

# NATIONAL HUMAN RIGHTS INSTITUTIONS AT WORK:

## Asia-Pacific Regional Workshop on Women's Economic, Social and Cultural Rights



Workshop Manual

22-27 January 2006  
Manila, the Philippines

equitas

Centre international  
d'éducation aux droits humains  
International Centre for  
Human Rights Education



Commission on Human Rights  
of the Philippines





Centre international  
d'éducation aux droits humains  
International Centre for  
Human Rights Education



Commission on  
Human Rights  
of the Philippines

## **NATIONAL HUMAN RIGHTS INSTITUTIONS AT WORK:**

**Asia-Pacific Regional Workshop on  
Women's Economic, Social and Cultural Rights**

**22 – 27 January 2006**

**Manila, the Philippines**

**Workshop Manual**

**Revised Edition**

**Equitas – International Centre for Human Rights Education**

1425, René-Lévesque Blvd. West

Suite 407

Montréal, Québec

Canada H3G 1T7

Tel. : (514) 954-0382

Fax. : (514) 954-0659

E-mail : [info@equitas.org](mailto:info@equitas.org)

Web site: [www.equitas.org](http://www.equitas.org)

Equitas is the new name of the Canadian Human Rights Foundation

**Commission on Human Rights of the Philippines**

State Accounting and Auditing Center Bldg.

University of the Philippines Complex

Commonwealth Ave.

Diliman 1101

Quezon City, the Philippines

© 2006 Equitas – International Centre for Human Rights Education

ISBN 2-921337-47-9

All portions of this manual may be reproduced for use in human rights education, provided acknowledgement of the source and notification of such use to Equitas is given.

The opinions expressed in this publication are those of the authors and do not represent the opinions or positions of the funders of this project.

# Table of Contents

<b>INTRODUCTION .....</b>	<b>5</b>
Background .....	5
Goal and Objectives .....	5
Participants .....	5
Methodology .....	6
<b>ABOUT THE MANUAL .....</b>	<b>7</b>
<b>DEVELOPMENT OF THE MANUAL.....</b>	<b>9</b>
<b>ABOUT THE ORGANIZERS .....</b>	<b>10</b>
<b>SCHEDULE .....</b>	<b>12</b>
<b>MODULE 1 OVERVIEW OF THE WORKSHOP.....</b>	<b>15</b>
Activity 1 Welcome.....	16
Activity 2 Getting to Know Participants and Their Expectations .....	17
Activity 3 Overview of the Workshop .....	19
<i>Reference Sheet 1: Workshop Framework .....</i>	<i>21</i>
<b>MODULE 2 CURRENT SITUATION OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS     IN THE REGION .....</b>	<b>23</b>
Activity 1 Overview of ESC Rights and the Situation in the Region .....	24
<i>Reference Sheet 2: ESC Rights Issues .....</i>	<i>26</i>
Activity 2 Examining ESC Rights in the Region .....	32
<i>Worksheet 1: ESC Rights Issues .....</i>	<i>34</i>
Activity 3 Women’s ESC Rights and Gender: Key Concepts.....	36
<i>Worksheet 2: Gender Roles in Society.....</i>	<i>39</i>
Activity 4 ESC Rights Workplan Part 1 .....	41

<b>MODULE 3 MANDATES AND ROLES OF NHRIs IN PROMOTING AND PROTECTING WOMEN’S ESC RIGHTS .....</b>	<b>43</b>
Activity 1 Women’s ESC Rights and NHRI Mandates .....	44
<i>Worksheet 3: Women’s ESC Rights and Your NHRI Mandate .....</i>	<i>45</i>
Activity 2 International Experiences in Promoting and Protecting Women’s ESC Rights: Best Practices.....	46
<i>Reference Sheet 3: NHRI Activities for Promoting and Protecting ESC Rights.....</i>	<i>47</i>
<b>MODULE 4 OVERVIEW OF ESC RIGHTS CONCEPTS .....</b>	<b>49</b>
Activity 1 State Obligations and Women’s ESC Rights .....	50
<i>Worksheet 4: Questions on State Obligations .....</i>	<i>52</i>
Activity 2 Understanding Key Principles of Women’s ESC Rights: Non-Discrimination and Equality .....	53
<i>Reference Sheet 4: Women’s ESC Rights – Principles, Obligations, and Concepts .....</i>	<i>55</i>
<i>Worksheet 5: Defining Non-Discrimination and Equality.....</i>	<i>56</i>
Activity 3 Working with ESC Rights Concepts .....	58
<i>Worksheet 6: Working with ESC Rights Concepts.....</i>	<i>60</i>
Activity 4 ESC Rights Workplan Part 2 .....	64
<b>MODULE 5 WORKING WITH INTERNATIONAL LEGAL NORMS: ICESCR AND CEDAW .....</b>	<b>65</b>
Activity 1 Advantages and Limitations of International Instruments.....	66
<i>Worksheet 7: Advantages and Limitations of Using International Instruments.....</i>	<i>68</i>
Activity 2 Working with the ICESCR .....	69
<i>Reference Sheet 5: Main Features of the International Covenant on Economic, Social, and Cultural Rights.....</i>	<i>71</i>
Activity 3 Working with CEDAW .....	73
<i>Reference Sheet 6: Main Features of the Convention on the Elimination of All Forms of Discrimination Against Women .....</i>	<i>75</i>
Activity 4 ESC Rights Workplan Part 3 .....	77
<b>MODULE 6 APPLYING A GENDER PERSPECTIVE TO THE WORK OF NHRIs .....</b>	<b>79</b>
Activity 1 Applying a Gender Perspective to ESC Rights .....	80
<i>Reference Sheet 7: Investigation, Monitoring, and Promotion of ESC Rights .....</i>	<i>81</i>



Activity 2 Case Study on Women's ESC Rights.....	84
Worksheet 8: Case Study.....	85
<b>MODULE 7 EFFECTIVE STRATEGIES FOR THE PROMOTION AND PROTECTION OF WOMEN'S ESC RIGHTS .....</b>	<b>93</b>
Activity 1 Feedback on Workplan Strategies for the Promotion and Protection of Women's ESC Rights .....	94
Activity 2 Challenges Involved in the Promotion of Women's ESC Rights.....	96
<b>MODULE 8 WORKPLANS AND FOLLOW-UP.....</b>	<b>97</b>
Activity 1 Finalizing Workplans .....	98
Activity 2 Follow-Up and Next Steps .....	99
<b>APPENDICES .....</b>	<b>101</b>
Appendix 1: Basic Primer on ESC Rights .....	103
Appendix 2: Summary of the International Covenant on Economic, Social and Cultural Rights .....	106
Appendix 3: The Paris Principles .....	114
Appendix 4: Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights .....	118
Appendix 5: Maastricht Guidelines on Violations of Economic, Social and Cultural Rights .	132
Appendix 6: CESCR General Comment 10 – The Role of National Human Rights Institutions in the Protection of Economic, Social and Cultural Rights.....	140
Appendix 7: Challenges for National Human Rights Institutions in Addressing ESC Rights .....	142
Appendix 8: Montréal Principles on Women's Economic, Social and Cultural Rights – An NGO Initiative to Protect and Promote Women's Rights.....	145
Appendix 9: "Equality and Non-discrimination: The Two Essential Principles for the Promotion and Protection of the Human Rights of Women" .....	163
Appendix 10: CESCR General Comment No. 16 (2005) – The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights .....	180
Appendix 11: Article on General Comment no. 16 .....	190
Appendix 12: List of General Comments CESCR .....	195

Appendix 13:	List of General Recommendations CEDAW Committee.....	196
Appendix 14:	Women's ESC Rights Workplan.....	198



# Introduction

## Background

This **Asia-Pacific Regional Workshop on Women's Economic, Social and Cultural Rights** provides participating national human rights institutions (NHRIs) with the opportunity to analyze and deepen their understanding of economic, social and cultural (ESC) rights issues and the consequences of women's inequality within the international and national human rights contexts. Participants will also examine their roles in promoting and protecting women's ESC rights and develop practical strategies that will be implemented upon their return to work.

## Goal and Objectives

The **goal** of this workshop is to strengthen the capacity of NHRIs to promote and protect women's ESC rights in the Asia-Pacific region.

The **objectives** of the workshop are to enable participants to:

- **Determine** the impact of current ESC rights issues in the Asia-Pacific region on women
- **Review** the mandate and role of NHRIs in promoting and protecting women's ESC rights
- **Apply** international legal norms on ESC rights and on women's rights to their work, in particular:
  - the International Covenant on Economic, Social and Cultural Rights and the General Comments to the ICESCR, including General Comment No. 16
  - the Convention on the Elimination of All Forms of Discrimination Against Women
- **Incorporate** a gender perspective in their work on ESC rights issues
- **Develop** practical strategies to effectively promote and protect women's ESC rights for NHRIs
- **Establish** informal networks among NHRIs for the promotion and protection of women's ESC rights

## Participants

The participants in the workshop are senior staff of National Human Rights Institutions working in the Asia-Pacific Region.

## Methodology

The curriculum design model of the workshop is based on principles of adult experiential learning. The underlying principle is that much of the content will come from the participants and that the workshop will serve as a framework for drawing out their experiences. Participants and facilitators commit themselves to engage in a process of mutual teaching and learning. The emphasis is on practical application and on the development of strategies for action. Continued reflection and evaluation are central to the learning process. There will be debriefing and evaluation sessions at the end of each day and recaps at the beginning of each day to establish the linkages between the modules.

The facilitators are skilled in adult education methods, knowledgeable about human rights and experienced in working with diverse groups. Internationally recognized human rights experts will be invited to give presentations throughout the workshop.

The completion of an “**ESC Rights Workplan**” aims to increase institutional capacity by providing participants with a framework for developing a concrete initiative to put their learning into practice. By reflecting on the content of the workshop, the **ESC Rights Workplan** helps the participants determine how the content is transferable to their own context, resulting in a planned integration of this new knowledge in the future activities of their institution. Throughout the workshop, participants will have opportunities to discuss their **ESC Rights Workplan** with other participants, facilitators, and the resource persons for feedback.

## About the Manual

This manual outlines the format of the workshop with objectives, descriptions of activities, and suggested time frames for each module. There are **Worksheets** and **Reference Sheets** for many of the activities.

**Module 1 – Overview of the Workshop** serves to welcome participants to the workshop and situate the relevance of this training program with respect to the effective promotion and protection of women's ESC rights. Participants review their expectations and resources for the workshop and reflect on how they can work effectively as a group.

In **Module 2 – Current Situation of Economic, Social, and Cultural Rights in the Region**, an activity on ESC rights in the region enables participants, along with the expertise of a resource person, to identify some of the principal ESC rights issues in the region and how these issues affect women. It is important to note that our focus is on the *issues themselves and how they affect women* – i.e. issues that affect men, women, boys, and girls, but may have particularly adverse or discriminatory effects on women and girls. Issues such as poverty, illiteracy, inadequate health care, or internal displacement due to conflict are, to name but a few, ESC rights issues that affect everyone. The questions we ask ourselves here are, how do these issues affect women and what are the wider repercussions at a societal level for *not* addressing these issues?

Answers to these questions are deeply rooted in our perception of the gender roles we attribute to women and men in our societies. While these perceptions vary between societies, women are often on an unequal footing with men when it comes to decision-making, power sharing, and access to resources. An activity on key gender concepts enables participants to reflect on existing gender roles in their societies. An understanding of these roles provides insight into the reasons why women experience discrimination with respect to issues raised in this Module.

A discussion of the regional context of ESC rights, how these rights affect women, and what factors underlie the inequality and discrimination women face helps frame an analysis on NHRI mandates in **Module 3 – Mandates and Roles of NHRIs in Promoting and Protecting Women's ESC Rights**. In this Module, participants identify elements of their NHRI's mandate that allow them to address ESC rights in general and women's ESC rights in particular. Participants also evaluate the strengths and weaknesses of their mandates and share amongst each other some of the activities undertaken by their NHRI to protect and promote women's ESC rights. Once they have shared some of their own best practices, a resource person complements the discussion with international examples of protecting and promoting women's ESC rights by NHRIs and other organizations.

**Module 4 – Overview of ESC Rights Concepts** considers two fundamental concepts necessary for the promotion and protection of women's ESC rights, namely those of

non-discrimination and equality. Both these concepts have been addressed from the beginning of the workshop by examining how ESC rights affect women. The reasons ESC rights affect women differently are rooted in discrimination against women and inequality between women and men, and this has happened in large part due to gender roles attributed to women and men in society and the resulting policies and practices that perpetuate those roles. This Module enables participants, along with the expertise of a resource person, to understand what these concepts mean and how they are defined and interpreted in international human rights instruments. The fundamental concepts of non-discrimination and equality form the basis for understanding the rights-based framework used to address women's ESC rights, a framework which relies on an understanding of state obligations, which the participants will examine in detail with a resource person. Participants end the Module by putting into practice their learning of this framework by examining ESC rights case studies.

**Module 5 – Working with International Legal Norms: ICESCR and CEDAW** enables participants to examine the applicability of these two international human rights instruments. The previous Module laid out the theoretical groundwork available for protecting and promoting women's ESC rights. Module 5 allows participants to identify concrete ways in which international legal norms can assist them in their work: participants will get a better understanding of General Comments (ICESCR) and General Recommendations (CEDAW), learn about the roles of the Committee for ESC rights and the CEDAW Committee, understand reporting mechanisms under these treaty bodies and the significance of country reports, and understand the meaning of the specific optional protocols for the two instruments.

A sound understanding of ICESCR and CEDAW prepares participants to work on a particular ESC rights case study, which is the essence of **Module 6 – Applying a Gender Perspective to the Work of NHRIs**. After examining specific tools for undertaking gender analysis, participants analyze the case study by referring back to the ESC rights issues they identified, how women are affected by those issues, and how changing gender roles shape the way women are affected by those issues. A gender analysis of the case study enables participants to identify practical solutions for protecting and promoting women's ESC rights in the short- and long-term.

**Module 7 – Effective Strategies for the Promotion and Protection of Women's ESC Rights** provides the opportunity for participants to receive feedback on their Workplans from resource persons, who will also provide examples of other effective strategies for addressing women's ESC rights. Participants will also look at the challenges involved in implementing these strategies.

Finally, **Module 8 – Workplans and Follow-Up**, provides the opportunity for participants to share their ideas from their Workplans with other members of the group and to get feedback from their peers. A draft of the follow-up activities along with timelines brings the workshop to a conclusion.

## Development of the Manual

Equitas – International Centre for Human Rights Education (formerly the Canadian Human Rights Foundation) and the Commission on Human Rights of the Philippines are gratefully indebted to those who lent their time and expertise to the development of this manual.

### Equitas – International Centre for Human Rights Education

- Ian Hamilton, Executive Director, Equitas
- Vincenza Nazzari, Director of Education, Equitas
- Paul McAdams, Senior Education Specialist, Equitas
- Sneh Aurora, Program Officer, National Institutions, Equitas

### Philippines Commission for Human Rights (CHRP)

- Jacqueline B. Veloria-Mejia, Executive Director, CHRP
- Ana Elzy E. Ofreneo, Director of HRE and Research Office, CHRP
- Nerissa M. Navarro Piamonte, Director of Strategic Development and Planning Office, CHRP
- Karen Gomez Dumpit, Director of Government Linkages Office, CHRP
- Maria Ellen Julian, Director of BHRAC Secretariat, CHRP

### Partners

- Orest Nowosad, Coordinator, National Institutions Unit, Office of the High Commissioner for Human Rights
- Poul Hauch Fenger, Associate Expert, National Institutions Unit, United Nations Office of the High Commissioner for Human Rights,
- Jo Ford, Human Rights Officer, Human Rights Unit, Commonwealth Secretariat

### Resource Persons

- Mario Gomez, Program Associate, Berghof Foundation for Conflict Studies
- Maria Graterol, Visiting Research Associate, Australian Human Rights Centre, University of New South Wales
- Cookie Diokno, Secretary General, Free Legal Assistance Group (FLAG)

## About the Organizers

This workshop is organized by Equitas – International Centre for Human Rights Education, the Philippines Commission on Human Rights, the United Nations Development Program (UNDP), the Office of the High Commissioner for Human Rights (OHCHR), and the Commonwealth Secretariat.

**Equitas – International Centre for Human Rights Education** was established as a non-profit, non-governmental organization in 1967 by a group of leading Canadian scholars, jurists and human rights advocates with a mandate to advance democracy, human development, peace and social justice through educational programs.

Established in 1967, Equitas has become a global leader in human rights education. During this time, Equitas' capacity-building programs in Canada and abroad have assisted civil society organizations and government institutions to participate effectively in human rights debates, to challenge discriminatory attitudes and practices and to advance important policy and legislative reforms to enhance human rights protection and fulfillment.

Equitas' regional human rights education programs currently focus on developing knowledge, strengthening skills and promoting action around the following themes: the creation and strengthening of independent national human rights institutions; training for NGO trainers; human rights education in the school system; training in human rights advocacy and monitoring; the protection of particular groups in society, including women, migrant workers, children and minorities; and the promotion and protection of economic, social and cultural rights. Equitas' current plans call for the expansion of our programming in Canada, the Middle East and the Americas.

The **Commission on Human Rights of the Philippines (CHRP)** came into being as a permanent and constitutionally independent body on 5 May 1987 as a result of Executive Order No. 163, fulfilling the vision of the 1987 Constitution. The CHRP is tasked with the promotion and protection of the human rights of all persons in the Philippines, including Filipinos residing abroad.

As one of the pioneering human rights commissions in Asia, the CHRP has been at the forefront of human rights education initiatives focused on critical sectors, such as the police and military, the academe (both public and private) covering primary, secondary and tertiary levels of education, and the government service. In cooperation with the Department of Education, the CHRP developed a human rights education curriculum for elementary and secondary levels, including teaching aides and the Human Rights Education Facilitator's Manual for the Training of Teachers.

The CHRP has been recognized internationally for its work in the field of human rights education. In 1995, the CHRP received the UNESCO prize for the teaching of human rights. Drawing from its extensive experience in human rights education and training,

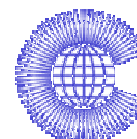
the CHRP is strengthening and expanding its existing Human Rights Resource Center to serve as the educational arm of the Commission covering the Asia-Pacific Region. The CHRP envisions it as a center of academic and professional excellence for teaching human rights in the region. Building from the present training programs, the centre will offer ladderized academic programmes leading to certificates and degree along five areas of human rights work: 1. Human Rights Investigations, 2. Teaching Human Rights, 3. Rights-Based Approach to Governance and Development, 4. Managing Human Rights Institutions, and 5. Special Courses of Specific Concerns, such as vulnerable groups like children, women, indigenous peoples and internally displaced persons.

The CHRP has established strong partnerships with other human rights institutions involved in capacity building, advocacy and training. It has also organized a number of important international conference and workshops in cooperation with the various organs of the United Nations and other international organizations.

This workshop is made possible thanks to the financial support of the UNDP, the OHCHR, and the Commonwealth Secretariat.



Centre international  
d'éducation aux droits humains  
International Centre for  
Human Rights Education





# Schedule

## 22 January: Arrival of participants

Sunday 22 January		
Time	Module/Activity	Title
	<b>Module 1</b>	<b>Overview of the Workshop</b>
30 min	Activity 1	Welcome
1 hr	Activity 2	Getting to Know Participants and Their Expectations
30 min	Activity 3	Overview of the Workshop

Monday 23 January		
Time	Module/Activity	Title
	<b>Module 2</b>	<b>Current Situation of Economic, Social, and Cultural Rights in the Region</b>
2 hrs	Activity 1	Overview of ESC Rights and the Situation in the Region
	Break	
1 hr	Activity 2	Examining ESC Rights in the Region
	Lunch	
1 hr	Activity 2	Continued
	Break	
1 hr 30 min	Activity 3	Women's ESC Rights and Gender: Key Concepts
30 min	Activity 4	<b>ESC Rights Workplan Part 1</b> Presentation of the Workplan.
15 min		Debriefing and End of Day Evaluation
Evening		Welcome Dinner

Tuesday 24 January		
Time	Module/Activity	Title
	<b>Module 3</b>	<b>Mandates and Roles of NHRIs in Promoting and Protecting ESC Rights and Women's Rights</b>
1 hr 30 min	Activity 1	Women's ESC Rights and NHRI Mandates
	Break	
1 hr 30 min	Activity 2	International Experiences in Promoting and Protecting Women's ESC Rights: Examples of Best Practice
	Lunch	
	<b>Module 4</b>	<b>Overview of ESC Rights Concepts</b>
1 hr 30 min	Activity 1	State Obligations and Women's ESC Rights
	Break	
1 hr 30 min	Activity 2	Understanding Key Principles of Women's ESC Rights: Non-Discrimination and Equality
15 min		Debriefing and End of Day Evaluation

Wednesday 25 January		
Time	Module/Activity	Title
	<b>Module 4</b>	<b>Continued</b>
2 hrs	Activity 3	Working with ESC Rights Concepts
	Break	
1 hr	Activity 4	<b>ESC Rights Workplan Part 2</b> Participants work on their Workplan.  Topics to address in the Workplan: <ul style="list-style-type: none"> <li>• Review of the mandate of participants' NHRIs</li> <li>• NHRI challenges to addressing women's ESC rights</li> <li>• Identifying a focus for the plan</li> </ul>
	Lunch	
	<b>Module 5</b>	<b>Working with International Legal Norms: ICESCR and CEDAW</b>
1 hr	Activity 1	Advantages and Limitations of International Instruments
	Break	
1 hr 30 min	Activity 2	Reviewing the ICESCR
15 min		Debriefing and End of Day Evaluation

Thursday 26 January		
Time	Module/Activity	Title
2 hrs	<b>Module 5</b> Activity 3	<b>Continued</b> Reviewing CEDAW
	Break	
30 min	Activity 4	<b>ESC Rights Workplan Part 3</b> Participants work on their Workplan.  Topics to address in the Workplan: <ul style="list-style-type: none"> <li>• Applicability of human rights instruments to your work</li> <li>• Development of your plan</li> </ul>
30 min	<b>Module 6</b> Activity 1	<b>Applying a Gender Perspective to the Work of NHRIs</b> Applying a Gender Perspective to ESC Rights
	Lunch	
1 hr	Activity 1	Continued
	Break	
2 hrs	Activity 2	Case Study on Women's ESC Rights
15 min		Debriefing and End of Day Evaluation

Friday 27 January		
Time	Module	Title
1 hr 30 min	<b>Module 7</b> Activity 1	<b>Effective Strategies for the Promotion and Protection of Women's ESC Rights</b> Feedback on Workplan Strategies for the Promotion and Protection of Women's ESC Rights
	Break	
1 hr 30 min	Activity 2	Challenges Involved in the Promotion of Women's ESC Rights
	Lunch	
1 hr 30 min	<b>Module 8</b> Activity 1	<b>Workplans and Follow-up</b> Finalizing and Sharing of Workplans
1 hr 30 min	Activity 2	Follow-up and Next Steps
30 min		Final Evaluation and Closing
		Closing Dinner

**28 January: Departure of participants**

## Module 1 Overview of the Workshop

<i>Activity</i>		<i>Time</i>
<b>Activity 1</b>	Welcome	30 min
<b>Activity 2</b>	Getting to Know Participants and Their Expectations	1 hr
<b>Activity 3</b>	Overview of the Workshop	30 min

## Activity 1 Welcome

### Objective

To formally open the workshop.

### Time

30 min

### Description

Welcome remarks by:

- Chair Purification C. Valera Quisumbing, Commission on Human Rights of the Philippines
- Ian Hamilton, Executive Director, Equitas
- Workshop partners (UNDP and the Commonwealth Secretariat)

End of Activity ■

## Activity 2 Getting to Know Participants and Their Expectations

### Objectives

To get to know the participants and to examine individual expectations and available resources in the group.

### Time

1 hr

### Description

This activity is divided into two parts.

In **Part A**, you will introduce yourselves to the members of the group.

In **Part B**, you will examine your expectations and resources for the workshop.

40 min

#### Part A Icebreaker

1. The workshop organizers introduce themselves and welcome participants to the workshop.
2. The facilitator presents a series of personal values written on cards placed around the room:
  - courage
  - confidence
  - sincerity
  - creativity
  - compassion
3. Participants are asked to place themselves next to the personal value which they most identify with as a human rights worker.
4. Participants in each corner introduce themselves (name, position, institution/country) and interview each other about why they chose that particular corner. (5 min)
5. The facilitator asks the participants in each corner to feedback to the larger group by giving the names of the people in the group and some of the reasons people gave for selecting that particular corner.

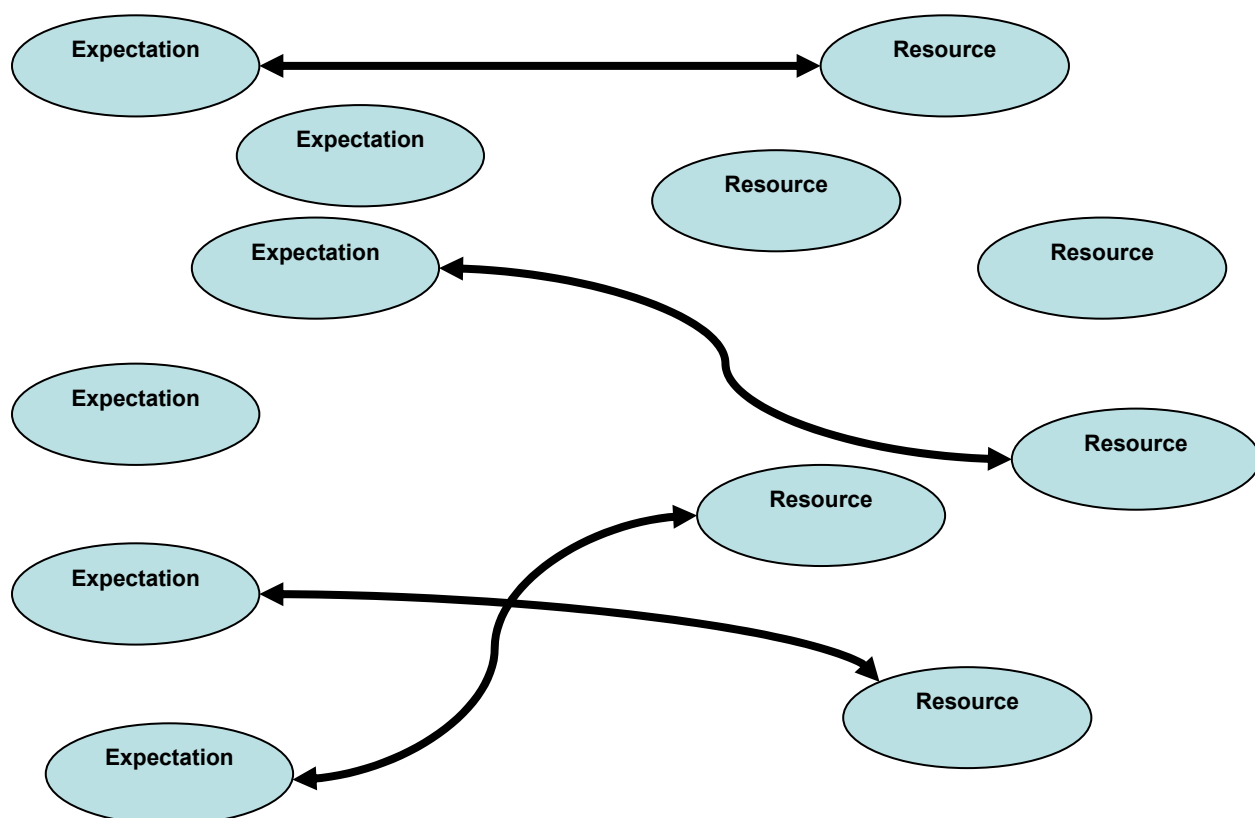
Cont'd ▶ ▶ ▶

Activity 2 cont'd

20 min

**Part B Expectations and Resources**

1. Using the information compiled from participants' **Application Forms**, the facilitator presents on flipchart their expectations and resources (needs and offers). Similar expectations and resources will be grouped together.
2. The facilitator reviews expectations and resources named by participants and maps connections between the expectations and resources listed on flipchart paper. Participants are invited to add any needs and resources they feel are missing.
3. The facilitator asks participants to write their names next to the expectations and resources they identify with. See the example below. (10 min)
4. The facilitator comments on the commonalities in expectations and resources available in the groups. (10 min)



End of Activity ■



## Activity 3 Overview of the Workshop

### Objectives

To provide an overview of the workshop and the overall program.  
To set ground rules for working effectively as a group.

### Time

30 min

### Description

This activity is divided into two parts.

In **Part A**, the workshop organizers will provide an overview of the workshop and the overall program.

In **Part B**, you will establish ground rules for working effectively as a group during the workshop.

20 min

#### **Part A Overview of the Workshop**

The workshop organizers provide an overview of the workshop, referring back to participants' expectations and resources expressed in **Activity 1**. The basic framework for the workshop is presented in **Reference Sheet 1**.

Cont'd ► ► ►

*Activity 3 cont'd*

**10 min**

**Part B Ground Rules**

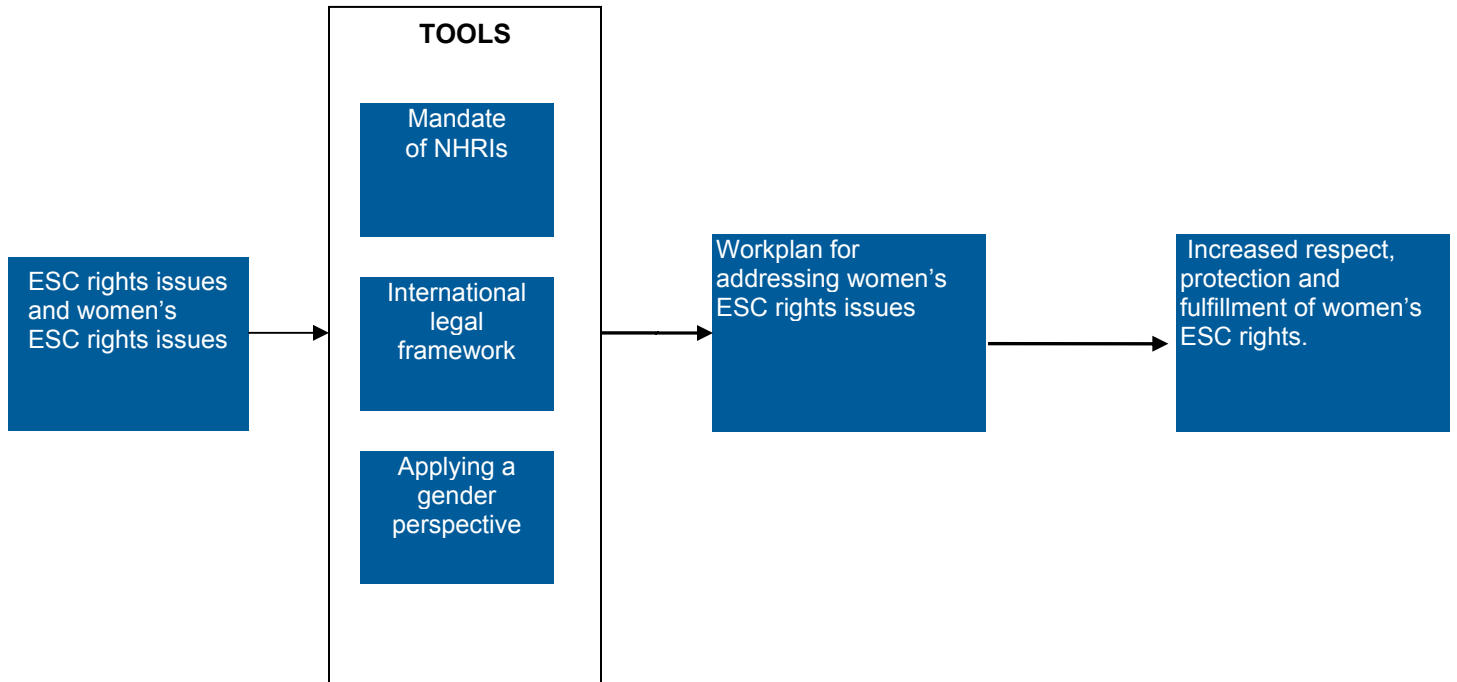
Together with your facilitator, develop a number of ground rules for working effectively as a group.

The facilitator writes them on flipchart and posts them in the room for the remainder of the workshop. It is important that all members of the group, including the facilitators, feel comfortable with the rules and commit to respecting them.

Ground rules for our group:

**End of Activity ■**

## Reference Sheet 1: Workshop Framework





## Module 2 Current Situation of Economic, Social, and Cultural Rights in the Region

<i>Activity</i>		<i>Time</i>
<b>Activity 1</b>	Overview of ESC Rights and the Situation in the Region	2 hrs
<b>Activity 2</b>	Examining ESC Rights in the Region	2 hrs
<b>Activity 3</b>	Women's ESC Rights and Gender: Basic Concepts	1 hr 30 min

## Activity 1 Overview of ESC Rights and the Situation in the Region

### Objectives

To provide an overview of ESC rights and the situation in the Asia-Pacific Region.

### Time

2 hrs

### Description

This activity is divided into three parts.

In **Part A**, the facilitator will present some results from participants' **Application Forms** pertaining to ESC rights.

In **Part B**, a resource person will discuss ESC rights in the Asia-Pacific region.

In **Part C**, there will be a question and answer period with the whole group.

30 min

#### Part A Group Discussion

1. The facilitator begins by asking participants two questions and records the answers on flipchart:

- What is your understanding of ESC rights?

---

---

---

- What is your understanding of equality between men and women?

---

---

---

Cont'd ► ► ►

**Activity 1 cont'd**

2. The facilitator presents participants with the principal ESC rights issues they identified in their **Application Forms**. In particular, the facilitator summarizes participants' answers to the following question: What are some of the principal ESC rights issues in your country?

Refer to **Reference Sheet 2** for a summary of the responses from participants' **Application Forms**.

**45 min****Part B Response by Resource Person**

The resource person comments on the information in **Reference Sheet 2** and provides an overview of ESC rights in general and in the Asia-Pacific region. Specific topics to address:

- Overview of the ESC rights situation globally, including some basic concepts and terms which will be discussed through the workshop
- Commonalities, particularities and differences in ESC rights issues among the countries in the Asia-Pacific region

Refer to **Appendix 1: Basic Primer on ESC Rights** for more information on ESC rights.

**45 min****Part C Group Discussion**

The resource person responds to questions from participants.

**End of Activity ■****To find out more:**

- Appendix 1: Basic Primer on ESC Rights
- ESC Rights: Handbook for National Human Rights Institutions. Available online: [http://www.ohchr.org/english/about/publications/docs/train12\\_e.pdf](http://www.ohchr.org/english/about/publications/docs/train12_e.pdf)
- Circle of Rights. Available online: <http://www1.umn.edu/humanrts/edumat/IHRIP/circle/toc.htm>



## Reference Sheet 2: ESC Rights Issues

The following list was developed from responses contained in participants' **Application Forms**.

**Questions asked: What are some of the principal economic, social, and cultural rights problems in your country? How do these problems affect women?**

Principal problems	How they affect women
<b>Afghanistan</b>	
<b>Participant 1</b>	
• Economic	• Women are being ignored.
• Social	• Women are being marginalized.
• Cultural	• Women are being given half of their rights.
<b>Fiji</b>	
<b>Participant 1</b>	
• Poverty	• Women are either under paid or are domestic workers with no form of income. This contributes to high level of poverty – right to housing, food, medical benefits etc.
• Equal access to Education	• In some instances especially in rural areas education of girls is still not a priority. Girl's chances of further education can be very limited due to financial constraints.
• Equal access to employment and labour relation issues	• The employers are normally biased in giving employment to women. This is due to maternity leave and the pay to be given to mothers. This strengthens view that males are better people to employ and are more productive in their work.
• Sexual Harassment at Workplace	• Women are the ones who are usually harassed at work place. This can be very degrading and mentally disturbing. Women at times leave work due to this type of pressures hence entering the cycle of unemployment and poverty again.
• Distribution of Property	• Property is usually given to males of a family this is very common in the rural areas. Women are given very little after divorce.

Principal problems	How they affect women
<b>Participant 2</b>	
<ul style="list-style-type: none"> <li>Sexual Harassment at Workplace</li> </ul>	<ul style="list-style-type: none"> <li>Women are mentally disturbed by the treatment from their employers and are mostly victims of Sexual Assault, which leaves a stigma throughout their lives.</li> </ul>
<ul style="list-style-type: none"> <li>Job Opportunities</li> </ul>	<ul style="list-style-type: none"> <li>The employers are normally biased in giving employment to women as they are quite judgmental whereby they are of the view that male genders are better people to work with and are more productive in their work.</li> </ul>
<ul style="list-style-type: none"> <li>Property Distribution</li> </ul>	<ul style="list-style-type: none"> <li>The women are deprived of their rights in the distribution of property as the society has maintained the paternal approach in most interior parts of Fiji</li> </ul>
<ul style="list-style-type: none"> <li>Education</li> </ul>	<ul style="list-style-type: none"> <li>The men are given brighter opportunities to further their education in universities and other institutions.</li> </ul>
<b>India</b>	
<b>Participant 1</b>	
<ul style="list-style-type: none"> <li>Gender biased societal norms</li> </ul>	<ul style="list-style-type: none"> <li>Girls are married and bear children at a very young age, they have no control over their reproductive health, many become young widows and are exploited.</li> </ul>
<ul style="list-style-type: none"> <li>Maternal mortality</li> </ul>	<ul style="list-style-type: none"> <li>They are denied the freedom to lead a long life and safe motherhood.</li> </ul>
<ul style="list-style-type: none"> <li>Access to safe and self controlled methods of contraception</li> </ul>	<ul style="list-style-type: none"> <li>More and more women resort to sterilization and abortion.</li> </ul>
<ul style="list-style-type: none"> <li>Gender mainstreaming</li> </ul>	<ul style="list-style-type: none"> <li>They remain neglected, under-represented and invisible.</li> </ul>
<ul style="list-style-type: none"> <li>Women's access to basic social services</li> </ul>	<ul style="list-style-type: none"> <li>Women are affected by education, nutrition, health, housing, drinking water etc.</li> </ul>
<b>Participant 2</b>	
<ul style="list-style-type: none"> <li>Patriarchal society, no right to inheritance</li> </ul>	<ul style="list-style-type: none"> <li>Decreased sex ratio, no access to land and property.</li> </ul>
<ul style="list-style-type: none"> <li>Illiteracy, no education</li> </ul>	<ul style="list-style-type: none"> <li>Total dependence on men, bearer of increased domestic violence.</li> </ul>
<ul style="list-style-type: none"> <li>Gender inequality</li> </ul>	<ul style="list-style-type: none"> <li>Malnutrition, high mortality of girl child.</li> </ul>
<ul style="list-style-type: none"> <li>Poverty</li> </ul>	<ul style="list-style-type: none"> <li>No economic independence, ill health, no education, unequal status.</li> </ul>
<ul style="list-style-type: none"> <li>Overworked</li> </ul>	<ul style="list-style-type: none"> <li>Women work twice as hard as men, but the work goes unnoticed, no credit is given.</li> </ul>
<b>Indonesia</b>	
<b>Participant 1</b>	
<ul style="list-style-type: none"> <li>Education for women of age</li> </ul>	<ul style="list-style-type: none"> <li>A lot of women of age have a minimum level of education.</li> </ul>
<ul style="list-style-type: none"> <li>Women's health</li> </ul>	<ul style="list-style-type: none"> <li>Quality of women's health is low.</li> </ul>
<ul style="list-style-type: none"> <li>Women's economic rights</li> </ul>	<ul style="list-style-type: none"> <li>No economic accessibility for women.</li> </ul>

Principal problems	How they affect women
<ul style="list-style-type: none"> <li>Women's role to manage resources</li> </ul>	<ul style="list-style-type: none"> <li>Women are not given the ability to manage resources.</li> </ul>
<b>Participant 2</b>	
<ul style="list-style-type: none"> <li>Discrimination</li> </ul>	<ul style="list-style-type: none"> <li>Disadvantaged position of women.</li> </ul>
<ul style="list-style-type: none"> <li>Violence against women</li> </ul>	<ul style="list-style-type: none"> <li>Increase in women's poverty.</li> </ul>
<ul style="list-style-type: none"> <li>Conflicts and post-conflict situations</li> </ul>	<ul style="list-style-type: none"> <li>Women have limited access to fulfill their rights.</li> </ul>
<ul style="list-style-type: none"> <li>Environmental problems</li> </ul>	
<ul style="list-style-type: none"> <li>Corporate social responsibility is not implemented</li> </ul>	
<b>Malaysia</b>	
<b>Participant 1</b>	
<ul style="list-style-type: none"> <li>Unequal pay (especially in private sector)</li> </ul>	<ul style="list-style-type: none"> <li>Women are discriminated against.</li> </ul>
<ul style="list-style-type: none"> <li>Insufficient law to encourage women in politics</li> </ul>	<ul style="list-style-type: none"> <li>A small number of women politicians.</li> </ul>
<ul style="list-style-type: none"> <li>Discriminatory laws, e.g.. maternity benefits</li> </ul>	<ul style="list-style-type: none"> <li>Employers prefer male employees.</li> </ul>
<b>Maldives</b>	
<b>Participant 1</b>	
<ul style="list-style-type: none"> <li>Access to education</li> </ul>	<ul style="list-style-type: none"> <li>Girls are unable to access higher education.</li> </ul>
<ul style="list-style-type: none"> <li>Participation in govt/decision-making</li> </ul>	<ul style="list-style-type: none"> <li>Not enough women in decision-making positions, women not eligible for leadership (President)</li> </ul>
<ul style="list-style-type: none"> <li>Sexual abuse</li> </ul>	<ul style="list-style-type: none"> <li>Sexual abuse and subordination.</li> </ul>
<ul style="list-style-type: none"> <li>Access to health</li> </ul>	<ul style="list-style-type: none"> <li>Pregnant women have problems, as access to hospitals is limited.</li> </ul>
<b>Mongolia</b>	
<b>Participant 1</b>	
<ul style="list-style-type: none"> <li>Gender equality</li> </ul>	<ul style="list-style-type: none"> <li>Low percentage of women involved in decision-making levels of the government and public institutions</li> </ul>
<ul style="list-style-type: none"> <li>Discrimination based on age, sex, education</li> </ul>	<ul style="list-style-type: none"> <li>Strict employment requirement criteria, fewer opportunities to advance in career</li> </ul>
<b>New Zealand</b>	
<b>Participant 1</b>	
<ul style="list-style-type: none"> <li>Employment equity</li> </ul>	<ul style="list-style-type: none"> <li>Pay equity for jobs which are performed principally by women.</li> </ul>
<ul style="list-style-type: none"> <li>Poverty</li> </ul>	<ul style="list-style-type: none"> <li>Effect disabled women in particular.</li> </ul>

Principal problems	How they affect women
<ul style="list-style-type: none"> <li>Right to education issues</li> </ul>	<ul style="list-style-type: none"> <li>Barrier to further education; repayment of loans.</li> </ul>
<b>Nepal</b>	
<b>Participants 1 and 2</b>	
<ul style="list-style-type: none"> <li>Gender discrimination</li> </ul>	<ul style="list-style-type: none"> <li>Fails to use ESC rights</li> </ul>
<ul style="list-style-type: none"> <li>Poverty</li> </ul>	<ul style="list-style-type: none"> <li>No access on ESC rights</li> </ul>
<ul style="list-style-type: none"> <li>Armed conflict</li> </ul>	<ul style="list-style-type: none"> <li>Women are forcefully exploited</li> </ul>
<ul style="list-style-type: none"> <li>Illiteracy</li> </ul>	<ul style="list-style-type: none"> <li>Very few opportunities on economic rights</li> </ul>
<ul style="list-style-type: none"> <li>Women cannot give legal identity to their child</li> </ul>	<ul style="list-style-type: none"> <li>They are deprived of their economic rights</li> </ul>
<b>Philippines</b>	
<b>Participant 1</b>	
<ul style="list-style-type: none"> <li>Right to education</li> </ul>	<ul style="list-style-type: none"> <li>Women and girl children are not uncommon residents of the streets.</li> </ul>
<ul style="list-style-type: none"> <li>Right to work</li> </ul>	<ul style="list-style-type: none"> <li>The Philippine labour force is affected by underemployment of women.</li> </ul>
<b>Participant 2</b>	
<ul style="list-style-type: none"> <li>Poverty</li> </ul>	<ul style="list-style-type: none"> <li>Exploitation</li> </ul>
<ul style="list-style-type: none"> <li>Discrimination</li> </ul>	<ul style="list-style-type: none"> <li>Economic dependence of women.</li> </ul>
<ul style="list-style-type: none"> <li>Graft and corruption</li> </ul>	<ul style="list-style-type: none"> <li>Non-empowerment of women</li> </ul>
<ul style="list-style-type: none"> <li>Lack of political will</li> </ul>	<ul style="list-style-type: none"> <li>Non realization of women's rights.</li> </ul>
<ul style="list-style-type: none"> <li>Role of women in society.</li> </ul>	
<b>Participant 3</b>	
<ul style="list-style-type: none"> <li>Poverty</li> </ul>	<ul style="list-style-type: none"> <li>Women are forced to engage in sexual exploitation.</li> </ul>
<ul style="list-style-type: none"> <li>Lack of governmental support</li> </ul>	<ul style="list-style-type: none"> <li>Prostitution and forced labour and debt bondage.</li> </ul>
<ul style="list-style-type: none"> <li>Cultural roles</li> </ul>	<ul style="list-style-type: none"> <li>Domestic violence.</li> </ul>
<b>South Korea</b>	
<b>Participant 1</b>	
<ul style="list-style-type: none"> <li>Unequal wages</li> </ul>	<ul style="list-style-type: none"> <li>Relative deprivation of women.</li> </ul>
<ul style="list-style-type: none"> <li>Confucianism</li> </ul>	<ul style="list-style-type: none"> <li>Irrational workload for women.</li> </ul>

Principal problems	How they affect women
<b>Sri Lanka</b>	
<b>Participant 1</b>	
• Non employment	• Effect the economic status
• Internal conflict/war	• Bad indicators of health, housing, etc.
• Malnutrition	• Effect personal health and family health
• Discrimination in wages	• Basic civil rights violated
• Violence in workplaces	• Sexual harassment
<b>Participant 2</b>	
• Low income of the majority of the population	• Many human rights violations of women
• Internal war situation	• Increase in the middle east migration of women as housemaids
• Internally displaced people, tsunami displacement and other displacements due to various disasters	• Increase the number of women-headed families
• Drug and alcohol addiction of men	• Increase malnutrition of women and children, low weight births and the death of babies
• Less participation of women in parliament	• Less opportunities for women to represent parliament
<b>Thailand</b>	
<b>Participant 1</b>	
• Environment (pollution, petroleum gas pipe etc.)	• Women's health.
• Abuse of children and women	• Women and children are not secure.
<b>Participant 2</b>	
• Environment (pollution, petroleum gas pipe etc.)	• Women's health
• Abuse of children and women	• Women and children are not secure.
• Low wages (especially unskilled labourers)	• More hours are spent trying to get more wages, leaves no chance to develop themselves.
• Discrimination and prejudice	• Less opportunity to make decisions in various areas (especially women in rural areas)
<b>Timor Leste</b>	
<b>Participant 1</b>	
• Equality	• No mechanisms to protect women's rights.
• Women don't understand their rights because of a lack	• Sometimes their rights are violated.

Principal problems	How they affect women
of socialization and campaigns.	
• Education	• Some women abandon or are unable to continue their studies after marriage.
• Health	• Sometimes access to medical assessments can be difficult.
• Public work (infrastructure)	• Few women are working in this area, and not much consideration is given to them.

## Activity 2 Examining ESC Rights in the Region

### Objective

To examine the factors underlying ESC rights issues in the region and their repercussions on women.

### Time

2 hrs

### Description

The previous activity provided an overview of ESC rights and the situation in the region, with an initial look at how these issues affect women. In this activity, you will further examine how these ESC rights issues affect women and what the wider repercussions are for society overall.

This activity is divided into two parts.

In **Part A**, you will work in small groups to examine the principal factors underlying ESC rights issues.

In **Part B**, you will present the results of your discussion to the larger group.

1 hr

#### Part A Group Work

1. The facilitator divides participants into small groups.
2. Based on the discussion in **Activity 1** on the principal ESC rights issues in the region, the facilitator assigns to each group one ESC rights issue to examine.
3. Participants answer the questions in **Worksheet 1**.
4. Each group prepares to present the results of their discussion to the larger group in **Part B**.

1 hr

#### Part B Group Presentations

The large group reconvenes. Each group reports on the results of their discussion (5 min each). The resource person synthesizes common elements and established links between the results from each group.

Cont'd ▶ ▶ ▶



***Activity 2 cont'd***

Questions to consider:

- Who is responsible for ensuring these ESC rights are realized?
- Why is it vital to consider how women are affected by ESC rights issues?

**End of Activity ■**

### Worksheet 1: ESC Rights Issues

Note: The example used in this worksheet is adapted from “Gender Approaches in Conflict and Post-Conflict Situations,” United Nations Development Programme, 2005. Available online: <http://www.undp.org/gender/docs/gendermanualfinalBCPR.pdf>.

**EXAMPLE – ESC Rights Issue to Examine:** Inadequate standard of living for internally displaced persons due to conflict

**ESC Rights Issue to Examine:** \_\_\_\_\_

What are some of the factors underlying or leading to violations of this ESC right?	How are women affected by these factors?	Looking at how women are affected by these factors, what are the wider repercussions at a societal level?
<p>Example:</p> <p>If the issue is an inadequate standard of living for internally displaced persons due to conflict, then some elements could be:</p>		
<ul style="list-style-type: none"> <li>Large number of internally displaced persons forced into refugee camps due to conflict</li> </ul>	<ul style="list-style-type: none"> <li>Creation of refugee camps that do not meet women's and girls' health needs</li> <li>Vulnerability to violence</li> <li>Inability for girls to attend school</li> </ul>	<ul style="list-style-type: none"> <li>Increase in child mortality rate, increase in health-related issues for women (for example, increase in women living with HIV/AIDS), inadequate resources for proper health care</li> <li>Increase in forced prostitution, rape, domestic violence.</li> <li>Lower level of literacy at the national level, women relegated to jobs requiring little education.</li> </ul>
<ul style="list-style-type: none"> <li>Shortage of materials and services (food, water, fuel, health care, etc)</li> </ul>	<ul style="list-style-type: none"> <li>Women's new/additional role as main provider for family needs may mean increased work to access food and water</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>
<ul style="list-style-type: none"> <li>Employment structures disrupted or destroyed</li> </ul>	<ul style="list-style-type: none"> <li>Apart from traditional gender roles, women may take on additional roles if men are in combat</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>

What are some of the elements underlying or leading to violations of this ESC right?	How are women affected by these elements?	Looking at how women are affected by these elements, what are the wider repercussions at a societal level?

## Activity 3 Women's ESC Rights and Gender: Key Concepts

### Objective

To identify key concepts of gender and gender roles in society.

### Time

1 hr 30 min

### Description

The previous activity enabled you to reflect on some of the wider societal repercussions stemming from women being affected differently than men by ESC rights issues. Women are affected differently than men by ESC rights issues partly due to gender roles that have been traditionally attributed to men and women in different societies. This activity explores some basic concepts of gender and gender roles and how they may change over time.

This activity is divided into three parts.

In **Part A**, you will share your understanding of gender.

In **Part B**, you will examine what gender roles are prevalent in the ESC rights issues identified in the previous activity.

In **Part C**, you will present the results of your discussion to the larger group.

30 min

#### Part A Communicating What Gender Means

1. The facilitator leads the participants through a discussion on sex and gender. Participants brainstorm their understanding of the distinction between sex and gender.

Sex	Gender

Cont'd ► ► ►

*Activity 3 cont'd*

2. The facilitator and resource person lead a discussion on communicating the concept of gender in society. Questions for discussion:
- How is the concept of “gender” expressed or articulated in different languages and dialects in your country? Does the term exist? How is it used? What meaning does it carry?

---

---

---

- Do you think the general population is aware of/understands the distinction between sex and gender?

---

---

---

- How would you explain the distinction between sex and gender to a group of men and women in a small, rural community? What examples would you use to explain gender?

---

---

---

- How would you explain the concept of gender to other target groups you work with? How would you explain it to colleagues?

---

---

---

Cont'd ▶ ▶ ▶

*Activity 3 cont'd*

**30 min**

**Part B Defining Gender Roles**

As a socially constructed concept, gender can change over time and vary among different cultures. Gender roles attributed to men and women depend on a number of factors, including:

- What a particular society considers appropriate for men and women within that society in terms of social roles and division of labour
- How power is used, who uses it, and how it is shared between men and women
- How race, class, religion, ethnicity, economic circumstances and age influence gender roles

You will now examine how gender roles are defined in your society in order to better determine how ESC rights issues are experienced differently by men and women.

1. The facilitator divides participants into the same groups as in the previous activity.
2. Participants answer the question in **Worksheet 2** on defining key gender roles in society.
3. Each group prepares to present the results of their discussion to the larger group in **Part C**.

**30 min**

**Part C Group Presentations**

The large group reconvenes. Each group reports on the results of their discussion (5 min each). The facilitator synthesizes common elements and the resource person responds to the presentations.

Questions to consider:

- Refer back to the question in **Worksheet 1** that asks how women are affected by elements underlying or leading to ESC rights violations. How do the gender roles you identified in **Part B** relate to the way women are affected by these ESC rights issues?
- Have gender roles in your country changed over time? If so, how?
- How can the gender roles you identified change over time?

**End of Activity ■**

## Worksheet 2: Gender Roles in Society

**Participation** (1) and **Division of Resources** (2) are two key elements used to help identify gender roles in society. You will use these two elements to examine gender roles in your societies.

For **Participation**, examine how gender roles are defined in your society at different levels – national, community, and household. Who has power at these different levels? Who participates, who makes decisions? Examples are given for each level. Complete the part, “*In my society*” by answering how gender roles are defined in your society at that level.

Key element in identifying gender roles: Participation and Division of Resources	How are the gender roles defined in your society?
<p><b>1) Participation:</b></p> <p>Representation and roles of women and men in positions of power in society:</p> <ul style="list-style-type: none"> <li>National, regional or district level decision-making (e.g., government)</li> <li>Community level decision-making</li> <li>Household-level decision-making</li> </ul>	<ul style="list-style-type: none"> <li>For example: Women are a minority in parliament and have little influence promoting women's rights</li> </ul> <p><i>In my society:</i></p> <ul style="list-style-type: none"> <li>For example: Women have little representation in community level decisions</li> </ul> <p><i>In my society:</i></p> <ul style="list-style-type: none"> <li>For example: Women bear the primary responsibility for <i>reproductive</i> roles, while men have remunerated <i>productive</i> roles and often control the financial situation of the family</li> </ul> <p><i>In my society:</i></p>

## Worksheet 2 cont'd

For **Division of Resources**, examine how gender roles are defined in your society with respect to different types of resources, such as land ownership, access to justice, health services, and information (this is not an exhaustive list). Who has power over these resources? Examples are given for each type of resource. Complete the part, “*In my society*” by answering how gender roles are defined in your society for each resource.

[illegible]



## Activity 4 ESC Rights Workplan Part 1

### Time

30 min

### Description

The facilitator explains the ESC Rights Workplan to participants and answers any questions participants may have about the Workplan.

End of Activity ■



## Module 3 Mandates and Roles of NHRIs in Promoting and Protecting Women's ESC Rights

<i>Activity</i>		<i>Time</i>
<b>Activity 1</b>	Women's ESC Rights in NHRI Mandates	1 hr 30 min
<b>Activity 2</b>	International Experiences in Promoting and Protecting Women's ESC Rights: Best Practices	1 hr 30 min

## Activity 1 Women's ESC Rights and NHRI Mandates

### Objectives

To analyze the role of NHRIs and their work on women's ESC rights.

### Time

1 hr 30 min

### Description

In the previous Module, you examined the context of women's ESC rights in the region. In this activity, you will examine NHRI mandates and see how they can be used to address women's ESC rights you identified in the previous Module.

This activity is divided into two parts.

In **Part A**, you will review your NHRI's mandate with respect to ESC rights and women's ESC rights.

In **Part B**, you will share the results of your discussion with the larger group.

30 min

#### Part A

1. The facilitator divides participants into country-specific groups.
2. Each group answers the questions in **Worksheet 3**.
3. Each group prepares to present the results of their discussion to the larger group in **Part B**.

1 hr

#### Part B Group Presentations

The large group reconvenes. Each group reports on the results of their discussion (5 min each). The facilitator synthesizes common elements and the resource person comments on the presentations.

Questions to consider:

- Has your NHRI been successful in fulfilling its mandate concerning ESC rights?
- Has your institution been successful in addressing women's ESC rights? If so, how? If not, why not? Which activities have been most successful? Why?

End of Activity ■

### Worksheet 3: Women's ESC Rights and Your NHRI Mandate

1

What is your Commission's mandate in relation to economic, social and cultural rights? Provide examples from the legislation and/or other appropriate source(s) that illustrate this mandate. (Refer to Part A of the Application Form.) Does the mandate address women's ESC rights in any specific way?

2

What are the **strengths** of the mandate with respect to women's ESC rights as it appears in the legislation or other source?

3

What are the **weaknesses** of the mandate with respect to women's ESC rights as it appears in the legislation or other source?

4

What kind of **activities** does your Commission undertake for the **promotion** and **protection** of women's ESC rights? (Refer to Part A of the Application Form.)

## Activity 2 International Experiences in Promoting and Protecting Women's ESC Rights: Best Practices

### Objective

To identify best practices for promoting and protecting women's ESC rights with a focus on the work of NHRIs.

### Time

1 hr 30 min

### Description

In the previous activity, you discussed your own experience in addressing women's ESC rights issues within the mandate of your NHRI. In this activity, a resource person complements your examples by providing further international examples of addressing women's ESC rights issues.

This activity is divided into two parts.

In **Part A**, the resource person will discuss some best practices for addressing women's ESC rights issues.

In **Part B**, the resource person will answer questions from participants.

45 min

#### Part A Presentation

The resource person addresses the points below taking into account the information on the work of NHRIs in the area of women's ESC rights presented in the previous activity.

- Other activities that NHRIs can undertake to address ESC rights, and in particular women's ESC rights. Refer to **Reference Sheet 3** for more information.
- International best practices for addressing women's ESC rights issues

45 min

#### Part B Question and Answer Period

The resource person leads a question and answer period.

End of Activity ■

#### For More Information:

- Appendix 6: CESCR General Comment 10 – The Role of National Human Rights Institutions in the Protection of Economic, Social and Cultural Rights

### Reference Sheet 3: NHRI Activities for Promoting and Protecting ESC Rights

Source: United Nations Office of the High Commissioner for Human Rights. (2005). Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions. Professional Training Series No.12. UN publication.

The **Committee on Economic, Social and Cultural Rights (CESCR)** has recognized that national human rights institutions have a “potentially crucial role” to play in promoting and protecting economic, social and cultural rights. National human rights institutions established in conformity with the Paris Principles have a unique mandate to work in the area of human rights. They are official independent organizations established by law, with specified powers and functions. This gives them status and consequently credibility not enjoyed by either governmental or non-governmental organizations. National human rights institutions can be catalysts for action and positive change in relation to all human rights, including economic, social and cultural rights.

In its **General Comment No. 10**, the Committee on Economic, Social and Cultural Rights calls upon States parties to ensure that the mandates of national human rights institutions include economic, social and cultural rights. It requests States parties to include details of the mandate and relevant activities of national human rights institutions when preparing and submitting their periodic reports under the International Covenant on Economic, Social and Cultural Rights.

General Comment No. 10 sets out the types of activities a national human rights institution can undertake to protect and promote economic, social and cultural rights:

- Conducting promotional, educational and information programmes;
- Scrutinizing existing laws, draft bills, administrative acts and other proposals for consistency with economic, social and cultural rights
- Providing technical advice
- Identifying national benchmarks for measuring the progressive realization of economic, social and cultural rights
- Conducting research and inquiries
- Monitoring compliance with regard to specific rights
- Examining specific complaints





## Module 4 Overview of ESC Rights Concepts

<i>Activity</i>		<i>Time</i>
<b>Activity 1</b>	State Obligations and Women's ESC Rights	1 hr 30 min
<b>Activity 2</b>	Understanding Key Principles of Women's ESC Rights: Non-Discrimination and Equality	1 hr 30 min
<b>Activity 3</b>	Working with ESC Rights Concepts	2 hrs
<b>Activity 4</b>	ESC Rights Workplan Part 2	1 hr

## Activity 1 State Obligations and Women's ESC Rights

### Objective

To identify state obligations with respect to ESC rights.

### Time

1 hr 30 min

### Description

In the previous Module, you examined how your NHRI's mandate addresses women's ESC rights. Strategies aimed at realizing women's ESC rights depend on States fulfilling their obligations in accordance with international instruments. This activity examines concrete state obligations that apply to the realization of women's ESC rights.

This activity is divided into two parts.

In **Part A**, a resource person will discuss state obligations and ESC rights.

In **Part B**, there will be a question and answer period with the whole group.

45 min

#### Part A Presentation

1. The facilitator divides participants into 5 groups. Throughout the presentation, think of questions you would like to ask the resource person. Once the presentation is over, each group will write down two questions it would like to ask the resource person.
2. The resource person provides an overview of state obligations with respect to women's ESC rights. The resource person refers to state obligations as defined in international instruments and further defined in General Comments (**Appendix 10**), the Limburg Principles (**Appendix 4**), and the Maastricht Guidelines (**Appendix 5**). Topics to address:
  - Source of State obligations
  - Obligation to respect
  - Obligation to protect
  - Obligation to fulfill

Cont'd ► ► ►

*Activity 1 cont'd*

- Further explanation of terms:
  - Undertake steps by all appropriate means
  - Progressive realization
  - Maximum of available resources
  - International assistance and cooperation
- Concepts of:
  - Minimum core content
  - Justiciability
  - Avoiding retrogressive measures
  - Permeability

**45 min**

**Part B Group Discussion**

1. Each group agrees on two questions it would like the resource person to answer in relation to the topic. Use **Worksheet 4** to record your group's questions.
2. The resource person answers the questions from each group. Use **Worksheet 4** to record the questions from the other groups. The facilitator will ensure that any unanswered questions will be addressed later in the workshop.

**End of Activity ■**

**Worksheet 4: Questions on State Obligations**

Questions	Notes

## Activity 2 Understanding Key Principles of Women's ESC Rights: Non-Discrimination and Equality

### Objective

To define the principles of non-discrimination and equality as they apply to women's ESC rights.

### Time

1 hr 30 min

### Description

The previous activity enabled you to examine the meaning of State obligations as they relate to women's ESC rights. As noted in Module 2, women face particular challenges in realizing their ESC rights due in part to discrimination and inequality.

**Non-discrimination** and **equality** are terms commonly used in human rights work, but what precisely do they mean? This activity helps you define what these terms mean and how they relate to your NHRI's mandate and its work on ESC rights.

This activity is divided into four parts.

In **Part A**, the facilitator explains a framework for analyzing women's ESC rights.

In **Part B**, you will work in small groups to define **either** non-discrimination **or** equality.

In **Part C**, you will share the results of your discussion with the larger group.

In **Part D**, a resource person will comment on the presentations.

10 min

#### Part A Presentation

The facilitator begins by explaining the diagram on **Reference Sheet 4**. This diagram illustrates a framework for analyzing women's ESC rights.

30 min

#### Part B Small Group Work

1. The facilitator divides participants into four small groups. Two groups examine the principle of non-discrimination and two groups examine the principle of equality.

Cont'd ► ► ►

*Activity 2 cont'd*

2. Together with the members of your group, read the following sources of information on the principle you are examining:
  - **Appendix 9:** "Equality and Non-discrimination: The Two Essential Principles for the Promotion and Protection of the Human Rights of Women". Proceedings of a Conference organized by the Centre for Comparative and Public Law and the Women's Studies Research Centre, University of Hong Kong, 20 April 2002.
  - **Appendix 10:** CESCR General Comment No. 16 (2005) – The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights
3. Complete **Worksheet 5** and prepare to present the results of your discussion to the larger group.

**20 min**

**Part C    Group Presentations**

The large group reconvenes. Each group reports on the results of their discussion (5 min each). The facilitator and resource person synthesize common elements.

**30 min**

**Part D    Response by Resource Person**

The resource person responds to the information presented in **Part C**.

**End of Activity ■**

## Reference Sheet 4: Women's ESC Rights – Principles, Obligations, and Concepts

### Women's ESC Rights

- adequate standard of living (including food and freedom from hunger, water, clothing, housing and freedom from forced eviction, continuous improvement of living conditions)
- highest attainable standard of mental and physical health, including reproductive and sexual health and freedom
- equal inheritance and ownership of land and property
- social security, social protection, social insurance and social services, including special assistance before, during and after childbirth
- training and education
- freely chosen work as well as just and favourable conditions of work including fair wages, equal remuneration and protection from sexual harassment and sex discrimination at work
- form and join trade unions
- protection from economic exploitation
- protection from coerced and uninformed marriage
- clean and healthy environment
- participate in cultural life
- claim and enjoy the benefits of patents and intellectual property
- freedom from trafficking and exploitation; recognition of the human rights of trafficked persons

Sources / further explanation of terms:

- CEDAW, ICESCR
- Montreal Principles, Part B

Understanding of women's ESC rights leads to an understanding of state obligations

### Obligations

- Obligation to **respect**
- Obligation to **protect**
- Obligation to **fulfill**

Key Sources:

- CESCR GC 3 (on State obligations)
- Limburg Principles 1-15
- Maastricht Guidelines 6-9
- Montreal Principles Part E

Further explanation of terms:

- **Undertake steps by all appropriate means:** Limburg Principles 16-20
- **Progressive realization:** Limburg Principles 21-24, Maastricht Guideline 8
- **Maximum of available resources:** Limburg Principles 25-28, Maastricht Guideline 10
- **International assistance and cooperation,** Limburg Principles 29-34

### Central concepts

- Minimum core content
- Justiciability
- Avoiding retrogressive measures

Underlying principles of women's ESC rights using a rights-based approach

### Equality

Key sources / further explanation of terms:

- CESCR GC 16
- CEDAW Article 3
- ICESCR Article 3
- Limburg Principle 45
- Millennium Development Goal 3
- Montreal Principles Part C

### Non-discrimination

Key sources / further explanation of terms:

- CESCR GC 16
- CEDAW Article 1
- Limburg Principles 35-41
- Maastricht Guideline 12
- Montreal Principles Part C

## Worksheet 5: Defining Non-Discrimination and Equality

Read Appendices 9 and 10 before answering the questions below.

This table is to be completed by the groups working on non-discrimination.

### Non-discrimination

Referring to your own experience and the two sources of information you just read, what are some of the key elements of **non-discrimination**?

How does your NHRI ensure non-discrimination in its activities for the promotion and protection of women's ESC rights? (Refer back to your answers about your NHRI's mandate, **Worksheet 3**)

1) Ensuring non-discrimination in **promotion** activities:

2) Ensuring non-discrimination in **protection** activities:



**Worksheet 5 continued**

Read Appendices 9 and 10 before answering the questions below.

This table is to be completed by the groups working on equality.

Equality
Referring to your own experience and the two sources of information you just read, what are some of the key elements of <b>equality</b> ?
<p>How does your NHRI ensure equality in its activities for the promotion and protection of women's ESC rights? (Refer back to your answers about your NHRI's mandate, <b>Worksheet 3</b>)</p> <p>3) Ensuring equality in <b>promotion</b> activities:</p> <p>4) Ensuring equality in <b>protection</b> activities:</p>

## Activity 3 Working with ESC Rights Concepts

### Objective

To apply ESC rights concepts in practice.

### Time

2 hrs

### Description

The previous two activities enabled you to examine State obligations for realizing women's ESC rights and reflect on the central concepts of non-discrimination and equality. This activity enables you to apply these concepts to particular case studies.

This activity is divided into two parts.

In **Part A**, you will examine ESC rights concepts in relation to particular rights.

In **Part B**, you will share your results with the larger group.

1 hr

#### Part A Small Group Work

1. The facilitator divides participants into small groups and assigns one of the ESC rights cases in **Worksheet 6** to each group.
2. Together with the members of your group, analyze the ESC rights issues in the case assigned to your group in **Worksheet 6**. Outline State obligations and apply the concepts of non-discrimination and equality.
3. Complete **Worksheet 6** and prepare to present the results of your discussion to the larger group.

1 hr

#### Part B Group Presentations

The large group reconvenes. Each group reports on the results of their discussion (10 min each). The resource person synthesizes common elements and the resource person responds to the presentations.

Questions to consider:

- Has your NHRI addressed similar cases? If so, how did you deal with them? What were the results?

Cont'd ► ► ►

*Activity 3 cont'd*

- Do you think the courts' decisions in both cases reflect a rights-based approach? In other words, do the decisions take into consideration a direct link to rights, ensure an increased level of accountability for duty-bearers and promote participation of rights-holders?

**End of Activity ■**

## Worksheet 6: Working with ESC Rights Concepts

Source: Centre on Housing Rights and Evictions. (2003). 50 Leading Cases on Economic, Social and Cultural Rights: Summaries. Working Paper No. 1, ESC Rights Litigation Programme.

Read the case below and answer the questions.

### Description of Case #1

Case 1: Bangladesh

#### ASK v. Government of Bangladesh

**Facts:** A large number of *basties* (informal settlements) in Dhaka were evicted without notice and the homes were demolished by bulldozers. Two inhabitants and three NGOs lodged a complaint.

**Decision:** Referring to *Olga Tellis v BMC* (Supreme Court of India decision), the Supreme Court found that the right to livelihood could be derived from constitutional fundamental rights, including the rights to life, respect for dignity and equal protection of the law. The Court noted that the right to livelihood of the inhabitants had been severely impacted by the evictions.

The Court held that the State must direct its policy towards ensuring the provision of the basic necessities of life including shelter, a directive principle enshrined in the Constitution (Article 15). While such directive principles are not judicially enforceable, the Court held that the right to life included the right not to be deprived of a livelihood and shelter. The Court ordered the government to develop master guidelines, or pilot projects for the resettlement of the slum dwellers. Any such plan to evict slum dwellers should provide for evictions to occur in phases and according to a person's ability to find alternative accommodation. The Court directed that reasonable time was to be given before the eviction.

The Court also directed that slum dwellers should be given the option of returning to their home villages, or leading an urban life. If they choose to stay in urban areas, they should be provided with loans for constructing houses, food, and in some cases vocational training. Special arrangements should be made for vulnerable population groups such as the sick and elderly, including the provision of food, shelter and medical facilities.

### Questions:

In this case,

1. What are the relevant human rights issues in this case?
  
2. Did women and men experience the situation differently? Would women have different concerns aside from or other than the concerns of men?
  
3. Who are the "rights-holders"?

### Description of Case #1

4. Which rights are not enjoyed? Which rights are not enjoyed by women in the same way as men?
5. Who are the “duty-bearers”?
6. What are the obligations of the duty-bearers? Did the duty-bearers respect, protect and fulfill the rights of women in the same way that they did for men?
7. What must be done to ensure non-discrimination and equality for men and women in the implementation of the court’s decision?
8. What role could an NHRI play in ensuring the court’s decision is implemented and that rights of men and women are protected, respected and fulfilled equally?

**Worksheet 6 cont'd**

**Description of Case #2**

Case 2: India

**People's Union For Civil Liberties**

(Supreme Court of India) 2001, Unreported, 2 May 2003.

**Facts:** Starvation deaths had occurred in Rajasthan despite excess grain being kept for official times of famine. Various schemes throughout India for food distribution were also not functioning. In 2001, the People's Union for Civil Liberties (PUCL) petitioned the Court for enforcement of the schemes and the Famine Code. The PUCL based their arguments on the right to food, deriving it from the right to life.

**Decision:** The Court, noting the right to life, stated "Would the very existence of life of those families which are below the poverty line not come under danger for want of appropriate schemes and implementation". They found systematic failure by the government to implement and resource various food schemes. The Court ordered that: (a) The Famine Code be implemented for three months; (b) Grain allocation for the Food for Work Scheme be doubled (from 5 to 10 million tonnes) and increased financial support for schemes; (c) Ration shop licensees must stay open and provide the grain to families below the poverty line (BPL) at the set price; (d) The government publicize the rights of BPL families to grain to ensure all eligible families are covered; (e) All individuals without means of support (older persons, widows, disabled adults) be granted a ration card for free grain; (f) State governments progressively implement the Mid Day Meal Scheme in schools.

Full text of decision: [www.righttofood.com](http://www.righttofood.com)

**Questions:**

In this case,

1. What are the relevant human rights issues in this case?
2. Did women and men experience the situation differently? Would women have different concerns aside from or other than the concerns of men?
3. Who are the "rights-holders"?

## Description of Case #2

4. Which rights are not enjoyed? Which rights are not enjoyed by women in the same way as men?
5. Who are the “duty-bearers”?
6. What are the obligations of the duty-bearers? Did the duty-bearers respect, protect and fulfill the rights of women in the same way that they did for men?
7. What must be done to ensure non-discrimination and equality for men and women in the implementation of the court’s decision?
8. What role could an NHRI play in ensuring the court’s decision is implemented and that rights of men and women are protected, respected and fulfilled equally?

## Activity 4 ESC Rights Workplan Part 2

### Time

1 hr

### Description

Participants continue to work on their Workplans.

End of Activity ■



## Module 5 Working with International Legal Norms: ICESCR and CEDAW

<i>Activity</i>		<i>Time</i>
<b>Activity 1</b>	Advantages and Limitations of International Instruments	1 hr
<b>Activity 2</b>	Working with the ICESCR	1 hr 30 min
<b>Activity 3</b>	Working with CEDAW	2 hrs
<b>Activity 4</b>	ESC Rights Workplan Part 3	30 min

## Activity 1 Advantages and Limitations of International Instruments

### Objective

To explore the advantages and limitations of international instruments for the protection of women's ESC rights.

### Time

1 hr

### Description

The previous Module enabled you to examine specific state obligations with respect to addressing women's ESC rights while considering the fundamental concepts of non-discrimination and equality. This Module examines how NHRIs can use international instruments, in particular the ICESCR and CEDAW to address women's ESC rights by NHRIs. This first activity examines some advantages and limitations to using international human rights instruments.

This activity is divided into two parts.

In **Part A**, participants list their ideas about the advantages and limitations of the international instruments.

In **Part B**, the resource person leads a large group discussion.

15 min

#### Part A Individual Work

1. Based on your knowledge and experience, state one **advantage** and one **limitation** of using international instruments to address women's ESC rights in your country. While the main instruments focused on during this workshop are the ICESCR and CEDAW, you do not need to limit your analysis to only those two instruments.
2. The facilitator provides you with 2 metacards. Label one card (**A**) – for **Advantage** and the other card (**L**) for **Limitation**. Write your ideas in point form, on the appropriate card. Try to think specifically about how you apply the instruments in your work.
3. Once you have finished, paste your cards on the flipchart version of **Worksheet 7**.

Cont'd ► ► ►

*Activity 1 cont'd*

**45 min**

**Part B Large Group Discussion**

The resource person leads a discussion on the ideas presented by the participants to draw out and add essential elements of the **Advantages** and **Limitations** identified.

**End of Activity ■**

## Worksheet 7: Advantages and Limitations of Using International Instruments

ADVANTAGES of using international instruments to address women's ESC rights.	Limitations of using international instruments to address women's ESC rights.

## Activity 2 Working with the ICESCR

### Objectives

To develop a greater awareness of the ICESCR and to explore the applicability of the ICESCR in addressing women's ESC rights.

### Time

1 hr 30 min

### Description

In the previous activity, you reflected on advantages and limitations of using international instruments in your work. This activity explores in greater detail these advantages and limitations and how NHRIs can assist governments in fulfilling their obligations by examining specific aspects of the ICESCR, such as the reporting mechanism to the CESCR and the optional draft protocol.

This activity is divided into two parts.

In **Part A**, a resource person will discuss various elements of the ICESCR.

In **Part B**, the resource person will answer questions from participants.

45 min

#### Part A Presentation

The resource person provides an overview of the ICESCR. Topics to address:

- Revision of rights protected in the ICESCR and their implication for women's ESC rights
- Role of the CESCR
- Meaning of the General Comments, in particular those which relate to NHRIs and women's rights
- Reporting mechanisms and country reports
- Implications of the draft Optional Protocol

The resource person may also provide specific examples to illustrate some of the topics addressed above and engage participants in small group work. Refer to **Reference Sheet 5** for more information on the ICESCR.

Cont'd ► ► ►

*Activity 2 cont'd*

**45 min**

**Part B Group Discussion**

The resource person responds to questions from participants.

Questions to consider:

- How can the ICESCR be used to promote and protect women's rights in the work of NHRIs (for example, in investigation, monitoring, promotion, education, research and legislative review)?
- What is your NHRI's current role in helping your government meet its State obligations under ICESCR?
- Has your NHRI contributed to your country's reports to the CESCR?
- What would be the implications of the draft Optional Protocol on the work of your NHRI? What implication does the draft Optional Protocol have for women's ESC rights?

**End of Activity ■**

## Reference Sheet 5: Main Features of the International Covenant on Economic, Social, and Cultural Rights

### Instrument: International Covenant on Economic, Social, and Cultural Rights (ICESCR)

Date of Entry into Force: 3 January 1976

Number of States Parties: 151 as of November 2004

#### 1) Rights protected

- Right to self determination (art. 1) (same provisions as in article 1 of the ICCPR);
- Right to work (art. 6);
- Right to just and favourable working conditions (art. 7);
- Right to form trade unions and right to strike (art. 8);
- Right to social security (art. 9);
- Right to adequate living conditions (art. 11);
- Right to education (art. 13);
- Right to take part in cultural life, to enjoy the benefits of scientific progress and its applications and to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which s/he is the author (art. 15).

#### 2) Obligations imposed on the State

- Obligation on the State to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the ICESCR by all appropriate means, including particularly the adoption of legislative measures.
- The Committee on Economic, Social and Cultural Rights developed the idea of minimum core obligations to refute the argument that lack of resources hinders fulfillment of obligations. The Committee has observed that every State has a minimum core obligation to satisfy minimum essential levels of each of the rights of the Covenant.

#### 3) Limitations

- The State may subject rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society (art. 4).
- More specifically, there is a limitation to the right to form trade unions as follows: The right to form trade unions shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

**Instrument: International Covenant on Economic, Social, and Cultural Rights (ICESCR)**

**Date of Entry into Force: 3 January 1976**

**Number of States Parties: 151 as of November 2004**

**4) Duties/Responsibilities imposed on the public**

- In conformity with the fifth paragraph of the Preamble, individuals have duties to other individuals and to the community to which they belong. Individuals have a responsibility to strive for the promotion and observance of the rights recognized in the ICESCR.

**5) Mechanisms for monitoring compliance**

- The Committee on Economic, Social and Cultural Rights was created in 1985 by the UN Economic and Social Council. The Committee is in charge of examining the periodic reports prepared by each State party every 5 years (in which States outline the enjoyment of the rights contained in the ICESCR (art.16)

**6) Optional protocol and purpose**

- A draft Optional Protocol granting the right of individuals or groups to submit communications concerning non-compliance with the ICESCR has yet to be officially adopted by the relevant UN organs.

**7) Other special characteristics**

- Under the American Human Rights Convention and the European Social Charter, the San Salvador Protocol and an Additional Protocol were respectively adopted in order to grant recourses to holders of economic, social and cultural rights under the Convention.



## Activity 3 Working with CEDAW

### Objectives

To develop a greater awareness of CEDAW and to explore the applicability of CEDAW in addressing women's ESC rights.

### Time

2 hrs

### Description

As was the case in the previous activity for ICESCR, this activity examines in greater detail advantages and limitations of CEDAW and how NHRIs can assist governments in fulfilling their obligations under CEDAW through the reporting mechanism to the CEDAW Committee and the optional protocol.

This activity is divided into two parts.

In **Part A**, a resource person will discuss various elements of CEDAW.

In **Part B**, the resource person will answer questions from participants.

45 min

#### Part A Presentation

The resource person provides an overview of CEDAW. Topics to address:

- Revision of rights protected under CEDAW and comparison to ICESCR
- Role of the CEDAW Committee
- Special Rapporteurs
- Meaning of the General Recommendations and examination of some principal ones
- Reporting mechanisms and country reports
- Implications of the Optional Protocol

The resource person may also provide specific examples to illustrate some of the topics addressed above and engage participants in small group work.

Refer to **Reference Sheet 6** for more information on CEDAW.

Cont'd ► ► ►

*Activity 3 cont'd*

**1 hr 15 min**

**Part B Group Discussion**

The resource person responds to questions from participants.

Questions to consider:

- What is your NHRI's role in helping your government meet its state obligations under CEDAW?
- Has your NHRI contributed to your country's reports to the CEDAW Committee?
- What are the implications of the Optional Protocol on the work of your NHRI?

**End of Activity ■**

## Reference Sheet 6: Main Features of the Convention on the Elimination of All Forms of Discrimination Against Women

**Instrument: Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

**Date of Entry into Force: 3 September 1981**

**Number of States Parties: 179 as of November 2004**

### 1) Rights protected

- Civil, political, economic, social and cultural rights without discrimination against women. (Refer also to **Reference Sheet 5**)

### 2) Obligations imposed on the State

- To take appropriate constitutional, legal and administrative measures to guarantee equality, to provide remedies and sanctions for public and private acts of discrimination and to repeal discriminatory laws, to take measures to eliminate practices that either risk threatening or actually threaten the enjoyments of the rights contained in CEDAW (art.2);
- To provide for equality between men and women which is a precondition for women's full enjoyment of human rights, to develop appropriate programs and measures to advance the status of women so that they can enjoy human rights on a basis of equality with men (art.3);
- To take measures to eliminate prejudices and stereotyping of sex roles (art.5);
- Suppression of all forms of trafficking and exploitation of women (art.6);
- To take appropriate measures to eliminate discrimination against women in the political and public life of the country (art.7);
- To take measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations (art.8).

### 3) Limitations

- No limitations except for the termination of discriminatory measures once such measures have been achieved

### 4) Duties/Responsibilities imposed on the public

- No specific duty or responsibility. However, "States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women," which implies that each individual needs to cooperate.

### 5) Mechanisms for monitoring compliance

- The Committee on the convention on the Elimination of All Forms of Discrimination Against Women is composed of 23 experts. State parties are required to submit reports to the Committee (every 4 years) on legislative, judicial and other measures they have taken in accordance with the provisions of the CEDAW (art. 17 to 22).

**Instrument: Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

**Date of Entry into Force: 3 September 1981**

**Number of States Parties: 179 as of November 2004**

6) Optional protocol and purpose

- The Optional Protocol to the CEDAW establishes a procedure for the filing of complaints from individuals claiming to be victims of violations of rights contained in CEDAW.

7) Other special characteristics

- Many States have made reservations to their ratification of CEDAW.
- It is interesting to note that special measures taken in order to protect motherhood are not considered as discrimination under CEDAW.

## Activity 4 ESC Rights Workplan Part 3

### Time

30 min

### Description

Participants continue to work on their Workplans.

End of Activity ■



## Module 6 Applying a Gender Perspective to the Work of NHRIs

<i>Activity</i>		<i>Time</i>
<b>Activity 1</b>	Applying a Gender Perspective to ESC Rights	1 hr 30 min
<b>Activity 3</b>	Case Study on Women's ESC Rights	2 hrs

## Activity 1 Applying a Gender Perspective to ESC Rights

### Objective

To explore the meaning of a gender perspective to ESC rights.

### Time

1 hr 30 min

### Description

The previous Module enabled you to explore practical ways your NHRI can use international human rights instruments to address women's ESC rights in its work. Apart from using these instruments and their mechanisms effectively in NHRI programs, a gender perspective should be integrated throughout all aspects of the work of NHRIs. This Module explores what a "gender perspective" means through an analysis of a case study.

This activity is divided into two parts.

In **Part A**, the resource person will provide a description of applying a gender perspective to ESC rights.

In **Part B**, the resource person will answer questions from participants.

45 min

#### Part A Presentation

The resource person provides a description of applying a gender perspective to ESC rights. In particular, the resource person examines how a gender perspective can be applied to investigation, monitoring, and promotion of women's ESC rights. A suggested framework for each of these aspects of the work of NHRIs is presented in **Reference Sheet 7**.

#### Applying a Gender Perspective

Applying a gender perspective means assessing the differing implications for women and men in actions such as policies, legislation, or programs. It integrates the different experiences of women and men into the design, implementation, monitoring and evaluation of policies and programs to ensure that women and men are treated equally and benefit equally.

45 min

#### Part B Question and Answer Period

The resource person responds to questions from participants.

End of Activity ■



## Reference Sheet 7: Investigation, Monitoring, and Promotion of ESC Rights

Source: United Nations Office of the High Commissioner for Human Rights. (2005). Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions. Professional Training Series No.12. UN publication.

### 1. Framework for Investigating ESC Rights

Framework for complaints:	Applying a gender perspective to this framework may include:
<p><b>1. Determine the admissibility of the complaint</b></p> <ul style="list-style-type: none"> <li>Identify the issues raised by the allegation;</li> <li>Assess whether the allegation falls within the jurisdiction of the national human rights institution;</li> <li>Assess whether the allegation, if proven, would constitute a violation of domestic and international human rights standards.</li> </ul> <p><b>2. Investigate</b></p> <ul style="list-style-type: none"> <li>Develop a plan, or terms of reference, to conduct an investigation;</li> <li>Conduct an investigation following established procedures and principles;</li> <li>Record the findings.</li> </ul> <p><b>3. Conciliate</b></p> <ul style="list-style-type: none"> <li>Where appropriate, assist the complainant and respondent to reach a private settlement of the issue acceptable to both.</li> </ul> <p><b>4. Make a determination on the complaint</b></p> <ul style="list-style-type: none"> <li>Analyse the information obtained during the course of the investigation;</li> <li>Make findings and recommendations.</li> </ul> <p><b>5. Follow up</b></p> <ul style="list-style-type: none"> <li>Inform all parties of the findings and recommendations</li> </ul>	<ul style="list-style-type: none"> <li>Analysis of different impacts of investigation actions (such as interviewing) on women and men</li> <li>different needs of women and men</li> <li>access to and control over resources</li> <li>education level of women and men</li> <li>access to services</li> <li>gender division of labour</li> <li>decision making mechanisms</li> <li>gender-disaggregated data, indicators, and benchmarks</li> </ul>

## Reference Sheet 7 cont'd

2. Framework for Monitoring ESC Rights

Framework for monitoring:	Applying a gender perspective to this framework may include:
<ol style="list-style-type: none"> <li>1. <b>Identifying appropriate indicators</b>, compatible with the State's obligations in relation to economic, social and cultural rights, for monitoring these rights at the national and international levels.</li> <li>2. <b>Establishing appropriate national benchmarks and targets</b> in relation to each indicator and asking: <ul style="list-style-type: none"> <li>▪ What movement has there been from the benchmark and, if there has not been positive movement, why not?</li> <li>▪ Has the State set targets and, if not, why not?</li> <li>▪ Have the targets been met and, if not, why not?</li> </ul> </li> <li>3. <b>Collecting data</b> during the monitoring period which can be disaggregated according to the grounds of prohibited discrimination (such as gender, race, ethnic origin or disability) and which are comparable, accurate, impartial and provided over time.</li> <li>4. <b>Analysing results, drawing conclusions, making recommendations and reporting</b> on findings for the monitoring period by: <ul style="list-style-type: none"> <li>▪ Considering data from indicators with established benchmarks (national and international) to give the current status of economic, social and cultural rights and help in developing targets to be met;</li> <li>▪ Gauging trends by comparing results over time with previous monitoring periods (multi-year analysis) to determine whether and what progress has been made and national benchmarks achieved;</li> <li>▪ Comparing results with international benchmarks also.</li> </ul> </li> </ol>	<p>As was the case for investigation:</p> <ul style="list-style-type: none"> <li>▪ Analysis of different impacts of investigation actions (such as interviewing) on women and men</li> <li>▪ different needs of women and men</li> <li>▪ access to and control over resources</li> <li>▪ education level of women and men</li> <li>▪ access to services</li> <li>▪ gender division of labour</li> <li>▪ decision making mechanisms</li> <li>▪ gender-disaggregated data, indicators, and benchmarks</li> </ul>

## Reference Sheet 7 cont'd

3. Framework for Promoting ESC Rights

Framework for Promotion:	Applying a gender perspective to this framework may include:
<ul style="list-style-type: none"> <li>▪ Identify participants, issues and needs.</li> <li>▪ Set goals and objectives.</li> <li>▪ Determine content and formulate programmes.</li> <li>▪ Prepare materials.</li> <li>▪ Conduct the promotional activities.</li> <li>▪ Evaluate and follow-up.</li> </ul>	<ul style="list-style-type: none"> <li>▪ ensuring participation of women in the design, planning, implementation, monitoring and evaluation of an activity</li> <li>▪ identifying stakeholders and beneficiaries</li> <li>▪ using gender-sensitive language</li> <li>▪ identifying clear and measurable objectives and results</li> <li>▪ identifying how women and men perceive information</li> <li>▪ evaluating the results of the activities by interviewing women and men</li> </ul>

These steps are not strictly in chronological order and do not stand alone. Rather, developing and working through one part of the process will affect other parts and result in changes to previous thinking. For example, attempts at translating an objective into concrete promotional activities may result in revisions or a complete change to the initial objective. Or it may be discovered only while conducting and evaluating an activity that its formulation was flawed and ineffective.

Flexibility in developing activities and in implementing them will assist a national human rights institution to benefit from the contributions of others and meet the needs of all involved. Lessons learned through the development, implementation and evaluation of promotional initiatives can be applied to later stages of the process, encouraging dynamic and progressive thinking for current and future initiatives.

## Activity 2 Case Study on Women's ESC Rights

### Objective

To analyze an ESC rights case study applying a gender perspective.

### Time

2 hrs

### Description

The previous activity enabled you to examine how a gender perspective can be applied to investigation, monitoring, and promotion of ESC rights. This activity enables you to put into practice the application of a gender perspective to a case study.

This activity is divided into three parts.

In **Part A**, you will apply a gender perspective to a case study.

In **Part B**, you will present your findings to the larger group.

In **Part C**, a resource person will comment on the presentations.

1 hr

#### Part A Small Group Work

1. The facilitator goes through the basic elements of the case study and explains the activity.
2. The facilitator divides participants into four groups.
3. Each group reads the case study presented in **Worksheet 8**.
4. Together with the members of your group, answer the questions in **Worksheet 8** and prepare to present your responses to the larger group.

40 min

#### Part B Group Presentations

The large group reconvenes. Each group reports on the results of their discussion (10 min each). The resource person synthesizes common elements.

20 min

#### Part C Response by Resource Person

The resource person responds to the presentations.

End of Activity ■

## Worksheet 8: Case Study

The following case study is inspired by true events that people have been subjected to under similar circumstances. The case study presents the situation of the “Kinori” minority in the country of “Lapeni”.

The case study is divided into three parts:

- **Part 1:** A general overview of the “Kinori” minority. (Take **10 minutes** to read.)
- **Part 2:** An examination of the alleged violations in the case study applying a gender perspective. (Take **20 minutes** to answer the questions.)
- **Part 3:** The development of short- and long-term strategies to address the women’s ESC rights issues presented in the case study. (Take **30 minutes** to develop a strategy.)

**Worksheet 8 cont'd**

**Part 1: The Case**

**General Overview**

The Kinori represent a minority of the population in the country of Lapeni. The group makes up 10% of the country's population of 22 million. They are of lower caste and mostly landless. The Kinori perform the most menial and degrading jobs in the country, and do not have the same access to education, medical facilities, land, food and other goods and services.

In general, the Kinori are segregated from the non-Kinori population in Lapeni. The Kinori are portrayed as inferior, poorer, and a 'contamination' to the rest of Lapeni society. The Kinori have been subjected to discrimination and oppression for decades in Lapeni, despite legislative and constitutional provisions protecting their rights.

Members of the Kinori community have been subjected to arbitrary detentions by police officers (who tend to be non-Kinori). In addition, the police have refused to take Kinori reports of violence or other human rights violations seriously.

Kinori communities in Lapeni tend to be segregated from the rest of the population. Paved roads end at the entrance to their communities. Clean water and sanitation are absent, and there exists no system for waste removal. Some health services are available, but most remain out of reach for the community as the cost is too high for the average Kinori to pay.

In Lapeni, the average Kinori makes about an average of Rupees 1000 per month, far below what an average Lapenite makes. Life expectancy and literacy rates are also much lower for the Kinori than the average Lapeni.

As a result of poor wages and lack of opportunities, many Kinori people are poor. The literacy rate is not even half the rate of the rest of the population, and within the Kinori community, girls are much more likely not to be able to read and write than are boys. For Kinori children who have the opportunity to stay in school, they are often separated from the non-Kinori children, cannot partake in meals with the other children, and are often in classes where the student/teacher ratio is double that in classes with non-Kinori children. In addition, the drop out rate for Kinori children is high as they are often taken out of school at the age of 10 or 11 in order to help their parents with work – in the shops, in the fields or at home.

In the country of Lapeni, there is also an insurgent group that aims to make the coastal West District of Lapeni a separate state. This group, known as the United Progressive Liberation Front (UPLF), started as a student movement about eight years ago, but has now become a more formalised and broad-based group. The UPLF members are from both Kinori and non-Kinori communities. The government of Lapeni has resisted their

demands, and as a result the UPLF have resorted to more aggressive measures. The UPLF have entered villages in the West District and have taken over the local government offices in several villages. The government has been sending army troops into the West District trying to keep the UPLF at bay. Both groups are armed, and there have been many sites of unrest and open fire. As a result, about 4,000 civilians have lost their lives at the hands of both the UPLF and government forces. Women have also been raped by members of both groups. Many more civilians, including teachers and children, are abducted by the UPLF and indoctrinated with their policies, or used as soldiers. The UPLF have blocked roads and destroyed communications services, in order to isolate the West District from the rest of Lapeni to force the government to concede to their demands for an independent state.

### **Manisha's Story**

Manisha is a 30 year-old Kinori mother of three sons who used to live in a coastal village of the West District of Lapeni. Up until a year ago, Manisha used to sell fish at the local market that her fisherman husband would catch. In December 2004 she lost her husband in the tsunami and their home was destroyed. Manisha and her three sons were placed in a temporary barracks 10 kilometres from her home that was set up by the government and run by the army. She shared a housing unit that was 4 meters by 5 meters with her sons and two other widows.

Conditions in the barracks are poor. There are an inadequate number of toilets and little access to clean drinking water. Food is distributed, but priority is accorded to non-Kinori persons living in the barracks; non-Kinori are also given preferential treatment when it comes to health care. Manisha's children are unable to attend their old school since it was destroyed in the tsunami, and there are no other schools near the barracks which they can attend.

Two weeks after the disaster, the government promised a daily living allowance for all persons living in the barracks. One year later, no one has received any compensation. As part of the rehabilitation and reconstruction efforts, the government has indicated that land up to two kilometres from the coastline should remain free of housing. Manisha's home was one kilometre from the shore; however the government does not recognize her as legally inheriting her husband's land.

Incidents of violence against women in the barracks have increased in recent months. Manisha was raped by an army officer who threatened to withhold her food allowances if she reported the crime. She wants to leave, but if she leaves the confines of the barracks, the government will no longer recognize her as an internally displaced person and therefore she will not receive any food rations for her and her children. Furthermore, if she leaves the barracks, her sons, who range in age between 7 and 11, would become vulnerable to being indoctrinated into the UPLF.

## Government's Rehabilitation and Reconstruction Plan

Within a week of the disaster, the government promised the creation of a Rehabilitation and Reconstruction Plan to relocate internally displaced persons. However, while the government has set up a committee to develop and implement the plan, progress has been slow. The government blames the UPLF for hampering relief efforts by blocking access to roads and stealing food and medical supplies. The UPLF, on the other hand, accuses the government of rampant corruption and mismanagement of relief efforts.

Women's participation in the Rehabilitation and Reconstruction Plan has been negligible. Local Women's Empowerment Bureaus have encouraged women from local communities and barracks to appoint spokeswomen to attend planning meetings. The women appointed feel as though their opinions are not listened to when they attend the meetings (consisting predominantly of men) and that they are perceived as "token women" who are appointed only to demonstrate "gender equality".

The inefficiency of the Rehabilitation and Reconstruction Committee has prompted some donors to try their own initiatives. For example, one major donor created a new structure whereby each community and barracks has six representatives who participate in the Rehabilitation and Reconstruction Committee. Problems have arisen with that structure because it conflicts with traditional structures already in place at the community level. As a result, the new structures are inefficient.



**Worksheet 8 cont'd****Part 2: Investigating Manisha's Case (20 min)**

As a staff member of your NHRI, you receive a complaint from an NGO concerning Manisha's situation. A representative of the NGO explains to you the situation described in Part 1 of the case study. The decision is made for your NHRI to investigate the situation.

Answer the questions below in relation to Manisha's case.

Questions regarding Manisha's case
1. What are some of the ESC rights issues?
2. Who is responsible for respecting, protecting and fulfilling women's ESC rights in the barracks?
3. Which provisions of ICESCR and CEDAW or other international instruments are relevant to this case?
4. How would you address this case in relation to your mandate? What steps would you take?

**Questions regarding Manisha's case**

5. Suppose the decision is made for you to monitor the case. If you had to develop a monitoring checklist, what would you include? List the items of your checklist in the space below.

Checklist for monitoring:

**Worksheet 8 cont'd**

**Part 3: Short- and Long-term Strategies (30 min)**

Following the investigation into Manisha's case, your NHRI intends to put forward recommendations for short- and long-term strategies for improving conditions in the barracks and ensuring the participation of women in the reconstruction of the tsunami-affected areas.

For this part of the case study, choose **one** of the following strategies to develop:

**A. Short-term Strategy:**

Your NHRI must propose a plan for improving the living conditions of women living in the barracks.

**B. Long-term Strategy:**

Your NHRI must propose a plan for ensuring the participation of women in the Rehabilitation and Reconstruction Plan for the area affected by the tsunami.

For your plan, use the framework in the table on the next page to identify the elements necessary for each step of your plan. Prepare to report the results of your discussion to the larger group in **Part C**.

**Worksheet 8 cont'd**

Type of strategy to develop (choose short- or long-term): \_\_\_\_\_

Plan Component	What you need to do
1. Identify participants, issues and needs	
2. Set goals and objectives	
3. Determine content and formulate programmes	
4. Evaluate and follow-up	

## Module 7 Effective Strategies for the Promotion and Protection of Women’s ESC Rights

<i>Activity</i>		<i>Time</i>
<b>Activity 1</b>	Feedback on Workplan Strategies for the Promotion and Protection of Women’s ESC Rights	1 hr 30 min
<b>Activity 2</b>	Challenges Involved in the Promotion and Protection of Women’s ESC Rights	1 hr 30 min

## Activity 1 Feedback on Workplan Strategies for the Promotion and Protection of Women's ESC Rights

### Objective

To further develop strategies for addressing women's ESC rights as defined in participants' Workplans.

### Time

1 hr 30 min

### Description

The previous Module enabled you to apply a gender perspective to ESC rights. The last activity with the case study enabled you to reflect on different strategies an NHRI could undertake to address women's ESC rights. In this activity, the resource persons will provide feedback on your Workplans.

This activity is divided into two parts.

In **Part A**, the resource persons will provide feedback to participants regarding ideas in their Workplans.

In **Part B**, the resource persons will summarize their feedback to the larger group.

1 hr

#### Part A Small Group Work

1. The facilitator divides participants into three groups (participants from the same country remain in the same group).
2. Country representatives from each group share their ideas from their Workplan with the resource person.
3. The resource person provides feedback to participants from each country and may provide other examples of effective strategies, such as:
  - Using international mechanisms
  - Undertaking legislative review and amendment
  - Conducting budget analysis
  - Transfer of learning to other NHRI staff
  - Promotion, advocacy, and education

Cont'd ► ► ►

*Activity 1 cont'd*

**30 min**

**Part B Summary by Resource Persons**

The resource persons summarize their feedback to the larger group.

**End of Activity ■**

## Activity 2 Challenges Involved in the Promotion of Women's ESC Rights

### Objective

To identify challenges in the promotion and protection of women's ESC rights.

### Time

1 hr 30 min

### Description

The previous activity enabled you to revise or modify the ideas included in your Workplan. This activity will further help you in defining your ideas by examining the challenges faced by NHRIs in the promotion and protection of women's ESC rights.

This activity is divided into two parts.

In **Part A**, the resource person will discuss some challenges in addressing women's ESC rights.

In **Part B**, the resource person will answer questions from participants.

**45 min**

#### **Part A Presentation**

The resource person discusses some challenges in addressing women's ESC rights and how these challenges can be overcome.

**45 min**

#### **Part B Question and Answer Period**

The resource person leads a question and answer period.

End of Activity ■



## Module 8 Workplans and Follow-up

<i>Activity</i>		<i>Time</i>
<b>Activity 1</b>	Finalizing and Sharing of Workplans	1 hr 30 min
<b>Activity 2</b>	Follow-up and Next Steps	1 hr 30 min

## Activity 1 Finalizing Workplans

### Objective

To complete and present Workplans.

### Time

1 hr 30 min

### Description

As the workshop draws to a close, you are now in the position to complete your Workplan. This activity gives you the opportunity to complete and present your plan for feedback from all members of the group.

This activity is divided into two parts.

In **Part A**, you will finalize your Workplan.

In **Part B**, you will present your Workplan to the members of the larger group.

**30 min**

#### **Part A Completion of Workplans**

Complete the remainder of your Workplan.

**1 hr**

#### **Part B Sharing of Workplans**

Participants share their Workplans with the members of the larger group.

End of Activity ■

## Activity 2 Follow-Up and Next Steps

### Objective

To determine follow-up measures and next steps.

### Time

1 hr 30 min

### Description

The workshop organizers lead the group through a discussion on follow-up and next steps following the workshop.

End of Activity ■



## **Appendices**



## Appendix 1: Basic Primer on ESC Rights

Source: Center for Economic and Social Rights, <http://cesr.org/basic>.

### What are Economic, Social, and Cultural rights?

Economic, social, and cultural rights include the human right to work, the right to an adequate standard of living, including food, clothing, and housing, the right to physical and mental health, the right to social security, the right to a healthy environment, and the right to education.

ESC rights are part of a larger body of human rights law that developed in the aftermath of World War II. Human rights law includes all economic and social rights, plus civil and political rights like the right to free speech and the right to a fair trial. These rights are deeply intertwined: for example, the right to speak freely means little without a basic education. Similarly, the right to work means little if you are not allowed to meet and assemble in groups to discuss work conditions.

The most important human rights law is in the International Bill of Human Rights, which includes the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. Economic and social rights are also included in numerous other human rights legal instruments. Among the most important are:

- Convention on the Rights of the Child (CRC)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Vienna World Conference on Human Rights Declaration and Plan of Action
- Conventions of the International Labor Organization

The U.N. human rights system is rooted in the International Bill of Rights, but also includes additional human rights treaties. Each of the treaties is governed by a Treaty Body that provides authoritative interpretations of its terms. The Treaty Bodies also publish General Comments, which elaborate on specific articles of the treaties.

### Why are they called “rights”?

All the world’s great religious and moral traditions, philosophers, and revolutionaries, recognize that human beings deserve to live in freedom, justice, dignity and economic security. The International Bill of Rights grew out of these traditions, and calls for all

governments to make sure their citizens have human rights — civil, political, social, cultural and economic. Referring to economic, social and cultural issues as “rights” uses the legal framework developed under international law, and gives individuals legitimate claims against state and non-state actors for protection and guarantees.

After the ICESCR came into force in 1976, jurisprudence around economic and social rights began to develop and great progress was made following the formation of the United Nations Committee on Economic, Social, and Cultural Rights.

Economic and social rights require governments and other powerful actors to ensure that people have access to basic needs, and that people have a voice in decisions affecting their well-being. Poverty and injustice are neither inevitable nor natural, but arise from deliberate decisions and policies, and the human rights legal framework provides a way to hold public officials accountable for development policies and priorities.

### **What are the minimum ESC rights requirements?**

States are bound to ensure minimum human rights regardless of their resource constraints. For ESC rights, minimum core requirements include available foodstuffs for the population, essential primary health care, basic shelter and housing, and the most basic forms of education. The Committee on Economic, Social, and Cultural Rights elaborated on state obligations under General Comment 3: The Nature of States Parties Obligations.

### How do states fulfill their minimum requirements?

The human rights legal framework spells out government’s responsibilities towards its citizens in terms of the following three overarching obligations:

- *Respect* — the obligation to respect requires governments to refrain from interfering directly or indirectly with the enjoyment of ESC rights
- *Protect* — the obligation to protect requires governments to prevent third parties, such as corporations, from interfering in any way with the enjoyment of ESC rights
- *Fulfill* — the obligation to fulfill requires governments to adopt the necessary measures to achieve the full realization of ESC rights

### **What about non-state actors?**

Human rights treaties are signed by governments, and are the duty of governments to enforce. However, this does not mean that non-state actors are free to violate people’s



human rights. There are three main ways to apply human rights standards to non-state actors. First, governments have the primary responsibility to protect human rights, including from violations by non-state actors. Second, individuals may claim their basic rights through judicial action. Finally, non-state actors are bound to respect human rights standards through the universal protection of human dignity. For more information on the role and responsibility of non-state actors, see Chris Jochnick's article, *Confronting the Impunity of Non-State Actors: New Fields for the Promotion of Human Rights*.

### **How are these rights enforced?**

At the international level, the most effective enforcement mechanism for all international human rights is political pressure. Those states that have ratified the ICESCR are required to submit regular reports, every five years, to the Committee on Economic and Social Rights that detail their human rights standards. When these reports are reviewed, it provides an excellent opportunity for civil society and the international community at large to put pressure on a country to adhere to its legal obligations.

Currently, there is no mechanism for individuals to bring forward violations of ESC rights to the Committee on Economic, Social and Cultural Rights. However, governments have been meeting every year at the United Nations to discuss the possibility of allowing individual complaints. This system would be similar to the one that currently exists with the Human Rights Committee for the International Covenant on Civil and Political Rights.

For those countries that haven't ratified the ICESCR, there are other international venues that apply political pressure. For example, a country may be a party to the CRC or CEDAW, both of which include ESC rights. Larger bodies, like the Commission on Human Rights, can also be used to apply political pressure. Additionally, petitions in regional human rights commissions can also be effective in highlighting an issue and seeking remedy.

At the domestic level, there are political and legal remedies for many ESC violations. Although these remedies are still far from comprehensive, they do demonstrate that economic and social rights are fundamentally justiciable. For example, a core part of every ESC right is a prohibition on discrimination, whether for employment, housing, or food. Anti-discrimination laws exist in most countries, and are fully enforceable in a court of law.

## Appendix 2: Summary of the International Covenant on Economic, Social and Cultural Rights

Source: Canadian Human Rights Foundation, International Human Rights Training Program Manual, 2005.

### Overview

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by UN General Assembly on December 16, 1966 and entered into force on January 3, 1976. As of 26 January 2006, 152 States have become parties to the Covenant (6 States are remaining signatories);  
<http://www.ohchr.org/english/countries/ratification/3.htm> .

Unlike civil and political rights, economic, social and cultural rights are often viewed with 'suspicion, caution and scepticism'. At times even 'treated with an air of triviality'. In the human rights field, ESC rights are most often accorded secondary status by governments and NGOs.

However, ESC rights are an indivisible part of human rights. First, ESC rights have intrinsic value. They expand the freedom to lead a life that people value. The potential of the human person may be expressed through civil and political rights, but the realization of these potentialities requires adequate social and economic circumstances.

The concept of human dignity is the foundation for all civil, political, economic, social and cultural rights. These rights can neither be given nor taken away. Human dignity is denied when civil and political rights, as well as ESC rights are not guaranteed. Two common elements mediate both sets of rights - security and equality. Security of the person includes socio-economic security and equality before the law encompasses equality of opportunities.

The development of international human rights law has shown the indivisibility of the civil, political and economic, social and cultural rights. For example, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child incorporate the protection of both sets of rights.

### Violations of Economic, Social and Cultural Rights

The notion of violation applied vigorously to civil and political rights is normally not used regarding ESC rights. The Committee on Economic, Social and Cultural Rights has developed the concept of 'minimum core obligations'. The Committee developed this concept mainly to refute the argument that lack of resources hinders fulfillment of obligations. The Committee has stated that every State has a minimum core obligation to satisfy minimum essential levels of each of the rights in the Covenant. The Committee has clarified that a State party 'in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic

shelter and housing, or of the most basic forms of education is prima facie, failing to discharge its obligations under the Covenant'.

Thus, it can be construed that failure to fulfill minimum core obligations will be a violation of the rights enshrined in the Covenant. However, the notion of violation of ESC rights needs to be further developed. A group of distinguished experts in international law have developed principles known as the *Limburg Principles*. These principles provide some basic framework to develop the notion of violation of ESC rights. According to the Limburg Principles, 'A failure by a State party to comply with an obligation contained in the Covenant is, under international law, a violation of the Covenant.'

In determining what amounts to a failure to comply, it must be borne in mind that the Covenant affords to a State party a margin of discretion in selecting the means for carrying out its objectives, and that factors beyond its reasonable control may adversely affect its capacity to implement particular rights.

A State party will be in violation of the Covenant, inter alia, if:

- It fails to take a step which it is required to take by the Covenant;
- It fails to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfillment of a right;
- It fails to implement without delay a right which it is required by the Covenant to provide immediately;
- It wilfully fails to meet a generally accepted international minimum standard of achievement, which is within its powers to meet;
- It applies a limitation to a right recognized in the Covenant other than in accordance with the Covenant;
- It deliberately retards or halts the progressive realization of a right, unless it is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or force majeure;
- It fails to submit reports as required under the Covenant.'

## Monitoring Mechanism

The Committee on Economic, Social and Cultural Rights was established in 1985 and is comprised of 18 members who are independent experts and serve in their personal capacity, not as representatives of Governments.

The primary function of the Committee is to monitor the implementation of the Covenant by States parties. Under articles 16 and 17 of the Covenant, States parties undertake to submit periodic reports to the Committee (within two years of the entry

into force of the Covenant for a particular State party, and thereafter once every five years) outlining the legislative, judicial, policy and other measures which they have taken to ensure the enjoyment of the rights contained in the Covenant. States parties are also requested to provide detailed data on the degree to which the rights are implemented and areas where particular difficulties have been faced in this respect.

The Committee has assisted the reporting process by providing States parties with a detailed 22-page set of reporting guidelines specifying the types of information the Committee requires in order to monitor compliance with the Covenant effectively (available at the UN's web site: [www.unhchr.ch](http://www.unhchr.ch)).

The Committee can also assist Governments in fulfilling their obligations under the Covenant by issuing specific legislative, policy and other suggestions and recommendations such that ESC rights are more effectively secured.

The Committee decided in 1988 to prepare "General Comments" on the rights and provisions contained in the Covenant with a view to assisting States parties in fulfilling their reporting obligations and to provide greater interpretative clarity as to the intent, meaning and content of the Covenant. The most recent General Comments issued by the Committee relate to the right to work (General Comment no. 18), intellectual property rights (General Comment no. 17) and the equal right of men and women to the enjoyment of all ESC rights (General Comment no. 16).

The Committee was the first treaty body to provide non-governmental organizations (NGOs) with the opportunity to submit written statements and make oral submissions dealing with issues relating to the enjoyment or non-enjoyment of the rights contained in the Covenant in specific countries.

## Provisions

### Articles 2(2) and 3: Non-discrimination

Article 2 (2) and Article 3 deal with the non-discrimination aspect. Article 2 (2) is similar to other instruments in stating that the rights should be enjoyed without discrimination on the grounds of 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

Article 3, on the other hand is more specific. It provides for the 'equal right of men and women to the enjoyment of rights...set forth in the Covenant.'

The concept of 'progressive realization' is not applicable to the non-discrimination clause and the obligation to ensure equal rights of men and women. The obligation is to ensure it immediately and not progressively.

The obligation to ensure the equal rights of men and women includes affirmative action to eliminate conditions that contribute to discrimination.

The Committee has followed the practice that discrimination is not restricted to those grounds identified under the Covenant and includes discrimination based on age, health status, or disability. The non-discriminatory clause of the Covenant covers discriminatory acts of both public authorities and private individuals.

#### **Article 4: Limitations**

Article 4, of the Covenant deals with the limitation clause. The ICESCR does not recognize any particular right to be non-derogable in the manner it is done under the International Covenant on Civil and Political Rights. However, Article 4, states that limitations imposed on the enjoyment of rights should be 'determined by law' and should be done solely for the purpose of 'promoting the general welfare in a democratic society.'

#### **Article 2 (1): Obligation of States**

Article 2 (1) of the Covenant deals with the obligation of States parties under the Covenant. According to the Committee on Economic, Social and Cultural Rights, 'Article 2 is of particular importance to a full understanding of the Covenant and must be seen as having a dynamic relationship with all of the other provisions of the Covenant. It describes the nature of the general legal obligations undertaken by States parties to the Covenant.'

Article 2 (1) of the Covenant states that,

'Each State party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of 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.'

Thus, obligations of States parties are expressed through the use of terms 'undertakes to take steps,' 'to the maximum available resources,' 'achieving progressively the full realization,' and 'by all appropriate means including particularly the adoption of legislative measures.'

In contrast, these terms are not used in the civil and political rights Covenant. The Article 2 (1) of the ICCPR states that, 'Each State Party to the present Covenant undertakes to respect and to ensure to all individuals... the rights recognized in the present Covenant....' It is normally argued that the ICESCR does not belong to the same genre as that of the civil and political rights. Hence, it is important to understand the meaning of terms used in Article 2(1) of the ICESCR to comprehend the obligations of states under the Covenant.

## Obligation of Conduct and Obligation of Result

The Committee on Economic, Social and Cultural Rights has made it clear that the obligations of States parties include both obligation of conduct and obligation of result. The International Law Commission has formulated these two categories and the Committee has referred to it to elaborate on the obligations of States parties under the Covenant.

*Obligation of conduct* means that, a State has to undertake a specific step. For example, prohibiting forced labour is an act of conduct. *Obligation of result* means attaining a particular outcome through active implementation of policies and programmes. However, conduct and result cannot be separated. The concepts of obligation of conduct and result provides an effective tool for monitoring the implementation of ESC rights. It also shows that realization of ESC rights is a dynamic process involving both immediate and long-term intervention.

## Meaning of 'Undertakes to Take Steps'

The use of the term 'Each State Party . . . undertakes to take steps,' in Article 2 (1) of the ICESCR is normally construed as implying progressive implementation of the Covenant. However, it should be noted that a similar term is used in Article 2 (2) of the ICCPR and in Article 2 (1) of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Thus, the term cannot be construed to imply progressive implementation. In fact, the Committee on Economic, Social and Cultural Rights has clarified that, 'while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.'

## Meaning of 'By All Appropriate Means, Including Particularly the Adoption of Legislative Measures'

The Committee on Economic, Social and Cultural Rights has recognized that States must decide the appropriate means and it may depend on the right that is being implemented. However, the Committee has stated that, 'States parties reports should indicate not only the measures that have been taken but also the basis on which they are considered to be the most "appropriate" under the circumstances.'

It is clear from the interpretation given by the Committee that the term 'all appropriate means' is linked to both conduct and result. A State party cannot avoid its obligations by merely saying that its policies are aimed at economic development and that poverty or illiteracy will be eradicated eventually.

As for the term 'adoption of legislative measures,' the Committee has stated that it by no means exhausts the obligation of States parties. A mere existence of laws is not sufficient to prove that a State party is carrying out its obligation under the Covenant.

For example, while considering the Canadian report, a member of the Committee commented that, 'When reports focused too narrowly on legal aspects, the suspicion naturally arose that there might be some gap between law and practice.'

In addition to laws, the Committee has also stressed the need for 'provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justifiable.'

### **Meaning of 'Achieving Progressively'**

It is normally assumed that due to the resources required for the realization of ESC rights, they are incapable of immediate implementation. On the other hand, the Committee has stated that,

'The fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the *raison d'être*, of the Covenant that is to establish clear obligations for States parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal.'

The Committee has made it clear that 'progressive realization' is not an escape clause. Such an interpretation provides activists an important conceptual perspective against the notion of 'gradualism' in economic policies. It means that ensuring social welfare is a gradual long-term process where the growth of the economy will benefit everyone. However, most often growth becomes an end in itself whether it is socially desirable or not. The position of the Committee seems to be that the process of economic growth should be combined with the realization of human rights.

The Committee has also concluded that 'progressive realization' includes not only continuous improvement but also the obligation to ensure that there are no regressive developments. The Committee has stated that, 'any deliberately retrogressive measures . . . would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum of available resources.'

### **Meaning of 'To the Maximum of Its Available Resources'**

The notion that economic resources are essential for the implementation of ESC rights has been the major justification for considering it secondary to civil and political rights. The Committee has acknowledged the importance of resources in fulfilling the rights



but does not consider that resource availability as an escape clause. For example, it has stated that 'in cases where significant numbers of people live in poverty and hunger, it is for the State to show that its failure to provide for the persons concerned was beyond its control.'

The Committee developed the idea of 'minimum core obligations' to refute the argument that lack of resources hinders fulfillment of obligations. The Committee has observed that every State has a minimum core obligation to satisfy minimum essential levels of each of the rights of the Covenant. It has clarified that a State party 'in which a significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is *prima facie*, failing to discharge its obligations under the Covenant.... In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.'

The Committee has made it clear that, 'even where the available resources are demonstrably inadequate, the obligations remains for a State party to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances.' In addition, the Committee has also stated that, 'even in times of severe resource constraints . . . vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes.'

### **Draft Optional Protocol**

The Committee on Economic, Social and Cultural Rights, at its 15th session held in Geneva from 18 November to 6 December 1996, concluded its consideration of a draft Optional Protocol to the ICESCR granting the right of individuals or groups to submit communications (complaints) concerning non-compliance with the Covenant. The elaboration of the draft optional protocol was recommended during the 1993 World Conference on Human Rights.

The report of the Committee on the subject (E/CN.4/1997/105) was submitted for consideration by the Commission on Human Rights at its 53rd session held in Geneva, from 17 March to 25 April 1997. After the commissioning of reports by an independent expert, in 2003 the Commission on Human Rights created an Open-Ended Working Group (OEWG) with a mandate to consider options regarding the elaboration of the Optional Protocol. The OEWG met for the first time from February 23 to March 5 2004. Governments and civil society representatives also attended the meeting. The OEWG did not reach consensus on whether to draft a final Optional Protocol at this meeting. The mandate of the OEWG was extended for an additional two years by the Commission on Human Rights during its 2004 session from March 15 to April 23 2004. The second session of the OEWG was held from 10 to 21 January 2005 and included governments and civil society representatives. The draft optional protocol has yet to be



officially adopted by the relevant United Nations organs. Comments, suggestions, recommendations and observations on the draft Optional Protocol could be sent to the Office of the High Commissioner for Human Rights in Geneva (webadmin.hchr@unog.ch).

### **Rights Under the Covenant**

- Article 1: The right to self-determination
- Article 6: The right to work
- Article 7: The right to enjoyment of just and favourable conditions of work
- Article 8: The right to form and join trade unions
- Article 9: The right to social security
- Article 10: Protection of the family
- Article 11: The right to an adequate standard of living (food, housing, clothing)
- Article 12: The right to enjoyment of the highest attainable standard of health (physical and mental)
- Article 13: The right to education
- Article 15: Cultural rights, intellectual property rights



## Appendix 3: The Paris Principles

Source: UN Commission on Human Rights Resolution 1992/54 of 3 March 1992, annex (E/1992/22); General Assembly Resolution 48/134 of 20 December 1993, annex.

### Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
  - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
    - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
    - (ii) Any situation of violation of human rights which it decides to take up;
    - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
    - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

- (b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
- (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
- (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
- (e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;
- (f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
- (g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

### **Composition and guarantees of independence and pluralism**

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:
  - (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
  - (b) Trends in philosophical or religious thought;
  - (c) Universities and qualified experts;
  - (d) Parliament;
  - (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).
2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent

of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

### **Methods of operation**

Within the framework of its operation, the national institution shall:

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combatting racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

### **Additional principles concerning the status of commissions with quasi-jurisdictional competence**

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.



## Appendix 4: Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights

Source: <http://shr.aaas.org/thesaurus/instrument.php?insid=94>

### Introduction

(i) A group of distinguished experts in international law, convened by the International Commission of Jurists, the Faculty of Law of the University of Limburg (Maastricht, the Netherlands) and the Urban Morgan Institute for Human Rights, University of Cincinnati (Ohio, United States of America), met in Maastricht on 2-6 June 1986 to consider the nature and scope of the obligations of States parties to the International Covenant on Economic, Social and Cultural Rights, the consideration of States parties Reports by the newly constituted ECOSOC Committee on Economic, Social and Cultural Rights, and international co-operation under Part IV of the Covenant.

(ii) The 29 Participants came from Australia, the Federal Republic of Germany, Hungary, Ireland, Mexico, Netherlands, Norway, Senegal, Spain, United Kingdom, United States of America, Yugoslavia, the United Nations Centre for Human Rights, the International Labour Organisation (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the Commonwealth Secretariat, and the sponsoring organizations. Four of the participants were members of the ECOSOC Committee on Economic, Social and Cultural Rights.

(iii) The Participants agreed unanimously upon the following principles which they believe reflect the present state of international law, with the exception of certain recommendations indicated by the use of the verb "should" instead of "shall".

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

#### *PART I: THE NATURE AND SCOPE OF STATES PARTIES' OBLIGATIONS*

##### **A. General Observations**

1. Economic, social and cultural rights are an integral part of international human rights law. They are the subject of specific treaty obligations in various international instruments, notably the International Covenant on Economic, Social and Cultural Rights.

2. The International Covenant on Economic, Social and Cultural Rights, together with the International Covenant on Civil and Political Rights and the Optional Protocol, entered into force in 1976. The Covenants serve to elaborate the Universal Declaration

of Human Rights: these instruments constitute the International Bill of Human Rights.

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

4. The International Covenant on Economic, Social and Cultural Rights (hereafter the Covenant) should, in accordance with the Vienna Convention on the Law of Treaties (Vienna, 1969), be interpreted in good faith, taking into account the object and purpose, the ordinary meaning, the Preparatory work and the relevant practice.

5. The experience of the relevant specialized agencies as well as of United Nations bodies and intergovernmental organizations, including the United Nations working groups and special rapporteurs in the field of human rights, should be taken into account in the implementation of the Covenant and in monitoring States parties' achievements.

6. The achievement of economic, social and cultural rights may be realized in a variety of political settings. There is no single road to their full realization. Successes and failures have been registered in both market and non-market economies, in both centralized and decentralized political structures.

7. States parties must at all times act in good faith to fulfil the obligations they have accepted under the Covenant.

8. Although the full realization of the rights recognized in the Covenant is to be attained progressively, the application of some rights can be made justiciable immediately while other rights can become justiciable over time.

9. Non-governmental organizations can play an important role in promoting the implementation of the Covenant. This role should accordingly be facilitated at the national as well as the international level.

10. States parties are accountable both to the international community and to their own people for their compliance with the obligations under the Covenant.

11. A concerted national effort to invoke the full participation of all sectors of society is, therefore, indispensable to achieving progress in realizing economic, social and cultural rights. Popular participation is required at all stages, including the formulation, application and review of national policies.

12. The supervision of compliance with the Covenant should be approached in a spirit of co-operation and dialogue. To this end, in considering the reports of States parties,

the Committee on Economic, Social and Cultural Rights, hereinafter called "the Committee", should analyse the causes and factors impeding the realization of the rights covered under the Covenant and, where possible, indicate solutions. This approach should not preclude a finding, where the information available warrants such a conclusion, that a State party has failed to comply with its obligations under the Covenant.

13. All organs monitoring the Covenant should pay special attention to the principles of non-discrimination and equality before the law when assessing States parties' compliance with the Covenant.

14. Given the significance for development of the progressive realization of the rights set forth in the Covenant, particular attention should be given to measures to improve the standard of living of the poor and other disadvantaged groups, taking into account that special measures may be required to protect cultural rights of indigenous peoples and minorities.

15. Trends in international economic relations should be taken into account in assessing the efforts of the international community to achieve the Covenant's objectives.

### **B. Interpretative Principles specifically relating to Part II of the Covenant**

*Article 2 (1): "to take steps ... by all appropriate means, including particularly the adoption of legislation"*

16. All States parties have an obligation to begin immediately to take steps towards full realization of the rights contained in the Covenant.

17. At the national level States Parties shall use all appropriate means, including legislative, administrative, judicial, economic, social and educational measures, consistent with the nature of the rights in order to fulfil their obligations under the Covenant.

18. Legislative measures alone are not sufficient to fulfil the obligations of the Covenant. It should be noted, however, that article 2 (1) would often require legislative action to be taken in cases where existing legislation is in violation of the obligations assumed under the Covenant.

19. States parties shall provide for effective remedies including, where appropriate, judicial remedies.

20. The appropriateness of the means to be applied in a particular State shall be determined by that State party, and shall be subject to review by the United Nations Economic and Social Council, with the assistance of the Committee. Such review shall



be without prejudice to the competence of the other organs established pursuant to the Charter of the United Nations.

*"to achieve progressively the full realization of the rights"*

21. The obligation "to achieve progressively the full realization of the rights" requires States parties to move as expeditiously as possible towards the realization of the rights. Under no circumstances shall this be interpreted as implying for States the right to defer indefinitely efforts to ensure full realization. On the contrary all States parties have the obligation to begin immediately to take steps to fulfil their obligations under the Covenant.

22. Some obligations under the Covenant require immediate implementation in full by all States parties, such as the prohibition of discrimination in article 2 (2) of the Covenant.

23. The obligation of progressive achievement exists independently of the increase in resources; it requires effective use of resources available.

24. Progressive implementation can be effected not only by increasing resources, but also by the development of societal resources necessary for the realization by everyone of the rights recognized in the Covenant.

*"to the maximum of its available resources"*

25. States parties are obligated regardless of the level of economic development, to ensure respect for minimum subsistence rights for all.

26. "Its available resources" refers to both the resources within a State and those available from the international community through international co-operation and assistance.

27. In determining whether adequate measures have been taken for the realization of the rights recognized in the Covenant attention shall be paid to equitable and effective use of and access to the available resources.

28. In the use of the available resources due priority shall be given to the realization of rights recognized in the Covenant, mindful of the need to assure to everyone the satisfaction of subsistence requirements as well as the provision of essential services.

*"individually and through international assistance and co-operation, especially economic and technical"*

29. International co-operation and assistance pursuant to the Charter of the United

Nations (arts. 55 and 56) and the Covenant shall have in view as a matter of priority the realization of all human rights and fundamental freedoms, economic social and cultural as well as civil and political.

30. International co-operation and assistance must be directed towards the establishment of a social and international order in which the rights and freedoms set forth in the Covenant can be fully realized (cf. art. 28 Universal Declaration of Human Rights).

31. Irrespective of differences in their political, economic and social systems, States shall co-operate with one another to promote international social, economic and cultural progress, in particular the economic growth of developing countries, free from discrimination based on such differences.

32. States parties shall take steps by international means to assist and co-operate in the realization of the rights recognized by the Covenant.

33. International co-operation and assistance shall be based on the sovereign equality of States and be aimed at the realization of the rights contained in the Covenant.

34. In undertaking international co-operation and assistance Pursuant to article 2 (1) the role of international organizations and the contribution of non-governmental organizations shall be kept in mind.

### Article 2 (2): Non-discrimination

35. Article 2 (2) calls for immediate application and involves an explicit guarantee on behalf of the States Parties. It should, therefore, be made subject to judicial review and other recourse Procedures.

36. The grounds of discrimination mentioned in article 2 (2) are not exhaustive.

37. Upon becoming a party to the Covenant States shall eliminate *de jure* discrimination by abolishing without delay any discriminatory laws, regulations and practices (including acts of omission as well as commission) affecting the enjoyment of economic, social and cultural rights.

38. *De facto* discrimination occurring as a result of the unequal enjoyment of economic, social and cultural rights, on account of a lack of resources or otherwise, should be brought to an end as speedily as possible.

39. Special measures taken for the sole purpose of securing adequate advancement of certain groups or individuals requiring such protection as may be necessary in order to ensure to such groups or individuals equal enjoyment of economic, social and cultural

rights shall not be deemed discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different groups and that such measures shall not be continued after their intended objectives have been achieved.

40. Article 2 (2) demands from States parties that they prohibit private persons and bodies from practising discrimination in any field of public life.

41. In the application of article 2 (2) due regard should be paid to all relevant international instruments including the Declaration and Convention on the Elimination of all Forms of Racial Discrimination as well as to the activities of the supervisory committee (CERD) under the said Convention.

#### Article 2 (3): Non-nationals in developing countries

42. As a general rule the Covenant applies equally to nationals and non-nationals.

43. The purpose of article 2 (3) was to end the domination of certain economic groups of non-nationals during colonial times. In the light of this the exception in article 2 (3) should be interpreted narrowly.

44. This narrow interpretation of article 2 (3) refers in particular to the notion of economic rights and to the notion of developing countries. The latter notion refers to those countries which have gained independence and which fall within the appropriate United Nations classifications of developing countries.

#### Article 3: Equal rights for men and women

45. In the application of article 3 due regard should be paid to the Declaration and Convention on the Elimination of All Forms of Discrimination against Women and other relevant instruments and the activities of the supervisory committee (CEDAW) under the said Convention.

#### Article 4: Limitations

46. Article 4 was primarily intended to be protective of the rights of individuals rather than permissive of the imposition of limitations by the State.

47. The article was not meant to introduce limitations on rights affecting the subsistence or survival of the individual or integrity of the person.

*"determined by law"*

48. No limitation on the exercise of economic, social and cultural rights shall be made

unless provided for by national law of general application which is consistent with the Covenant and is in force at the time the limitation is applied.

49. Laws imposing limitations on the exercise of economic, social and cultural rights shall not be arbitrary or unreasonable or discriminatory.

50. Legal rules limiting the exercise of economic, social and cultural rights shall be clear and accessible to everyone.

51. Adequate safeguards and effective remedies shall be provided by law against illegal or abusive imposition on application of limitations on economic, social and cultural rights.

*"promoting the general welfare"*

52. This term shall be construed to mean furthering the well-being of the people as a whole.

*"in a democratic society"*

53. The expression "in a democratic society" shall be interpreted as imposing a further restriction on the application of limitations.

54. The burden is upon a State imposing limitations to demonstrate that the limitations do not impair the democratic functioning of the society.

55. While there is no single model of a democratic society, a society which recognizes and respects the human rights set forth in the United Nations Charter and the Universal Declaration of Human Rights may be viewed as meeting this definition.

*"compatible with the nature of these rights"*

56. The restriction "compatible with the nature of these rights" requires that a limitation shall not be interpreted or applied so as to jeopardize the essence of the right concerned.

## Article 5

57. Article 5 (1) underlines the fact that there is no general, implied or residual right for a State to impose limitations beyond those which are specifically provided for in the law. None of the provisions in the law may be interpreted in such a way as to destroy "any of the rights or freedoms recognized". In addition article 5 is intended to ensure that nothing in the Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

58. The purpose of article 5 (2) is to ensure that no provision in the Covenant shall be interpreted to prejudice the provisions of domestic law or any bilateral or multilateral treaties, conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected. Neither shall article 5 (2) be interpreted to restrict the exercise of any human right protected to a greater extent by national or international obligations accepted by the State party.

### **C. Interpretative Principles specifically relating to Part III of the Covenant**

#### Article 8: "prescribed by law"

59. See the interpretative principles under the synonymous term "determined by law" in article 4.

#### *"necessary in a democratic society"*

60. In addition to the interpretative principles listed under article 4 concerning the Phrase "in a democratic society", article 8 imposes a greater restraint upon a State party which is exercising limitations on trade union rights. It requires that such a limitation is indeed necessary. The term "necessary" implies that the limitation:

- (a) responds to a pressing public or social need;
- (b) pursues a legitimate aim; and
- (c) is proportional to that aim.

61. Any assessment as to the necessity of a limitation shall be based upon objective considerations.

#### *"national security"*

62. National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.

63. National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order.

64. National security cannot be used as a Pretext for imposing vague or arbitrary limitations and may be invoked only when there exist adequate safeguards and effective remedies against abuse.

65. The systematic violation of economic, social and cultural rights undermines true national security and may jeopardize international Peace and security. A State responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive Practices against its population.

*"public order (ordre public)"*

66. The expression "public order (*ordre public*)" as used in the Covenant may be defined as the sum of rules which ensures the functioning of society or the set of fundamental principles on which a society is founded. Respect for economic, social and cultural rights is part of public order (*ordre public*).

67. Public order (*ordre public*) shall be interpreted in the context of the purpose of the particular economic, social and cultural rights which are limited on this ground.

68. State organs or agents responsible for the maintenance of public order (*ordre public*) shall be subject to controls in the exercise of their power through the parliament, courts, or other competent independent bodies.

*"rights and freedoms of others"*

69. The scope of the rights and freedoms of others that may act as a limitation upon rights in the Covenant extends beyond the rights and freedoms recognized in the Covenant.

### **D. Violations of Economic, Social and Cultural Rights**

70. A failure by a State party to comply with an obligation contained in the Covenant is, under international law, a violation of the Covenant.

71. In determining what amounts to a failure to comply, it must be borne in mind that the Covenant affords to a State party a margin of discretion in selecting the means for carrying out its objects, and that factors beyond its reasonable control may adversely affect its capacity to implement particular rights.

72. A State party will be in violation of the Covenant, *inter alia*, if:

- it fails to take a step which it is required to take by the Covenant;
- it fails to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfilment of a right;
- it fails to implement without delay a right which it is required by the Covenant to

provide immediately;

- it wilfully fails to meet a generally accepted international minimum standard of achievement, which is within its powers to meet;
- it applies a limitation to a right recognized in the Covenant other than in accordance with the Covenant;
- it deliberately retards or halts the progressive realization of a right, unless it is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or *force majeure*;
- it fails to submit reports as required under the Covenant.

73. In accordance with international law each State party to the Covenant has the right to express the view that another State party is not complying with its obligations under the Covenant and to bring this to the attention of that State party. Any dispute that may thus arise shall be settled in accordance with the relevant rules of international law relating to the peaceful settlement of disputes.

## ***PART II. CONSIDERATION OF STATES PARTIES' REPORTS AND INTERNATIONAL CO-OPERATION UNDER PART IV OF THE COVENANT***

### **A. Preparation and submission of reports by States parties**

74. The effectiveness of the supervisory machinery provided in Part IV of the Covenant depends largely upon the duality and timeliness of reports by States parties.

Governments are therefore urged to make their reports as meaningful as possible. For this purpose they should develop adequate internal procedures for consultations with the competent government departments and agencies, compilation of relevant data, training of staff, acquisition of background documentation, and consultation with relevant non-governmental and international institutions.

75. The Preparation of reports under article 16 of the Covenant could be facilitated by the implementation of elements of the programme of advisory services and technical assistance as proposed by the chairmen of the main human rights supervisory organs in their 1984 report to the General Assembly (United Nations Doc. A39/484).

76. States parties should view their reporting obligations as an opportunity for broad public discussion on goals and policies designed to realize economic, social and cultural rights. For this purpose wide publicity should be given to the reports, if possible in draft. The preparation of reports should also be an occasion to review the extent to which relevant national policies adequately reflect the scope and content of each right, and to specify the means by which it is to be realized.

77. States parties are encouraged to examine the possibility of involving non-governmental organizations in the preparation of their reports.

78. In reporting on legal steps taken to give effect to the Covenant, States parties should not merely describe any relevant legislative provisions. They should specify, as appropriate, the judicial remedies, administrative procedures and other measures they have adopted for enforcing those rights and the practice under those remedies and procedures.

79. Quantitative information should be included in the reports of States parties in order to indicate the extent to which the rights are protected in fact. Statistical information and information on budgetary allocations and expenditures should be Presented in such a way as to facilitate the assessment of the compliance with Covenant obligations. States Parties should, where Possible, adopt clearly defined targets and indicators in implementing the Covenant. Such targets and indicators should, as appropriate, be based on criteria established through international co-operation in order to increase the relevance and comparability of data submitted by States parties in their reports.

80. Where necessary, governments should conduct or commission studies to enable them to fill gaps in information regarding progress made and difficulties encountered in achieving the observance of the Covenant rights.

81. Reports by States Parties should indicate the areas where more progress could be achieved through international co-operation and suggest economic and technical co-operation programmes that might be helpful toward that end.

82. In order to ensure a meaningful dialogue between the States Parties and the organs assessing their compliance with the provisions of the Covenant, States parties should designate representatives who are fully familiar with the issues raised in the report.

### **B. Role of the Committee on Economic, Social and Cultural Rights**

83. The Committee has been entrusted with assisting the Economic and Social Council in the substantive tasks assigned to it by the Covenant. In particular, its role is to consider States parties reports and to make suggestions and recommendations of a general nature, including suggestions and recommendations as to fuller compliance with the Covenant by States parties. The decision of the Economic and Social Council to replace its sessional Working Group by a Committee of independent experts should lead to a more effective supervision of the implementation by States parties.

84. In order to enable it to discharge fully its responsibilities the Economic and Social Council should ensure that sufficient sessions are provided to the Committee. It is imperative that the necessary staff and facilities for the effective Performance of the



Committee's functions be provided, in accordance with ECOSOC resolution 1985/17.

85. In order to address the complexity of the substantive issues covered by the Covenant, the Committee might consider delegating certain tasks to its members. For example, drafting grounds could be established to prepare preliminary formulations or recommendations of a general nature or summaries of the information received. Rapporteurs could be appointed to assist the work of the Committee in particular to prepare reports on specific topics and for that purpose consult States parties, specialized agencies and relevant experts and to draw up proposals regarding economic and technical assistance projects that could help overcome difficulties States parties have encountered in fulfilling their Covenant obligations.

86. The Committee should, pursuant to articles 22 and 23 of the Covenant, explore with other organs of the United Nations, specialized agencies and other concerned organizations, the possibilities of taking additional international measures likely to contribute to the progressive implementation of the Covenant.

87. The Committee should reconsider the current six-year cycle of reporting in view of the delays which have led to simultaneous consideration of reports submitted under different phases of the cycle. The Committee should also review the guidelines for States parties to assist them in preparing reports and propose any necessary modifications.

88. The Committee should consider inviting States parties to comment on selected topics leading to a direct and sustained dialogue with the Committee.

89. The Committee should devote adequate attention to the methodological issues involved in assessing compliance with the obligations contained in the Covenant. Reference to indicators, in so far as they may help measure progress made in the achievement of certain rights, may be useful in evaluating reports submitted under the Covenant. The Committee should take due account of the indicators selected by or in the framework of the specialized agencies and draw upon or promote additional research, in consultation with the specialized agencies concerned, where gaps have been identified.

90. Whenever the Committee is not satisfied that the information provided by a state Party is adequate for a meaningful assessment of progress achieved and difficulties encountered it should request supplementary information, specifying as necessary the precise issues or questions it would like the State party to address.

91. In preparing its reports under ECOSOC resolution 1985/17, the Committee should consider, in addition to the "summary of its consideration of the reports", highlighting thematic issues raised during its deliberations.

### **C. Relations between the Committee and Specialized Agencies, and other international organs**

92. The establishment of the Committee should be seen as an opportunity to develop a positive and mutually beneficial relationship between the Committee and the specialized agencies and other international organs.

93. New arrangements under article 18 of the Covenant should be considered where they could enhance the contribution of the specialized agencies to the work of the Committee. Given that the working methods with regard to the implementation of economic, social and cultural rights vary from one specialized agency to another, flexibility is appropriate in making such arrangements under article 18.

94. It is essential for the proper supervision of the implementation of the Covenant under Part IV that a dialogue be developed between the specialized agencies and the Committee with respect to matters of common interest. In particular consultations should address the need for developing indicators for assessing compliance with the Covenant; drafting guidelines for the submission of reports by States parties; making arrangements for submission of reports by the specialized agencies under article 18. Consideration should also be given to any relevant procedures adopted in the agencies. Participation of their representatives in meetings of the Committee would be very valuable.

95. It would be useful if Committee members could visit specialized agencies concerned, learn through personal contact about programmes of the agencies relevant to the realization of the rights contained in the Covenant and discuss the possible areas of collaboration with those agencies.

96. Consultations should be initiated between the Committee and international financial institutions and development agencies to exchange information and share ideas on the distribution of available resources in relation to the realization of the rights recognized in the Covenant. These exchanges should consider the impact of international economic assistance on efforts by States Parties to implement the Covenant and possibilities of technical and economic co-operation under article 22 of the Covenant.

97. The Commission on Human Rights, in addition to its responsibilities under article 19 of the Covenant, should take into account the work of the Committee in its consideration of items on its agenda relating to economic, social and cultural rights.

98. The Covenant on Economic, Social and Cultural Rights is related to the Covenant on Civil and Political Rights. Although most rights can clearly be delineated as falling within the framework of one or other Covenant, there are several rights and Provisions referred to in both instruments which are not susceptible to clear differentiation. Both Covenants moreover share common provisions and articles. It is important that consultative arrangements be established between the Economic, Social and Cultural

Rights Committee and the Human Rights Committee.

99. Given the relevance of other international legal instruments to the Covenant, early consideration should be given by the Economic and Social Council to the need for developing effective consultative arrangements between the various supervisory bodies.

100. International and regional intergovernmental organizations concerned with the realization of economic, social and cultural rights are urged to develop measures, as appropriate, to promote the implementation of the Covenant.

101. As the Committee is a subsidiary organ of the Economic and Social Council, non-governmental organizations enjoying consultative status with the Economic and Social Council are urged to attend and follow the meetings of the Committee and, when appropriate, to submit information in accordance with ECOSOC resolution 1296 (XLIV).

102. The Committee should develop, in co-operation with intergovernmental organizations and non-governmental organizations as well as research institutes an agreed system for recording, storing and making accessible case law and other interpretative material relating to international instruments on economic, social and cultural rights.

103. As one of the measures recommended in article 23 it is recommended that seminars be held Periodically to review the work of the Committee and the progress made in the realization of economic, social and cultural rights by States parties.

## Appendix 5: Maastricht Guidelines on Violations of Economic, Social and Cultural Rights

Source: [http://www1.umn.edu/humanrts/instree/Maastrichtguidelines\\_.html](http://www1.umn.edu/humanrts/instree/Maastrichtguidelines_.html)

### Introduction

On the occasion of the 10th anniversary of the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (hereinafter 'the Limburg Principles'), a group of more than thirty experts met in Maastricht from 22-26 January 1997 at the invitation of the International Commission of Jurists (Geneva, Switzerland), the Urban Morgan Institute on Human Rights (Cincinnati, Ohio, USA) and the Centre for Human Rights of the Faculty of Law of Maastricht University (the Netherlands). The objective of this meeting was to elaborate on the Limburg Principles as regards the nature and scope of violations of economic, social and cultural rights and appropriate responses and remedies.

The participants unanimously agreed on the following guidelines which they understand to reflect the evolution of international law since 1986. These guidelines are designed to be of use to all who are concerned with understanding and determining violations of economic, social and cultural rights and in providing remedies thereto, in particular monitoring and adjudicating bodies at the national, regional and international levels.

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

#### I The significance of economic, social and cultural rights

1. Since the Limburg Principles were adopted in 1986, the economic and social conditions have declined at alarming rates for over 1.6 billion people, while they have advanced also at a dramatic pace for more than a quarter of the world's population. The gap between rich and poor has doubled in the last three decades, with the poorest fifth of the world's population receiving 1.4% of the global income and the richest fifth 85%. The impact of these disparities on the lives of people - especially the poor - is dramatic and renders the enjoyment of economic, social and cultural rights illusory for a significant portion of humanity.

2. Since the end of the Cold War, there has been a trend in all regions of the world to reduce the role of the state and to rely on the market to resolve problems of human welfare, often in response to conditions generated by international and national financial markets and institutions and in an effort to attract investments from the multinational enterprises whose wealth and power exceed that of many states. It is no longer taken for granted that the realization of economic, social and cultural rights depends significantly on action by the state, although, as a matter of international law, the state remains ultimately responsible for guaranteeing the realization of these rights.

While the challenge of addressing violations of economic, social and cultural rights is rendered more complicated by these trends, it is more urgent than ever to take these rights seriously and, therefore, to deal with the accountability of governments for failure to meet their obligations in this area.

3. There have also been significant legal developments enhancing economic, social and cultural rights since 1986, including the emerging jurisprudence of the Committee on Economic, Social and Cultural Rights and the adoption of instruments, such as the revised European Social Charter of 1996 and the Additional Protocol to the European Charter Providing for a System of Collective Complaints, and the San Salvador Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988. Governments have made firm commitments to address more effectively economic, social and cultural rights within the framework of seven UN World Summits conferences (1992-1996). Moreover, the potential exists for improved accountability for violations of economic, social and cultural rights through the proposed Optional Protocols to the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination Against Women. Significant developments within national civil society movements and regional and international NGOs in the field of economic, social and cultural rights have taken place.

4. It is now undisputed that all human rights are indivisible, interdependent, interrelated and of equal importance for human dignity. Therefore, states are as responsible for violations of economic, social and cultural rights as they are for violations of civil and political rights.

5. As in the case of civil and political rights, the failure by a State Party to comply with a treaty obligation concerning economic, social and cultural rights is, under international law, a violation of that treaty. Building upon the Limburg Principles, the considerations below relate primarily to the International Covenant on Economic, Social and Cultural Rights (hereinafter "the Covenant"). They are equally relevant, however, to the interpretation and application of other norms of international and domestic law in the field of economic, social and cultural rights.

## **II The meaning of violations of economic, social and cultural rights**

### *Obligations to respect, protect and fulfil*

6. Like civil and political rights, economic, social and cultural rights impose three different types of obligations on States: the obligations to respect, protect and fulfil. Failure to perform any one of these three obligations constitutes a violation of such rights. The obligation to respect requires States to refrain from interfering with the enjoyment of economic, social and cultural rights. Thus, the right to housing is violated if the State engages in arbitrary forced evictions. The obligation to protect requires States to prevent violations of such rights by third parties. Thus, the failure to ensure that private employers comply with basic labour standards may amount to a violation

of the right to work or the right to just and favourable conditions of work. The obligation to fulfil requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights. Thus, the failure of States to provide essential primary health care to those in need may amount to a violation.

### *Obligations of conduct and of result*

7. The obligations to respect, protect and fulfil each contain elements of obligation of conduct and obligation of result. The obligation of conduct requires action reasonably calculated to realize the enjoyment of a particular right. In the case of the right to health, for example, the obligation of conduct could involve the adoption and implementation of a plan of action to reduce maternal mortality. The obligation of result requires States to achieve specific targets to satisfy a detailed substantive standard. With respect to the right to health, for example, the obligation of result requires the reduction of maternal mortality to levels agreed at the 1994 Cairo International Conference on Population and Development and the 1995 Beijing Fourth World Conference on Women.

### *Margin of discretion*

8. As in the case of civil and political rights, States enjoy a margin of discretion in selecting the means for implementing their respective obligations. State practice and the application of legal norms to concrete cases and situations by international treaty monitoring bodies as well as by domestic courts have contributed to the development of universal minimum standards and the common understanding of the scope, nature and limitation of economic, social and cultural rights. The fact that the full realization of most economic, social and cultural rights can only be achieved progressively, which in fact also applies to most civil and political rights, does not alter the nature of the legal obligation of States which requires that certain steps be taken immediately and others as soon as possible. Therefore, the burden is on the State to demonstrate that it is making measurable progress toward the full realization of the rights in question. The State cannot use the "progressive realization" provisions in article 2 of the Covenant as a pretext for non-compliance. Nor can the State justify derogations or limitations of rights recognized in the Covenant because of different social, religious and cultural backgrounds.

### *Minimum core obligations*

9. Violations of the Covenant occur when a State fails to satisfy what the Committee on Economic, Social and Cultural Rights has referred to as "a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights [...]. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, violating the Covenant." Such minimum core obligations apply irrespective of the availability of resources of the country concerned or any other factors and difficulties.

*Availability of resources*

10. In many cases, compliance with such obligations may be undertaken by most States with relative ease, and without significant resource implications. In other cases, however, full realization of the rights may depend upon the availability of adequate financial and material resources. Nonetheless, as established by Limburg Principles 25-28, and confirmed by the developing jurisprudence of the Committee on Economic, Social and Cultural Rights, resource scarcity does not relieve States of certain minimum obligations in respect of the implementation of economic, social and cultural rights.

*State policies*

11. A violation of economic, social and cultural rights occurs when a State pursues, by action or omission, a policy or practice which deliberately contravenes or ignores obligations of the Covenant, or fails to achieve the required standard of conduct or result. Furthermore, any discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of economic, social and cultural rights constitutes a violation of the Covenant.

*Gender discrimination*

12. Discrimination against women in relation to the rights recognized in the Covenant, is understood in light of the standard of equality for women under the Convention on the Elimination of All Forms of Discrimination Against Women. That standard requires the elimination of all forms of discrimination against women including gender discrimination arising out of social, cultural and other structural disadvantages.

*Inability to comply*

13. In determining which actions or omissions amount to a violation of an economic, social or cultural right, it is important to distinguish the inability from the unwillingness of a State to comply with its treaty obligations. A State claiming that it is unable to carry out its obligation for reasons beyond its control has the burden of proving that this is the case. A temporary closure of an educational institution due to an earthquake, for instance, would be a circumstance beyond the control of the State, while the elimination of a social security scheme without an adequate replacement programme could be an example of unwillingness by the State to fulfil its obligations.

*Violations through acts of commission*

14. Violations of economic, social and cultural rights can occur through the direct action of States or other entities insufficiently regulated by States. Examples of such violations include:

- (a) The formal removal or suspension of legislation necessary for the continued enjoyment of an economic, social and cultural right that is currently enjoyed;
- (b) The active denial of such rights to particular individuals or groups, whether through legislated or enforced discrimination;



- (c) The active support for measures adopted by third parties which are inconsistent with economic, social and cultural rights;
- (d) The adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations relating to these rights, unless it is done with the purpose and effect of increasing equality and improving the realization of economic, social and cultural rights for the most vulnerable groups;
- (e) The adoption of any deliberately retrogressive measure that reduces the extent to which any such right is guaranteed;
- (f) The calculated obstruction of, or halt to, the progressive realization of a right protected by the Covenant, unless the State is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or force majeure;
- (g) The reduction or diversion of specific public expenditure, when such reduction or diversion results in the non-enjoyment of such rights and is not accompanied by adequate measures to ensure minimum subsistence rights for everyone.

*Violations through acts of omission*

15. Violations of economic, social, cultural rights can also occur through the omission or failure of States to take necessary measures stemming from legal obligations. Examples of such violations include:

- (a) The failure to take appropriate steps as required under the Covenant;
- (b) The failure to reform or repeal legislation which is manifestly inconsistent with an obligation of the Covenant;
- (c) The failure to enforce legislation or put into effect policies designed to implement provisions of the Covenant;
- (d) The failure to regulate activities of individuals or groups so as to prevent them from violating economic, social and cultural rights;
- (e) The failure to utilize the maximum of available resources towards the full realization of the Covenant;
- (f) The failure to monitor the realization of economic, social and cultural rights, including the development and application of criteria and indicators for assessing compliance;
- (g) The failure to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfilment of a right guaranteed by the Covenant;
- (h) The failure to implement without delay a right which it is required by the Covenant to provide immediately;
- (i) The failure to meet a generally accepted international minimum standard of achievement, which is within its powers to meet;
- (j) The failure of a State to take into account its international legal obligations in the field of economic, social and cultural rights when entering into bilateral or multilateral agreements with other States, international organizations or multinational corporations.



### III Responsibility for violations

#### *State responsibility*

16. The violations referred to in section II are in principle imputable to the State within whose jurisdiction they occur. As a consequence, the State responsible must establish mechanisms to correct such violations, including monitoring investigation, prosecution, and remedies for victims.

#### *Alien domination or occupation*

17. Under circumstances of alien domination, deprivations of economic, social and cultural rights may be imputable to the conduct of the State exercising effective control over the territory in question. This is true under conditions of colonialism, other forms of alien domination and military occupation. The dominating or occupying power bears responsibility for violations of economic, social and cultural rights. There are also circumstances in which States acting in concert violate economic, social and cultural rights.

#### *Acts by non-state entities*

18. The obligation to protect includes the State's responsibility to ensure that private entities or individuals, including transnational corporations over which they exercise jurisdiction, do not deprive individuals of their economic, social and cultural rights. States are responsible for violations of economic, social and cultural rights that result from their failure to exercise due diligence in controlling the behaviour of such non-state actors.

#### *Acts by international organizations*

19. The obligations of States to protect economic, social and cultural rights extend also to their participation in international organizations, where they act collectively. It is particularly important for States to use their influence to ensure that violations do not result from the programmes and policies of the organizations of which they are members. It is crucial for the elimination of violations of economic, social and cultural rights for international organizations, including international financial institutions, to correct their policies and practices so that they do not result in deprivation of economic, social and cultural rights. Member States of such organizations, individually or through the governing bodies, as well as the secretariat and nongovernmental organizations should encourage and generalize the trend of several such organizations to revise their policies and programmes to take into account issues of economic, social and cultural rights, especially when these policies and programmes are implemented in countries that lack the resources to resist the pressure brought by international institutions on their decision-making affecting economic, social and cultural rights.

### IV Victims of violations

#### *Individuals and groups*

20. As is the case with civil and political rights, both individuals and groups can be victims of violations of economic, social and cultural rights. Certain groups suffer disproportionate harm in this respect such as lower-income groups, women, indigenous

and tribal peoples, occupied populations, asylum seekers, refugees and internally displaced persons, minorities, the elderly, children, landless peasants, persons with disabilities and the homeless.

### *Criminal sanctions*

21. Victims of violations of economic, social and cultural rights should not face criminal sanctions purely because of their status as victims, for example, through laws criminalizing persons for being homeless. Nor should anyone be penalized for claiming their economic, social and cultural rights.

## **V Remedies and other responses to violations**

### *Access to remedies*

22. Any person or group who is a victim of a violation of an economic, social or cultural right should have access to effective judicial or other appropriate remedies at both national and international levels.

### *Adequate reparation*

23. All victims of violations of economic, social and cultural rights are entitled to adequate reparation, which may take the form of restitution, compensation, rehabilitation and satisfaction or guarantees of non-repetition.

### *No official sanctioning of violations*

24. National judicial and other organs must ensure that any pronouncements they may make do not result in the official sanctioning of a violation of an international obligation of the State concerned. At a minimum, national judiciaries should consider the relevant provisions of international and regional human rights law as an interpretive aide in formulating any decisions relating to violations of economic, social and cultural rights.

### *National institutions*

25. Promotional and monitoring bodies such as national ombudsman institutions and human rights commissions should address violations of economic, social and cultural rights as vigorously as they address violations of civil and political rights.

### *Domestic application of international instruments*

26. The direct incorporation or application of international instruments recognizing economic, social and cultural rights within the domestic legal order can significantly enhance the scope and effectiveness of remedial measures and should be encouraged in all cases.

### *Impunity*

27. States should develop effective measures to preclude the possibility of impunity of any violation of economic, social and cultural rights and to ensure that no person who may be responsible for violations of such rights has immunity from liability for their actions.

*Role of the legal professions*

28. In order to achieve effective judicial and other remedies for victims of violations of economic, social and cultural rights, lawyers, judges, adjudicators, bar associations and the legal community generally should pay far greater attention to these violations in the exercise of their professions, as recommended by the International Commission of Jurists in the Bangalore Declaration and Plan of Action of 1995.

*Special rapporteurs*

29. In order to further strengthen international mechanisms with respect to preventing, early warning, monitoring and redressing violations of economic, social and cultural rights, the UN Commission on Human Rights should appoint thematic Special Rapporteurs in this field.

*New standards*

30. In order to further clarify the contents of States obligations to respect, protect and fulfil economic, social and cultural rights, States and appropriate international bodies should actively pursue the adoption of new standards on specific economic, social and cultural rights, in particular the right to work, to food, to housing and to health.

*Optional protocols*

31. The optional protocol providing for individual and group complaints in relation to the rights recognized in the Covenant should be adopted and ratified without delay. The proposed optional protocol to the Convention on the Elimination of All Forms of Discrimination Against Women should ensure that equal attention is paid to violations of economic, social and cultural rights. In addition, consideration should be given to the drafting of an optional complaints procedure under the Convention on the Rights of the Child.

*Documenting and monitoring*

32. Documenting and monitoring violations of economic, social and cultural rights should be carried out by all relevant actors, including NGOs, national governments and international organizations. It is indispensable that the relevant international organizations provide the support necessary for the implementation of international instruments in this field. The mandate of the United Nations High Commissioner for Human Rights includes the promotion of economic, social and cultural rights and it is essential that effective steps be taken urgently and that adequate staff and financial resources be devoted to this objective. Specialized agencies and other international organizations working in the economic and social spheres should also place appropriate emphasis upon economic, social and cultural rights as rights and, where they do not already do so, should contribute to efforts to respond to violations of these rights.



## **Appendix 6: CESCR General Comment 10 – The Role of National Human Rights Institutions in the Protection of Economic, Social and Cultural Rights**

Source: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/af81bf2fed39cec1802566d50052f53b?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/af81bf2fed39cec1802566d50052f53b?Opendocument)

1. Article 2 (1) of the Covenant obligates each State party "to take steps ... with a view to achieving progressively the full realization of the [Covenant] rights ... by all appropriate means". The Committee notes that one such means, through which important steps can be taken, is the work of national institutions for the promotion and protection of human rights. In recent years there has been a proliferation of these institutions and the trend has been strongly encouraged by the General Assembly and the Commission on Human Rights. The Office of the High Commissioner for Human Rights has established a major programme to assist and encourage States in relation to national institutions.

2. These institutions range from national human rights commissions through Ombudsman offices, public interest or other human rights "advocates", to *defenseurs du peuple* and *defensores del pueblo*. In many cases, the institution has been established by the Government, enjoys an important degree of autonomy from the executive and the legislature, takes full account of international human rights standards which are applicable to the country concerned, and is mandated to perform various activities designed to promote and protect human rights. Such institutions have been established in States with widely differing legal cultures and regardless of their economic situation.

3. The Committee notes that national institutions have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights. Unfortunately, this role has too often either not been accorded to the institution or has been neglected or given a low priority by it. It is therefore essential that full attention be given to economic, social and cultural rights in all of the relevant activities of these institutions. The following list is indicative of the types of activities that can be, and in some instances already have been, undertaken by national institutions in relation to these rights:

(a) The promotion of educational and information programmes designed to enhance awareness and understanding of economic, social and cultural rights, both within the population at large and among particular groups such as the public service, the judiciary, the private sector and the labour movement;

- (b) The scrutinizing of existing laws and administrative acts, as well as draft bills and other proposals, to ensure that they are consistent with the requirements of the International Covenant on Economic, Social and Cultural Rights;
  - (c) Providing technical advice, or undertaking surveys in relation to economic, social and cultural rights, including at the request of the public authorities or other appropriate agencies;
  - (d) The identification of national level benchmarks against which the realization of Covenant obligations can be measured;
  - (e) Conducting research and inquiries designed to ascertain the extent to which particular economic, social and cultural rights are being realized, either within the State as a whole or in areas or in relation to communities of particular vulnerability;
  - (f) Monitoring compliance with specific rights recognized under the Covenant and providing reports thereon to the public authorities and civil society; and
  - (g) Examining complaints alleging infringements of applicable economic, social and cultural rights standards within the State.
4. The Committee calls upon States parties to ensure that the mandates accorded to all national human rights institutions include appropriate attention to economic, social and cultural rights and requests States parties to include details of both the mandates and the principal relevant activities of such institutions in their reports submitted to the Committee.

## Appendix 7: Challenges for National Human Rights Institutions in Addressing ESC Rights

Source: United Nations Office of the High Commissioner for Human Rights. (2005). Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions. Professional Training Series No.12. UN publication.

A national human rights institution is likely to encounter a number of challenges in addressing economic, social and cultural rights. It will need to look internally and externally to anticipate and address the obstacles and challenges that may arise.

### Internal factors

The first challenge facing a national human rights institution may be that of increasing the level of understanding and acceptance of economic, social and cultural rights among its members and staff. They may recognize the importance of the indivisibility and interdependence of all human rights, but be more familiar and experienced in dealing with civil and political rights. The national institution will need to develop appropriate methodologies and approaches for addressing economic, social and cultural rights, and to allocate priority to their implementation.

Understanding of and commitment to economic, social and cultural rights of themselves will be insufficient. A national human rights institution will also require the institutional capacity to deal with economic, social and cultural rights, and that will be dependent on the availability of financial resources and staff time. The national institution is likely to have a heavy existing workload and case backlog. Its staff may be insufficiently experienced and trained in the area of economic, social and cultural rights. The institution's networking with external stakeholders may be undeveloped or ineffective. It may lack management coordination and planning. These are all factors that will challenge the institution's ability to protect and promote economic, social and cultural rights.

A national human rights institution will need to define standards, including indicators, benchmarks and targets, relating to economic, social and cultural rights. To monitor these rights, its staff will require a fuller understanding of the dimensions and parameters of each right and the related State obligations. International standards, particularly those contained in the International Covenant on Economic, Social and Cultural Rights, will assist them in this. They will need to supplement their skills in investigating individual violations with competency in fact-finding, the collection and analysis of primary and secondary data and the analysis of economic, including budgetary, information.

## External factors

No national human rights institution can solve all of its country's human rights problems on its own. The effectiveness of its work on economic, social and cultural rights will require an external environment that is supportive and enabling—an effective judiciary, accountable democratic institutions and an engaged and effective civil society. Few, if any, national human rights institutions will encounter these ideal conditions. A national institution must therefore remain conscious that the political, economic, social and cultural environment can inhibit its operating independently and effectively, and obstruct its work for economic, social and cultural rights. The national human rights institution should consider:

- The level of judicial capacity and independence and their impact on its ability to function;
- The domestic legislative framework for and international treaty obligations relating to the enforcement of remedies;
- Strategies to reduce risks that it will be drawn into party political conflicts;
- Steps to educate the public and civil society about its mandate;
- How to sensitize the Government, the military and the police to its role and authority.

Societies with recent histories of gross violations of human rights, or where societal transformation is occurring, may also be struggling with a culture of impunity in which individuals consider themselves to be above the law. A national human rights institution in this kind of society will need to advocate respect by all individuals for the country's democratic institutions, including the national institution itself.

A national human rights institution may also face conflicting interpretations of human rights, and challenges to the notion of the universality of all rights. In a State that has not yet ratified the key international human rights treaties, the national institution will give priority to promoting the ratification of treaties and their incorporation in domestic law. Indeed, a restrictive interpretation of human rights may also affect the Government's interpretation of the national institution's mandate, excluding the institution from addressing economic, social and cultural rights issues.

A national human rights institution may also need to address in its promotional activities misconceptions, lack of awareness and shared misunderstanding among the public, government officials and even the judiciary about the specific nature of economic, social and cultural rights and the State's obligation to respect, protect and fulfil these rights. It may encounter a public and institutional attitude that access to food, housing, employment and education are welfare issues rather than human rights issues, or that economic, social and cultural issues are aspirational rather than legal. The realization of economic, social and cultural rights may be viewed as unrealistically expensive.



Public opinion may not accept that there is any deficiency in a country's performance of its obligations relating to economic, social and cultural rights. The relatively well off segment of society, whether the majority of the population or not, may lack interest in or be prejudiced against marginalized individuals and groups. This segment of society has a disproportionate effect on the public expression of views and disproportionate influence on Governments. Business competition, consumerism and the mass media can contribute to public apathy concerning economic, social and cultural rights.

Even where there is good government and public appreciation of economic, social and cultural rights and obligations, the national human rights institution may encounter difficulty in promoting and protecting them. For example, the State may lack resources to address economic, social and cultural rights issues. The national human rights institution will need to understand the legal nature of the progressive realization of economic, social and cultural rights and the implications of obligations concerning these rights for government decision-making about budgets, revenue raising and public expenditure, and inform itself of the Government's available resources and be in a position to discuss this subject with it.

In addition, legal and judicial gaps may still inhibit the full realization of economic, social and cultural rights. Courts may not consider economic, social and cultural rights and social conditions relevant to cases before them. Even when these rights are considered justiciable, the courts may be unwilling to uphold the spirit and intent of the law in addition to the letter. Moreover, courts are often physically far from the people who need them the most, and where they are not, access to the legal system is usually more successful for the wealthy than the poor. The system may fail to deliver justice because of corruption. Low expectations and poor actual results from the courts will affect the public's confidence in and use of the system, particularly those whose economic, social and cultural rights are being violated and who are in need of protection.





## Appendix 8: Montréal Principles on Women’s Economic, Social and Cultural Rights – An NGO Initiative to Protect and Promote Women’s Rights

Source: Centre for Economic and Social Rights. <http://cesr.org/node/view/697>

The Montréal Principles were adopted at a meeting of experts held December 7 – 10, 2002 in Montréal, Canada. These principles are offered to guide the interpretation and implementation of the guarantees of non-discrimination and equal exercise and enjoyment of economic, social and cultural rights, found, *inter alia*, in Articles 3 and 2(2) of the *International Covenant on Economic, Social and Cultural Rights*, so that women can enjoy these rights fully and equally.

The participants at the Montreal meeting were: Sneh Aurora, Fareda Banda, Reem Bahdi, Stephanie Bernstein, Gwen Brodsky, Ariane Brunet, Christine Chinkin, Mary Shanthi Dairiam, Shelagh Day, Leilani Farha, Ruth Goba, Soledad Garcia Muñoz, Sara Hossain, Lucie Lamarche, Marianne Möllmann, Dianne Otto, Karrisha Pillay, Inés Romero, and Alison Symington. They unanimously agreed on the following principles.

### A. Introduction

Sex or gender inequality is a problem experienced primarily by women. The systems and assumptions which cause women’s inequality in the enjoyment of economic social and cultural rights are often invisible because they are deeply embedded in social relations, both public and private, within all States. Acknowledging this systemic and entrenched discrimination is an essential step in implementing guarantees of non-discrimination and equality.

The terms “gender” and “sex” should both be understood as referring to the range of economic, social, cultural, historical, political and biological constructions of norms of behaviour that are considered appropriate for women and men. Implicit in such an understanding of “gender” or “sex” relations is that male and female norms have been constructed so as to privilege men and disadvantage women. “Gender” and “sex” discrimination can be used interchangeably, and both “gender inequality” and “sex inequality” are used to refer to the disadvantaged position of women. In order to reflect this understanding of women’s disadvantage, the Montréal Principles use the terms “discrimination against women” and “women’s equality” wherever possible.

Economic, social and cultural rights have a particular significance for women because as a group, women are disproportionately affected by poverty, and by social and cultural marginalization. Women's poverty is a central manifestation, and a direct result of women's lesser social, economic and political power. In turn, women's poverty reinforces their subordination, and constrains their enjoyment of every other right.

The UN Charter mandates universal respect for, and observance of all human rights, including the right of women to equal exercise and enjoyment of their economic social and cultural rights.<sup>1</sup> All regional and global instruments which set out economic social and cultural rights contain guarantees of non-discrimination and of equal enjoyment for women of these rights.<sup>2</sup> An expression of this global consensus is found in Articles 3 and 2(2) of the *International Covenant on Economic, Social and Cultural Rights*.

In the political context of the early 21<sup>st</sup> century, it is particularly important to underline this long-standing international consensus regarding human rights primacy. The lack of priority accorded to securing universal enjoyment of economic, social and cultural rights hurts women disproportionately.

Women's particular vulnerability to social and economic deprivation is deepened further in conflict and post-conflict situations and when economic sanctions are imposed. The Committee on Economic, Social and Cultural Rights has stated that economic, social and cultural rights must be taken into account when imposing sanctions, and State Parties to the Covenant should take account of the suffering that such sanctions are likely to inflict on certain sectors, such as women. As the UN Security Council has recognized, peace and women's equality are inextricably linked.<sup>3</sup>

The inequality in the lives of women that is deeply embedded in history, tradition and culture<sup>4</sup> affects women's access to and enjoyment of economic, social and cultural rights. To ensure women's enjoyment of these rights, they must be implemented in a way that takes into account the context in which women live. For example, the traditional assignment to women and girls of the role of primary care-giver for children, older persons and the sick restricts women's freedom of movement and consequently their access to paid employment and education. The economic and social devaluation of the work, paid and unpaid, that women traditionally do from a very young age, contributes further to fixing women in a position of economic and social inequality. These factors diminish women's earning capacity and their economic autonomy, and contribute to the high rates of poverty among women worldwide. Traditional, historical, religious or cultural attitudes are also used to justify and perpetuate discrimination against women in the delivery of economic, social and cultural rights, including health services and education, by public and private agencies.

Inequality in women's enjoyment of economic, social and cultural rights contributes to their economic dependence, denial of personal autonomy and lack of empowerment. These in turn limit still further women's ability to participate in public life, including fora for economic, social, political and legal policy and decision-making. As the Committee on the Elimination of Discrimination against Women has noted: "Policies developed and decisions made by men alone reflect only part of human experience and potential."<sup>5</sup> Such policies and decisions are less likely to take account of gendered consequences, and the economic and social factors that affect women's lives.

Economic, social and cultural rights and civil and political rights are particularly indivisible and interconnected in the lives of women: inequality in economic, social and cultural rights undermines women's ability to enjoy their civil and political rights, which then limits their capacity to influence decision and policy-making in public life. Since "[a]ll human rights are universal, indivisible and interdependent and interrelated"<sup>6</sup> equality in civil and political rights<sup>7</sup> is undermined unless equality in the exercise and enjoyment of economic, social and cultural rights is secured.

It is especially important that women's entitlement to equal enjoyment of economic, social and cultural rights is acknowledged and re-emphasized in the current climate of neo-liberalism and economic globalization. Policies of privatization, economic austerity and structural adjustment have negative impacts for women.<sup>8</sup> For example, women are often the hardest hit by economic transition, financial crises and rising unemployment.

In part, this is because women are relied upon to provide services that are cut such as caring for children, older persons and the sick, because women are often in insecure, part-time employment, they are commonly the first to lose their jobs. Furthermore, poverty can lead to a decrease in food intake among women and girls; girls are the first to drop out of schools; greater numbers of women are forced to migrate; and women are vulnerable to trafficking, violence and ill health. Economic and political insecurity provoke private and public backlash against women's rights that may be expressed through violence and articulated in the form of defending cultures and traditions.

To fully implement the rights set out in Articles 3 and 2(2) of the International Covenant on Economic Social and Cultural Rights, and similar guarantees in other human rights instruments, requires an understanding that focuses upon the subordination, stereotyping and structural disadvantage that women experience. It requires more than just formal legal recognition of equality between the sexes. It requires commitment by all responsible parties to take all necessary steps to address the actual material and social disadvantage of women.

## B. Definition of Women's Economic Social and Cultural Rights

### 1. Women's economic, social and cultural rights include, but are not limited to, the right to:

- ✦ An adequate standard of living including:
  - food and freedom from hunger;
  - water;
  - clothing;
  - housing and freedom from forced eviction;
  - continuous improvement of living conditions;

*See for example:* International Covenant on Economic, Social and Cultural Rights (ICESCR) article 11(1) and (2); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) article 14(2)(h); Universal Declaration of Human Rights (UDHR) article 25; Universal Declaration on Eradication of Hunger and Malnutrition (UDEHM) article 1; Declaration on the Right to Development (DRD) article 8(1); Committee on Economic, Social and Cultural Rights, General Comment 15 ("The right to water"); Additional Protocol to the American Convention on Economic, Social and Cultural Rights (San Salvador Protocol) article 12; Rome Declaration on Food Security; Istanbul Declaration and Program of Action on Human Settlements.<sup>9</sup>

- ❖ The highest attainable standard of mental and physical health throughout a woman's life cycle, including reproductive and sexual health and freedom;

*See for example:* ICESCR article 10(2) and 12; International Covenant on Civil and Political Rights (ICCPR) article 6(4) and 18(4); Declaration on the Elimination of Discrimination Against Women (DEDAW) article 9(e); CEDAW articles 10(h), 11(2)(a) and 12; UDHR article 25; Declaration on Population and Development para. 7; Beijing Declaration and Program of Action paras. 89, 94 and 96; Convention on the Rights of the Child (CRC) articles 24, 3(2); American Convention on Human Rights (ACHR) article 4(5); San Salvador Protocol article 10; Inter-American Convention on the Protection, Punishment and Eradication of Violence Against Women (ICPPEVAW) article 4(b); American Declaration on the Rights and Duties of Man (ADRDM) article xi; Declaration on Social Progress and Development (DSPD) article 11(b); DRD article 8(1); Maternity Protection Convention (MPC) article 3; African Charter on Human and Peoples' Rights (African Charter) article 16; Committee on the Elimination of Discrimination Against Women, General Comment 24.<sup>10</sup>

❖ Equal inheritance and ownership of land and property;

*See for example:* ICESCR article 11(1); CEDAW articles 13(b), 14(2)(e) and (g), 15(2) and 16(h); DEDAW article 6(1)(a); DRD article 8(1); International Convention on the Elimination of All Forms of Racial Discrimination (CERD) articles 5(d)(v) and 5(d)(vi); UDHR article 17; ACHR article 21; African Charter, article 14; Beijing Declaration and Program of Action, para. 61(b), 62, and 63.<sup>11</sup>

❖ Social security, social protection, social insurance and social services, including special assistance before, during and after childbirth;

*See for example:* ICESCR articles 9 and 10(2); CERD article 5(e)(iv); DEDAW article 10(1)(c); CEDAW articles 11(1)(e), 11(2)(a), and 14(2)(c); MPC articles 4 and 6; UDHR article 22, 23(1) and 25(1); San Salvador Protocol articles 9(2) and 15 (3)(a); ADRDM article xvi; ICCPEVAW, article 8; CRC article 28.<sup>12</sup>

❖ Training and education;

*See for example:* ICESCR articles 6 and 13; CEDAW articles 10 and 14(2)(d); DEDAW article 9; UDEHM article 4; CERD article 5(e)(v); UDHR article 26; ACHR article 17(1); ICPPEVAW article 6(b); San Salvador Protocol article 13(1)(2) and (3); CRC article 28; Convention Against Discrimination in Education article 1; ADRDM article xii; Beijing Declaration and Program of Action para. 69.<sup>13</sup>

❖ Freely chosen work as well as just and favourable conditions of work including fair wages, equal remuneration and protection from sexual harassment and sex discrimination at work;

*See for example:* ICESCR articles 6 (1), 6(2) and 7; CEDAW articles 11(1)(c), (f); CERD article 5(e); ICCPR article 8(3)(a); DEDAW article 10(1)(a); Abolition of Forced Labour Convention (AFLC) article 1; DSPD article 6; UDHR articles 4 and 23; Declaration on the Elimination of Violence against Women (DEVAW) article 3; ACHR article 6(2); African Charter articles 5 and 15; ADRDM, article xiv; San Salvador Protocol articles 6 and 7; Convention for the Protection of Human Rights and Fundamental Freedoms (CPHRFF) article 4(2); MPC article 8; Equal Remuneration Convention (ERC) article 1; Convention on Employment Policy articles 1 (1) and (2); ILO Declaration on Fundamental Principles and Rights at Work; ICPPEVAW, article 2(b).<sup>14</sup>

❖ Form and join trade unions;

*See for example:* ICESCR article 8; ICCPR article 22; CERD article 5(e)(ii); DSPD article 10; San Salvador Protocol article 8; ILO Convention on Freedom of Association and Protection of the Right to Organize.<sup>15</sup>

❖ Protection from economic exploitation;

*See for example:* ICESCR articles 8 and 10 (3); ICCPR article 8; Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery article 1(b); CRC article 32; ILO Convention on Worst Forms of Child Labour; UDHR article 4; ACHR article 6.<sup>16</sup>

❖ Protection from coerced and uninformed marriage;

*See for example:* ICESCR article 10(1); CEDAW article 16(1)(b); DEDAW article 6(2)(a); ICCPR article 23(3); Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage (Marriage Convention) article 1; CERD article 5(d)(iv); UDHR article 16(2); ACHR article 17(3).<sup>17</sup>

❖ A clean and healthy environment;

*See for example:* ICESCR article 12(2)(b); African Charter article 24.<sup>18</sup>

❖ Participate in cultural life;

*See for example:* ICESCR article 15(1)(a); CRC article 29(1)(c); CEDAW article 13(c); ICCPR article 27; DEVAW article 3; CERD article 5(e)(vi); UDHR article 27; ACHR article 26; African Charter articles 17(2) and 22(1); ICPPEVAW article 5; San Salvador Protocol articles 14(1)(a) and (b).<sup>19</sup>

❖ Claim and enjoy the benefits of patents and intellectual property;

*See for example:* ICESCR article 15(1)(c); San Salvador Protocol article 14(c).<sup>20</sup>

❖ Nationality; and to bestow nationality on children;

*See for example:* CEDAW article 9; DEDAW Article 5; Convention on the Nationality of Married Women (CNMW) article 1; Convention Relating to the Status of Refugees (CSR) article 2; UDHR article 15; ACHR article 20; CERD article 5(d)(iii).<sup>21</sup>

- ❖ Freedom from trafficking and exploitation; recognition of the human rights of trafficked persons;

*See for example:* CEDAW article 6; DEDAW article 8; DEVAW article 2(b); CRC articles 34 and 35; ICPPEVAW article 2(b); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime.<sup>22</sup>

## **2. Indivisibility and Interdependence of Rights**

Economic, social and cultural rights and civil and political rights are indivisible, interdependent and interconnected. In the real lives of women, it is difficult to separate these rights. For example, a woman's right to life is threatened as much by the deprivation of economic, social and cultural rights as by the deprivation of civil and political rights.

## **3. No Justification for Restriction**

Nothing in the wording or substance of any international or regional human rights document, policy, practice or custom can be used to justify restricting women's equal enjoyment and exercise of economic, social and cultural rights.

## **4. Non-Retrogression**

International law entitles women to claim the highest level of available protection for their rights that is afforded by international human rights instruments or national law, policy or custom.<sup>23</sup>

# **C. Principles of Equality and Non-discrimination**

## **5. Women's Sex and Gender Inequality**

Unequal power relations between women and men must be acknowledged and changed, and the entrenched disadvantage caused by this power imbalance must be addressed, if women are to achieve the equal exercise and equal enjoyment of their economic, social and cultural rights.

## **6. Non-Discrimination and Equality**

Legal guarantees of non-discrimination based on sex and legal guarantees of equality for women, though expressed differently, are articulations of the same obligation. This obligation is not confined to negative restraints on States and third parties because



negative restraints, alone, do not successfully eliminate discrimination against women. Both the right to non-discrimination and the right to equality mandate measures that prevent harmful conduct and positive steps to address the long-standing disadvantage of women.

### **7. Definition of Sex Discrimination**

Sex or gender discrimination occurs when intentionally or unintentionally, a law, program or policy, or an act or a failure to act, has the effect or purpose of impairing or nullifying the recognition, exercise or enjoyment by women of their economic, social and cultural rights.<sup>24</sup>

### **8. Forms of Sex Discrimination**

Sex or gender discrimination is experienced as discrimination because of being a woman. It can also be experienced as discrimination on the basis of marital status, for example, as discrimination against wives, co-habitees, unmarried women, divorced women or widows, or on the basis of family status, family responsibility, pregnancy, reproductive capacity, or sexuality. Sexual harassment of women and violence against women must also be understood as forms of sex discrimination.

### **9. Substantive Equality**

Economic, social and cultural rights must be interpreted and implemented in a manner that ensures to women substantively equal exercise and enjoyment of their rights. Substantively equal enjoyment of rights cannot be achieved through the mere passage of laws or promulgation of policies that are gender-neutral on their face. Gender neutral laws and policies can perpetuate sex inequality because they do not take into account the economic and social disadvantage of women; they may therefore simply maintain the *status quo*. *De jure* equality does not, by itself, provide *de facto* equality. *De facto*, or substantive equality, requires that rights be interpreted, and that policies and programs - through which rights are implemented - be designed in ways that take women's socially constructed disadvantage into account, that secure for women the equal benefit, in real terms, of laws and measures, and that provide equality for women in their material conditions. The adequacy of conduct undertaken to implement rights must always be assessed against the background of women's actual conditions and evaluated in the light of the effects of policies, laws and practices on those conditions.

### **10. Intersectionality**

Many women encounter distinct forms of discrimination due to the intersection of sex with such factors as: race, language, ethnicity, culture, religion, disability, or socio-economic class. Indigenous women, migrant women, displaced women, and non-national or refugee women experience distinct forms of discrimination because of the



intersection of their sex and race, or their sex and citizenship status. Women may also confront particular forms of discrimination due to their age or occupation; family status, as single mothers or widows; health status, such as living with HIV/AIDS; sexuality, such as being lesbian; or because they are engaged in prostitution. Intersecting discrimination can determine the form or nature that discrimination takes, the circumstances in which it occurs, the consequences of the discrimination, and the availability of appropriate remedies. To ensure that all women enjoy the benefits of their economic, social and cultural rights, specific measures are needed to address the ways in which women are differently affected in their enjoyment of a right as a result of the intersection of discrimination based on sex with discrimination based on other characteristics.

#### **11. Autonomy**

Women are entitled to exercise and enjoy their economic social and cultural rights as autonomous persons. They cannot enjoy their economic, social and cultural rights equally if they are treated as inferior to men or as adjuncts of, or dependents of men, whether those men are family members or others. In turn, economic, social and cultural rights must be interpreted and applied in ways that recognize women's right to full legal personhood and autonomy.

### **D. Impediments To Women's Equal Enjoyment of Economic, Social and Cultural Rights**

#### **12. Impediments**

Structural impediments to women's equal exercise and enjoyment of economic social and cultural rights include, but are not limited to: (i) social norms, customs and traditions that legitimize women's inequality; (ii) failure to take account of women's disadvantage or their distinct experiences when designing laws or measures to implement economic, social and cultural rights; (iii) restrictions on access to legal or administrative bodies where remedies for rights violations may be sought; (iv) women's under-representation in decision-making processes; (v) women's unequal status in their families; (vi) the failure to recognize women's unremunerated work, and to encourage the fairer distribution between women and men of family and community-supporting labour; (vii) the neglect of women's economic, social and cultural rights in conflict and post-conflict situations; and (viii) the gender-differentiated effects of economic globalization. These impediments must be addressed and eliminated to ensure that measures adopted to implement economic, social and cultural rights will benefit women equally.

## **E. Legal Obligations**

### **13. Justiciability and Allocation of Resources**

Women's rights to non-discrimination and equality are enforceable by judicial bodies and administrative tribunals in all circumstances, including when they raise issues of government allocation of resources for the realization of economic, social and cultural rights.

### **14. Immediate Obligation**

The right to non-discrimination and to the equal exercise and enjoyment of economic, social and cultural rights imposes an immediate obligation on States. This obligation is not subject to progressive realization. The obligation is also an immediate one for inter-governmental bodies and quasi-State actors or other groups exercising control over territory or resources.<sup>25</sup>

### **15. Respect, Protect, Fulfill and Promote**

Women's right to non-discrimination and equality imposes four specific obligations on States: the obligations to respect, protect, fulfill and promote women's exercise and enjoyment of economic, social and cultural rights. These four obligations are indivisible and interdependent and must be implemented by States simultaneously and immediately.

### **16. Range of Conduct**

The obligations to respect, protect, fulfill and promote women's economic, social and cultural rights require a range of conduct from States. States are obliged to both refrain from acting harmfully and to take positive steps to advance women's equality. States are required to repeal laws and policies that discriminate either directly or indirectly. They are also required to guarantee women's rights to non-discrimination and to the equal exercise and enjoyment of economic, social and cultural rights in appropriate domestic laws, such as national constitutions and human rights legislation, and in the interpretation of customary and personal laws. States are obliged to regulate the conduct of third parties, such as employers, landlords, and service providers. States are also obliged to design and implement policies and programmes to give long-term and full effect to women's economic, social and cultural rights. These may include the adoption of temporary special measures to accelerate women's equal enjoyment of their rights, gender audits, and gender-specific allocation of resources.<sup>26</sup>

### **17. Rights-claiming mechanisms**

States must ensure that women's rights to non-discrimination and to the equal exercise and enjoyment of economic, social and cultural rights can be effectively interpreted and applied by judicial and quasi-judicial bodies that are independent from government. Further, States must ensure that the right to be free from discrimination and the right to equality are interpreted substantively, rather than formally, by judicial and quasi-judicial bodies, so as to foster the equal enjoyment by women of economic, social and cultural rights. States, when appearing as parties or intervenors before judicial or quasi-judicial bodies must advocate for the interpretation and application of rights that will ensure women's substantive enjoyment of them.

**18. Maximum Available Resources**

States must use the maximum available resources to respect, protect, fulfill and promote economic, social and cultural rights. The maximum available resources must be distributed in a manner that provides substantively equal exercise and enjoyment of economic, social and cultural rights by women.

**19. Trade, Trade Agreements and International Financial Institutions**

States have a non-derogable obligation to guarantee women's equal enjoyment of their economic, social and cultural rights in their actions and decision-making in the context of trade, trade agreements, and agreements with, or participation in, international and regional financial institutions.

**20. Due Diligence**

All States when participating in international financial institutions, trade agreements, or aid and development programs shall apply a due diligence test to assess, foresee and prevent any adverse consequences of trade agreements, structural adjustment programs, development and humanitarian assistance, and other economic and social policies on women's economic, social and cultural rights. Where harm is caused by such agreements or programs, the responsible States and institutions shall implement compensatory measures. This applies at national, regional and international levels, in public and private spheres of life.

**21. Provision for Basic Needs**

In the context of scarcity, States shall make sure that the basic needs of women are satisfied, especially in regard to health care, access to potable water, sanitation services, housing, education, energy and social protection. This obligation prevails as well in times of conflict and post-conflict. States and other inter-governmental bodies must ensure that services are provided in a manner that does not discriminate against women, and that ensures women's equality.

**22. Privatization and Regulation of Third Parties**

Where services are partially or wholly privatized, at a minimum States are required to adopt an effective regulatory system to monitor the distribution of such services and service providers must work in cooperation with the State to ensure the substantively equal enjoyment of services by women in fulfilment of the State's international legal obligations.

**23. Regulation of Transnational Corporations and Third Parties**

States have an obligation to require transnational corporations and other commercial entities, when they are providing services or programs related to the enjoyment of economic, social and cultural rights, to ensure that women benefit equally. States also have an obligation to prevent transnational corporations and other commercial entities from violating women's economic, social and cultural rights on their territory. When such rights are violated, States have a duty to provide women with effective remedies.

**24. Recognition of Unremunerated Work**

States must adopt specific measures to recognize the economic and social contribution of the women who carry out unremunerated activities. States must also ensure that women or particular groups of women do not carry out a disproportionately large part of the unremunerated and devalued workload of families and communities, including domestic labour and the care of children, sick, and older persons.

**25. Participation**

States and inter-governmental bodies must ensure that women can and do participate fully in the formulation, development, implementation and monitoring of economic, social and cultural programs and policies. They must also ensure the full participation of women in the formulation, development, implementation and monitoring of specific strategies, plans and policies that aim to eliminate their gender specific disadvantages. This may require States and intergovernmental bodies to ensure women's participation in decision-making where non-State actors provide programs or services that are related to the enjoyment of economic, social and cultural rights.

**F. Violations**

**26. Commission and Omission**

Violations of women's economic, social and cultural rights can occur through acts of commission or omission by States and other actors who are insufficiently regulated by the State, or not regulated by the State.

### **27. Failure to Correct**

Where the economic, social and cultural rights of women, or particular groups of women, have been violated, States are obliged to adopt concrete measures designed to ensure the immediate enjoyment of these rights by the affected women.

### **28. Undermining the Rights**

Undermining women's enjoyment or exercise of their economic, social and cultural rights constitutes a violation. A State undermines these rights by: adopting overly restrictive interpretations of rights-conferring provisions; taking the position that economic, social and cultural rights are not justiciable; restricting access by women, and organizations which represent them, to judicial and quasi-judicial bodies; implementing women's equal enjoyment progressively rather than immediately; and, failing to maintain adequately funded and effective enforcement institutions.

### **29. Retrogressive Measures**

The adoption of retrogressive measures that further reduce women's access to or enjoyment of their economic, social or cultural rights constitutes a violation.

### **30. Unwillingness to Use Resources**

A State which is unwilling to use the maximum of its available resources for the realization of economic, social and cultural rights violates women's economic, social and cultural rights.

## **G. Mechanisms and Remedies**

### **31. Judicial and Quasi-Judicial Mechanisms**

States must establish and maintain effective mechanisms for fully claiming and enforcing women's economic, social and cultural rights, including independent courts and tribunals, administrative authorities and national human rights and women's commissions. Judges and other adjudicators must be provided with adequate training regarding women's rights to equality and to the equal enjoyment of their economic, social and cultural rights. States must also ratify relevant international and regional treaties that allow international remedies and communication procedures without reservations that have the effect of undermining women's equal exercise and enjoyment of their economic, social and cultural rights.

### **32. Policy Mechanisms**

States are required to ensure that there is a national system of institutions and mechanisms, including national human rights institutions, commissions, and ombuds

offices, which will support the development of strategies, plans and policies specifically designed to guarantee women's equal exercise and enjoyment of their economic, social and cultural rights. This system must guarantee the effective inclusion of women's perspectives in the design and application of public policies in economic, social and cultural areas.

### **33. Resources for Mechanisms**

States must provide sufficient financial and physical resources to the institutions and mechanisms that have the responsibility to implement and enforce women's economic, social and cultural rights in order to ensure their effectiveness and accessibility.

### **34. Access**

States must remove any obstacles that prevent women or certain groups of women from accessing institutions and mechanisms which enforce and implement women's economic social and cultural rights and provide women with information regarding how to access them. States must also adopt measures, such as legal aid, to facilitate women's access to institutions and mechanisms that can implement and enforce women's economic, social and cultural rights.

### **35. Standards, Data and Review**

States must continuously review and revise the implementation and enforcement of women's economic, social and cultural rights by developing gender-sensitive standards, methodologies, criteria, targets and indicators, as well as tools for gender disaggregation of statistical data and for budgetary analysis to specifically assess women's substantively equal enjoyment of their economic, social and cultural rights.

### **36. Remedies**

In the event of an infringement of the right to non-discrimination or the right to equal enjoyment of women's economic social and cultural rights, States are required to provide one or more of the following non-exhaustive list of remedies: compensation, reparation, restitution, rehabilitation, guarantees of non-repetition, declarations, public apologies, educational programmes, prevention programmes, revised policies, benchmarks and implementation programmes, and other effective and appropriate remedies. The State has a related obligation to ensure that the appropriate remedy is both ordered and effectively implemented.



\*\*\*\*

## ENDNOTES

<sup>1</sup> UN Charter Articles 55, 56, and 103.

<sup>2</sup> International Covenant on Economic Social and Cultural Rights, Articles 2(2) and 3; American Convention on Human Rights, Article 1(1); Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Article 3; European Convention for the Protection of Human Rights and Fundamental Freedoms (read in conjunction with its Protocols), Article 14; African Charter on Human and Peoples' Rights, Article 2; Cairo Declaration on Human Rights in Islam, Article 1.

<sup>3</sup> Security Council Resolution 1325, 2000.

<sup>4</sup> As identified by the Human Rights Committee at para. 5 in its *General Comment 28: Equality of rights between men and women* (article 3). 29/03/2000. CCPR/C/21/Rev.1/Add.10.

<sup>5</sup> CEDAW *General Recommendation 23: Political and Public Life*. 13/01/97. Contained in document A/52/38. See para. 13.

<sup>6</sup> United Nations General Assembly, *Vienna Declaration and Programme of Action*, I. 12/07/93. A/CONF.157/23 at para 5.

<sup>7</sup> As reiterated in HRC General Comment 28, *supra* note 4.

<sup>8</sup> Report of Independent Expert, Fantu Cheru, 'Effects of Structural Adjustment Programmes on Full Enjoyment of Human Rights', UN Doc. E/CN.4/1999/50, 24 February 1999.

<sup>9</sup> *International Covenant on Economic, Social and Cultural Rights*, 19 December 1966, 993 U.N.T.S. 3, Can. T.S. 1976 No. 46, 6 I.L.M. 360 (entered into force 3 January 1976) [ICESCR]. *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, 1249 U.N.T.S. 13, Can. T.S. 1982 No. 31, 19 I.L.M. 33 (entered into force 3 September 1981) [CEDAW]. *Universal Declaration of Human Rights*, GA Res. 217 (III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71 [UDHR]. *Universal Declaration on the Eradication of Hunger and Malnutrition*, adopted by the World Food Conference, endorsed by GA Res. 3348 (XXIX) 1974, 29th Sess., UN Doc. E/CONF. 65/20 (1974) 1 [UDEHM]. *Declaration on the Right to Development*, GA Res. 41/128, annex, 41 UN GAOR, 41st Sess., Supp. No. 53, UN Doc. A/41/53 (1986) 186 [DRD]. United Nations Committee on Economic, Social and Cultural Rights, General Comment 15, E/C.12/2002/11, 26 November 2002. *Additional Protocol to the American Convention on Economic, Social and Cultural Rights*, O.A.S. T.S. No. 69, (1989) 28 I.L.M. 156 (entered into force 16 November 1999) (San Salvador Protocol). *Rome Declaration on World Food Security*, Food and Agriculture Organization of the United Nations, Report of the World Food Summit, Rome, 13-17 November 1996, Part One (WFS 96/REP) (Rome, 1997), appendix. *Istanbul Declaration and Program of Action on Human Settlements*, adopted by United Nations Conference on Human Settlements, 4 June 1996.

<sup>10</sup> *International Covenant on Economic, Social and Cultural Rights*, 19 December 1966, 993 U.N.T.S. 3, Can. T.S. 1976 No. 46, 6 I.L.M. 360 (entered into force 3 January 1976) [ICESCR]. *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Can. T.S. 1976 No. 47, 6 I.L.M. 368 (entered into force 23 March 1976) [ICCPR]. *Declaration on the Elimination of Discrimination against Women*, GA Res. 2263(XXII), UN GAOR, 22d Sess. (1967) [DEDAW]. *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, 1249 U.N.T.S. 13, Can. T.S. 1982 No. 31, 19 I.L.M. 33 (entered into force 3 September 1981) [CEDAW]. *Universal Declaration of Human Rights*, GA Res. 217 (III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71 [UDHR]. *Cairo Declaration on Population and Development*, adopted at the International Conference of Parliamentarians on Population and Development, Cairo, 4 September 1994. *Report of the Fourth World Conference on Women: Platform for Action*, A/Conf.177/20, 17 October 1995 [hereinafter *Platform for Action*]. *Convention on the Rights of the Child*, 20 November 1989, 1577 U.N.T.S. 3, 28 I.L.M. 1456 (entered into force 2 September 1990) [CRC]. *American convention on Human Rights*, 22 November 1969, 1144 U.N.T.S. 143, O.A.S. T. S. No. 36 (entered into force 18 July 1978) [ACHR]. *Additional Protocol to the American Convention on Economic, Social and Cultural Rights*, O.A.S. T.S. No. 69, (1989) 28 I.L.M. 156 (entered into force 16 November 1999) (San Salvador Protocol). *Inter-American Convention on the Protection, Punishment and Eradication of Violence Against Women*, 9 June 1994, 33 I.L.M. 1534 (entered into force 5 March 1995) [ICPPEVAW]. *American Declaration on the Rights and Duties of Man*, adopted at the Ninth Annual International Conference of American States, Bogota, 1948. *Declaration on Social Progress and Development*, GA Res. 2542 (XXIV), 24 UN GAOR 24th Sess., Supp. No. 30, UN Doc. A/7630 (1969) 49 [DSPD]. *Declaration on the Right to Development*, GA Res. 41/128, annex, 41 UN GAOR, 41st Sess., Supp. No. 53, UN Doc. A/41/53 (1986) 186 [DRD]. *Maternity Protection Convention*, 2000, 15 June 2000, I.L.O. No. 183, 40 I.L.M. 2 (entered into force 7 February 2002) [MPC]. *African Charter on Human and Peoples' Rights*, 27 June 1981, 1520 U.N.T.S. 217, 21 I.L.M. 58 (1982) (entered into force 21 October 1986) [African Charter]. Committee on the Elimination of Discrimination Against Women, General Comment 24, 2 February 1999.

<sup>11</sup> *International Covenant on Economic, Social and Cultural Rights*, 19 December 1966, 993 U.N.T.S. 3, Can. T.S. 1976 No. 46, 6 I.L.M. 360 (entered into force 3 January 1976) [ICESCR]. *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, 1249 U.N.T.S. 13, Can. T.S. 1982 No. 31, 19 I.L.M. 33 (entered into force 3 September 1981) [CEDAW]. *Declaration on the Elimination of Discrimination against Women*, GA Res. 2263(XXII), UN GAOR, 22d Sess. (1967) [DEDAW]. *Declaration on the Right to Development*, GA Res. 41/128, annex, 41 UN GAOR, 41st Sess., Supp. No. 53, UN Doc. A/41/53 (1986) 186 [DRD]. *International Convention on the Elimination of All Forms of Racial Discrimination*, 7 March 1966, 660

U.N.T.S. 195, 5 I.L.M. 352 (entered into force 4 January 1969) [CERD]. *Universal Declaration of Human Rights*, GA Res. 217 (III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71 [UDHR]. *American convention on Human Rights*, 22 November 1969, 1144 U.N.T.S. 143, O.A.S. T. S. No. 36 (entered into force 18 July 1978) [ACHR]. *African Charter on Human and Peoples' Rights*, 27 June 1981, 1520 U.N.T.S. 217, 21 I.L.M. 58 (1982) (entered into force 21 October 1986) [African Charter]. *Report of the Fourth World Conference on Women: Platform for Action*, A/Conf.177/20, 17 October 1995 [hereinafter *Platform for Action*].

<sup>12</sup> International Covenant on Economic, Social and Cultural Rights, 19 December 1966, 993 U.N.T.S. 3, Can. T.S. 1976 No. 46, 6 I.L.M. 360 (entered into force 3 January 1976) [ICESCR]. International Convention on the Elimination of All Forms of Racial Discrimination, 7 March 1966, 660 U.N.T.S. 195, 5 I.L.M. 352 (entered into force 4 January 1969) [CERD]. Declaration on the Elimination of Discrimination against Women, GA Res. 2263(XXII), UN GAOR, 22d Sess. (1967) [DEDAW]. Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 U.N.T.S. 13, Can. T.S. 1982 No. 31, 19 I.L.M. 33 (entered into force 3 September 1981) [CEDAW]. Maternity Protection Convention, 2000, 15 June 2000, I.L.O. No. 183, 40 I.L.M. 2 (entered into force 7 February 2002) [MPC]. Universal Declaration of Human Rights, GA Res. 217 (III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71 [UDHR]. Additional Protocol to the American Convention on Economic, Social and Cultural Rights, O.A.S. T.S. No. 69, (1989) 28 I.L.M. 156 (entered into force 16 November 1999) (San Salvador Protocol). American Declaration on the Rights and Duties of Man, adopted at the Ninth Annual International Conference of American States, Bogota, 1948. Inter-American Convention on the Protection, Punishment and Eradication of Violence Against Women, 9 June 1994, 33 I.L.M. 1534 (entered into force 5 March 1995) [ICPPEVAW]. Convention on the Rights of the Child, 20 November 1989, 1577 U.N.T.S. 3, 28 I.L.M. 1456 (entered into force 2 September 1990) [CRC].

<sup>13</sup> International Covenant on Economic, Social and Cultural Rights, 19 December 1966, 993 U.N.T.S. 3, Can. T.S. 1976 No. 46, 6 I.L.M. 360 (entered into force 3 January 1976) [ICESCR]. Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 U.N.T.S. 13, Can. T.S. 1982 No. 31, 19 I.L.M. 33 (entered into force 3 September 1981) [CEDAW]. Declaration on the Elimination of Discrimination against Women, GA Res. 2263(XXII), UN GAOR, 22d Sess. (1967) [DEDAW]. Universal Declaration on the Eradication of Hunger and Malnutrition, adopted by the World Food Conference, endorsed by GA Res. 3348 (XXIX) 1974, 29th Sess., UN Doc. E/CONF. 65/20 (1974) 1 [UDEHM]. International Convention on the Elimination of All Forms of Racial Discrimination, 7 March 1966, 660 U.N.T.S. 195, 5 I.L.M. 352 (entered into force 4 January 1969) [CERD]. Universal Declaration of Human Rights, GA Res. 217 (III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71 [UDHR]. American convention on Human Rights, 22 November 1969, 1144 U.N.T.S. 143, O.A.S. T. S. No. 36 (entered into force 18 July 1978) [ACHR]. Inter-American Convention on the Protection, Punishment and Eradication of Violence Against Women, 9 June 1994, 33 I.L.M. 1534 (entered into force 5 March 1995) [ICPPEVAW]. Additional Protocol to the American Convention on Economic, Social and Cultural Rights, O.A.S. T.S. No. 69, (1989) 28 I.L.M. 156 (entered into force 16 November 1999) (San Salvador Protocol). Convention on the Rights of the Child, 20 November 1989, 1577 U.N.T.S. 3, 28 I.L.M. 1456 (entered into force 2 September 1990) [CRC]. Convention Against Discrimination in Education, 429 U.N.T.S. 93, B.T.S. 44 (1962) (entered into force 22 May 1962). American Declaration on the Rights and Duties of Man, adopted at the Ninth Annual International Conference of American States, Bogota, 1948. Report of the Fourth World Conference on Women: Platform for Action, A/Conf.177/20, 17 October 1995 [hereinafter *Platform for Action*].

<sup>14</sup> International Covenant on Economic, Social and Cultural Rights, 19 December 1966, 993 U.N.T.S. 3, Can. T.S. 1976 No. 46, 6 I.L.M. 360 (entered into force 3 January 1976) [ICESCR]. Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 U.N.T.S. 13, Can. T.S. 1982 No. 31, 19 I.L.M. 33 (entered into force 3 September 1981) [CEDAW]. International Convention on the Elimination of All Forms of Racial Discrimination, 7 March 1966, 660 U.N.T.S. 195, 5 I.L.M. 352 (entered into force 4 January 1969) [CERD]. *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Can. T.S. 1976 No. 47, 6 I.L.M. 368 (entered into force 23 March 1976) [ICCPR]. *Declaration on the Elimination of Discrimination against Women*, GA Res. 2263(XXII), UN GAOR, 22d Sess. (1967) [DEDAW]. *Abolition of Forced Labour Convention* (ILO No. 105), 25 June 1957, 320 U.N.T.S. 291, Can. T.S. 1960 No. 21 (entered into force 17 January 1959) [AFLC]. *Declaration on Social Progress and Development*, GA Res. 2542 (XXIV), 24 UN GAOR 24th Sess., Supp. No. 30, UN Doc. A/7630 (1969) 49 [DSPD]. *Universal Declaration of Human Rights*, GA Res. 217 (III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71 [UDHR]. *Declaration on the Elimination of Violence Against Women*, GA Res. 48/104, UN GAOR, 48th Sess., Supp. No. 49, UN Doc. A/48/49 (1993) 217 [DEVAW]. *American convention on Human Rights*, 22 November 1969, 1144 U.N.T.S. 143, O.A.S. T. S. No. 36 (entered into force 18 July 1978) [ACHR]. *African Charter on Human and Peoples' Rights*, 27 June 1981, 1520 U.N.T.S. 217, 21 I.L.M. 58 (1982) (entered into force 21 October 1986) [African Charter]. *American Declaration on the Rights and Duties of Man*, adopted at the Ninth Annual International Conference of American States, Bogota, 1948. *Additional Protocol to the American Convention on Economic, Social and Cultural Rights*, O.A.S. T.S. No. 69, (1989) 28 I.L.M. 156 (entered into force 16 November 1999) (San Salvador Protocol). *Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, 213 U.N.T.S. 222, E.T.S. No. 5 (entered into force 3 September 1953) [CPRHFF]. *Maternity Protection Convention*, 2000, 15 June 2000, I.L.O. No. 183, 40 I.L.M. 2 (entered into force 7 February 2002) [MPC]. *Equal Remuneration Convention*, 29 June 1951, 165 U.N.T.S. 303, ILO No. 100 (entered into force 23 May 1953) [ERC]. *Convention on Employment Policy*, ILO No. 122 (adopted 9 July 1964). *ILO Declaration on Fundamental Principles and Rights at Work*, (1998) 37 I.L.M. 1233 (signed 19 June 1998). *Inter-American Convention on the Protection, Punishment and Eradication of Violence Against Women*, 9 June 1994, 33 I.L.M. 1534 (entered into force 5 March 1995) [ICPPEVAW].

<sup>15</sup> *International Covenant on Economic, Social and Cultural Rights*, 19 December 1966, 993 U.N.T.S. 3, Can. T.S. 1976 No. 46, 6 I.L.M. 360 (entered into force 3 January 1976) [ICESCR]. *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Can. T.S. 1976 No. 47, 6 I.L.M. 368 (entered into force 23 March 1976) [ICCPR]. *International Convention on the Elimination of All Forms of Racial Discrimination*, 7 March 1966, 660 U.N.T.S. 195, 5 I.L.M. 352 (entered into force 4 January 1969) [CERD]. *Declaration on Social Progress and Development*, GA Res. 2542 (XXIV), 24 UN GAOR 24th Sess., Supp. No. 30, UN Doc. A/7630 (1969) 49 [DSPD]. *Additional Protocol to the American Convention on Economic, Social and Cultural Rights*, O.A.S. T.S. No. 69, (1989) 28 I.L.M. 156 (entered into force 16 November 1999) (San Salvador Protocol). *ILO Convention on Freedom of Association and Protection of the Right to Organize*, 68 U.N.T.S. 17, ILO No. 87 (adopted 9 July 1948).



<sup>16</sup> *International Covenant on Economic, Social and Cultural Rights*, 19 December 1966, 993 U.N.T.S. 3, Can. T.S. 1976 No. 46, 6 I.L.M. 360 (entered into force 3 January 1976) [ICESCR]. *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Can. T.S. 1976 No. 47, 6 I.L.M. 368 (entered into force 23 March 1976) [ICCPR]. *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery*, 226 U.N.T.S. 3, C.T.S. 1963/7 (entered into force 30 April 1957). *Convention on the Rights of the Child*, 20 November 1989, 1577 U.N.T.S. 3, 28 I.L.M. 1456 (entered into force 2 September 1990) [CRC]. *ILO Convention on Worst Forms of Child Labour*, ILO No. 182 (adopted 19 November 2000). *Universal Declaration of Human Rights*, GA Res. 217 (III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71 [UDHR]. *American convention on Human Rights*, 22 November 1969, 1144 U.N.T.S. 143, O.A.S. T. S. No. 36 (entered into force 18 July 1978) [ACHR].

<sup>17</sup> *International Covenant on Economic, Social and Cultural Rights*, 19 December 1966, 993 U.N.T.S. 3, Can. T.S. 1976 No. 46, 6 I.L.M. 360 (entered into force 3 January 1976) [ICESCR]. *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, 1249 U.N.T.S. 13, Can. T.S. 1982 No. 31, 19 I.L.M. 33 (entered into force 3 September 1981) [CEDAW]. *Declaration on the Elimination of Discrimination against Women*, GA Res. 2263(XXII), UN GAOR, 22d Sess. (1967) [DEDAW]. *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Can. T.S. 1976 No. 47, 6 I.L.M. 368 (entered into force 23 March 1976) [ICCPR]. *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*, 7 November 1962, 521 U.N.T.S. 231, (entered into force 9 December 1964) [Marriage Convention]. *International Convention on the Elimination of All Forms of Racial Discrimination*, 7 March 1966, 660 U.N.T.S. 195, 5 I.L.M. 352 (entered into force 4 January 1969) [CERD]. *Universal Declaration of Human Rights*, GA Res. 217 (III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71 [UDHR]. *American convention on Human Rights*, 22 November 1969, 1144 U.N.T.S. 143, O.A.S. T. S. No. 36 (entered into force 18 July 1978) [ACHR].

<sup>18</sup> *International Covenant on Economic, Social and Cultural Rights*, 19 December 1966, 993 U.N.T.S. 3, Can. T.S. 1976 No. 46, 6 I.L.M. 360 (entered into force 3 January 1976) [ICESCR]. *African Charter on Human and Peoples' Rights*, 27 June 1981, 1520 U.N.T.S. 217, 21 I.L.M. 58 (1982) (entered into force 21 October 1986) [African Charter].

<sup>19</sup> *International Covenant on Economic, Social and Cultural Rights*, 19 December 1966, 993 U.N.T.S. 3, Can. T.S. 1976 No. 46, 6 I.L.M. 360 (entered into force 3 January 1976) [ICESCR]. *Convention on the Rights of the Child*, 20 November 1989, 1577 U.N.T.S. 3, 28 I.L.M. 1456 (entered into force 2 September 1990) [CRC]. *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, 1249 U.N.T.S. 13, Can. T.S. 1982 No. 31, 19 I.L.M. 33 (entered into force 3 September 1981) [CEDAW]. *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Can. T.S. 1976 No. 47, 6 I.L.M. 368 (entered into force 23 March 1976) [ICCPR]. *Declaration on the Elimination of Violence Against Women*, GA Res. 48/104, UN GAOR, 48th Sess., Supp. No. 49, UN Doc. A/48/49 (1993) 217 [DEVAW]. *International Convention on the Elimination of All Forms of Racial Discrimination*, 7 March 1966, 660 U.N.T.S. 195, 5 I.L.M. 352 (entered into force 4 January 1969) [CERD]. *Universal Declaration of Human Rights*, GA Res. 217 (III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71 [UDHR]. *American convention on Human Rights*, 22 November 1969, 1144 U.N.T.S. 143, O.A.S. T. S. No. 36 (entered into force 18 July 1978) [ACHR]. *African Charter on Human and Peoples' Rights*, 27 June 1981, 1520 U.N.T.S. 217, 21 I.L.M. 58 (1982) (entered into force 21 October 1986) [African Charter]. *Inter-American Convention on the Protection, Punishment and Eradication of Violence Against Women*, 9 June 1994, 33 I.L.M. 1534 (entered into force 5 March 1995) [ICPPEVAW]. *Additional Protocol to the American Convention on Economic, Social and Cultural Rights*, O.A.S. T.S. No. 69, (1989) 28 I.L.M. 156 (entered into force 16 November 1999) (San Salvador Protocol).

<sup>20</sup> *International Covenant on Economic, Social and Cultural Rights*, 19 December 1966, 993 U.N.T.S. 3, Can. T.S. 1976 No. 46, 6 I.L.M. 360 (entered into force 3 January 1976) [ICESCR]. *Additional Protocol to the American Convention on Economic, Social and Cultural Rights*, O.A.S. T.S. No. 69, (1989) 28 I.L.M. 156 (entered into force 16 November 1999) (San Salvador Protocol).

<sup>21</sup> *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, 1249 U.N.T.S. 13, Can. T.S. 1982 No. 31, 19 I.L.M. 33 (entered into force 3 September 1981) [CEDAW]. *Declaration on the Elimination of Discrimination against Women*, GA Res. 2263(XXII), UN GAOR, 22d Sess. (1967) [DEDAW]. *Convention on the Nationality of Married Women*, 20 February 1957, 309 U.N.T.S. 65, Can. T.S. 1960 No. 2 (entered into force 11 August 1958) [CNMW]. *Convention Relating to the Status of Refugees*, 28 July 1951, 189 U.N.T.S. 137, 158 B.S.P. 499 (entered into force April 22, 1954) [CSR]. *Universal Declaration of Human Rights*, GA Res. 217 (III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71 [UDHR]. *American convention on Human Rights*, 22 November 1969, 1144 U.N.T.S. 143, O.A.S. T. S. No. 36 (entered into force 18 July 1978) [ACHR]. *International Convention on the Elimination of All Forms of Racial Discrimination*, 7 March 1966, 660 U.N.T.S. 195, 5 I.L.M. 352 (entered into force 4 January 1969) [CERD].

<sup>22</sup> *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, 1249 U.N.T.S. 13, Can. T.S. 1982 No. 31, 19 I.L.M. 33 (entered into force 3 September 1981) [CEDAW]. *Declaration on the Elimination of Discrimination against Women*, GA Res. 2263(XXII), UN GAOR, 22d Sess. (1967) [DEDAW]. *Declaration on the Elimination of Violence Against Women*, GA Res. 48/104, UN GAOR, 48th Sess., Supp. No. 49, UN Doc. A/48/49 (1993) 217 [DEVAW]. *Convention on the Rights of the Child*, 20 November 1989, 1577 U.N.T.S. 3, 28 I.L.M. 1456 (entered into force 2 September 1990) [CRC]. *Inter-American Convention on the Protection, Punishment and Eradication of Violence Against Women*, 9 June 1994, 33 I.L.M. 1534 (entered into force 5 March 1995) [ICPPEVAW]. *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, (2001) 40 I.L.M. 335 (not yet in force).

<sup>23</sup> See for example UDHR article 30; ICCPR article 5(1) and (2); ICESCR article 5(2); CRC article 41; ACHR article 29; ECHR articles 17 and 53.

<sup>24</sup> CEDAW, Article 1; HRC *General Comment 18: Non-discrimination*. 10/11/89. 37<sup>th</sup> Sess., 1989; CERD *General Comment 25: Gender-related dimensions of racial discrimination*. 20/03/2000. Contained in document A/55/18, annex V.

---

<sup>25</sup> CESCR *General Comment 3: The nature of states-parties' obligations (art. 2, par. 1)*. 14/12/90. Contained in document E/1991/23. See para. 1.

<sup>26</sup> See, for example CEDAW, Article 4(1).

## Appendix 9: "Equality and Non-discrimination: The Two Essential Principles for the Promotion and Protection of the Human Rights of Women"

Source: <http://iwwraw-ap.org/aboutus/paper04.htm>



*International Women's Rights Action Watch Asia Pacific*

Proceedings of a Conference organized by the  
Centre for Comparative and Public Law and  
the Women's Studies Research Centre,  
University of Hong Kong[1]  
20 April 2002

**Ms. Carole Petersen**, Associate Professor and Director of the Centre for Comparative and Public Law (CCPL), opened the conference and introduced the Keynote Speaker, Ms. Shanthi Dairiam, the Executive Director of the International Women's Rights Action Watch - Asia Pacific.[2] Ms. Petersen noted that the goals of the conference included:

1. To increase awareness in Hong Kong of the importance of the Convention on the Elimination of All Forms of Discrimination Against Women[3] (which we will generally refer to here as "CEDAW" or the "Convention") and international standards of equality.
2. To facilitate the development of a working relationship between the Hong Kong women's movement and the International Women's Rights Action Watch - Asia Pacific.
3. To assess the situation of women in Hong Kong, focusing on those issues where better implementation of CEDAW and the recently created Women's Commission could make a difference.

### **MS. SHANTHI DAIRIAM: KEYNOTE SPEECH**

The principles of equality and non-discrimination are essential principles for the promotion of women's rights. When discussing these principles, you cannot avoid mentioning the Convention on the Elimination on all Forms of Discrimination Against Women. The Convention is premised on these two principles and all the work of my organization is done through interpretation of these principles, by learning through the work of the CEDAW Committee, its interpretations of CEDAW and the jurisprudence that has

developed.[4] For me, CEDAW is practically synonymous with the principles of equality and non-discrimination.

Although progress has been made in many societies, we find that the disparities in well-being, status, rights and power between men and women continue to persist.[5] The reason why we decided to work on CEDAW is because we felt this was one treaty that perhaps held some promise, because it guarantees equality and non-discrimination. We decided to premise our work on these principles, to give us a better opportunity to address the persistent nature of inequality. It is particularly important that the Convention calls for the elimination of discrimination in all fields, not only in the public sphere but also in the private sphere.

CEDAW gives women's rights activists a very good theoretical framework to identify barriers to women's advancement, to identify needs and measures for action, and to assess accomplishments. Very often, there is a lack of an adequate framework in the work related to women's rights. It tends to come in bits and pieces and to be very ad hoc, and there is no theoretical underpinning as to why a particular approach is better. We need a theoretical framework and this treaty gives us that.

### **The need to deal with the system rather than the symptoms**

There is a need to go beyond a single issue in which we may be interested. Instead, we must attempt to unravel the pernicious structural and dynamic process of discrimination that underpins the various manifestations of inequality. There is a tendency to put labels on people when we start to help them, such as "asset-less," "landless" or "the illiterate." However, we do not know the story behind the labels. Why is that person so, and what are the underlying reasons? There is a tendency to look at these manifestations and deal with them separately. Yet the problem has to be dealt with holistically. We must address several institutions at the same time-family, market, community and the state. These institutions interact and reinforce this web of discrimination, facilitating a denial of responsibility and a state of helplessness, because discrimination is so pernicious. An example of such a situation is when a state builds schools but the family does not send the girl child to study; the state will say "we have done everything; it is beyond our control". But the Convention is unequivocal in its demands. The measure of state action to secure the human rights of women and the indicators of state progress in this regard lie not just in what the state does (such as building schools) but more importantly in what the state achieves (the level of progress).

How can this obligation be implemented in practice? In Bangladesh, in spite of progressive state policies in education and the availability of education, it was found that parents in

rural areas were reluctant to send their girl children to school because the majority of teachers were male; being a conservative society, parents would not allow their girls to be educated by men. The government rectified the situation by introducing the policy of having sixty percent female teachers to overcome the cultural barrier. This is an example of why there has to be a constant questioning as to why, despite so many interventions, equality still eludes us. There are always various levels of impediments that have to be addressed and removed.

### **Substantive (not merely formal) equality**

By demanding the practical realization of rights, CEDAW promotes the substantive model of equality, which includes equality of opportunity, equality of access to opportunity, and equality of result or outcome. Understanding the concept of equality of access is critical because this is where discrimination normally occurs. Opportunity is, by and large, created but there is an impediment to availing it. The acknowledgment that discrimination has to be eliminated is based on the understanding that discrimination is socially constructed and that it is not an essential or natural principle of human interaction. This recognizes the need for and paves the way for concerted action against inequality and the institutional mechanisms, which perpetuate it. It also paves the way for proactive positive measures. So it is not just enough to prohibit discriminatory practices. Rather, we must focus on what could be the enabling issues, so as to put in place a positive responsibility on the state as well.

### **How does the Convention look at discrimination?**

Article 1 of the Convention defines discrimination as anything-restriction, exclusion or distinction-which is based on sex and has the intention or the effect of denying women the exercise of rights.[6] This is a very useful yardstick for measuring discrimination. Although there is no article on violence against women in the Convention, the CEDAW Committee has brought domestic violence and trafficking into the purview of the Convention, as forms of discrimination against women. The rationale: all forms of violence deny women a whole range of rights, and therefore constitute discrimination. It is important to look at everything that has the effect of denying women their rights, although there may not be an intention to deny rights. So, neutral laws and policies treating men and women at par may seem to be non-discriminatory, but could be discriminatory because women may be at a disadvantage as compared to men due to existing inequalities. This approach helps us to identify the weaknesses of formal or so-called neutral laws and policies. Opportunities presented through formal equality, which manifest themselves in gender-neutral policy or law, may actually discriminate against women. For example, an aquaculture development project in a South Asian country presented itself as an "equal opportunity" project, providing, on the same basis, access to training and other technical inputs to become fish

farmers. The criteria, which was applied equally to men and women, was that aspiring participants should own their own ponds. This automatically discriminated against women, who do not inherit property because of the weakness in the law. Thus the neutral application of the requirement actually constituted unintended discrimination against women. Similarly, in Australia, a neutral retrenchment policy of "last-in and first-out" was held to be discriminatory against women because it did not take into consideration the effect of the past discriminatory recruitment policies, which had denied women job opportunities. Equality also requires us to consider equality and sustainability of results, which involves ensuring a just flow of benefits to women.

In many countries, although it is now "uncivilized" to discriminate against women overtly, women continue to suffer from the effects of past discrimination. In Malaysia, for example, there are very few women judges. This is not because there are not qualified women in the profession but because some decades ago women did not go beyond becoming magistrates. Now they do not have the requisite number of years of experience and therefore cannot get appointed to the higher judiciary. That is true also in the civil service, although there is no policy of discrimination at present. The existence of conditions of eligibility that women cannot fulfill (for no fault of their own) and which privilege men have the effect of discriminating against women. The State is obligated to put in place some form of temporary special measures to help correct the effects of past discrimination.[7] Courts in various jurisdictions are now more ready than before to strike down policies that are overtly discriminatory. But they are still reluctant to develop jurisprudence in favor of positive obligation. The courts need to move in this direction.

### **Impediments to promoting the idea of substantive equality**

1. The notion of men being instinctively better: Unfortunately, people tend to believe this notion until you challenge them and ask for concrete examples as to how they are better. Another argument, found in almost all cultures, is that men are set out almost divinely to do certain things and that women must do certain other things, and that if you change this order of things you will upset the social fabric of life. This is presented as "complementarity". The answer to such an argument is that you cannot be complementing each other if you are not equal. Two people may be doing different things but for them to be complimenting each other, their work must be seen as equal. Otherwise, you may be viewed as merely supplementing the mainstream work, leading to reinforcements of stereotypes. This has real consequences in terms of allocation of resources, entitlements, rights, privileges, powers etc. The notion of complementarity can be insidious and dangerous.

In Asia, religious and cultural factors are often indistinguishable. This creates a great deal of conflict of interest and a "nuanced contextualised balance"[8] has to be maintained to ensure that women's rights are not sacrificed. To maintain such a balance, there needs to be



an understanding of the processes by which a community and society create, maintain, reinforce and reproduce social relations between women and men as an element of group identity. This process of preserving group identity has invariably led to the social construction of discrimination against women.[9]

Naila Kabeer explains that discrimination is based on social norms that come in the form of culture and tradition. These rules and norms are socially legitimized by all the institutions—family, market, state and community. These institutions combine their practices, creating links, and re-imposing discrimination against women through the allocation of responsibilities, roles, resources, privileges and rights on the basis of legitimacy of the norms. If men are seen as the main bread-earners and women as supplementary wage earners, then inheritance rights and better wages will go to men. The state does not require equal pay for equal value and at the family level sons are given better education opportunities, while women are supposed to fulfill their household responsibilities. The market reinforces this by employing men without giving them child support benefits. On the other hand, women who demand market place replacement of child caring are seen as unruly and they are not represented in the decision making process. Thus a web of discrimination is created.

2. Equality as a western conception: The other argument that comes from many governments has to do with the notion of equality being a western conception. They argue that the concept needs to be "adjusted" before it can be implemented in a particular society. My answer is that equality is a norm that is essential. It guarantees the potential for the fullest enjoyment of all rights for the individual and makes choice and autonomy possible. Equality can not be adjusted. However, the CEDAW Committee does acknowledge the principle of progressive implementation. For example, the Committee does not expect developing countries to bring about universal literacy in one year. There is no comparison of the indicators of well-being between poor and wealthy countries. But rights are universal; they are not only for the West. So too is equality. However, the level of accomplishment of the fulfillment of the rights may be at different degrees of progression. Moreover, the methods applied to realize rights may have to be adjusted for particular societies.

3. Protectionist approach: There are several institutions and organizations in each government, each with their own interpretation of equality and they may tend to take a protectionist approach. They curtail freedoms of women in the name of protecting them from harm. A prohibition of night work is one example of this approach. Another example is an executive decision in Nepal prohibiting women from going abroad to work, justified as an attempt to protect them from being trafficked. Protectionist approaches are inherently limiting in that they do not challenge gender-based discrimination and the reasons why women are at risk. Rather, these approaches reproduce discrimination in the garb of

protecting women. Protectionism serves to curtail women's freedom to work which men enjoy. It reproduces old myths that women are less safe at night or that violence against women only happens at night, and it thus frees the state from carrying out the obligation to secure the environment. Another example can be found in Croatia, where the government banned women with children less than 4 years old from doing overtime work. This policy simply reinforces old stereotypes and fails to make it a duty of the parents (instead of only women) to look after their children.

4. Citing lack of resources and special circumstances: Governments often rely upon the lack of resources or prevailing social problems as a "justification" for not implementing CEDAW. For example, during the hearings before the CEDAW Committee, the Chinese national government emphasized the problem of over-population. Similarly, Iraq told the Committee that the country was under economic sanctions and therefore little could be done for the women. Nepal said that it was one of the poorest countries and had no resources. However, what this Convention requires is not to have a status of progress comparable to highly developed countries. Rather, it deals with the condition of women as against men. That is the context in which these issues must be considered. Thus, the question is: what is the government doing to ensure that the women are not suffering disproportionately where sanctions have been imposed? What is being done to protect women from violence, to make sure that they receive equal humanitarian services in situations of armed conflict? When states say that they have no resources, the states are asked to show that they have made the maximum possible effort for the realization of rights. Is there a plan, for example, to eliminate certain inequalities or deprivations? These governments normally do not have any such plan. The justification of lack of resources is, therefore, often seen by the Committee as invalid and as demonstrating a lack of good faith.

### **The CEDAW Committee's review of Hong Kong's Initial Report under CEDAW (1999)**

CEDAW was extended to Hong Kong in 1996 and the first report of the Hong Kong Special Administrative Region was submitted in August 1998.[10] The CEDAW Committee reviewed Hong Kong's report in February 1999 (as part of its review of China's third and fourth periodic reports).[11] The Committee expressed happiness about the enactment of Sex Discrimination Ordinance in 1995.[12] However, the Committee made a number of recommendations for better implementation of CEDAW, including the formation of a "high level national machinery, with appropriate powers and resources that will coordinate a focused policy for women and a long term strategy to ensure effective implementation of the Convention." [13] The primary mandate of such a body would be to coordinate efforts to



implement CEDAW in Hong Kong. (The Women's Commission was subsequently announced by the Hong Kong government in 2000 and established in 2001.)

### **Tasks for Hong Kong non-governmental organizations**

One of the tasks that remains for Hong Kong NGOs (who did excellent work during the presentation of Hong Kong's initial report) is to evaluate the actions of the government post-review and to assess the level of success and achievements. The Committee talked about the structural impediments in the electoral system, low presence of women in statutory boards, the civil service, and the judiciary, and it supported affirmative action for better participation of women. The Committee also asked that marital rape be criminalized[14] and steps be taken to ensure health and safety of sex workers. It further recommended that more be done to implement the concept of equal pay for equal work of equal value[15] and that there be public consultation on the implementation of the Concluding Comments.

An important function for NGOs and civil society is that they should set the standards for achievement of many of these targets. The standards will be lowered if the government does this. Thus, NGOs should further provide information to the Committee on the manifestations of discrimination and what needs to be done to reduce them, monitor actions that are taking place and make sure that all women are benefiting from them. Women need to learn to claim their rights; in order to do this, we also need to create a democratic space for the issue to be raised.

### **Discussion and questions following Ms. Dairiam's speech**

Responding to a question regarding the triple burden that women have to bear as participants in economic activities, Ms Dairiam agreed that economic participation adds to the burden of women. "But what we are also concerned about is economic independence, which has serious implications in terms of her own decision making, protecting herself from violence etc. There is great value in ensuring that women are economically independent." Ms. Dairiam also noted that the Convention says that child bearing is a social function that women perform and that the society has to bear the costs. Article 5 (elimination of stereotypes) further states there has to be education regarding sharing of responsibilities between men and women. The Committee regularly questions governments on such issues. When the Croatia government said that it banned women with children under four from working over-time, the Committee said that if you want to ban, you should ban both mother and father. The issue of triple burden has to be constantly

raised and monitored if new policies have been introduced, to make sure that there are no elements of discrimination, even when the policies are intended to be positive and generous.

Ms. Carole Petersen raised the issue of the Chief Executive's recent announcement that a primary focus of his second term would be the creation of more jobs. Women's organizations should make sure that jobs are created for women and not just in traditional sectors (such as construction) where primarily men work. This could be an issue that the Women's Commission could focus upon, especially as part of its current "gender mainstreaming" project.

Ms. Tessa Stewart asked if resorting to mediation to settle disputes under the Sex Discrimination Ordinance affected the exercise of rights. Mediation may not be an equal process, since women may give in earlier for the sake of harmony.

Ms. Petersen responded that there is a significant body of research showing that mediation can actually perpetuate power imbalances. One point to note about the process in Hong Kong is that the EOC does not choose whether to use mediation. The statute requires the EOC to attempt to conciliate any complaint under the Sex Discrimination Ordinance, except those complaints which should be discontinued. Thus, the EOC does not have the discretion under the law to take a case directly to litigation, even if it is a strong case. Indeed, the complainant cannot even apply for legal assistance from the EOC until conciliation has been attempted and failed. In theory, a complainant could bypass the EOC and file a complainant directly in the District Court (as this is an option under the law). However, in practice, most people need the EOC's assistance and thus are obligated to participate in conciliation. Our research on this topic, which is not yet complete<sup>[16]</sup>, suggests that certain steps could be taken to strengthen the position of the complainant in the process. One possibility is to find people to help them to articulate their complaint in the conciliation conference since the EOC officers are required to stay objective during the process and cannot advocate for one party during the conference. If the officer openly assists the complainant in the conference, s/he could be accused of bias by the other party. Another possibility would be to bring back the issue of whether we need an equal opportunity tribunal, as was proposed in Anna Wu's Human Rights and Equal Opportunities Commission Bill. If there was a low-cost tribunal available it might increase the bargaining power of the complainant in the conciliation process. Presently, the complainant does not know if she will receive legal assistance if she does not accept the settlement offer. The EOC does not have unlimited funds and cannot support all cases.

However, Ms. Anna Wu, chairperson of the Equal Opportunities Commission, noted that on occasions, the EOC had given time to the complainant to step out of conciliation and

speak to the Commission lawyers. While the conciliator cannot tell the complainant what to do, s/he can encourage the complainant to look for legal advice.

## **Protectionism v Protection for Women**

Ms. Dairiam responded to a question regarding protectionism by asking the participants to distinguish between protectionist policies and protection for women. In countries like India where there are many cases of custodial violence, there is a rule in the police force that no woman can be brought for interrogation between 6 PM and 6 AM. The question that needs to be asked is whether that policy denies them any right. If it does not, it should be supported. But we need to be careful about protectionist attitudes, which entrench disadvantages for women, such as banning women from certain kinds of work, banning them from travel, etc. Each case has to be considered by examining the effect.

## **SESSION TWO: COMMENTS BY PANELISTS**

Ms. Wai Ha Lam, the External Organiser of the Association for Advancement of Feminism, said that the lack of resources among women's organizations in Hong Kong results in the priority being put on the local level, rather than on the international mechanism. There are always pressing issues at the local level that require lobbying with the government. However, we tend to work without any theoretical framework and without a comprehensive analysis. Preparing the alternative report (for the CEDAW Committee hearing in 1999)[17] gave us the opportunity to develop a more comprehensive approach. It was a good experience and an achievement (for Hong Kong women's organizations) because we all had to document our experiences and express our concerns. It also involved certain skills in terms of analysis, something that Hong Kong NGOs rarely do. Moreover, as a result of the alternative report, the Women's Commission became a reality.

Unfortunately, on the whole, the Hong Kong Government has done nothing for the implementation of CEDAW besides producing some materials. Women's organizations criticized these materials because they are not educative enough; they merely mention the name of the Convention. The standard position of the government has been that as long as we do not blatantly discriminate against women we are a liberal, free society. Every time an anti-discrimination bill has been introduced, the government argues that if we prohibit the employers too much investors will leave and Hong Kong will experience economic difficulty.

There is a lack of commitment on the part of the government in terms of initiative to implement CEDAW. There is very little space for advocacy in Hong Kong because democracy is very restricted, and there is a shortage of resources among NGOs. The NGOs

were not widely consulted while preparing the CEDAW report. They were merely consulted on the headings, not the substance. Submissions were invited from NGOs but nobody knows how they were incorporated.

The government has formed the Women's Commission but in many ways it has gone against the recommendation of the CEDAW Committee. The Women's Commission is not a very high authority within government, as it is under the Health and Welfare Bureau. It has little resources since it is an advisory committee and the secretariat is very small. It does not have enough power and it has failed to work very closely with the NGOs. There is no collaboration with them. It has taken up most of the bad practices of the government and is very bureaucratic. There has to be a more constructive and productive relationship. Since the Commission monitors the work of the government regarding women, NGOs can be a very good source of feedback, but we do not want to be mere advisory bodies, whose advice is sought at the pleasure of the Commission. We want to be able to participate in the decision making as well. We would also like to have (unpublished) information about women's position in Hong Kong from the Women's Commission since it has direct contact with the government.

One of the difficulties with an international mechanism is that Hong Kong is considered a developed society and therefore the resources are not forthcoming in Hong Kong for international human rights work. Also, women NGOs are not well-equipped to analyze and produce comprehensive gender analysis on policies and services because we are generally pressed with our other areas of concern. We need to work a bit more with the universities, because at the moment we do not do all that much work with the academics. We seem to be working separately.

Ms. Chan Yu, Director of the Hong Kong Federation of Women's Centres, said that Ms. Dairiam's lecture had forced her to look back at CEDAW, the perspective of which women's organizations in Hong Kong had lost in the last two years. The notion of gender mainstreaming, which became popular after the Fourth World Conference on Women (held in Beijing in 1995), means that everyone should be an expert on gender equality. But do people really know about CEDAW and gender mainstreaming? Gender mainstreaming is a process, a strategy to achieve equality. We need to learn more about CEDAW and its content as well as the Optional Protocol to CEDAW. We can then educate grassroots people as to what CEDAW entails and what it means. If we adopt CEDAW as a tool, we will need to consider women's issues from a rights perspective.

We also need to learn more about the partnership between the state and the civil society, and how the two can work for the implementation of the convention and education. Empowerment cannot be carried out without the NGOs because they have a lot of

experience and are good educators for gender equality. Their experience should be taken into account.

## **Mandate and Work of the Women's Commission**

Ms. Petersen commented that the terms of reference of the Women's Commission (which were set by the government) do not actually mention CEDAW.[18] This is disappointing, given that the Commission was actually created in response to the concluding comments of the CEDAW Committee and is supposed to serve as the primary enforcement body for CEDAW in Hong Kong. The failure to mention CEDAW in the terms of reference says something about the Hong Kong government's approach to women's rights. "At hearings before international human rights bodies, the government will point to the Women's Commission as the implementing body for CEDAW; however, when it comes back to Hong Kong, it is not so keen to bring the international jurisprudence home." Certain legislators tried to add a specific mention of CEDAW in the Sex Discrimination Ordinance when the Bill was debated in the legislature. But the government did not want that in the law. It argued that the Convention was too vague to be referred to expressly in the local Ordinance. A specific mention of CEDAW would have been more helpful, although the EOC still does work related to it and relies on it in litigation. We should also start focusing on the role of the Women's Commission in educating and training women about CEDAW. The Women's Commission should think about how we can make training and education of CEDAW more effective.

Dr. Judith Mackay, a member of the Women's Commission, spoke (in her personal capacity) to explain some of the work that the Commission has been doing since its establishment. A good deal of energy during the past year has been spent in setting up the institution, making familiarization visits to NGOs, and being briefed by various parties on a wide range of different issues affecting women. The present focus of the Commission is on education, gender empowerment and gender mainstreaming. The Commission has produced a checklist for gender mainstreaming, currently approaching the end of its piloting stage. Further ideas that were suggested at the conference for gender mainstreaming were the chief executive's employment programme as well as the training fund. Based on her experience with civil servants, she believes that in many cases it is not that the government officials are actually against the idea of gender mainstreaming, but that they have never systematically considered gender perspectives before. She was optimistic that officials would adopt the idea of gender mainstreaming when encouraged to do so. For example, the Commission is asking all government departments to automatically keep data in a sex-disaggregated form when it obtains new data and government officials appear open to this idea.

The Commission is also dealing with various issues of women's empowerment, like getting more women on government boards, gender mainstreaming etc. But it has not really had the time and the opportunity to sit down and look at its framework under CEDAW.

### **Work of the Women's NGOs**

Ms. Anna Wu, chairperson of the EOC, commended the work of the women's NGOs and added that because of their hard work a lot of things have been fought for and secured-like the Women's Commission. She noted that her suggestions to the government (to elevate the Women's Commission to the Chief Secretary's level and to change the name of the Health and Welfare Bureau, under which the Commission now belongs, to include Women's Affairs) were declined. But since the ministerial system is now being proposed, it may be that this is the right time to ask which minister is responsible for women's issues.

Hong Kong NGOs face a problem monitoring during the periods between reports to the CEDAW Committee. If NGOs could coordinate a yearly monitoring exercise, there would be more to say when the reporting date approaches and more pressure could be put on the government. NGOs can take the initiative and play a leadership role in this area. She also offered to provide certain EOC back-up resources (such as research and venue) to NGO workers working towards that end.

Ms. Wu noted that every time a rights initiative is taken, the government raises "cost to business" as a reason to oppose it. The argument should really be put the other way around: the cost occurs when they violate rights, not when they are protecting them. She also noted that although CEDAW is not mentioned in the Sex Discrimination Ordinance, as a matter of strategy, whenever the EOC litigates, the case is developed with the Convention obligations in mind. The EOC puts the Convention into the case in every way possible.

The EOC has also been lobbying the government to award certain extra points to tenders of companies with good equal opportunities systems. By marrying that with the government education funds used for training, which are in fact being given to private sector companies, it should be possible to create a better enabling environment for women.

### **Identifying Key Officials for Sensitization**

Ms. Vandana Rajwani, a barrister and an Assistant Professor in the Faculty of Law, University of Hong Kong, suggested that a holistic and comprehensive approach should be adopted in order to avoid projects being criticized as lacking in gender sensitivity. It was imperative that gender sensitivity training was widespread. In particular, it would be effective to design a short training course on gender issues for people in key policy-making



positions. Such an approach could be more influential than having one gender sensitive member on the board who will be the lone person fighting to convince others who are unaware of the issues. She added that there was a need to train the trainers as well as to educate the educators. Even if more gender sensitive textbooks are approved, ultimately it rests on the trainers to instill concepts of equality.

## **Textbooks and Stereotypes**

Dr. Wendy Taylor of the Department of Nursing, University of Hong Kong, made a comment on the recent research by the EOC, which demonstrated that Hong Kong boys still have very stereotypical and sexist views (more so than Hong Kong girls). She said it was necessary to consider why boys think the way they do, who is teaching those stereotypes, and what are we doing to change them? We can change the textbooks but if the teaching of stereotypes starts at home, then we cannot make much progress with that limited approach. The problem needs to be addressed from a systemic point of view by looking at the various institutions-family, government etc.

## **Importance of Accounting for Unpaid Work**

Ms. Dairiam stressed that accounting for unpaid household work of women was more than an emotional issue of gaining recognition for their work. There is a lot of work going on in various countries, including, in particular, the statistical committee at the United Nation's Economic and Social Council for Asia and the Pacific (ESCAP) which is putting together methodologies to do the calculation.[19] It should not stop at saying that women are definitely contributing to the economic activities of the countries by their domestic work since there is a value to it. This is not a substitute for an actual income in their hands. However, the value of accounting for unpaid work can be used for various resource allocation policies of the state and certain services. For instance, insurance policies are beginning to recognize that if there is an injury to a woman, the compensation to her should consider the loss that her handicap would cause to the family. In the past, companies said there is no loss. It should also be considered for social security, pension benefits and old age benefits for women, because they have contributed to the national economy.

## **The Extent of Civil Society and State Partnership**

Ms. Dairiam added that there is a need for partnership in the gathering of information and understanding the issues. In the absence of such partnerships, policy decisions will be made based upon false assumptions and women may never benefit. Education at every level can be facilitated if there is a partnership and full implementation of the treaty is only possible through such partnership.

Civil society needs to maintain the accountability of the government as to whether it is working for the realization of women's rights. How far this partnership will be successful, how much demand one can make from the state, and whether it is taking the responsibility right up to the international level to the CEDAW Committee will vary from country to country.

## **Enforceability of CEDAW and the Role for NGOs in a Jurisdiction**

Ms. Dairiam noted that very often doubts are raised about the effectiveness and enforceability of the treaty. "So what can this treaty do for us?" is the question posed. The question needs to be reversed to "What do you plan to do with this treaty?" There is a need for the state to use the treaty if it is to be of use. It is not like a manna from heaven which has suddenly fallen into one's hands. The second doubt that the people have is: how enforceable is it? So what if the CEDAW Committee gives recommendations, how can you force the government to comply? In fact, these governments have shame, no matter how recalcitrant. They want to look good.

One of the problems with the NGOs is that they do excellent work up until the time of the review. They give all the information to the CEDAW Committee and the Committee asks many excellent questions of the government. But when they come home, there is a complete lull in the activity. The NGOs don't pursue the monitoring of the work. They need to insist, right at the start, on an action plan on how the recommendations are going to be achieved. That is where the partnership also needs to come in. The governments should sit together with the NGOs and put up a detailed action plan and monitor how that is progressing. Otherwise there will be no framework for monitoring. The legislature can demand an action plan as well, which can facilitate the review of the Committee at a later reporting. It will also make things do-able and practical. When there is no focus on what it is monitoring, the Committee can go a bit off track as well.

Dr. Judith Mackay of the Women's Commission felt that NGOs have a usefulness of being outside the system and pushing the envelope forward and saying things that government



officials cannot say. At the Women's Commission, a working group is considering various collaboration models-with academia, the NGOs, the EOC-and we have no answers to it as yet. By December (2002), there should be some form of a model for collaboration.

Ms. Dairiam agreed that collaboration was a difficult position but there has to be a model that ensures NGO participation with their views getting full weight in the process of policy formulation and identification of priorities. But at the same time the NGOs still have to remain outside of the system and be able to monitor and draw accountability. There cannot be a total merging of state and NGO in a way that the NGO cannot hold the government accountable.

According to Ms. Sophia Woodman, a visiting scholar at the CCPL, Faculty of Law, at the last session in which the CEDAW Committee reviewed a report on Hong Kong, there were just too many shadow reports from Hong Kong NGOs, without any priority list to enable the Committee to understand which are the most important issues. The lack of focus is a serious problem when the Committee gets too much material, and it is essential for the next time around that the NGOs in Hong Kong come to an understanding on what could constitute the core of all the shadow reports in order to provide a focus to the Committee.

Closing the discussion, Ms. Petersen said that although it was unlikely that China would ratify the Optional Protocol of CEDAW in the near future, that did not mean that CEDAW was not enforceable here. First, we cannot underestimate the impact of the enforcement process of CEDAW as a lobbying tool. The Concluding Comments have made an impact in Hong Kong. That is why we have the Women's Commission. Also, the courts are willing to refer to CEDAW. The EOC relied on CEDAW in the case against the Director of Education and the court held that the Convention can be referred to when interpreting the Sex Discrimination Ordinance. That is very important. It is a precedent that can be applied to other cases under the Sex Discrimination Ordinance. The court also held that there is a presumption that the legislature intends to comply with international treaties that bind Hong Kong. So the presumption is that other legislation should also comply with CEDAW.

## **Conclusions and Recommendations**

During the course of the conference, the following issues were raised and received with general acceptance among the participants:

1. In order to achieve substantive equality-as against mere formal equality-it is important to have a holistic understanding of the overall situation of rights and there is a need to focus on the equality of results, instead of focusing merely on formal equality of opportunities.

2. Based on the Concluding Comments of the CEDAW Committee, NGOs and civil societies in Hong Kong should take the initiative to set standards for achievement in various fronts of women's rights, and use those standards to hold the government accountable.
3. In view of the recent announcement of the Chief Executive that his second term would have job creation as its main priority, women's organizations should work towards ensuring that the new jobs created do not fall only in the traditional sectors in which men work.
4. Since the conciliation model that is presently required by statute may tend to perpetuate the power imbalance between the victim and the perpetrator, the community should reconsider the desirability of having a low cost Human Rights or Equal Opportunities Tribunal. That could increase the bargaining power of complainants and also provide the respondent with a greater incentive to make reasonable offers for settlement.
5. There is a need for civil societies and NGOs to work more closely with the academic community in Hong Kong, and to maximize the impact of advocacy through collaborative work.
6. Since the Women's Commission is the national mechanism established by the government in response to the CEDAW Committee's Concluding Comments, the Commission should develop a strategy to educate and train women about CEDAW.
7. NGOs should coordinate a yearly review and monitoring of the government's initiative towards realizing the rights of the women as provided for in CEDAW. This can put pressure on the government and also facilitate a more comprehensive monitoring of the government's actions.
8. Emphasis should also be put on sensitizing key decision-makers about the issues relating to equality.

## ENDNOTES

[1] This report has been prepared by the Centre for Comparative and Public Law and the Women's Studies Research Centre, University of Hong Kong.

[2] See the website (<http://www.iwraw-ap.org>) of the International Women's Rights Action Watch - Asia Pacific for additional information on the organization. The website also provides substantial information on CEDAW, the activities of the CEDAW Committee, and guidance on how NGOs can participate in the CEDAW enforcement process.

[3] GA Res 34/180, 1249 UNTS 13, available (together with additional information on CEDAW) on-line at [www.un.org/womenwatch/daw/cedaw/frame.htm](http://www.un.org/womenwatch/daw/cedaw/frame.htm). See also the resources on CEDAW on the website of the Centre for Comparative and Public Law, the University of Hong Kong at [www.hku.hk/ccpl](http://www.hku.hk/ccpl).

[4] A complete set of General Recommendations of the CEDAW Committee, dealing with various aspects of the Convention, is available at the Treaty Body Database on the website of the Office of the United Nations High Commissioner for Human Rights ([www.unhchr.ch](http://www.unhchr.ch)). [Click "Treaty body database" on the site map, then click "CEDAW Committee" and choose "General Comments."]

[5] For detailed analyses on the impact of CEDAW in ten different jurisdictions, see Marilou McPhedran, Susan Bazilli, Moana Ericson and Andrew Byrnes (eds.), *The First CEDAW Impact Study: Final Report*, (Centre for Feminist Research and the International Women's Rights Project, York University: 2000) [Available electronically from the CCPL website ([www.hku.hk/ccpl](http://www.hku.hk/ccpl)). Click "CEDAW in Hong Kong" to find the link to "CEDAW Impact Study on-line," which takes you to the website of International Women's Rights Project of York University listing a number of other resources including the CEDAW Impact Study].

[6] Complete text of CEDAW is available at the website of the Office of the United Nations High Commissioner for Human Rights at <http://www.unhchr.ch/> [Click "treaties" to get a list of human rights instruments arranged thematically].

[7] See *ibid.* for General Recommendation 23 (Politics and Public Life) of the CEDAW Committee, which elaborates on the state party's treaty obligation to put in place temporary special measures to deal with past discrimination against women with regard to participation in public life.

[8] This phrase has been borrowed from the decision of Justice A Sachs.

[9] For an explanation of this phenomenon, see Naila Kabeer and Ramya Subramanian, *Institutions, Relations and Outcomes*:

Framework and Tools of Gender-Aware Planning, (1996: IDS Discussion Paper 357).

[10] See Initial Report on the Hong Kong Special Administrative Region under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women, UN Doc CEDAW/C/CHN/3-4/Add.2 (also available on the CCPL CEDAW website and the website of the Health and Welfare Bureau, Hong Kong Government: <http://www.info.gov.hk/hwb/english/ARCHIVE/INDEX.HTM>)

[11] See Moana Erickson and Andrew Byrnes, "Hong Kong and the Convention on All Forms of Discrimination Against Women", (1999) 29 Hong Kong Law Journal 350.

[12] Cap. 480, Laws of Hong Kong. For discussion of the political and legal developments that led to the enactment of the Sex Discrimination Ordinance and the extension of CEDAW to Hong Kong, see Carole J. Petersen, "Equality as Human Right: the Development of Anti-discrimination Law in Hong Kong" (1996) 34 Columbia Journal of Transnational Law 335.

[13] See Report of the Committee on the Elimination of Discrimination Against Women, Twentieth session (19 January-5 February 1999), at Concluding Comments on the Initial Report on the Hong Kong Special Administrative Region, UN Doc A/54/38/Rev.1 (available at the Centre for Comparative and Public Law's CEDAW website, [www.hku.hk/ccpl/cedaw/govt.html](http://www.hku.hk/ccpl/cedaw/govt.html)).

[14] The government's original view (which may well have been correct) was that since the Hong Kong statute was based upon English law, a Hong Kong court would likely follow the decision of the English House of Lords in *R v. R* [1992] 1 AC 599, 614 and hold that non-consensual sex between married persons constitutes rape. However, the Committee's comment highlighted the lack of clarity on the topic and the need to expressly provide for this in the legislation. Thus, pursuant to the Committee's recommendation, a Bill aimed at criminalizing marital rape by amending the relevant provisions in the Crime Ordinance (Cap 200) was introduced in the Legislative Council in July 2001. See generally, Robyn Emerton, "Marital Rape and Related Sexual Offences: A Review of the Proposed Amendments to Part XII of the Crimes Ordinance" (2000) 31 Hong Kong Law Journal 415. As of this writing it appears that the government may now adopt a simpler approach, which will be to leave the concept of "unlawful" in the definition of rape but add language stating, for the avoidance of doubt, that rape within marriage is a criminal offence.

[15] The Hong Kong Equal Opportunities Commission is currently conducting a study of this issue. For a discussion of the extent to which equal pay for work of equal value is required by law in Hong Kong, see Carole J. Petersen, "Equal Pay for Work of Equal Value: A Feminist Perspective", in *Proceedings - Equal Pay for Work of Equal Value: A Conference Organised by the Equal Opportunities Commission* (Hong Kong Equal Opportunities Commission 2000).

[16] The research project is entitled "Enforcing Equal Opportunities In Hong Kong: A Study of Investigation, Conciliation, and Other Enforcement Mechanisms", supported by a grant from the Hong Kong Research Grants Council (principal investigator: Carole J. Petersen, co-investigators: Andrew Byrnes, Cecilia Chan, and Lynch, Katharine; Senior Research Assistant: Fong, Janice).

[17] See Submission to the CEDAW Committee on the Initial Report on Hong Kong Under the Convention on the Elimination of All Forms of Discrimination Against Women by Non-Governmental Organizations (1998) (endorsed by Association for the Advancement of Feminism, Hong Kong Women Workers Association, Hong Kong Women Christian Association, Hong Kong Federation of Women's Centers, Association Concerning Sexual Violence Against Women, Hong Kong Association for the Survivors of Sexual Women Abuse, Family Ideal Community Education Project, Queer Sisters, Sitting, and Hong Kong Human Rights Monitor) (link available at the CEDAW website maintained by the Centre for Comparative and Public Law, <http://www.hku.hk/ccpl/cedaw/ngo-reports.html>).

[18] See the Women's Commission's website (<http://www.womens.gov.hk/women>).

[19] ESCAP has prepared a draft Guidebook on Integrating Unpaid Work into National Policies, available (barring two chapters) at the ESCAP website at <http://unescap.org/stat/> which lists its new publications, including the draft guidebook. (visited June 12, 2002)

IWRAW Asia Pacific is an independent, non-profit, NGO in Special consultative status with the Economic and Social Council of the United Nations.

©IWRAW Asia Pacific | [www.iwraw-ap.org](http://www.iwraw-ap.org)

## Appendix 10: CESCR General Comment No. 16 (2005) – The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights

Source: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/7c6dc1dee6268e32c125708f0050dbf6?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/7c6dc1dee6268e32c125708f0050dbf6?Opendocument)

### Introduction

1. The equal right of men and women to the enjoyment of all human rights is one of the fundamental principles recognized under international law and enshrined in the main international human rights instruments. The International Covenant on Economic, Social and Cultural Rights (ICESCR) protects human rights that are fundamental to the dignity of every person. In particular, article 3 of this Covenant provides for the equal right of men and women to the enjoyment of the rights it articulates. This provision is founded on Article 1, paragraph 3, of the United Nations Charter and article 2 of the Universal Declaration of Human Rights. Except for the reference to ICESCR, it is identical to article 3 of the International Covenant on Civil and Political Rights (ICCPR), which was drafted at the same time.

2. The *travaux préparatoires* state that article 3 was included in the Covenant, as well as in ICCPR, to indicate that beyond a prohibition of discrimination, “the same rights should be expressly recognized for men and women on an equal footing and suitable measures should be taken to ensure that women had the opportunity to exercise their rights .... Moreover, even if article 3 overlapped with article 2, paragraph 2, it was still necessary to reaffirm the equality rights between men and women. That fundamental principle, which was enshrined in the Charter of the United Nations, must be constantly emphasized, especially as there were still many prejudices preventing its full application”.<sup>1</sup> Unlike article 26 of ICCPR, articles 3 and 2, paragraph 2, of ICESCR are not stand-alone provisions, but should be read in conjunction with each specific right guaranteed under part III of the Covenant.

3. Article 2, paragraph 2, of ICESCR provides for a guarantee of non-discrimination on the basis of sex among other grounds. This provision, and the guarantee of equal enjoyment of rights by men and women in article 3, are integrally related and mutually reinforcing. Moreover, the elimination of discrimination is fundamental to the enjoyment of economic, social and cultural rights on a basis of equality.

4. The Committee on Economic, Social and Cultural Rights (CESCR) has taken particular note of factors negatively affecting the equal right of men and women to the enjoyment of economic, social and cultural rights in many of its general comments, including those on the right to adequate housing,<sup>2</sup> the right to adequate food,<sup>3</sup> the right to education,<sup>4</sup> the right to the highest attainable standard of health,<sup>5</sup> and the right to water.<sup>6</sup> The Committee also routinely requests information on the equal enjoyment by men and

women of the rights guaranteed under the Covenant in its list of issues in relation to States parties' reports and during its dialogue with States parties.

5. Women are often denied equal enjoyment of their human rights, in particular by virtue of the lesser status ascribed to them by tradition and custom, or as a result of overt or covert discrimination. Many women experience distinct forms of discrimination due to the intersection of sex with such factors as race, colour, language, religion, political and other opinion, national or social origin, property, birth, or other status, such as age, ethnicity, disability, marital, refugee or migrant status, resulting in compounded disadvantage.<sup>7</sup>

## I. CONCEPTUAL FRAMEWORK

### A. Equality

6. The essence of article 3 of ICESCR is that the rights set forth in the Covenant are to be enjoyed by men and women on a basis of equality, a concept that carries substantive meaning. While expressions of formal equality may be found in constitutional provisions, legislation and policies of Governments, article 3 also mandates the equal enjoyment of the rights in the Covenant for men and women in practice.

7. The enjoyment of human rights on the basis of equality between men and women must be understood comprehensively. Guarantees of non-discrimination and equality in international human rights treaties mandate both *de facto* and *de jure* equality. *De jure* (or formal) equality and *de facto* (or substantive) equality are different but interconnected concepts. Formal equality assumes that equality is achieved if a law or policy treats men and women in a neutral manner. Substantive equality is concerned, in addition, with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience.

8. Substantive equality for men and women will not be achieved simply through the enactment of laws or the adoption of policies that are, *prima facie*, gender-neutral. In implementing article 3, States parties should take into account that such laws, policies and practice can fail to address or even perpetuate inequality between men and women because they do not take account of existing economic, social and cultural inequalities, particularly those experienced by women.

9. According to article 3, States parties must respect the principle of equality in and before the law. The principle of equality in the law must be respected by the legislature when adopting laws, by ensuring that those laws further equal enjoyment of economic, social and cultural rights by men and women. The principle of equality before the law must be respected by administrative agencies, and courts and tribunals, and implies that those authorities must apply the law equally to men and women.

## **B. Non-discrimination**

10. The principle of non-discrimination is the corollary of the principle of equality. Subject to what is stated in paragraph 15 below on temporary special measures, it prohibits differential treatment of a person or group of persons based on his/her or their particular status or situation, such as race, colour, sex, language, religion, political and other opinion, national or social origin, property, birth, or other status, such as age, ethnicity, disability, marital, refugee or migrant status.

11. Discrimination against women is “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.<sup>8</sup> Discrimination on the basis of sex may be based on the differential treatment of women because of their biology, such as refusal to hire women because they could become pregnant; or stereotypical assumptions, such as tracking women into low-level jobs on the assumption that they are unwilling to commit as much time to their work as men.

12. Direct discrimination occurs when a difference in treatment relies directly and explicitly on distinctions based exclusively on sex and characteristics of men or of women, which cannot be justified objectively.

13. Indirect discrimination occurs when a law, policy or programme does not appear to be discriminatory, but has a discriminatory effect when implemented. This can occur, for example, when women are disadvantaged compared to men with respect to the enjoyment of a particular opportunity or benefit due to pre-existing inequalities. Applying a gender-neutral law may leave the existing inequality in place, or exacerbate it.

14. Gender affects the equal right of men and women to the enjoyment of their rights. Gender refers to cultural expectations and assumptions about the behaviour, attitudes, personality traits, and physical and intellectual capacities of men and women, based solely on their identity as men or women. Gender-based assumptions and expectations generally place women at a disadvantage with respect to substantive enjoyment of rights, such as freedom to act and to be recognized as autonomous, fully capable adults, to participate fully in economic, social and political development, and to make decisions concerning their circumstances and conditions. Gender-based assumptions about economic, social and cultural roles preclude the sharing of responsibility between men and women in all spheres that is necessary to equality.

## **C. Temporary special measures**

15. The principles of equality and non-discrimination, by themselves, are not always sufficient to guarantee true equality. Temporary special measures may sometimes be needed in order to bring disadvantaged or marginalized persons or groups of persons to the same substantive level as others. Temporary special measures aim at realizing not only de jure or formal equality, but also de facto or substantive equality for men and women.



However, the application of the principle of equality will sometimes require that States parties take measures in favour of women in order to attenuate or suppress conditions that perpetuate discrimination. As long as these measures are necessary to redress de facto discrimination and are terminated when de facto equality is achieved, such differentiation is legitimate.<sup>9</sup>

## II. STATES PARTIES' OBLIGATIONS

### A. General legal obligations

16. The equal right of men and women to the enjoyment of economic, social and cultural rights is a mandatory and immediate obligation of States parties.<sup>10</sup>

17. The equal right of men and women to the enjoyment of economic, social and cultural rights, like all human rights, imposes three levels of obligations on States parties - the obligation to respect, to protect and to fulfil. The obligation to fulfil further contains duties to provide, promote and facilitate.<sup>11</sup> Article 3 sets a non-derogable standard for compliance with the obligations of States parties as set out in articles 6 through 15 of ICESCR.

### B. Specific legal obligations

#### 1. Obligation to respect

18. The obligation to respect requires States parties to refrain from discriminatory actions that directly or indirectly result in the denial of the equal right of men and women to their enjoyment of economic, social and cultural rights. Respecting the right obliges States parties not to adopt, and to repeal laws and rescind, policies, administrative measures and programmes that do not conform with the right protected by article 3. In particular, it is incumbent upon States parties to take into account the effect of apparently gender-neutral laws, policies and programmes and to consider whether they could result in a negative impact on the ability of men and women to enjoy their human rights on a basis of equality.

#### 2. Obligation to protect

19. The obligation to protect requires States parties to take steps aimed directly at the elimination of prejudices, customary and all other practices that perpetuate the notion of inferiority or superiority of either of the sexes, and stereotyped roles for men and women. States parties' obligation to protect under article 3 of ICESCR includes, inter alia, the respect and adoption of constitutional and legislative provisions on the equal right of men and women to enjoy all human rights and the prohibition of discrimination of any kind; the adoption of legislation to eliminate discrimination and to prevent third parties from interfering directly or indirectly with the enjoyment of this right; the adoption of administrative measures and programmes, as well as the establishment of public institutions, agencies and programmes to protect women against discrimination.

20. States parties have an obligation to monitor and regulate the conduct of non-State actors to ensure that they do not violate the equal right of men and women to enjoy economic, social and cultural rights. This obligation applies, for example, in cases where public services have been partially or fully privatized.

### 3. Obligation to fulfil

21. The obligation to fulfil requires States parties to take steps to ensure that in practice, men and women enjoy their economic, social and cultural rights on a basis of equality. Such steps should include:

- To make available and accessible appropriate remedies, such as compensation, reparation, restitution, rehabilitation, guarantees of non-repetition, declarations, public apologies, educational programmes and prevention programmes;
- To establish appropriate venues for redress such as courts and tribunals or administrative mechanisms that are accessible to all on the basis of equality, including the poorest and most disadvantaged and marginalized men and women;
- To develop monitoring mechanisms to ensure that the implementation of laws and policies aimed at promoting the equal enjoyment of economic, social and cultural rights by men and women do not have unintended adverse effects on disadvantaged or marginalized individuals or groups, particularly women and girls;
- To design and implement policies and programmes to give long-term effect to the economic, social and cultural rights of both men and women on the basis of equality. These may include the adoption of temporary special measures to accelerate women's equal enjoyment of their rights, gender audits, and gender-specific allocation of resources;
- To conduct human rights education and training programmes for judges and public officials;
- To conduct awareness-raising and training programmes on equality for workers involved in the realization of economic, social and cultural rights at the grass-roots level;
- To integrate, in formal and non-formal education, the principle of the equal right of men and women to the enjoyment of economic, social and cultural rights, and to promote equal participation of men and women, boys and girls, in schools and other education programmes;
- To promote equal representation of men and women in public office and decision-making bodies;



- To promote equal participation of men and women in development planning, decision-making and in the benefits of development and all programmes related to the realization of economic, social and cultural rights.

### **C. Specific examples of States parties' obligations**

22. Article 3 is a cross-cutting obligation and applies to all the rights contained in articles 6 to 15 of the Covenant. It requires addressing gender-based social and cultural prejudices, providing for equality in the allocation of resources, and promoting the sharing of responsibilities in the family, community and public life. The examples provided in the following paragraphs may be taken as guidance on the ways in which article 3 applies to other rights in the Covenant, but are not intended to be exhaustive.

23. Article 6, paragraph 1, of the Covenant requires States parties to safeguard the right of everyone to the opportunity to gain a living by work which is freely chosen or accepted and to take the necessary steps to achieve the full realization of this right. Implementing article 3, in relation to article 6, requires *inter alia*, that in law and in practice, men and women have equal access to jobs at all levels and all occupations and that vocational training and guidance programmes, in both the public and private sectors, provide men and women with the skills, information and knowledge necessary for them to benefit equally from the right to work.

24. Article 7 (a) of the Covenant requires States parties to recognize the right of everyone to enjoy just and favourable conditions of work and to ensure, among other things, fair wages and equal pay for work of equal value. Article 3, in relation to article 7 requires, *inter alia*, that the State party identify and eliminate the underlying causes of pay differentials, such as gender-biased job evaluation or the perception that productivity differences between men and women exist. Furthermore, the State party should monitor compliance by the private sector with national legislation on working conditions through an effectively functioning labour inspectorate. The State party should adopt legislation that prescribes equal consideration in promotion, non-wage compensation and equal opportunity and support for vocational or professional development in the workplace. Finally, the State party should reduce the constraints faced by men and women in reconciling professional and family responsibilities by promoting adequate policies for childcare and care of dependent family members.

25. Article 8, paragraph 1 (a), of the Covenant requires States parties to ensure the right of everyone to form and join trade unions of his or her choice. Article 3, in relation to article 8, requires allowing men and women to organize and join workers' associations that address their specific concerns. In this regard, particular attention should be given to domestic workers, rural women, women working in female-dominated industries and women working at home, who are often deprived of this right.

26. Article 9 of the Covenant requires that States parties recognize the right of everyone to social security, including social insurance, and to equal access to social services. Implementing article 3, in relation to article 9, requires, *inter alia*, equalizing the

compulsory retirement age for both men and women; ensuring that women receive the equal benefit of public and private pension schemes; and guaranteeing adequate maternity leave for women, paternity leave for men, and parental leave for both men and women.

27. Article 10, paragraph 1, of the Covenant requires that States parties recognize that the widest possible protection and assistance should be accorded to the family, and that marriage must be entered into with the free consent of the intending spouses.

Implementing article 3, in relation to article 10, requires States parties, *inter alia*, to provide victims of domestic violence, who are primarily female, with access to safe housing, remedies and redress for physical, mental and emotional damage; to ensure that men and women have an equal right to choose if, whom and when to marry - in particular, the legal age of marriage for men and women should be the same, and boys and girls should be protected equally from practices that promote child marriage, marriage by proxy, or coercion; and to ensure that women have equal rights to marital property and inheritance upon their husband's death. Gender-based violence is a form of discrimination that inhibits the ability to enjoy rights and freedoms, including economic, social and cultural rights, on a basis of equality. States parties must take appropriate measures to eliminate violence against men and women and act with due diligence to prevent, investigate, mediate, punish and redress acts of violence against them by private actors.

28. Article 11 of the Covenant requires States parties to recognize the right of everyone to an adequate standard of living for him/herself and his/her family, including adequate housing (para. 1) and adequate food (para. 2). Implementing article 3, in relation to article 11, paragraph 1, requires that women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so. Implementing article 3, in relation to article 11, paragraph 2, also requires States parties, *inter alia*, to ensure that women have access to or control over means of food production, and actively to address customary practices under which women are not allowed to eat until the men are fully fed, or are only allowed less nutritious food.<sup>12</sup>

29. Article 12 of the Covenant requires States parties to undertake steps towards the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The implementation of article 3, in relation to article 12, requires at a minimum the removal of legal and other obstacles that prevent men and women from accessing and benefiting from health care on a basis of equality. This includes, *inter alia*, addressing the ways in which gender roles affect access to determinants of health, such as water and food; the removal of legal restrictions on reproductive health provisions; the prohibition of female genital mutilation; and the provision of adequate training for health-care workers to deal with women's health issues.<sup>13</sup>

30. Article 13, paragraph 1, of the Covenant requires States parties to recognize the right of everyone to education and in paragraph 2 (a) stipulates that primary education shall be compulsory and available free to all. Implementing article 3, in relation to article 13, requires, *inter alia*, the adoption of legislation and policies to ensure the same admission criteria for boys and girls at all levels of education. States parties should ensure, in

particular through information and awareness-raising campaigns, that families desist from giving preferential treatment to boys when sending their children to school, and that curricula promote equality and non-discrimination. States parties must create favourable conditions to ensure the safety of children, in particular girls, on their way to and from school.

31. Article 15, paragraph 1 (a) and (b), of the Covenant require States parties to recognize the right of everyone to take part in cultural life and to enjoy the benefits of scientific progress. Implementing article 3, in relation to article 15, paragraph 1 (a) and (b), requires, *inter alia*, overcoming institutional barriers and other obstacles, such as those based on cultural and religious traditions, which prevent women from fully participating in cultural life, science education and scientific research, and directing resources to scientific research relating to the health and economic needs of women on an equal basis with those of men.

### III. IMPLEMENTATION AT THE NATIONAL LEVEL

#### A. Policies and strategies

32. The most appropriate ways and means of implementing the right under article 3 of the Covenant will vary from one State party to another. Every State party has a margin of discretion in adopting appropriate measures in complying with its primary and immediate obligation to ensure the equal right of men and women to the enjoyment of all their economic, social and cultural rights. Among other things, States parties must, integrate into national plans of action for human rights appropriate strategies to ensure the equal right of men and women to the enjoyment of economic, social and cultural rights.

33. These strategies should be based on the systematic identification of policies, programmes and activities relevant to the situation and context within the State, as derived from the normative content of article 3 of the Covenant and spelled out in relation to the levels and nature of States parties' obligations referred to in paragraphs 16 to 21 above. The strategies should give particular attention to the elimination of discrimination in the enjoyment of economic, social and cultural rights.

34. States parties should periodically review existing legislation, policies, strategies and programmes in relation to economic, social and cultural rights, and adopt any necessary changes to ensure that they are consonant with their obligations under article 3 of the Covenant.

35. The adoption of temporary special measures may be necessary to accelerate the equal enjoyment by women of all economic, social and cultural rights and to improve the *de facto* position of women.<sup>14</sup> Temporary special measures should be distinguished from permanent policies and strategies undertaken to achieve equality of men and women.

36. States parties are encouraged to adopt temporary special measures to accelerate the achievement of equality between men and women in the enjoyment of the rights under the Covenant. Such measures are not to be considered discriminatory in themselves as they are grounded in the State's obligation to eliminate disadvantage caused by past and current discriminatory laws, traditions and practices. The nature, duration and application of such measures should be designed with reference to the specific issue and context, and should be adjusted as circumstances require. The results of such measures should be monitored with a view to being discontinued when the objectives for which they are undertaken have been achieved.

37. The right of individuals and groups of individuals to participate in decision-making processes that may affect their development must be an integral component of any policy, programme or activity developed to discharge governmental obligations under article 3 of the Covenant.

### **B. Remedies and accountability**

38. National policies and strategies should provide for the establishment of effective mechanisms and institutions where they do not exist, including administrative authorities, ombudsmen and other national human rights institutions, courts and tribunals. These institutions should investigate and address alleged violations relating to article 3 and provide remedies for such violations. States parties, for their part, should ensure that such remedies are effectively implemented.

### **C. Indicators and benchmarks**

39. National policies and strategies should identify appropriate indicators and benchmarks on the right to equal enjoyment by men and women of economic, social and cultural rights in order to effectively monitor the implementation by the State party of its obligations under the Covenant in this regard. Disaggregated statistics, provided within specific time frames, are necessary to measure the progressive realization of economic, social and cultural rights by men and women, where appropriate.

## **IV. VIOLATIONS**

40. States parties must fulfil their immediate and primary obligation to ensure the equal right of men and women to the enjoyment of economic, social and cultural rights.

41. The principle of equality between men and women is fundamental to the enjoyment of each of the specific rights enumerated in the Covenant. Failure to ensure formal and substantive equality in the enjoyment of any of these rights constitutes a violation of that right. Elimination of de jure as well as de facto discrimination is required for the equal enjoyment of economic, social and cultural rights. Failure to adopt, implement and monitor effects of laws, policies and programmes to eliminate de jure and de facto discrimination with respect to each of the rights enumerated in articles 6 to 15 of the Covenant constitutes a violation of those rights.

42. Violations of the rights contained in the Covenant can occur through the direct action of, failure to act or omission by States parties, or through their institutions or agencies at the national and local levels. The adoption and undertaking of any retrogressive measures that affect the equal right of men and women to the enjoyment of the all the rights set forth in the Covenant constitutes a violation of article 3.

<sup>1</sup> Draft International Covenants on Human Rights Report of the Third Committee. A/53/65 (17 December 1962), para. 85.

<sup>2</sup> Committee on Economic, Social and Cultural Rights (hereinafter CESCR), general comment No. 4 (1991): The right to adequate housing (article 11, paragraph 1 of the Covenant) para. 6; general comment No. 7 (1997): The right to adequate housing (article 11, paragraph 1 of the Covenant): Forced evictions, para. 10.

<sup>3</sup> CESCR, general comment No. 12 (1999): The right to adequate food (article 11 of the Covenant), para. 26.

<sup>4</sup> CESCR, general comment No. 11 (1999): Plans for primary education (article 14 of the Covenant), para. 3; general comment No. 13 (1999): The right to education (article 13 of the Covenant), paras. 6 (b), 31 and 32.

<sup>5</sup> CESCR, general comment No. 14 (2000): The right to the highest attainable standard of health (article 12 of the Covenant), paras. 18-22.

<sup>6</sup> CESCR, general comment No. 15 (2000): The right to water (articles 11 and 12 of the Covenant), paras. 13 and 14.

<sup>7</sup> Cf. Committee on the Elimination of Racial Discrimination, general comment XXV (2000): Gender-related dimensions of racial discrimination.

<sup>8</sup> As defined in article 1 of the Convention on the Elimination of All Forms of Discrimination against Women.

<sup>9</sup> However, there is one exception to this general principle: reasons specific to an individual male candidate may tilt the balance in his favour, which is to be assessed objectively, taking into account all criteria pertaining to the individual candidates. This is a requirement of the principle of proportionality.

<sup>10</sup> CESCR, general comment No. 3 (1990): The nature of States parties obligations (art. 2, para. 2).

<sup>11</sup> According to CESCR general comment Nos. 12 and 13, the obligation to fulfil incorporates an obligation to facilitate and an obligation to provide. In the present general comment, the obligation to fulfil also incorporates an obligation to promote the elimination of all forms of discrimination against women.

<sup>12</sup> Other examples of obligations and possible violations of article 3 in relation to article 11 (1) and (2) are further discussed in CESCR general comment No. 12, para. 26.

<sup>13</sup> CESCR general comment No. 14. paras. 18-21.

<sup>14</sup> Reference is made in this regard to general recommendation No. 25 on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women adopted by the Committee on the Elimination of Discrimination against Women (CEDAW), CESCR general comment No. 13 and the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights.

## Appendix 11: Article on General Comment no. 16

Source: [http://www.communitylawcentre.org.za/ser/esr2005/2005july\\_comment.php](http://www.communitylawcentre.org.za/ser/esr2005/2005july_comment.php), *Pierre de Vos, University of Western Cape, South Africa*

The General Comments issued over the past two decades by the UN Committee on Economic, Social and Cultural Rights (CESCR) have played a pivotal role in our understanding of the scope and content of the various obligations engendered by social and economic rights. Although the South African Constitutional Court has refrained from a wholesale adoption of these General Comments, they have nevertheless been influential in the development of the South African jurisprudence on social and economic rights.

One of the themes running like a golden thread through these various General Comments is that states have a general obligation to guarantee social and economic rights without discriminating against anyone because of their race, sex, religion, language or other relevant characteristic.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) contains both a general clause prohibiting discrimination in the exercise of the rights in the Covenant in article 2(2), and a specific injunction in article 3 that States Parties must ensure the equal right of men and women to the enjoyment of all economic social and cultural rights in the Covenant.

The Committee issued General Comment 16 (GC 16), which deals specifically with this injunction. The GC 16 is important and noteworthy because it rejects the traditional formalistic notion of gender equality that merely requires equal treatment of men and women. Instead, it endorses a particular, progressive, notion of equality that takes cognisance of the structural inequalities between men and women in our society.

Formal equality merely requires the state to adopt neutral rules and regulations regardless of the entrenched patterns of sex and gender inequality in a society. Substantive equality, on the other hand, requires the state to take cognisance of the structural inequality between men and women and to adopt legislation and devise programmes that begin to address this problem.

As a starting point, the GC 16 makes it clear that equal enjoyment of social and economic rights requires not only that states formally treat men and women equally, but also that in practice the end result must be that men and women can enjoy the various rights equally.

The Committee therefore endorses the notion of substantive equality, arguing that the obligation of states goes beyond the requirement of ensuring legal (formal) equality to that of moving towards actual (substantive) equality.

The GC 16 argues that substantive equality between men and women "will not be achieved simply through the enactment of laws or the adoption of policies that are genderneutral on their face".

What is required is to take into account existing economic, social, and cultural inequalities experienced by women with a view to eradicating them.

This approach is in line with the equality jurisprudence of South Africa's Constitutional Court (see *Harksen v Lane No and Others*, 1997 (11) BCLR 1489 (CC)). The state therefore has a duty to take special measures to ensure that women have a better chance at gaining fair access to the social and economic benefits in our society.

This duty to take special measures is qualified, in that the GC endorses the need for temporary measures in order to bring marginalised and disadvantaged persons or groups of persons to the same substantive level as others. The measures must be "necessary to redress actual discrimination" and must be terminated as soon as the actual equality is achieved. Although this qualification appears to limit the scope for affirmative action to deal with women's inequality, the actual structural inequalities between men and women are so deeply entrenched all over the world that one would envisage these "temporary" measures being needed for a very long time indeed.

### **Progressive definition of discrimination**

The Comment adopts the definition of discrimination contained in Convention on the Elimination of All Forms of Discrimination Against Women, stating that discrimination against women is:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

This definition, focusing on both the "effect" and the "purpose" of the distinction, is in line with the notion of substantive equality, which looks beyond the formal requirements of equal treatment towards the impact that even neutral rules may have on excluding women from the enjoyment of the rights.



The GC 16 also endorses the notion that women experience discrimination both because of their sex (biology), such as refusals to hire women because they could become pregnant, and because of their gender (stereotypical assumptions), such as tracking women into lowlevel jobs on the assumption that they are unwilling to commit as much time to their work as men.

The inclusion of gender is an important development. Women often experience disproportionate social and economic hardship because of their gender, in other words because of the "cultural expectations and assumptions about the behaviour, attitudes, personality traits, and physical and intellectual capacities of men and women, based solely on their identity as men or women".

As these gender-based assumptions and expectations generally place women at a disadvantage with respect to substantive enjoyment of rights, and because gender-based assumptions about economic, social and cultural roles preclude the sharing of responsibility between men and women in all spheres that is necessary to equality, the GC 16 implies that states have a special duty to take steps that will allow women to overcome these disadvantages.

South Africa's Constitution prohibits both direct and indirect discrimination based on the understanding that laws and regulations, which on their face might be neutral, may nevertheless have a disproportionate impact on one group or another (see *City Council of Pretoria v Walker*, 1998 (3) BCLR 257 (CC)).

The GC 16 endorses this view, stating that direct discrimination occurs when a difference in treatment relies directly and explicitly on distinctions based exclusively on sex and on characteristics of men or women, which cannot be justified objectively, while indirect discrimination occurs when a law, policy or programme does not appear to be discriminatory on its face, but has a discriminatory effect when it is implemented.

By endorsing the notion of indirect discrimination, the GC 16 acknowledges that the application of a law that is genderneutral may leave the existing inequality in place or exacerbate it.

From the above, it must be clear that the GC 16 encompasses a progressive and expansive notion of gender equality. Much like the South African jurisprudence, it rejects the traditional formalistic notion of gender equality and endorses the need for states to take special measures to ensure that women have fair access to social and economic benefits.



## Obligations imposed on states

The GC 16 goes further, though, by setting out the specific legal obligations of states to ensure the equal rights of men and women in the enjoyment of all social and economic rights.

Regarding the negative obligation to respect the rights in the Covenant, the GC 16 requires states to "refrain from discriminatory actions that directly or indirectly result in the denial of the equal right of men and women from their enjoyment of economic, social and cultural rights".

This means that states have a duty not to adopt, and where appropriate, to repeal laws and rescind policies, administrative measures and programmes that do not conform to the right protected by article 3.

What is therefore required, according to the GC 16, is for states to take a second look at all the apparently sexneutral laws, policies and programmes to see whether they could result in a negative impact on the ability of men and women to enjoy their human rights on a basis of equality.

Regarding the positive duty to protect the rights in the Covenant, the GC 16 requires steps to be taken:

aimed directly towards the elimination of prejudices, customary and all other practices that perpetuate the notion of inferiority or superiority of either of the sexes, and stereotyped roles for men and women.

What is therefore required is for states to adopt legislation or amend their Constitutions to ensure that a legal framework is put in place that will, inter alia, prevent third parties from interfering directly or indirectly with the enjoyment of this right.

Regarding the positive duty to fulfil the rights in the Covenant, the GC 16 requires that steps are taken: to ensure that in practice, men and women enjoy their economic, social and cultural rights on a basis of equality. According to GC 16, States Parties must, among other things:

- ensure the availability and accessibility of appropriate remedies, such as compensation, reparation, restitution, rehabilitation, guarantees of nonrepetition, declarations, public apologies, educational programmes and prevention programmes;

- establish appropriate venues for redress, such as courts and tribunals or administrative mechanisms that are accessible to all on the basis of equality, including the poorest and most disadvantaged and marginalised men and women;
- develop monitoring mechanisms to ensure that the implementation of laws and policies aimed at promoting the equal enjoyment of economic, social and cultural rights by men and women do not have unintended adverse effects on disadvantaged or marginalised individuals or groups, particularly women and girls;
- design and implement policies and programmes to give longterm effect to the economic, social and cultural rights of both men and women on the basis of equality. These may include the adoption of temporary special measures to accelerate women's equal enjoyment of their rights, gender audits and genderspecific allocation of resources;
- conduct human rights education and design and implement training programmes for judges and public officials;
- raise awareness and design and implement training programmes on equality for workers involved in the realisation of economic, social and cultural rights at the grassroots level;
- ensure the integration in formal and nonformal education of the principle of the equal right of men and women to the enjoyment of economic, social and cultural rights, and promotion of equal participation of men and women, boys and girls, in schools and other education programmes;
- promote equal representation of men and women in public office and decisionmaking bodies; and
- promote equal participation of men and women in development planning, decisionmaking and in the benefits of development and all programmes related to the realisation of economic, social and cultural rights.

## Conclusion

In most parts of the world, the full realisation of many of the rights contained in the Covenant remains in the distant future. Limited resources mean that many states cannot fully realise these rights in the short term.

At the same time, it is clear that women often have less access to (the limited) social and economic benefits that are available.

## Appendix 12: List of General Comments CESCR

Source: <http://www.ohchr.org/english/bodies/cescr/comments.htm>

No.	Subject	Date
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 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	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

## Appendix 13: List of General Recommendations CEDAW Committee

Source: <http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html>

Article 21 of the Convention on the Elimination of All Forms of Discrimination against Women empowers the Committee on the Elimination of Discrimination against Women (CEDAW) to make suggestions and general recommendations based on the examination of reports and information received from States parties. These, as well as comments from States parties, are included in the session reports of the Committee. Suggestions are usually directed at United Nations entities, while general recommendations are addressed to States parties and usually elaborate the Committee's view of the obligations assumed under the Convention.

As of January 2004, CEDAW had adopted 25 general recommendations. Those adopted during the Committee's first ten years were short and modest, addressing such issues as the content of reports, reservations to the Convention and resources.

At its tenth session in 1991, the Committee decided to adopt the practice of issuing general recommendations on specific provisions of the Convention and on the relationship between the Convention Articles and what the Committee described as "cross-cutting" themes. Following this decision, CEDAW issued more detailed and comprehensive general recommendations which offer States parties clear guidance on the application of the Convention in particular situations.

In 1997, the Committee adopted a three-stage process for the formulation of general recommendations. The first stage consists of an open dialogue between the Committee, non-governmental organizations and others regarding the topic of the general recommendation. A Committee member is then asked to draft the general recommendation, which is discussed at the next session of the Committee in one of its working groups. At the following session, the revised draft is adopted by the Committee.

The following general recommendations have been adopted by the Committee:

- General recommendation No. 1 -- fifth session, 1986 reporting guidelines
- General recommendation No. 2 -- sixth session, 1987 reporting guidelines
- General recommendation No. 3 -- sixth session, 1987 education and public information programmes
- General recommendation No. 4 -- sixth session, 1987 reservations
- General recommendation No. 5 -- seventh session, 1988 temporary special measures
- General recommendation No. 6 -- seventh session, 1988 effective national machinery and publicity
- General recommendation No. 7 -- seventh session, 1988 resources
- General recommendation No. 8 -- seventh session, 1988 article 8
- General recommendation No. 9 -- eighth session, 1989 statistical data
- General recommendation No. 10 -- eighth session, 1989 tenth anniversary of the adoption of CEDAW

- General recommendation No. 11 -- eighth session, 1989 technical advisory services for reporting
- General recommendation No. 12 -- eighth session, 1989 violence against women
- General recommendation No. 13 -- eighth session, 1989 equal remuneration for work of equal value
- General recommendation No. 14 -- ninth session, 1990 female circumcision
- General recommendation No. 15 -- ninth session, 1990 women and AIDS
- General recommendation No. 16 -- tenth session, 1991 unpaid women workers in rural and urban family enterprises
- General recommendation No. 17 -- tenth session, 1991 measurement and quantification of the unremunerated domestic activities of women and their recognition in the GNP
- General recommendation No. 18 -- tenth session, 1991 disabled women
- General recommendation No. 19 -- eleventh session, 1992 violence against women
- General recommendation No. 20 -- eleventh session, 1992 reservations
- General recommendation No. 21 -- thirteenth session, 1994 equality in marriage and family relations
- General recommendation No. 22 -- fourteenth session, 1995 article 20 of the Convention
- General recommendation No. 23 -- sixteenth session, 1997 women in political and public life
- General recommendation No. 24 -- twentieth session, 1999 article 12 - women and health
- General recommendation No. 25 -- thirtieth session, 2004 article 4 paragraph 1 - Temporary special measures

## Appendix 14: Women's ESC Rights Workplan

### 1. Introduction

The content covered in this workshop aims to provide the necessary information and tools as well as the skills in order for you to develop practical strategies to employ in the protection and promotion of women's ESC rights. This "ESC Rights Workplan" provides you with a for developing a concrete plan for putting your learning into practice with the aim of increasing your NHRI's capacity to protect and promote women's ESC rights. The Workplan will assist you in organizing your ideas by asking questions about the relevance of the content of each workshop Module to your work.

Networking and collaborative efforts are important objectives of the overall program. Participants from the same NHRI are encouraged to work together in developing their Workplans; however, even though they may share a common strategy for their plans, each participant should reflect on how they will put their own learning into practice.

Throughout the workshop, you will have the opportunity to share your work with other participants, facilitators, and resource persons for feedback and revision. On the last day of the workshop, you will present your work to group members.

### 2. Instructions for Working on Your Workplan

- The facilitators will go over the goal and contents of the Workplan.
- Look through the contents of this Workplan and raise any questions or concerns you may have.
- Remember that you are all resources for each other; therefore, do not hesitate to draw upon each other's experience and knowledge in developing your Workplan.
- Specific times have been scheduled throughout the workshop for you to work on your Workplan as well as receive input and feedback from other participants as well as resource persons.

### 3. Important Considerations for Designing Your Workplan

- Does it fit within the mandate of your NHRI? **First** and foremost, your plan must be coherent with the mandate of your NHRI.
- Is it within the capacity of your NHRI? **Secondly**, the plan must be within the scope of your NHRI's capacity; that is, your NHRI should have the necessary human and financial resources to implement the plan. And it should also fit within the scope of your individual responsibility.
- What should the plan include? **Thirdly**, your plan must have:

- a clear focus
- a realistic timeframe for implementation
- well-defined objectives and results
- clearly defined ideas on how to evaluate the results

When thinking of what your plan should include, consider some of the following possible areas:

1. Strengthening the **internal capacity** of your NHRI to address women's ESC rights. For example, internal training on gender mainstreaming NHRI programs to transfer learning to colleagues.
2. Applying a gender perspective to an **existing program** within the NHRI related to ESC rights.
3. Developing a **new program** for the protection or promotion of women's ESC rights.

## 4. Procedure for Developing Your Workplan

### Duration

The development of your plan will take place over the course of the workshop.

### Objective

The objective of this Workplan is to provide you with a framework for developing a concrete plan for putting your learning into practice with the aim of increasing your NHRI's capacity to protect and promote women's ESC rights.

### Description

The design process will take place in four phases.

- **Phase I – Determining a Direction**
  - You will begin by examining your NHRI's current work in addressing women's ESC rights (**Worksheet 1**).
  - You will then identify possible internal and external challenges facing your NHRI (**Worksheet 2**).
  - You will then identify a possible focus for your plan (**Worksheet 3**).
- **Phase 2 – Developing Your Plan**
  - Throughout the workshop, at the end of each day, it is recommended that you take the time to reflect on the day's activities and on their relevance to the development of your plan. **Worksheet 4** provides a space to record your thoughts and comments.

- **Phase 3 – Refining and Finalizing Your Plan**
  - **Worksheet 5** outlines the steps to consider for the realization of your plan. You will be given some time during the workshop to refine the ideas and information that you have been collecting throughout the week. You will also have the opportunity to receive feedback from other participants, the facilitators, and resource persons.
- **Phase 4 – Presenting Your Plan**
  - You will present your plan to the other participants at the end of the workshop.



## Phase 1: Determining a Direction

### WORKSHEET 1 – Women’s ESC Rights and Your NHRI

In order to identify a possible focus for your plan, you must first have a clear idea of the mandate of the NHRI as it relates to ESC rights, and in particular women’s ESC rights. Answer the questions below to help you assess your institution’s capacity.

<b>1. What is the mandate of your NHRI with respect to 1) ESC rights in general and 2) women’s ESC rights?</b>
<b>2. Do you personally work on ESC rights issues? If so, describe briefly. (Note: Refer to the Application Form)</b>
<b>3. Do you personally work on women’s rights issues? If so, describe briefly. (Note: Refer to the Application Form)</b>

## Phase 1: Determining a Direction

### WORKSHEET 2 – Identifying Your NHRI's Current Capacity and Challenges

Complete the table below in order to identify the internal and external challenges facing your NHRI.

#### Internal

Internal Capacity	How this applies to your NHRI
1. Mandate: any limitations on ability to work with women's ESC rights	
2. Level of knowledge of ESC rights concepts	
3. Level of knowledge of women's rights	
4. Level of priority of women's ESC rights among staff	
5. Institutional capacity: financial resources – what are the budgetary constraints?	
6. Institutional capacity: human resources – are there sufficient staff?	
7. Level of understanding and sensitization to gender concepts among staff	

Internal Capacity	How this applies to your NHRI
8. Networking with relevant external stakeholders	
9. Management and/or planning capacity	
10. Investigation capacity	
11. Monitoring capacity	
12. Promotion capacity	
13. Other:	

## External

External Challenges	How this applies to your NHRI
1. State recognition of principles of universality, indivisibility and interdependence of all human rights	
2. Ratification of relevant international treaties	
3. Domestic and legislative framework	
4. Domestic justiciability of ESC rights	
5. Existence of other human rights protection mechanisms	
6. Cooperation with Parliament and Government	
7. Accountability: are human rights violators generally held accountable or is there a culture of impunity?	
8. Public and civil society cooperation with the NHRI	
9. Cultural, traditional or religious notions related to gender roles	

External Challenges	How this applies to your NHRI
10. Other (for example, conflict, natural disasters):	

## Phase 1: Determining a Direction

### WORKSHEET 3 – Identifying a Focus for Your Plan

Based on the analysis of your institution that you have just completed, identify some possible directions your Workplan. As mentioned earlier, some possible directions can be:

1. Strengthening the **internal capacity** of your NHRI to address women's ESC rights. For example, internal training on gender mainstreaming NHRI programs.
2. Applying a gender perspective to an **existing program** within the NHRI related to ESC rights.
3. Developing a **new program** for the protection or promotion of women's ESC rights.

List some of your initial ideas for a possible focus for your plan.

## Phase 2: Developing Your Plan

### WORKSHEET 4 – Main Points from the Workshop

Use the table below to record some of the main points of the workshop and how they may help you in developing your plan.

Module/Main points discussed	What are some of the main points of these Modules and how are they relevant in the day-to-day reality of your institution?
<b>Module 1:</b> <b>Overview of the Workshop</b> <ul style="list-style-type: none"> <li>▪ Participants' expectations and resources</li> <li>▪ Overview of the workshop</li> </ul>	
<b>Module 2:</b> <b>Current Situation of Economic, Social, and Cultural Rights in the Region</b> <ul style="list-style-type: none"> <li>▪ Overview of ESC rights</li> <li>▪ ESC rights in the region</li> <li>▪ How women are affected by ESC rights</li> </ul>	

Module/Main points discussed	What are some of the main points of these Modules and how are they relevant in the day-to-day reality of your institution?
<p><b>Module 3:</b>  <b>Mandates and Roles of NHRIs in Promoting and Protecting Women's ESC Rights</b></p> <ul style="list-style-type: none"> <li>▪ NHRI mandates for addressing women's ESC rights</li> <li>▪ Best practices for addressing women's ESC rights</li> </ul>	
<p><b>Module 4:</b>  <b>Overview of ESC Rights Concepts</b></p> <ul style="list-style-type: none"> <li>▪ State obligations</li> <li>▪ Concepts of non-discrimination and equality</li> </ul>	



Module/Main points discussed	What are some of the main points of these Modules and how are they relevant in the day-to-day reality of your institution?
<p><b>Module 5:</b>  <b>Reviewing International Legal Norms: ICESCR and CEDAW</b></p> <ul style="list-style-type: none"> <li>▪ Reviewing ICESCR</li> <li>▪ Reviewing CEDAW</li> </ul>	
<p><b>Module 6:</b>  <b>Applying a Gender Perspective to the Work of NHRIs</b></p> <ul style="list-style-type: none"> <li>▪ Applying a gender perspective to the work of NHRIs</li> <li>▪ Investigation, monitoring, and promotion using a gender perspective</li> </ul>	

Module/Main points discussed	What are some of the main points of these Modules and how are they relevant in the day-to-day reality of your institution?
<p><b>Module 7:</b>  <b>Effective Strategies for the Protection and Promotion of Women's ESC Rights</b></p> <ul style="list-style-type: none"> <li>▪ Effective strategies</li> <li>▪ Challenges in addressing women's ESC rights for NHRIs</li> <li>▪ Feedback on the Workplan</li> </ul>	
<p><b>Module 8:</b>  <b>Workplans and Follow-Up</b></p> <ul style="list-style-type: none"> <li>▪ Presentation of the Workplan</li> <li>▪ Follow-up</li> </ul>	

## Phase 3: Refining and Finalizing Your Plan

### WORKSHEET 5 – Development Guide for Your Workplan

Program Development Model		Information About Your Plan
<b>1. FOCUS</b> of your plan?	What is the focus of your plan?	
<b>2. WHY</b> is the plan needed?	Needs? Change(s) required in: <ul style="list-style-type: none"> <li>• Knowledge</li> <li>• Attitude/motivation</li> <li>• Professional practice/behaviour</li> <li>• Policy/legislation</li> <li>• Others</li> </ul>	
<b>3. WHO</b> is the target audience?	Description of target audience Profile: <ul style="list-style-type: none"> <li>• Occupation</li> <li>• Average age</li> <li>• Gender</li> <li>• Educational level</li> <li>• Learning style</li> <li>• Others</li> </ul>	

Worksheet 5 continued...

Program Development Model		Information About Your Plan
<b>4. WHAT</b> do you want to achieve?	Goal & Objectives	
<b>5. WHAT</b> will the plan include?	<p><b>CONTENT</b></p> <p>Based on the needs identified and the goal and objectives set to meet these needs, determine what you can do. Possible options are to:</p> <ol style="list-style-type: none"> <li>1. Strengthen the internal capacity of your NHRI to address women's ESC rights.</li> <li>2. Apply a gender perspective to an existing program within the NHRI related to ESC rights.</li> <li>3. Develop a new program for the protection or promotion of women's ESC rights.</li> </ol> <p><b>METHODS</b></p> <p>Techniques, activity types that will be used.</p>	

## Worksheet 5 continued...

Program Development Model		Information About Your Plan
<b>WHAT CONT'D</b> Gender	How will you incorporate a gender perspective in your plan? Does your plan address gender inequalities perpetuated by practices, structures, and distribution of power?	
<b>6. WHEN? &amp; HOW LONG?</b>	<b>TIME FRAME</b> 1. Determine time frame for the overall plan, for the different activities. 2. Is the time frame realistic considering the amount of material you plan to include?	

*Worksheet 5 continued...*

Program Development Model	Information About Your Plan
<p><b>7. HOW</b> will success be measured?</p>	<p>EVALUATION</p> <p>Determine appropriate evaluation mechanisms.</p> <ol style="list-style-type: none"> <li>1. How will you measure results?</li> <li>2. What are the short, medium, and long term results of your plan?</li> <li>3. What indicators and benchmarks will you use to ensure the success of your plan?</li> </ol>