal coverage. Internet has consultative status with the United Nations. Dr. Wiseberg has been the organization's executive director since its foundation in 1976. She is also an adjunct professor at the Graduate School of the Faculty of Common Law, University of Ottawa, Canada.

LUIS VALENCIA RODRIGUEZ is Ambassador of Ecuador to Argentina. He has also represented his country as Ambassador to Bolivia, Brazil, Peru and Venezuela. From 1965 to 1966, and from 1981 to 1984, he was Minister for External Relations of Ecuador. He taught international law at Central University, Quito. Ambassador Valencia Rodriguez was a member of the Committee on the Elimination of Racial Discrimination from 1970 to 1986 and was twice the Committee's Chairperson (1972-1974, and 1984-1986).

MARTA SANTOS PAIS is Director of the Evaluation, Policy and Planning Department at UNICEF and was formerly senior legal adviser in the Office of Comparative Law of the Attorney General's Office in Portugal. She was member of Portuguese delegations to International Conferences including in the United Nations and the Council of Europe. She participated in the drafting of the Convention on the Rights of the Child and was a member and rapporteur of the Committee on the Rights of the Child from its inception to February 1997.

ZAGORKA ILIC is a former adviser to the Federal Secretary for Foreign Affairs of the Government of Yugoslavia. A career diplomat, she dealt primarily with social and humanitarian affairs. She participated in numerous international and regional conferences and seminars, in particular in the United Nations World Conferences on Women. Ms. Ilic was a member of the Committee on the Elimination of Discrimination against Women since its inception in 1980 until 1994 and served as its Vice-Chairperson from 1980 to 1982.

IVANKA CORTI is member of the Italian Governmental Commission for Human Rights and of different Italian women's Human Rights NGOs. From 1985 to 1992 she has been member of the Italian governmental Commission for Equality. She was elected for the first time as CEDAW expert in 1986, re-elected in 1990 and in 1994 for the third term. In 1993 she was elected chairperson of the CEDAW Committee and re-elected for the 1995-1996 term. In 1996 she was elected chairperson of the Seventh Meeting of the Persons Chairing Human Rights Treaty Bodies. Ivanka Corti participated in different international conferences and seminars and in the World Conferences in Vienna, Cairo and Beijing. She is author of different publications on women's human rights.

JOSEPH VOYAME retired in 1988 as Director of the Federal Bureau of Justice in Berne, Switzerland. He lectured for many years at various Swiss universities and is adjunct professor at the Institut des hautes études en administration publique (IDHEAP) in Lausanne. He was a member of the Committee against Torture and its Chairman since the Committee's inception in 1988 until 1993.

PETER BURNS is a professor of law at the University of British Columbia, Vancouver, Canada, where he was the Dean of Law from 1982-91. He has been a member of the United Nations Committee Against Torture since 1987, is the Chairman of the International Centre for Criminal Law Reform and Criminal Justice Policy, Vancouver; he is also President of the Society for the Reform of the Criminal Law. He has published or edited 6 books and over 70 papers or articles.