

Frequently Asked Questions on Economic, Social and Cultural Rights

H u m a n R i g h t s

Fact Sheet No.

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Office of the United Nations
High Commissioner for Human Rights



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INTRODUCTION

In the past 15 years interest in promoting and protecting economic, social and cultural rights has grown. Non-governmental organizations (NGOs), academia, Governments and the judiciary are paying increasing attention to the protection of these rights in their programmes, policies and case law, and highlighting the need to respect them as a key to ensuring greater overall enjoyment of human rights. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights raises the hope of a renaissance for the protection of these rights, both nationally and internationally. This is timely, particularly given that the denial of economic, social and cultural rights continues and is even intensifying, in wealthy and poor countries alike.

The relative neglect of these rights on the human rights agenda has, unfortunately, fostered a host of misunderstandings and misconceptions about them. And while many of the reasons for this neglect—cold war tensions, academic neglect, lack of clarity on substance, lack of civil society engagement—have disappeared, many of the misunderstandings persist. This Fact Sheet therefore seeks to demystify economic, social and cultural rights, and answer some of the most common questions put to practitioners. While it assumes a certain basic knowledge about human rights, it should be useful for a wider public.

The publication of a separate fact sheet on economic, social and cultural rights should not, however, give the impression that they are somehow a distinct category of rights that can be dealt with in isolation. On the contrary, strengthening the protection of economic, social and cultural rights is an integral part of strengthening the protection of *all* the rights recognized in the Universal Declaration of Human Rights. Dispelling the myths specifically surrounding economic, social and cultural rights is crucial to dismantling unworkable categorizations of rights as we move towards a human rights agenda that treats civil, cultural, economic, political and social rights as truly universal, indivisible, interdependent and interrelated.

1. What are economic, social and cultural rights?

Economic, social and cultural rights are those human rights relating to the workplace, social security, family life, participation in cultural life, and access to housing, food, water, health care and education.

Although economic, social and cultural rights may be expressed differently from country to country or from one instrument to another, here is a basic list:

- **Workers' rights**, including freedom from forced labour, the rights to decide freely to accept or choose work, to fair wages and equal pay for equal work, to leisure and reasonable limitation of working hours, to safe and healthy working conditions, to join and form trade unions, and to strike;
- **The right to social security and social protection**, including the right not to be denied social security coverage arbitrarily or unreasonably, and the right to equal enjoyment of adequate protection in the event of unemployment, sickness, old age or other lack of livelihood in circumstances beyond one's control;
- **Protection of and assistance to the family**, including the rights to marriage by free consent, to maternity and paternity protection, and to protection of children from economic and social exploitation;
- **The right to an adequate standard of living**, including the rights to **food** and to be free from hunger, to **adequate housing**, to **water** and to **clothing**;
- **The right to health**, including the right to access to health facilities, goods and services, to healthy occupational and environmental conditions, and protection against epidemic diseases, and rights relevant to sexual and reproductive health;
- **The right to education**, including the right to free and compulsory primary education and to available and accessible secondary and higher education, progressively made free of charge; and the liberty of parents to choose schools for their children;
- **Cultural rights**, including the right to participate in cultural life and to share in and benefit from scientific advancement, and protection of authors' moral and material interests from scientific, literary or artistic production.

These rights are human rights. Like other human rights, they contain dual freedoms: *freedom from the State* and *freedom through the State*. For example, the right to adequate housing covers a right to be free from forced evictions carried out by State agents (*freedom from the State*) as well as a right to receive assistance to access adequate housing in certain situations (*freedom through the State*).

They have become increasingly well defined in national, regional and global legal systems, in laws and regulations, in national constitutions, and in international treaties. Accepting them as human rights creates legal obligations on States to ensure everyone in the country can enjoy these rights and to provide remedies if they are violated. As with other human rights, recognizing economic, social and cultural rights together with the principle of non-discrimination puts the focus on the most excluded, discriminated and marginalized groups in society.

Box 1 Principal international instruments including economic, social and cultural rights

Universal Declaration of Human Rights (1948)

United Nations human rights treaties

- International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- International Covenant on Economic, Social and Cultural Rights (1966)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Rights of the Child (1989)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Convention on the Rights of Persons with Disabilities (2006)

Regional treaties

- European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), its First Protocol (1952), European Social Charter (1961) and Revised European Social Charter (1996)
- American Convention on Human Rights (1969), and Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (1988)
- African Charter on Human and Peoples' Rights (1981), African Charter on the Rights and Welfare of the Child (1990), and Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)

2. Why is protecting economic, social and cultural rights important?

Failing to protect economic, social and cultural rights can have very serious consequences. For instance:

- The denial of economic, social and cultural rights can have devastating effects. Forced displacement or eviction can result in homelessness, the loss of livelihood and the destruction of social networks, and have devastating psychological effects. Malnutrition has a clear health impact, particularly on children under 5; it affects all their organs for life, including their developing brain, liver and heart, as well as their immune system.
- Denying economic, social and cultural rights can affect large numbers of people. For example, diarrhoeal dehydration caused by a lack of safe drinking water claims the lives of nearly 2 million children every year and has killed more children in the past 10 years than all the people lost to armed conflict since the Second World War.¹
- Gross violations of economic, social and cultural rights have been among the root causes of conflicts, and failure to address systematic discrimination and inequities in the enjoyment of these rights can undermine the recovery from conflict. For example, discriminating in access to employment, using education as a tool for propaganda, forcibly evicting communities from their homes, withholding food aid from political opponents and poisoning water sources are all abuses of economic, social and cultural rights that have fed conflict in the past.
- The denial of economic, social and cultural rights can lead to violations of other human rights. For example, it is often harder for individuals who cannot read and write to find work, to take part in political activity or to exercise their freedom of expression. Failing to protect a woman's right to adequate housing (such as lack of secure tenure) can make her more vulnerable to domestic violence, as she might have to choose between remaining in an abusive relationship or becoming homeless.

¹ United Nations Children's Fund, *Sanitation for All* (January 2000).

The importance of economic, social and cultural rights cannot be overstated. Poverty and exclusion lie behind many of the security threats that we continue to face both within and across borders and can thus place at risk the promotion and protection of all human rights. Even in the most prosperous economies, poverty and gross inequalities persist and many individuals and groups live under conditions that amount to a denial of economic, social, civil, political and cultural human rights. Social and economic inequalities affect access to public life and to justice. Globalization has generated higher rates of economic growth, but too many of its benefits have been enjoyed unequally, within and across different societies. Such fundamental challenges to human security require action at home as well as international cooperation.

Louise Arbour, United Nations High Commissioner for Human Rights
(Geneva, 14 January 2005)

Despite these facts, the protection of economic, social and cultural rights is not always given sufficient priority, as the Committee on Economic, Social and Cultural Rights observed in a statement to the World Conference on Human Rights in Vienna (A/CONF.157/PC/62/Add.5, annex I, paras. 6–7):

Denial of the right to vote or of the right to freedom of speech, solely on the grounds of race or sex, is loudly and rightly condemned by the international community. Yet deep-rooted forms of discrimination in the enjoyment of economic, social and cultural rights against women, the elderly, the disabled and other vulnerable and disadvantaged groups are all too often tolerated as unfortunate realities. Thus, for example, many human rights advocates have little to say in response to the fact that women in many countries “are generally rewarded [for the disproportionate work burden they bear] with less food, less health care, less education, less training, less leisure, less income, less rights and less protection”. Statistical indicators of the extent of deprivation, or breaches, of economic, social and cultural rights have been cited so often that they tended to lose their impact. The magnitude, severity and constancy of that deprivation have provoked attitudes of resignation, feelings of helplessness and compassion fatigue.

3. Are economic, social and cultural rights new rights?

No. National laws and international treaties had already codified many of the human rights we now call economic, social and cultural rights prior to the adoption of the Universal Declaration of Human Rights in 1948.

Box 2: Early international recognition of economic and social rights

The International Labour Organization (ILO) and the World Health Organization (WHO) spearheaded the international recognition of economic and social rights. ILO recognized a range of workers' rights in its Declaration of Philadelphia (1944), affirming that "all human beings... have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity." Similarly, just after the Second World War, the Constitution of WHO (1946) declared that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being."

Countries such as Costa Rica recognized the right to education from the 1840s and late nineteenth century welfare reforms in some European countries introduced protection for some economic, social and cultural rights such as the right to work. Early twentieth century constitutions of some Latin American countries, such as the 1917 Constitution of Mexico, were among the first to guarantee economic, social and cultural rights as human rights—including labour rights, the right to health and the right to social security.

In the 1930s measures taken in the United States of America and other countries introduced stronger protection of workers' rights and recognized the State's responsibility to ensure access to basic social services, including social security, health care and housing. In 1941, United States President Franklin D. Roosevelt mentioned "four essential human freedoms" which should be guaranteed to all persons everywhere in the world: freedom of speech and expression, freedom of worship, freedom from want, and freedom from fear.

These were an important source of inspiration for the 1948 Universal Declaration of Human Rights and are reflected in the second paragraph of its preamble: "the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people."

President Roosevelt's four freedoms

In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms.

The first is freedom of speech and expression—everywhere in the world.

The second is freedom of every person to worship God in his own way—everywhere in the world.

The third is freedom from want—which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants—everywhere in the world.

The fourth is freedom from fear—which, translated into world terms, means a worldwide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor—anywhere in the world.

That is no vision of a distant millennium. It is a definite basis for a kind of world attainable in our own time and generation.

Annual message to Congress
(6 January 1941)

The Universal Declaration of Human Rights includes a comprehensive range of civil, cultural, economic, political and social rights in a single international human rights instrument, without making any distinction between them. This was probably the first comprehensive recognition of economic, social and cultural rights. In 1966, States adopted the International Covenant on Economic, Social and Cultural Rights, legally binding States parties to promote and protect economic, social and cultural rights. Many other human rights treaties enshrine all civil, cultural, economic, political and social rights in an integrated manner.

The World Conference on Human Rights in Vienna in 1993 affirmed that “all human rights are universal, indivisible and interdependent and interrelated” and that “the international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.” Since then, significant progress has been made in clarifying the legal content of internationally recognized economic, social and cultural rights, as well as in developing mechanisms and methodologies to implement them.

4. Are economic, social and cultural rights individual rights?

Yes. Economic, social and cultural rights, like other human rights, are the birthright of every human being. A child excluded from primary school because of school fees, a woman paid less than her male colleague for the same work, a person in a wheelchair unable to enter a theatre because there is no ramp, a pregnant woman refused entry to a hospital to give birth because she is unable to pay, an artist whose work is publicly altered, distorted or mutilated, a man refused emergency medical care on account of his migrant status, a woman forcibly evicted from her home, a man left to starve when food stocks lie unused—these are all examples of individuals denied their economic, social and cultural rights.

Nonetheless, economic, social and cultural rights are sometimes wrongly interpreted as being only collective in nature. While these rights can affect many people and may have a collective dimension, they are also individual rights. For example, forced evictions often concern whole communities, yet individuals suffer from the denial of their right to adequate housing. The confusion about the individual or collective nature derives in part from the fact that redressing economic, social and cultural rights often requires a collective public effort through the provision of resources and the development of rights-based policies. To prevent children being denied primary education because they are unable to pay school fees, a State would need to set up a system to ensure free primary education for all children. Again, however, this feature does not prevent individual children from claiming the right to education.

There are some important exceptions to the individual nature of economic, social and cultural rights. Importantly, certain rights, such as the rights of trade unions to establish national federations and to function freely, are essentially collective.

5. Are economic, social and cultural rights fundamentally different from civil and political rights?

No. In the past, there has been a tendency to speak of economic, social and cultural rights as if they were fundamentally different from civil and political rights. However, this categorization is artificial and even self-defeating. Why then do we often speak of “civil and political rights” and “economic, social and cultural rights” as separate categories of rights? Several reasons have led to this categorization, which has tended to obscure the elements that all rights have in common.

First, the distinction was initially drawn for historical reasons. While the Universal Declaration of Human Rights made no distinction between rights, the distinction appeared in the context of the deepening cold war tensions between East and West. The market economies of the West tended to put greater emphasis on civil and political rights, while the centrally planned economies of the Eastern bloc highlighted the importance of economic, social and cultural rights. This led to the negotiation and adoption of two separate Covenants—one on civil and political rights, and another on economic, social and cultural rights. However, this strict separation has since been abandoned and there has been a return to the original architecture of the Universal Declaration. In recent decades, human rights treaties such as the Convention on the Rights of the Child or the Convention on the Rights of Persons with Disabilities have integrated all rights.

Second, economic, social and cultural rights have been seen as requiring high levels of investment, while civil and political rights are said simply to require the State to refrain from interfering with individual freedoms. It is true that many economic, social and cultural rights sometimes require high levels of investment—both financial and human—to ensure their full enjoyment. However, economic, social and cultural rights also require the State to refrain from interfering with individual freedoms, for instance trade union freedoms or the right to seek work of one’s choosing. Similarly, civil and political rights, although comprising individual freedoms, also require investment for their full realization. For example, civil and political rights require infrastructures such as a functioning court system, prisons respecting minimum living conditions for prisoners, legal aid, free and fair elections, and so on.

Third, economic, social and cultural rights are sometimes said to be vague or unclear compared to civil and political rights. While not all economic, social and cultural rights are equally clearly defined in human rights treaties, the same applies to civil and political rights. Consider the following examples:

Economic, social and cultural rights	Civil and political rights
The right to take part in cultural life	The right to take part in the conduct of public affairs
The right to be free from hunger	The right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment

Finally, in reality, the enjoyment of all human rights is interlinked. For example, it is often harder for individuals who cannot read and write to find work, to take part in political activity or to exercise their freedom of expression. Similarly, famines are less likely to occur where individuals can exercise political rights, such as the right to vote. Consequently, when closely scrutinized, categories of rights such as “civil and political rights” or “economic, social and cultural rights” make little sense. For this reason, it is increasingly common to refer to civil, cultural, economic, political and social rights.

Box 3: An example of the clarification of economic, social and cultural rights

The Committee on Economic, Social and Cultural Rights, through its series of general comments, has articulated the contents of each economic, social and cultural right. For example, reflecting the work of the Special Rapporteur on the right to education, it set out the essential features of the right to education in its general comment No. 13 (1999):

Education in all its forms and at all levels shall exhibit the following interrelated and essential features:

(a) *Availability*: functioning educational institutions and programmes have to be available in sufficient quantity;

(b) *Accessibility*: educational institutions and programmes have to be accessible to everyone.

Accessibility has three overlapping dimensions:

- Non-discrimination: education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination;
- Physical accessibility: education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g., a neighbourhood school) or via modern technology (e.g., access to a “distance learning” programme);
- Economic accessibility: education has to be affordable to all: whereas primary education shall be available “free to all”, States parties are required to progressively introduce free secondary and higher education;

(c) *Acceptability*: the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g., relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents;

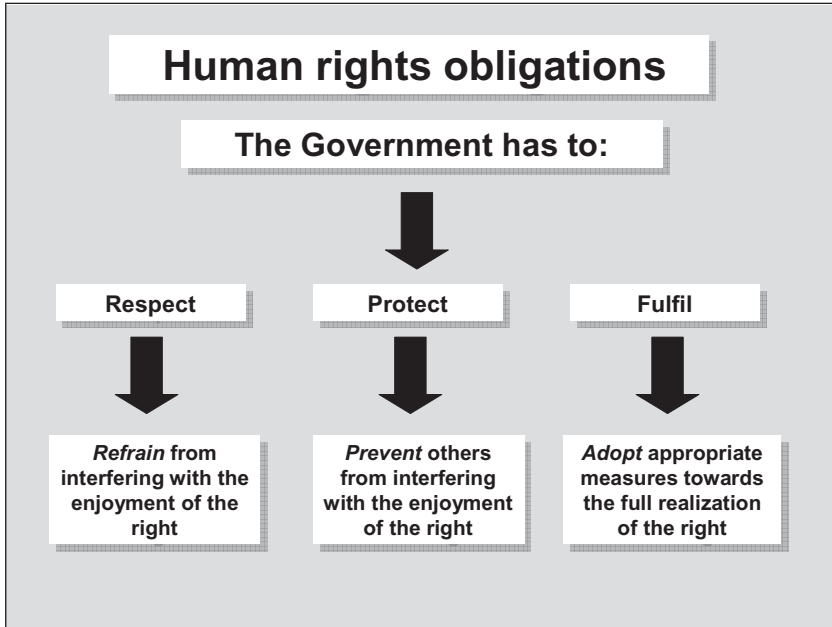
(d) *Adaptability*: education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.

When considering the appropriate application of these “interrelated and essential features” the best interests of the student shall be a primary consideration.

6. What are the obligations of States on economic, social and cultural rights?

The obligations of States in relation to economic, social and cultural rights are expressed differently from treaty to treaty. For example, the International Covenant on Economic, Social and Cultural Rights requires States “to take steps” to the maximum of their available resources to achieve progressively the full realization of economic, social and cultural rights. The Covenant also requires States to guarantee the enjoyment of economic, social and cultural rights without discrimination and to ensure the equal right of men and women to the enjoyment of these rights. Other treaties or constitutions word obligations differently and even include specific actions that States must take, such as the adoption of legislation or the promotion of these rights in public policies.

In order to clarify the meaning of States’ obligations, they are sometimes put under three headings: to **respect**, to **protect** and to **fulfil** economic, social and cultural rights.



Box 4: Examples of the obligations to respect, protect and fulfil

The right to work

Respect: the State must not use forced labour or deny political opponents work opportunities.

Protect: the State must ensure that employers, both in the public and in the private sectors, pay the minimum wage.

Fulfil: the State must promote the enjoyment of the right to work by, for instance, undertaking educational and informational programmes to instil public awareness of it.

The right to water

Respect: the State must not disconnect an individual's water supply without respecting due process.

Protect: where water services are operated or controlled by the private sector, the State must ensure adequate pricing regulation so that water rates, if any, are affordable.

Fulfil: the State must take steps to ensure that all persons are progressively connected to a safe drinking water supply.

The right to health

Respect: the State must not deny access to health facilities on a discriminatory basis.

Protect: the State must control the quality of medicines marketed in the country by either public or private suppliers.

Fulfil: the State must facilitate the enjoyment of the right to health by, for example, establishing universal vaccination campaigns for children.

The right to education

Respect: the State must respect the liberty of parents to choose schools for their children.

Protect: the State must ensure that third parties, including parents, do not prevent girls from going to school.

Fulfil: the State must take positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples, and of good quality for all.

7. What is the “progressive realization” of economic, social and cultural rights?

The concept of “progressive realization” describes a central aspect of States’ obligations in connection with economic, social and cultural rights under international human rights treaties. At its core is the obligation to take appropriate measures towards the full realization of economic, social and cultural rights to the maximum of their available resources (see box 5). The reference to “resource availability” reflects a recognition that the realization of these rights can be hampered by a lack of resources and can be achieved only over a period of time. Equally, it means that a State’s compliance with its obligation to take appropriate measures is assessed in the light of the resources—financial and others—available to it. Many national constitutions also allow for the progressive realization of some economic, social and cultural rights.

Box 5: “Progressive realization” clauses in United Nations human rights treaties

International Covenant on Economic, Social and Cultural Rights (art. 2 (1))

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, 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.

Convention on the Rights of the Child (art. 4)

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.

Convention on the Rights of Persons with Disabilities (art. 4 (2))

With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

The concept of progressive realization is sometimes misinterpreted as if States did not have to protect economic, social and cultural rights until they have sufficient resources. On the contrary, the treaties impose an immediate obligation to take appropriate steps towards the full realization of economic, social and cultural rights. A lack of resources cannot justify inaction or indefinite postponement of measures to implement these rights. States must demonstrate that they are making every effort to improve the enjoyment of economic, social and cultural rights, even when resources are scarce. For example, irrespective of the resources available to it, a State should, as a matter of priority, seek to ensure that everyone has access to, at the very least, minimum levels of rights, and target programmes to protect the poor, the marginalized and the disadvantaged.

Box 6: Progressive realization of a legally enforceable right to housing

Laws enacted in Scotland (local government) and France (national Government) are examples of efforts to progressively implement the right to adequate housing.

In 2003 the Scottish Parliament passed the landmark *Homelessness etc. (Scotland) Act 2003*, which fundamentally changes Scotland's homelessness legislation by progressively introducing a fully justiciable right to housing. While at first applicable only to persons that have a "priority need", the Act is intended to ensure that over a period of ten years—between 2003 and 2012—these groups are expanded to include everyone without a home. In 2012 every unintentionally homeless person in Scotland will have a legally challengeable right to permanent accommodation.

Since 2003 the Scottish law has become a model for other States. In France, similar legislation has been under discussion. The French law, too, would create a legally challengeable right to housing (*droit opposable au logement*) that would be progressively realized. When gaining legal force, in 2008, the French law will apply only to homeless persons and those living in poverty. By 2012, it will include anyone eligible for social housing.

8. What kind of obligations towards economic, social and cultural rights should be implemented immediately?

Even though States may realize economic, social and cultural rights progressively, they must also take immediate action, irrespective of the resources they have, in five areas:

1. **The elimination of discrimination.** States must prohibit discrimination in, for instance, health care, education and the workplace immediately. Discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status must be prohibited.

2. **Economic, social and cultural rights not subject to progressive realization.** Some economic, social and cultural rights do not require significant resources. For example, obligations to ensure the right to form and join trade unions and to strike, and the obligation to protect children and young persons from economic and social exploitation, do not require significant resources and should be respected immediately. Others do require resources but are formulated in such a way as not to be subject to progressive realization. For example, States parties to the International Covenant have a strict limit of two years to develop a plan of action to ensure the provision of free and compulsory primary education for all.

Box 7: Examples of rights under the International Covenant on Economic, Social and Cultural Rights (part III) subject to immediate protection

- The right to form and join trade unions and to strike (art. 8);
- The obligation to protect children and young persons from economic and social exploitation (art. 10 (3));
- Equal remuneration for work of equal value without distinction of any kind (art. 7 (a) (i));
- The provision of free and compulsory primary education for all (art. 13 (2) (a));
- The obligation to respect the liberty of parents to choose for their children schools, other than those established by the public authorities, which conform to minimum educational standards (art. 13 (3));
- The obligation to protect the liberty of individuals and bodies to establish and direct educational institutions which conform to minimum standards (art. 13 (4));
- The obligation to respect the freedom indispensable for scientific research and creative activity (art. 15 (3)).

3. **Obligation to “take steps”.** As mentioned above, even under the obligation of progressive realization, States have to make constant efforts to improve the enjoyment of economic, social and cultural rights. This means that, while their full realization may be achieved progressively, steps towards that goal must be taken within a reasonably short time. Such steps should be deliberate, concrete and targeted as clearly as possible, using all appropriate means, including particularly but not only the adoption of legislative measures.

Here are examples of steps that States should take towards progressive realization:

- Assessing the state of enjoyment of economic, social and cultural rights, including ensuring adequate mechanisms to collect and assess relevant and suitably disaggregated data;
- Formulating strategies and plans, incorporating indicators and time-bound targets, which should be realistic, achievable and designed to assess progress in the realization of these rights;
- Adopting the necessary laws and policies, and making adequate funds available to put the plans and strategies into practice;
- Regularly monitoring and assessing the progress made in the implementation of the plans and strategies;
- Establishing grievance mechanisms so that individuals can complain if the State is not meeting its responsibilities.

4. **Non-retrogressive measures.** States should not allow the existing protection of economic, social and cultural rights to deteriorate unless there are strong justifications for a retrogressive measure. For example, introducing school fees in secondary education which had formerly been free of charge would constitute a deliberate retrogressive measure. To justify it, a State would have to demonstrate that it adopted the measure only after carefully considering all the options, assessing the impact and fully using its maximum available resources.

5. **Minimum core obligations.** Under the International Covenant on Economic, Social and Cultural Rights, there are obligations considered to be of immediate effect to meet the *minimum essential levels of each of the rights*. They are called *minimum core obligations*. If a State fails to meet these because it does not have the resources, it must demonstrate that it has made every effort to use all available resources to satisfy, as a matter of priority, these core obligations. Even if a State has clearly inadequate resources at its disposal, the Government must still introduce low-cost and targeted programmes to assist those most in need so that its limited resources are used efficiently and effectively.

Box 8: Examples of minimum core obligations in relation to economic, social and cultural rights

Minimum core obligations, highlighted by the Committee on Economic, Social and Cultural Rights in its general comments, require States to:

- Ensure the right of access to employment, especially for disadvantaged and marginalized individuals and groups, enabling them to live a life of dignity;
- Ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone;
- Ensure access to basic shelter, housing and sanitation, and an adequate supply of safe drinking water;
- Provide essential drugs as defined under the WHO Action Programme on Essential Drugs;
- Ensure free and compulsory primary education to all;
- Ensure access to a social security scheme that provides a minimum essential level of benefits that cover at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

For more information on core obligations, see the general comments adopted by the Committee on Economic, Social and Cultural Rights listed in the annex below.

9. What are some examples of violations of economic, social and cultural rights?

A violation of economic, social and cultural rights occurs when a State fails in its obligations to ensure that they are enjoyed without discrimination or in its obligation to respect, protect and fulfil them. Often a violation of one of the rights is linked to a violation of other rights.

Box 9: Examples of violations of economic, social and cultural rights

- Forcibly evicting people from their homes (the right to adequate housing)
- Contaminating water, for example, with waste from State-owned facilities (the right to health)
- Failure to ensure a minimum wage sufficient for a decent living (rights at work)
- Failure to prevent starvation in all areas and communities in the country (freedom from hunger)
- Denying access to information and services related to sexual and reproductive health (the right to health)
- Systematically segregating children with disabilities from mainstream schools (the right to education)
- Failure to prevent employers from discriminating in recruitment (based on sex, disability, race, political opinion, social origin, HIV status, etc.) (the right to work)
- Failure to prohibit public and private entities from destroying or contaminating food and its source, such as arable land and water (the right to food)
- Failure to provide for a reasonable limitation of working hours in the public and private sector (rights at work)
- Banning the use of minority or indigenous languages (the right to participate in cultural life)
- Denying social assistance to people because of their status (e.g., people without a fixed domicile, asylum-seekers) (the right to social security)
- Failure to ensure maternity leave for working mothers (protection of and assistance to the family)
- Arbitrary and illegal disconnection of water for personal and domestic use (the right to water)

10. Is gender relevant to economic, social and cultural rights?

Yes, gender is relevant to many aspects of economic, social and cultural rights.

First, women and men may experience economic, social and cultural rights differently. Lack of regulation of working conditions for hard manual work, such as in mines or on construction sites, traditionally affects more men than women, while neglect of protection of workers' rights in the informal sector, including domestic work, affects more women than men.

In some countries, school dropout rates are higher among boys than girls as parents expect boys to help the family economically. Sometimes, more girls give up school than boys owing to early marriage and pregnancy, violence and sexual abuse at school, or parents expecting them to help in the home. When strategies, legislation, policies, programmes and monitoring mechanisms overlook these differences, they may lead to an unequal enjoyment of economic, social and cultural rights.

Second, where discrimination against women and girls is deeply rooted, the enjoyment of economic, social and cultural rights is also affected. In many countries, preference for boys over girls in the family results in girls receiving less food or education. In most countries, there is a tendency to pay lower salaries to women for work of equal value. Inequality in marriage, inheritance or recognition under the law deprives many women of resources, such as credit, land tenure and housing, and thus undermines their capacity to enjoy economic, social and cultural rights independently. Lack of full participation of women in economic, social and cultural decision-making, including rural development and post-crisis recovery, results not only in failure to reflect women's views and experiences in efforts to realize economic, social and cultural rights, but may also result in the development of programmes and policies that are not fully relevant to them.

Box 10: What is gender?

Gender is **relevant to both women and men**.

Gender refers to the **socially constructed differences** between women and men that are:

- Attributed throughout the life cycle
- Learned, not innate
- Changeable for any given society over time
- Manifested with wide variations both within and between cultures

Gender **influences the roles, power and resources** for women and men in any culture.

11. Do economic, social and cultural rights oblige Governments to supply goods and services free of charge?

As a general rule, no. There is a common misconception that economic, social and cultural rights require the Government to provide free health care, water, education, food and other goods and services. States have a responsibility to ensure that facilities, goods and services required for the enjoyment of economic, social and cultural rights are available at *affordable prices*. This means that the direct and indirect costs of housing, food, water, sanitation, health or education should not prevent a person from accessing these services and should not compromise his or her ability to enjoy other rights.

This statement is subject to two provisos. First, in some instances, ensuring equal enjoyment of rights may involve providing subsidized or free services to those who would otherwise not be able to enjoy certain rights. For example, in a severe drought, if the shortage of food contributes to increased prices, States may be required to provide food and water to ensure that no one goes hungry.

Second, some services necessary for realizing certain economic, social and cultural rights must be provided free of charge. For example, under international law, primary education must be free and compulsory for all, and secondary education should be available and accessible to all, in particular by the progressive introduction of free education. Services relevant to pregnancy should be free to women where necessary. Some national legislation might also require other services relevant to other economic, social and cultural rights to be provided free of charge.

Box 11: Cash transfers to empower people in poverty to realize their economic, social and cultural rights

Bolsa Familia is an innovative social initiative by the Brazilian Government. It reaches 11 million families, more than 46 million people, a major portion of the country's low-income population.

Poor families with children receive an average of R\$ 70 (about US\$ 35) in direct cash transfers. In return, they commit to keeping their children in school and taking them for regular health checks. *Bolsa Familia* has two important results: it helps to reduce current poverty and gets families to invest in their children, thus breaking the cycle of intergenerational transmission of poverty and reducing future poverty.

The virtue of *Bolsa Família* is that it reaches a significant portion of Brazilian society that has never benefited from social programmes. Ninety-four per cent of the funds reach the poorest 40 per cent of the population. Studies prove that most of the money is used to buy food, school supplies and clothes for the children.

Its success has sparked adaptations in almost 20 countries, including Chile, Indonesia, Mexico, Morocco, South Africa and Turkey. More recently, New York City announced its *Opportunity NYC* conditional transfer of income programme, modelled on *Bolsa Família* and its Mexican equivalent. This is an example of a developed country adopting and learning from the experiences of the so-called developing world.

Source: World Bank, *Bolsa Família: changing the lives of millions in Brazil* (22 August 2007)

12. Do economic, social and cultural rights make people dependent on welfare?

It is sometimes claimed that the protection of economic, social and cultural rights makes people dependent on welfare or on State intervention. Such a result would tend to work against human rights objectives. Indeed, one of the principal objectives of human rights law is to empower individuals so that they have the capacity and the freedom to live a life in dignity. If State assistance in fact disempowers recipients, the question arises whether the right policies are in place. Similarly, economic, social and cultural rights require much more than the provision of social assistance, including the dismantling of social barriers that obstruct the full participation of everyone in economic and social life.

It is an unfortunate reality that economic recession, relocation of industry and other economic and social factors sometimes lead to a situation where individuals are unable to enjoy a decent standard of living. When this is the case, access to social security is necessary, including welfare payments. As the Universal Declaration of Human Rights states, everyone has the right to social security in the event of unemployment, sickness, old age or other lack of livelihood in circumstances beyond his or her control. However, this does not always mean an entitlement to a handout. Social security should prevent people from living in desperate situations and help them get back on their feet with a view to giving them opportunities to be free, contributing members of society. Government provision of goods and services when necessary is therefore a means to ensure the enjoyment of economic, social and cultural rights, but not an end in itself.

13. Do economic, social and cultural rights flow naturally from democracy or economic growth?

No, not necessarily. There is a misconception that the realization of economic, social and cultural rights will flow automatically from the enjoyment of democracy, and that any imbalance in the full realization of economic, social and cultural rights will in the long term be corrected by the market forces in open economies. The truth is that, unless specific action is taken towards the full realization of economic, social and cultural rights, these rights can rarely, if ever, be realized, even in the long term.

The Committee on Economic, Social and Cultural Rights has pointed out that the full realization of economic, social and cultural rights is rarely achieved as a mere by-product, or fortuitous consequence, of some other programmes or developments—be it transition to a system of democracy or economic growth. Economic growth, for instance, does not automatically translate into an improvement of the standard of living of the most excluded and marginalized groups, unless special measures or policies are directed to those ends. If growth leads to improved resources for free and compulsory education but there are no specific policies to ensure that persons with disabilities have physical access to schools, this would widen the gaps between sectors of the population and result in a denial of economic, social and cultural rights.

Similarly, democracy alone is often insufficient to realize economic, social and cultural rights for the poorest and most marginalized. People living in poverty and at the margins of society often find it harder to get their views reflected in laws, public policies or development efforts, because they lack a voice in parliaments and ministries. There can be a tendency for public policies to focus on the needs of those who have greater sway in political processes, particularly at election time. Social benefits may focus on the needs of middle-class swing voters, or economic or trade policy may be shaped to meet the needs of powerful industries. This may divert attention from the most marginalized to those who are more visible and have more power and more access to decision makers in a democracy. At the same time, it is hard to imagine democracy surviving for long in the face of chronic poverty, neglect and denial of economic, social and cultural rights.

14. Do economic, social and cultural rights prohibit the private provision of essential goods and services?

No. The human rights framework does not dictate a particular form of service delivery or pricing policy. International human rights law does not prescribe whether services should be delivered by public or private service providers, or by a combination of the two.

However, States are responsible for regulating and ensuring that any given form of service provision respects human rights, for example ensuring free primary education and services relevant to health care, food, water and sanitation or housing, are available, accessible (physically as well as economically), and adequate for all, including vulnerable and marginalized groups. States must therefore regulate and, where the service is not provided by the public sector, control private providers through an efficient and effective regulatory system which includes independent monitoring and penalties for non-compliance.

For example, the right to water may be ensured through a system of privatized water supply. However, the State is ultimately accountable under international human rights law if a privatized water supply denies particular people access to safe drinking water. Similarly, the Government has a responsibility to regulate the prices imposed by the private sector so that safe drinking water is affordable for all.

Box 12: Privatization of water provision

Bolivia

In 1999, the Bolivian Government privatized water provision in compliance with conditions agreed with the World Bank and the International Monetary Fund (IMF). In Cochabamba, the water provision was contracted out. The consortium increased water rates significantly, hitting people living in poverty particularly hard. Groups of local residents and civil society organizations came together in the *Coordinadora por la Defensa del Agua y de la Vida* (Coalition in Defence of Water and Life) to oppose the privatization, closing the city down for four days. Protests turned violent and a teenage boy was killed. Afterwards, the municipal company SEMAPA was reinstated. Six years after the Cochabamba “water war”, access to water has improved and rates have been raised only slightly. However, management and service delivery seem to have remained of poor quality.

Box 12: *(continued)*

The case illustrates the importance of ensuring proper regulation of water services, including water rates. The same is true for private sector as well as public sector provision of all essential goods and services. Insufficient regulation can deny economic, social and cultural rights, and even lead to violence and conflict. In this regard, not only the Government, but also private companies and international financial institutions have important responsibilities to ensure that individuals living in poverty are not denied economic, social and cultural rights.

Source: Report of the High Commissioner for Human Rights on human rights, trade and investment (E/CN.4/Sub.2/2003/9).

15. Is achieving the Millennium Development Goals the same as realizing economic, social and cultural rights?

The Millennium Development Goals provide a potentially powerful fillip for the realization of human rights, including economic, social and cultural rights, in the context of development. The Millennium Development Goals and human rights standards complement each other to a great degree, but human rights go further.

First of all, the *nature of the commitment* made by States is different. Human rights, including economic, social and cultural rights, are legally binding commitments, while the Millennium Development Goals are political commitments. The Millennium Development Goals are a set of benchmarks developed to reflect objectives agreed in the Millennium Declaration, which is a non-legally binding commitment. However, it should be noted that the Millennium Declaration is explicitly built on the recognition of human rights norms and standards. Thus the Millennium Development Goals should be pursued in a manner that is compatible with the legal obligations each State may have under human rights norms and standards.

Secondly, the *scope* of issues that economic, social and cultural rights cover is *wider* than those covered by the Millennium Development Goals. For example, the Millennium Development Goals do not directly address higher education, security of tenure or participation in cultural life. Thus, while goal 2 requires States to achieve universal primary education, the right to education requires States to address not only primary (which must be free) but also secondary and tertiary education. Furthermore, while the Millennium Development Goals address certain aspects of economic, social and cultural rights, social freedoms, such as protection against forced evictions, are additional human rights concerns not addressed by the Millennium Development Goals.

Thirdly, economic, social and cultural rights together with the principle of non-discrimination bring in a *qualitative aspect* by asking not only *how many* but also *who* is being lifted out of poverty. For instance, goal 1 seeks to reduce by half the proportion of people who suffer from hunger by 2015. This clearly promotes the human right to be free from hunger. Yet human rights law goes further and requires this target to be met in a non-discriminatory manner. If, for example, the target is met by 2015, yet the proportion of indigenous people going hungry has increased or even stayed the same, goal 1 might be met but human rights breached.

Fourthly, the Millennium Development Goals are an intermediary target with a limited time frame, while human rights require States to make constant efforts until they achieve the final goal, i.e., full realization of human rights for all. For example, goal 7 requires States to reduce by half the proportion of people without sustainable access to safe drinking water. The right to water requires States, including those that have met goal 7, to continue efforts to ensure access to safe and affordable drinking water for *all*.

Lastly, there is a difference in *geographical scope*. The Millennium Development Goals focus mostly on the developing world, while international human rights norms are universal and provide a means to address poverty, HIV/AIDS, maternal mortality and so forth wherever they occur. For example, the rights of migrant workers are often under threat in developed and in developing countries alike. Similarly, poverty and social exclusion remain an issue, even in wealthy countries, highlighting that denials of economic, social and cultural rights occur anywhere.

Therefore, to realize economic, social and cultural rights, efforts should be made to achieve the Millennium Development Goals in a way that fully integrates a human rights perspective, and to go beyond.

16. Do economic, social and cultural rights apply during emergencies, disasters and armed conflicts?

Yes. There is no express permission under human rights law for States to derogate from their obligations in relation to economic, social and cultural rights during emergencies, disasters or armed conflicts. In fact, in such circumstances, more attention is often required to protect economic, social and cultural rights, in particular those of the most marginalized groups of society.

Economic, social and cultural rights are often grossly and systematically violated during emergencies and armed conflicts. In conflicts, the systematic destruction of civilian objects or the forced displacement of the population is often deliberately used as a weapon of war. A further example is intentional action that can lead to starvation, notably raiding food stores, destroying harvests or wilfully impeding the distribution of relief supplies. In natural disasters, violations of economic, social and cultural rights may also occur, for example, if marginalized groups are overlooked in the delivery of emergency aid.

During armed conflict, human rights law reinforces international humanitarian law—the principles and rules which limit the use of force in times of armed conflict. Some violations of economic, social and cultural rights are already prohibited under humanitarian law and considered international crimes, such as denying medical attention, destroying or appropriating property or deliberately starving civilians as a method of warfare. The extent to which human rights law and international humanitarian law overlap is a matter of interpretation, but the absolute separation between the two legal regimes has been gradually bridged since the adoption of the Charter of the United Nations and especially since the 1968 International Conference on Human Rights. The Proclamation of Teheran, adopted at the Conference, recognizes that it is the obligation of States to eradicate the “massive denials of human rights, arising out of aggression or any armed conflict.”

Box 13: Application of economic, social and cultural rights during conflicts

The advisory opinion of the International Court of Justice on *the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (9 July 2004) provides a concrete example of how economic, social and cultural rights interrelate with international humanitarian law and how these rights apply during armed conflict and occupation.

In its advisory opinion the Court highlighted that “some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law.” Importantly, the Court declared that “the protection offered by human rights conventions does not cease in case of armed conflict”—a judgement relevant to all conflicts worldwide.

Consequently, the Court not only found international humanitarian law applicable, it also noted that, in the territories under its occupation, the occupying Power (Israel) was bound by the human rights provisions of the International Covenant on Economic, Social and Cultural Rights and of the Convention on the Rights of the Child.

It affirmed that the Convention applied “to each child” within the jurisdiction of a State party and thus to all children in the Occupied Palestinian Territory. It found a range of provisions in the Convention and the Covenant relevant, including the right to work, the right to protection and assistance accorded to the family and to children and young persons, the right to an adequate standard of living, including adequate food, clothing and housing, and the right “to be free from hunger”, the right to health, and the right to education.

Addressing economic, social and cultural rights also helps to prevent, prepare for and recover from disasters and conflicts. Studies and investigations show that systematic discrimination and inequalities in the enjoyment of economic, social and cultural rights may cause, or exacerbate, social and political tensions leading to conflict or worsening the impact of disasters, and placing obstacles on the road to recovery.

Box 14: Transitional justice and economic, social and cultural rights

In spite of many achievements and occasional exceptions, transitional justice has, like mainstream justice, not yet dealt with economic, social, and cultural rights adequately or systematically. I suggest that transitional justice should take up the challenges to which mainstream justice is reluctant to rise: acknowledging that there is no hierarchy of rights and providing protection for all human rights, including economic, social, and cultural rights. As with all other human rights, economic, social, and cultural rights call for constitutional protection, legislative promotion, and judicial enforcement. A comprehensive strategy for transitional justice would, therefore, address the gross violations of all human rights during the conflict as well as the gross violations that gave rise to or contributed to the conflict in the first place.

Source: Louise Arbour, United Nations High Commissioner for Human Rights, “Economic and social justice for societies in transition”, *New York University Journal of International Law and Politics*, vol. 40, No. 1 (2007).

17. Who has a role to play in promoting and protecting economic, social and cultural rights nationally?

Various national actors have important roles to play in realizing economic, social and cultural rights. States have the primary responsibility to respect, protect and fulfil economic, social and cultural rights. Different State organs (the legislature, the executive, the judiciary) can play a variety of roles. In addition, civil society, the private sector as well as national human rights institutions, donor States and international organizations can all act to promote and protect economic, social and cultural rights.

Here are examples of actions that State organs can take:

(a) The **legislature** has, in many countries, a role to play in approving the ratification of international treaties, including those that recognize economic, social and cultural rights. It also approves legislation and regulations to ensure that national laws conform with international or constitutional norms on economic, social and cultural rights. Furthermore, the legislature is often in charge of approving the national budget and can thus ensure that the *maximum available resources* are devoted to fulfilling these rights. Many parliaments have cross-party human rights committees, which provide a forum for parliamentarians to work together on human rights, including economic, social and cultural rights;

(b) The **executive** complements the work of the legislature and has an important role in ensuring that legislation is supported by adequate policies and programmes, and that budgets are correctly prepared and executed and their use audited. The public administration can facilitate the coordination of various sectors within Government as well as with other partners, such as civil society, the private sector and development partners, so that they join forces to promote and protect economic, social and cultural rights. Local governments are also responsible for guaranteeing all human rights, particularly when the provision of basic services, such as education or health, has been decentralized;

(c) The **judiciary** has a role in ensuring that the State and others respect economic, social and cultural rights, and provides remedies if such rights are violated. It also has an important role in elaborating the legal contents of economic, social and cultural rights in its specific national context.

National human rights institutions (NHRIs), such as ombudsmen, national human rights commissions and *defensores del pueblo*, are increasingly working to promote and monitor economic, social and cultural rights. While the actions they can take depend on their individual mandates, NHRIs can protect and promote economic, social and cultural rights in a variety of ways, such as by handling complaints in cases of violations, undertaking investigations, monitoring implementation of relevant international human rights treaties, advising the Government on the domestic application of international treaties, recommending policy changes, and providing training and public education.

Box 15: Investigative monitoring of economic, social and cultural rights in the Philippines

The 1987 Philippines Constitution stipulates that the Philippine Commission on Human Rights shall function “to investigate ... all forms of human rights violations involving civil and political rights” and shall “monitor the Philippine Government’s compliance with international treaty obligations on human rights.” A Supreme Court ruling of 5 January 1994 confirmed that the Commission could investigate only civil and political rights violations. This decision led the Commission to look for other ways to include economic, social and cultural rights within its mandate.

Because of the large number of complaints alleging violations of economic, social and cultural rights the Commission received, it developed a system of *investigative monitoring* of economic, social and cultural rights based on the constitutional requirement that it should monitor Government compliance with international treaty obligations. The Philippines ratified the International Covenant on Economic, Social and Cultural Rights in 1974 and so obligations under that treaty were included in the Commission’s constitutional mandate. The Commission has attempted to implement its investigative monitoring function through the development of the Philippine Human Rights Plan, which identifies administrative, programme and legislative measures to address the needs of 16 vulnerable sectors in Philippine society. The Commission has also placed considerable emphasis on monitoring forced evictions and the resulting violations of human rights.

Source: OHCHR, Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions, Professional Training Series No. 12 (United Nations publication, Sales No. E.04.XIV.8).

Various actors in civil society, such as **NGOs, social movements, community-based organizations, human rights defenders, professional associations** (e.g., associations of lawyers, health professionals, teachers), **trade unions, academics** and **religious institutions**, have crucial roles in working with individuals and groups to promote their economic, social and cultural rights, and in holding the Government accountable for realizing these rights.

Increasing numbers of **private business enterprises**, both national as well as multinational, are providing basic goods and services related to the realization of economic, social and cultural rights. In such cases, the State still carries the obligation to ensure that such organizations and enterprises respect human rights norms and standards in the delivery of these goods and services.

The **media** can provide a forum for public discussion on human rights and for disseminating information and raising awareness of human rights. At the same time, considering their strong influence in the modern world, the information and image they disseminate can have a substantial negative impact on human rights if they are not sensitive to human rights issues, norms and standards.

Finally, **donor agencies and intergovernmental organizations operating in the country** in humanitarian assistance, development aid and other international cooperation should also comply with human rights obligations which may be imposed on them under international law or the law of their country of nationality. For example, all Member States of the United Nations and United Nations agencies should respect and observe human rights and fundamental freedoms for all without discrimination in their international cooperation, as enshrined in the Charter of the United Nations. They should also respect the human rights obligations that the recipient country has accepted under international as well as national law. They should ensure that their cooperation will not undermine the recipient country's efforts to realize human rights, including economic, social and cultural rights, and ideally facilitate and support such efforts. They must also ensure that the conduct of their staff, contractors or other people under their control complies with applicable human rights norms and standards.

18. Are economic, social and cultural rights “justiciable”?

Yes. Decisions of courts in countries from all regions of the world covering all economic, social and cultural rights demonstrate that these rights can be subject to judicial enforcement. Nonetheless, the justiciability of economic, social and cultural rights has traditionally been questioned for a number of reasons.

First, economic, social and cultural rights have been seen by some as being too “vaguely worded” to allow judges to justify decisions on whether violations have occurred. While adjudicating such rights may raise questions of what constitutes, for example, *hunger*, *adequate* housing, or a *fair* wage, judges have already dealt ably with questions of what constitutes *torture*, a *fair trial* or *arbitrary or unlawful interference with privacy*. Filling in the gaps in legislation is a clear function of the judiciary, not only in human rights law but in any area of law.

Second, the realization of economic, social and cultural rights depends heavily on Government policies. Yet, reviewing Government policies in this

area, as in any other, to ensure that they are consistent with constitutional principles and obligations under international human rights law is clearly a function of the judiciary. While the role of the judiciary in reviewing Government policy may vary from country to country, policy review is not policymaking. The judiciary is therefore not overstepping its constitutional role by taking decisions on economic, social and cultural rights.

Third, and linked to the previous point, some have questioned whether it is possible for a court to assess the progressive realization of economic, social and cultural rights. Monitoring progressive realization can rely on several mechanisms, including the courts. In South Africa, courts have assessed whether the State is meeting its obligations towards progressive realization by considering whether the steps taken by the Government are *reasonable*. A failure to take into account the needs of the most vulnerable in, for instance, a housing policy would suggest that the policy would not meet the test of reasonableness.

Judicial enforcement of human rights is fundamental. A right without a remedy raises questions of whether it is in fact a right at all. This is not to say that judicial enforcement is the only, or indeed the best, way of protecting economic, social and cultural rights. However, judicial enforcement has a clear role in developing our understanding of these rights, in affording remedies in cases of clear violations and in providing decisions on test cases which can lead to systematic institutional change to prevent violations of rights in the future.

Box 16: Some case law on economic, social and cultural rights

Increasing numbers of individuals are bringing cases alleging violations of economic, social and cultural rights before courts in many countries, and before global and regional human rights mechanisms. For example:

- In South Africa, Government policy restricted the ability of doctors at public hospitals and clinics other than designated research and training sites to prescribe a drug reducing mother-to-child transmission of HIV, even where it was medically indicated and adequate facilities existed for testing and counselling pregnant women. In *The Minister of Health and Others v. Treatment Action Campaign*, in 2002, the Constitutional Court found that this policy fell short of compliance with the right of everyone to have access to health-care services under the Constitution and required the Government to review its policy on access to HIV/AIDS treatments.
- In Latvia, in 2000, the Constitutional Court found that the Government's failure to ensure all employers paid full social insurance premiums into a fund for their employees constituted a violation of the right to social security. If employers did not perform this task, the Government should compel them to do so.

- In Brazil, the Federal Supreme Court in 2005 ruled that the State was obliged to ensure access to day care and kindergarten for children between 0 and 6 years old under the Constitution. The case was brought before the Court in a *civil public action* on the right to education for children. The Court underlined that, in some situations where the administrative powers fail to protect social rights through adequate public policies, courts can have a role to play in protecting economic, social and cultural rights.
- In the Gambia, the legislative regime for mental health patients, which lacked therapeutic objectives, provision of matching resources and programmes of treatment of persons with mental disabilities, was considered a violation of the right to health. Taking resource constraints into consideration, the African Commission on Human and Peoples' Rights held, in *Purohit and Moore v. The Gambia*, that the State is under the obligation to "take concrete and targeted steps, while taking full advantage of its available resources" to realize the right to health. The Commission also required the State to repeal and replace the impugned legislative regime, and provide adequate medical and material care to persons with mental disabilities.
- In Argentina, a family was arbitrarily deprived from food aid following reforms to the programme. The arbitrary exclusion put the life of the family's children in danger, leading to hospitalization. In *María Delia Cerrudo and Others v. Government of the City of Buenos Aires*, the Administrative Disputes Tribunal ordered that, in order to protect the right to health and the right to life of the children, the family should be provisionally included in the new programme pending final determination of its long-term eligibility.

19. How can we monitor the progressive realization of economic, social and cultural rights?

While courts are important in addressing claims by individuals of breaches of economic, social and cultural rights, it is also important to ensure that Government policy is generally on track to achieve the progressive realization of these rights. This is particularly important to prevent economic, social and cultural rights being denied. Various methodologies have been developed in recent years to measure if, and how, a State is making progress in the realization of economic, social and cultural rights.

NHRIs, intergovernmental organizations, experts and civil society organizations are increasingly examining ways to monitor the progressive realization of economic, social and cultural rights through the use of statistical indicators, and analysis of national law and policy as well as budgets. Here are examples of ways to monitor the realization of economic, social and cultural rights and the efforts made by the State to meet its obligations towards these rights:

- Identifying trends—such as measuring changes in literacy rates and gender breakdown of educational attainment over time;
- Analysing legal provisions and policies—such as constitutional provisions, national strategies, laws and policies aiming to realize the right to food (including those on nutrition, food safety, agriculture, etc.) to see whether they are consistent with international law and whether they are implemented;
- Analysing budgets—in particular, trends in budget allocations (such as analysing trends in health sector budgets as a proportion of gross national product). Unless fully justified, a decrease in budget allocation may indicate a failure to take steps towards the progressive realization of a particular right.

Monitoring budgets is particularly important when analysing the realization of economic, social and cultural rights. National budgets are key political documents reflecting States' policy priorities as well as the level of public resources. Analysing them is therefore relevant for monitoring efforts towards the progressive realization of rights, including the extent to which the most efficient use is made of the available resources. Underfunding of programmes, manifest disparities in the use of public funds for specific groups and regions, or significant decreases in funding to particular sectors may indicate a State's failure to realize economic, social and cultural rights progressively.

Given the importance of resources to achieve economic, social and cultural rights, monitoring should identify the effort the Government makes in relation to implementation, not only the extent to which a particular right is enjoyed. Measuring the proportion of the budget spent on realizing economic, social and cultural rights can help measure Government effort. For instance, a Government with limited resources might devote more effort to meeting economic, social and cultural rights than a Government of a wealthy country, even though the population of the latter appears to enjoy such rights to a greater degree. A State with few resources might make slow progress in realizing the right to health, but make a significant effort. Another State with many resources might invest little in the most marginalized in society and might even reduce its effort over time. By measuring effort, a poor country using scarce resources fairly might compare favourably to a wealthy country.

While the analysis of budget processes can be useful to monitor efforts to realize economic, social and cultural rights, there are limitations and challenges. For example, the national budget does not necessarily give the full picture of the financial resources available to a State. In some cases

reforms to ensure more equitable taxes may be an effective strategy to give practical meaning to the use of the maximum available resources. Equally, the size of budget allocations to different sectors does not necessarily lead to improved access to services and the realization of rights. Often the key issue is not the amounts spent, but rather *how* they are spent.

A country's ability to progressively realize economic, social and cultural rights hinges upon, in no small measure, its capacity to formulate an appropriate budget based on sound policy and participation, and to ensure its effective and efficient utilization.

(Bernards Mudho, independent expert on the effects of structural adjustment policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights)

Box 17: Indicators framework developed by OHCHR

OHCHR has developed a framework for using quantitative and qualitative indicators to promote and monitor the implementation of human rights, including economic, social and cultural rights. The basic idea is to translate universal human rights standards into indicators that are contextually relevant and operational at country level.

In brief, the framework translates human rights, as articulated in core international human rights treaties and other instruments, into a few characteristic attributes and a set of *structural*, *process* and *outcome* indicators. For a particular human right, the identified indicators should bring to the fore an assessment of the steps taken by a State in addressing its obligations—from commitment and acceptance of international human rights standards (*structural* indicators) to its efforts, as the primary duty-bearer, to meet the obligations that flow from the standards (*process* indicators), on to the impact of those efforts on rights-holders (*outcome* indicators).

For instance, for the right to health, as stated in article 12 of the International Covenant on Economic, Social and Cultural Rights and elaborated in general comment No. 14 (2000) by the Committee on Economic, Social and Cultural Rights, OHCHR, in consultation with a panel of experts, has identified indicators for five attributes, namely reproductive health, child mortality and health care, natural and occupational environment, prevention, treatment and control of diseases, and accessibility to health facilities and essential medicines. The indicators identified under the “reproductive health” attribute include the time frame and coverage of a national policy on maternal and reproductive health (*structural* indicator), the proportion of births attended by skilled health personnel (*process* indicator) and the maternal mortality ratio (*outcome* indicator).

Source: “Report on indicators for monitoring compliance with international human rights instruments” (HRI/MC/2006/7).

20. What monitoring mechanisms exist internationally?

There are various international mechanisms, global as well as regional, to monitor and protect economic, social and cultural rights. They include the monitoring bodies of the United Nations human rights treaties, the special procedures and universal periodic review mechanism established by the Human Rights Council, and regional human rights mechanisms.

All the nine core United Nations human rights treaties have their own monitoring mechanisms—committees of independent experts known as **treaty bodies**. The main treaty body overseeing the implementation of economic, social and cultural rights is the Committee on Economic, Social and Cultural Rights. Other treaty bodies monitor the implementation of economic, social and cultural rights in relation to, for example, the prohibition of discrimination on the grounds of sex or ethnicity or rights of specific groups, such as children, migrant workers and persons with disabilities. Reflecting the nature of human rights, i.e., their interdependency and indivisibility, the other treaty bodies, whose main focus is not on economic, social and cultural rights, have also been monitoring compliance with economic, social and cultural rights directly or indirectly. For example, certain aspects of the right to health and the right to food have been monitored in relation to the right to life or the prohibition of inhuman and degrading treatment by bodies dealing with civil and political rights or torture.

Treaty bodies perform four main functions:

- (a) They periodically review reports on States' implementation of treaties;
- (b) They articulate the contents of rights and obligations under the treaties through their **general comments** or general recommendations;
- (c) Most treaty bodies **examine complaints** known as *communications* or *petitions* from individuals and groups of individuals.
- (d) Some treaty bodies also **conduct inquiries**, under certain conditions, when they receive reliable information of grave or systematic violations of human rights.

Treaty	Treaty body	Functions		
		Regular review of State party reports	Individual complaints	Inquiry into grave violations
International Covenant on Economic, Social and Cultural Rights	Committee on Economic, Social and Cultural Rights	✓	✓ ²	✓ ²
Convention on the Elimination of All Forms of Discrimination against Women	Committee on the Elimination of Discrimination against Women	✓	✓	✓
International Convention on the Elimination of All Forms of Racial Discrimination	Committee on the Elimination of Racial Discrimination	✓	✓	
Convention on the Rights of the Child	Committee on the Rights of the Child	✓		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	Committee on Migrant Workers	✓	✓	
International Covenant on Civil and Political Rights	Human Rights Committee	✓	✓	
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Committee against Torture	✓	✓	✓
Convention on the Rights of Persons with Disabilities	Committee on the Rights of Persons with Disabilities	✓	✓	✓
International Convention on the Protection of All Persons against Enforced Disappearance (not yet in force)	Committee on Enforced Disappearances (to be established)	✓	✓	

² This function will be established when the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights enters into force.

The other main United Nations human rights mechanisms which monitor States' compliance with their human rights obligations are the **special procedures** of the Human Rights Council. The Human Rights Council appoints independent experts to address specific country situations or thematic issues. Such experts are called special rapporteurs, independent experts, special representative, or they are appointed as working groups. Currently, there are several thematic mandates which focus on specific economic, social and cultural rights.

Box 18: Special procedures on specific economic, social and cultural rights

- The Special Rapporteur on the **right to education** (since 1998)
- The Special Rapporteur on the **right to food** (since 2000)
- The Special Rapporteur on **adequate housing** as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (since 2000)
- The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental **health** (since 2002)
- The Independent Expert on the issue of human rights obligations related to access to **safe drinking water** and **sanitation** (since 2008)

In addition, there are many other special procedure mandate holders who address economic, social and cultural rights, such as the Special Rapporteur on the rights of indigenous people, the Special Rapporteur on violence against women, the Special Rapporteur on countering terrorism or the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises.

The mandates of the special procedures are normally threefold:

- (a) They **examine, monitor, advise and publicly report** on human rights situations.
- (b) Most special procedures respond to **individual complaints** of human rights falling within their mandates by sending letters transmitting allegations to States or communications requesting the State to take action to protect economic, social and cultural rights.
- (c) The special procedures also carry out **country visits** to examine the implementation of the rights concerned, report on their findings to the Human Rights Council and make recommendations to the countries concerned.

Finally, in 2007 the Human Rights Council established a new monitoring process: the universal periodic review. Through this mechanism, it periodically reviews the fulfilment of the human rights obligations of all countries. It is envisaged as a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs. The review process started in 2008.

Regional mechanisms

There are regional mechanisms to monitor economic, social and cultural rights in Africa, the Americas and Europe. They also **regularly review State party reports, interpret treaties** and receive **individual complaints**.

Box 19: Regional human rights monitoring mechanisms with clear mandates covering the protection of economic, social and cultural rights

African system

The African Commission on Human and Peoples' Rights

The African Court on Human and Peoples' Rights

Council of Europe

The European Committee of Social Rights

Inter-American system

The Inter-American Commission on Human Rights

The Inter-American Court of Human Rights

Annex

International instruments:

- Universal Declaration of Human Rights (1948)

Core international treaties

- International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Rights of the Child (1989)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Convention on the Rights of Persons with Disabilities (2006)
- International Convention for the Protection of All Persons from Enforced Disappearance (2006)

Regional treaties most relevant to economic, social and cultural rights

The Americas

- American Convention on Human Rights (1969)
- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (1988)

Africa

- African Charter on Human and Peoples' Rights (1981)
- African Charter on the Rights and Welfare of the Child (1990)
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)

Europe

- European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)
- European Social Charter (1961) and revised European Social Charter (1996)

General comments/recommendations adopted by the United Nations treaty-monitoring bodies relevant to economic, social and cultural rights (as of January 2008)

Committee on Economic, Social and Cultural Rights – general comments

No.	Subject	Date
19	The right to social security (art. 9)	2007
18	The right to work (art. 6)	2005
17	The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (art. 15 (1) (c))	2005
16	The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3)	2005
15	The right to water (arts. 11 and 12)	2002
14	The right to the highest attainable standard of health (art. 12)	2000
13	The right to education (art. 13)	1999
12	The right to adequate food (art. 11)	1999
11	Plans of action for primary education (art. 14)	1999
10	The role of national human rights institutions in the protection of economic, social and cultural rights	1998
9	The domestic application of the Covenant	1998
8	The relationship between economic sanctions and respect for economic, social and cultural rights	1997
7	The right to adequate housing: forced evictions (art.11 (1))	1997
6	The economic, social and cultural rights of older persons	1995
5	Persons with disabilities	1994
4	The right to adequate housing (art. 11 (1))	1991
3	The nature of States parties' obligations (art. 2 (1))	1990
2	International technical assistance measures (art. 22)	1990
1	Reporting by States parties	1989

Human Rights Committee – general comments

No.	Subject	Date
28	Equality of rights between men and women (art. 3)	2000
27	Freedom of movement (art. 12)	1999
23	The rights of minorities (art. 27)	1994
21	Humane treatment of persons deprived of liberty (art. 10)	1992
19	Protection of the family, the right to marriage and equality of the spouses (art. 23)	1990
18	Non-discrimination	1989
17	Rights of the child (art. 24)	1989
8	Right to liberty and security of persons (art. 9)	1982

Committee on the Elimination of Discrimination against Women – general recommendations

No.	Subject	Date
24	Women and health (art. 12)	1999
21	Equality in marriage and family relations	1994
19	Violence against women	1992
18	Disabled women	1991
17	Measurement and quantification of the unremunerated domestic activities of women and their recognition in the gross national product	1991
16	Unpaid women workers in rural and urban family enterprises	1991
15	Avoidance of discrimination against women in national strategies for the prevention and control of acquired immunodeficiency syndrome (AIDS)	1990
14	Female circumcision	1990
13	Equal remuneration for work of equal value	1989

Committee on the Rights of the Child – general comments

No.	Subject	Date
9	The rights of children with disabilities	2006
7	Implementing child rights in early childhood	2005
5	General measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44 (6))	2003
4	Adolescent health and development in the context of the Convention on the Rights of the Child	2003
3	HIV/AIDS and the rights of the child	2003
2	The role of independent national human rights institutions in the promotion and protection of the rights of the child	2002
1	The aims of education (art. 29 (1))	2001

Resources (websites, publications and tools)

General information on economic, social and cultural rights

Website: Portal site on economic, social and cultural rights

- OHCHR: <http://www.ohchr.org>, search for “Economic, Social and Cultural Rights: General information and resources”

Websites: Intergovernmental organizations

- International Labour Organization (ILO): <http://www.ilo.org/>
- International Organization for Migration (IOM): <http://www.iom.int/>
- Food and Agriculture Organization (FAO): www.fao.org, with a “Right to Food” page
- United Nations Human Settlements Programme (UN-Habitat): <http://www.unhabitat.org>, with a “Housing Rights” page
- World Health Organization (WHO): <http://www.who.int>, with a “Health and Human Rights” page
- United Nations Educational, Scientific and Cultural Organization (UNESCO) – Human Rights page: <http://www.unesco.org>, with a “Right to Education” page

Websites: Non-governmental organizations

- Amnesty International: <http://www.amnesty.org/>
- Center for Economic and Social Rights: <http://www.cesr.org/>
- International Network for Economic, Social and Cultural Rights (ESCR-Net): <http://www.escr-net.org/>

- International Federation for Human Rights (FIDH): <http://www.fidh.org/>
- Human Rights Watch (HRW): <http://www.hrw.org/>
- International Centre for the Legal Protection of Human Rights (INTERIGHTS): <http://www.interights.org>
- International Commission of Jurists (ICJ): <http://www.icj.org/>
- International NGO Coalition for an Optional Protocol to the ICESCR: <http://www.op-icescr-coalition.org/>
- International Women’s Rights Action Watch (IWRAP) – Asia Pacific: <http://www.iwraw-ap.org/>
- World Organisation Against Torture (OMCT): <http://www.omct.org/>
- Social Watch: <http://www.socialwatch.org/>
- FoodFirst Information and Action Network (FIAN): <http://www.fian.org/>
- Centre on Housing Rights and Evictions (COHRE): <http://www.cohre.org>
- Habitat International Coalition (HIC): <http://www.hic-net.org/>
- Asian Coalition for Housing Rights: <http://www.achr.net/>
- 3D – Trade – Human Rights – Equitable Economy: <http://www.3dthree.org/>

Special procedures of the Human Rights Council

- OHCHR: <http://www.ohchr.org>, search for “Special Procedures” to find thematic reports, mission reports by special rapporteurs and other documents

Official reports (see www.ods.un.org)

- Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments (A/HRC/6/3).
- Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council’s substantive session of 2007 (E/2007/82). The report focuses on the progressive realization of economic, social and cultural rights in international human rights law.
- Report of the Secretary-General on the question of the realization in all countries of economic, social and cultural rights (A/HRC/4/62).
- Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council’s substantive session of 2006 (E/2006/86). The report focuses on the legal protection of economic, social and cultural rights.

Fact sheets and publications (see www.ohchr.org)

- OHCHR, Fact Sheet No. 21, *The Human Right to Adequate Housing*
- OHCHR, Fact Sheet No. 23, *Harmful Traditional Practices Affecting the Health of Women and Children*
- OHCHR, Fact Sheet No. 24/Rev.1, *The International Convention on Migrant Workers and its Committee*
- OHCHR, Fact Sheet No. 25, *Forced Evictions and Human Rights*
- OHCHR, Fact Sheet No. 31, *The Right to Health*
- OHCHR/UNAIDS, *International Guidelines on HIV/AIDS and Human Rights – 2006 Consolidated Version* (United Nations publication, Sales No. E.06.XIV.4)
- OHCHR, *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies* (HR/PUB/06/12)
- OHCHR, *Human Rights and Poverty Reduction: A Conceptual Framework* (HR/PUB/04/1)
- OHCHR, *Claiming the Millennium Development Goals: A human rights approach* (United Nations publication, Sales No. E.08.XIV.6)
- OHCHR, “Human rights, poverty reduction and sustainable development: health, food and water”, background paper
- WHO/OHCHR/COHRE/WaterAid/CESR, *The Right to Water*
- United Nations Housing Rights Programme (UNHRP), “Indigenous peoples’ right to adequate housing: a global overview”, Report No. 7
- OHCHR/UNESCO, *Plan of Action for the first phase of the World Programme for Human Rights Education*

Tools

- ESCR-Net case law database: <http://www.escr-net.org/>
- Universal Human Rights Index: <http://www.universalhumanrightsindex.org/>
- Circle of Rights – Economic, Social and Cultural Rights Activism: A Training Resource: <http://www1.umn.edu/humanrts/edumat/IHRIP/circle/toc.htm>
- ILO online databases: <http://www.ilo.org/>
 - Applis – database on the application of international labour standards
 - ILOLEX – database of international labour standards
 - LibSynd – Committee on Freedom of Association database
 - NATLEX – database of national labour, social security and related human rights legislation

- FAO, The Right to Food Virtual Library: www.fao.org
- FIAN, *Screen State action against hunger! How to use the Voluntary Guidelines on the Right to Food to monitor public policies?* (2007), available at: www.fian.org
- International Federation of Health and Human Rights Organisations: <http://www.ifhro.org/>
- People's Health Movement: <http://phmovement.org/>
- Physicians for Human Rights: <http://physiciansforhumanrights.org/>
- International organization for the development of freedom of education (OIDEF): <http://www.oidel.ch/>
- FAO/DMC/OCHA/OHCHR/UN-HABITAT/UNHCR, *Handbook on Housing and Property Restitution for Refugees and Displaced Persons: Implementing the "Pinheiro Principles"*, available at: www.ohchr.org
- Basic principles and guidelines on development-based eviction and displacement (A/HRC/4/18, annex I), available at: www.ods.un.org
- United Nations Housing Rights Programme (UNHPR), "Monitoring housing rights: Developing a set of indicators to monitor the full and progressive realisation of the human right to adequate housing" (2003), Working Paper No. 1
- UNHPR, "Housing rights legislation: Review of international and national legal instruments" (2002), Report No. 1, available at: www.ohchr.org
- COHRE, AAAS, SDC and UN-HABITAT, *Manual on the Right to Water and Sanitation* (2007)
- COHRE, *Legal Resources for the Right to Water: International and National Standards* (2003), Source No. 8
- WHO/OHCHR, The Right to Health, information sheet
- Draft human rights guidelines for pharmaceutical companies in relation to access to medicines prepared by Paul Hunt, United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, available at: www.ohchr.org
- OHCHR/UNAIDS/WHO, *HIV/AIDS: Stand Up for Human Rights* (2003), available at: www.ohchr.org
- United Nations Population Fund (UNFPA)/OHCHR, *Application of Human Rights to Reproductive and Sexual Health* (2001), Recommendations

Human Rights Fact Sheets:*

- No. 2 The International Bill of Human Rights (Rev.1)
- No. 3 Advisory Services and Technical Cooperation in the Field of Human Rights (Rev.1)
- No. 4 Combating Torture (Rev.1)
- No. 6 Enforced or Involuntary Disappearances (Rev.2)
- No. 7 Complaint Procedures (Rev.1)
- No. 9 The Rights of Indigenous Peoples (Rev.2)
- No. 10 The Rights of the Child (Rev.1)
- No. 11 Extrajudicial, Summary or Arbitrary Executions (Rev.1)
- No. 12 The Committee on the Elimination of Racial Discrimination
- No. 13 International Humanitarian Law and Human Rights
- No. 14 Contemporary Forms of Slavery
- No. 15 Civil and Political Rights: The Human Rights Committee (Rev.1)
- No. 16 The Committee on Economic, Social and Cultural Rights (Rev.1)
- No. 17 The Committee against Torture
- No. 18 Minority Rights (Rev.1)
- No. 19 National Institutions for the Promotion and Protection of Human Rights
- No. 20 Human Rights and Refugees
- No. 21 The Human Right to Adequate Housing
- No. 22 Discrimination against Women: The Convention and the Committee
- No. 23 Harmful Traditional Practices Affecting the Health of Women and Children
- No. 24 The International Convention on Migrant Workers and its Committee (Rev.1)
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- No. 28 The Impact of Mercenary Activities on the Right of Peoples to Self-determination
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- No. 30 The United Nations Human Rights Treaty System – An Introduction to the Core Human Rights Treaties and the Treaty Bodies
- No. 31 The Right to Health
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