

# Protection and Promotion of Economic, Social and Cultural Rights in Nepal

Building the Capacity of the  
National Human Rights Commission,  
the Government and Civil Society



Pokhara, Nepal  
21-25 July 2004

Workshop Manual



Canadian Human Rights Foundation  
Fondation canadienne des droits de la personne



National Human Rights Commission, Nepal



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# Introduction

## Program Goal

The goal of this workshop is to strengthen the capacity of the National Human Rights Commission and selected stakeholders from government and civil society to protect and promote economic, social and cultural rights in Nepal.

## Objectives

- **Develop** skills in using a framework based on internationally accepted human rights standards and principles to address situations and issues relating to ESC rights.
- **Examine** existing national and international mechanisms to promote and protect ESC rights.
- **Explore** the roles of the NHRC, the government and civil society to promote, respect, protect and fulfill ESC rights.
- **Develop** practical strategies for the NHRC and partner organisations to employ in the protection and promotion of ESC rights.

## Participants

This first ESC rights workshop focuses on general ESC rights training for the National Human Rights Commission (NHRC) staff and selected stakeholders. The workshop is for five days and includes approximately 30 participants. The participants are senior staff of the NHRC, selected representatives of key NGOs (working on ESC rights issues or in the area of human rights education), and targeted government officials. A second ESC rights workshop to be held in 2005 will focus in greater depth on particular ESC rights issues relevant to the NHRC.

## Methodology

The workshop methodology is based on a participatory approach to learning. A basic assumption in this approach is that much of the content comes from the participants and that the workshop serves as the framework for drawing out this content. There will be a combination of small group work, presentations by resource persons, case studies and plenary discussions. A gender approach is integrated throughout the program in order to recognise the different effects certain policies and practices related to human rights may have on men and women and to examine the need to develop gender-sensitive strategies to address these differences.

# Introduction ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

## About the Manual

This manual outlines the five-day workshop with objectives, descriptions of activities, and suggested time frames for each Module. There are **Worksheets** and **Reference Sheets** for several of the activities. There are also **Appendices** with supplementary reference material.

## About the Organisers

The **Canadian Human Rights Foundation (CHRF)** is a non-profit, non-governmental organisation dedicated to the protection and promotion of human rights through education, in Canada and around the world.

Recognising the potential of National Human Rights Institutions (NHRIs) to promote awareness and education on human rights, the CHRF has developed a special program aimed at the creation and strengthening of independent and effective NHRIs in conformity with the Paris Principles. The CHRF National Institutions Program involves education and training initiatives designed to strengthen the capacity of these institutions to promote and protect human rights, in particular economic, social and cultural rights. Through the participatory methodology practiced by the organisers and the presentations by highly qualified resource people from around the globe, the program contributes to a greater understanding by the participants of the unique role of NHRIs in the promotion and protection of human rights. In particular, participants gain knowledge regarding general principles governing NHRIs; deepen their understanding of issues and standards related to human rights; and explore investigation, monitoring and education strategies for the promotion and protection of such rights.

To date, activities of CHRF's National Institutions Program have been focused in Asia with initiatives in Indonesia, the Philippines, Thailand, Malaysia and Nepal.

The **National Human Rights Commission, Nepal (NHRC)** was established in May 2000, with a mandate to protect and promote human rights.

In regard to the protection of human rights, the NHRC accepts and investigates complaints of human rights violations, as well as conducts observation tours to prisons, with the aim of developing recommendations on prison reform. Since June 2002, the NHRC has been implementing a project called Responding to the Crisis to deal with human rights issues arising from the internal conflict. Key aims of this project are: accurate and timely reporting of human rights violations, disseminating findings to stakeholders, and producing and disseminating reports

The NHRC has also undertaken several activities aimed at the promotion of human rights, including: training sessions for government officials and the general public about human rights protection, stressing the obligations of the government under international standards; and awareness raising about caste-discrimination and protecting the rights of Dalits. In 2002, the NHRC established the Office of National Rapporteur on Trafficking in Women and Children.

## Acknowledgements

This manual was realized thanks to the financial support of the Ford Foundation and the United Nations Development Program, Nepal.



## Workshop Schedule

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# Module 1: Introduction

Activity 1	Yours “Truly”	35 min
Activity 2	Building Effective Group Dynamics	25 min
Activity 3	Expectations and Resources	20 min
Activity 4	Overview of the Project and Workshop	40 min



## Day 1 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

### Activity 1 Yours “Truly”

#### Objective

To have participants get to know one another.

#### Time

35 min

#### Description

Yours “Truly” is intended as a fun and informal icebreaker that gives participants a first chance to share information about themselves.

This activity is divided into three parts.

In **Part A**, participants, facilitators and organisers prepare two statements about themselves, one true and one false.

In **Part B**, you will work in small groups to discuss your statements.

In **Part C**, each small group presents a summary of their true statements and members introduce themselves to the larger group.

5 min

#### Part A Individual Work

1. In the space below, write two statements that describe a *unique* fact about you, one true and one false.
2. Do not tell your colleagues which one is which. Do not put them in a particular order.

Eg. 1. *I speak six languages.* 2. *I once kept a pet cobra in my house.*

1. \_\_\_\_\_
2. \_\_\_\_\_

Cont'd ▶ ▶ ▶

## 10 min

The facilitator divides participants into five groups. Each member of the group takes a turn in the “spotlight”. Being in the “spotlight” means that it is your turn to answer questions about each of your statements. Only one person can be in the “spotlight” at a time.

1. Sitting in a circle, select the first person for the “spotlight”.
2. As the person in the “spotlight”, briefly tell others:
  - your name
  - where you are from
  - the name of your organisation
  - the two statements you have prepared
3. Going clockwise, each member of the group poses one question to you about each of your statements. (E.g. *How do you say “mother” in all six languages? What did you feed the cobra?*). Answer each question as convincingly as you can.
4. The members of the small group discuss and decide together which statement is true and which is false.
5. Once your group has decided, the person in the “spotlight” must reveal the true statement.
6. Choose one member of your group to prepare a point-form summary on flipchart of your group’s “true” statements. He/she will present the summary to the other groups in **Part C**.

**10 min**

Groups in turn present their summaries and then each group member briefly introduces him/herself to the large group by stating his/her name, position and organisation.

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### Activity 2 Building Effective Group Dynamics

#### Objectives

To discuss the potential for conflict that exists in a human rights education context and to develop a set of ground rules for working as a group.

#### Time

25 min

#### Description

In a participatory learning process, participants must be prepared not only to take responsibility for their own learning but also for their interactions with other participants in the group. Understanding how groups function is crucial to achieving good participation by group members.

Groups can be powerful and productive when they function well. The performance and output of the group is likely to be greater than the sum of its individual members.

This activity is divided into two parts.

In **Part A**, you will explore the potential for conflict in a human rights education context.

In **Part B**, you will determine ground rules for the effective functioning of the group.

10 min

#### **Part A Brainstorming – Your Understanding of the Term “Conflict”**

1. The facilitator leads the group in a brainstorming session to have you reflect on your understanding of the term conflict. Use the table on the next page to take notes. (5 min)
2. You will then briefly discuss potential conflicts that may arise in a human rights training session. (5 min)

Cont'd ► ► ►



### Activity 2 cont'd

<b>Conflict is...</b>	
<b>Potential conflicts in a human rights education training session:</b>	

## What Is Conflict?

**Conflict** refers to a confrontation between individuals or groups, resulting from opposite or incompatible ends or means. It is “a social factual situation in which at least two parties (individuals, groups, states) are involved, and who:

- "Conflict** is present when two or more parties perceive that their interests are incompatible, express hostile attitudes, or [...] pursue their interests through actions that damage the other parties. These parties may be individuals, small or large groups, and countries." (Lund, 1997:2-2).

- Over *resources* — access to and distribution of territory, money, energy sources, food
- Over *power* — how control and participation in political decision-making are allocated
- Over *identity* — concerning the cultural, social and political communities to which people feel tied

Over *status* — particularly as embodied in systems of government, religion, or ideology

**Conflict management** refers to addressing, containing, and limiting conflict in such a way that its escalation into a more violent mode is avoided.

**Conflict transformation** is a process of engaging with and transforming the relationships, interests, discourses and if necessary, the very constitution of society that supports the continuation of violent conflict. Constructive conflict is seen as a vital agent or catalyst for change.

Conflict is an inevitable part of working with groups of people who have different interests, backgrounds and experiences. Conflict need not be destructive if it is used constructively.

Even small conflicts should not be ignored by trainers as they may grow out of proportion and affect the entire group. There is no prescription for dealing with group conflict. It will depend on the people involved, ways of expressing dissent and disagreement which are determined by culture, and the style of the trainer.

10

## 15 min

In the article "Using Ground Rules to Negotiate Power in the Classroom," Briskin states that:

Together with your facilitator, develop a number of ground rules for working together as a group. Refer back to the potential conflicts you identified in **Part A** to help you determine appropriate ground rules for your group.

- Listen and "hear" what is being said
- Avoid put-downs (of yourself or others)
- Refrain from speaking too often or too long (give everyone a chance to speak)

Agree on a number of rules. The facilitator will write them on flipchart and post 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 / Agreement for our group:

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## Day 1 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

### Activity 3 Expectations and Resources

#### Objective

To discuss participants' expectations and resources for this workshop.

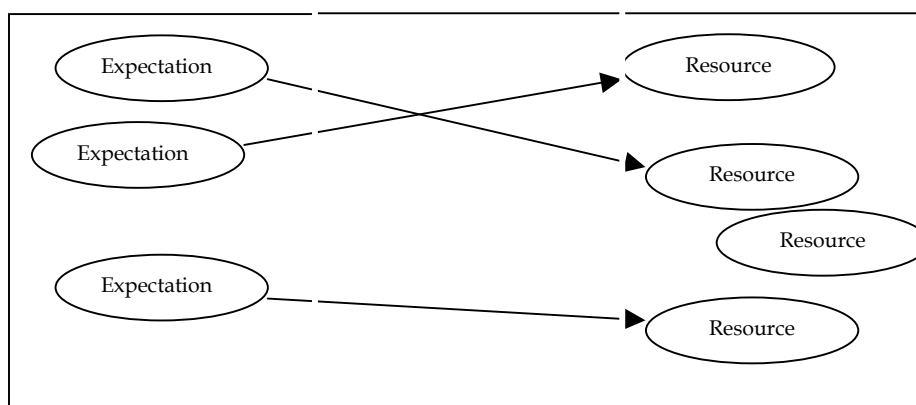
#### Time

20 min

#### Description

Using the information compiled from the **Pre-workshop Assignments** completed by participants, the facilitator presents on flipchart their expectations and resources (needs and offers). Similar expectations and resources will be grouped together.

1. 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.
2. The facilitator asks participants to write their names next to the expectations and resources they identify with. See the example below. (10 min)



3. The facilitator comments on the commonalities in expectations and resources available in the groups. (10 min)

End of Activity ■

## Activity 4 Overview of the Project and Workshop

## Objective

To provide an overview of the project and the workshop.

## Time

40 min

### Description

This activity is divided into two parts.

In **Part A**, there will be an overview of the project.

In **Part B**, there will be an overview of the workshop and the workshop methodology.

20 min

## Part A Project Overview

The Program Officer explains the role of this workshop within the CHRF-NHRC project to enhance capacity of the NHRC and selected stakeholders in government and civil society to protect and promote ESC rights.

She also presents the other components of the project:

- Regional workshops
- Working groups
- Other workshops in the second year of the project

See the following pages for more information on the project.

**Cont'd ▶ ▶ ▶**

## Day 1 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

### Activity 4 cont'd

#### Project Overview:

This workshop is part of two-year project aimed at **building the capacity of the National Human Rights Commission, Nepal and selected partners and stakeholders in government and civil society to protect and promote economic, social and cultural rights**. This project is part of the NHRC/UNDP's project entitled *Capacity Development of the National Human Rights Commission* (NEP/00/010).

The project has been designed to meet the needs expressed by the NHRC in relation to ESC rights. In particular, the project aims to strengthen the capacity of the NHRC and others to:

- analyse issues involving ESC rights;
- monitor and document the ESC rights situation in all regions of the country;
- investigate and respond effectively to ESC rights-based complaints and issues;
- promote awareness of ESC rights, advocate for the protection of ESC rights; and
- effectively use existing promotion and protection mechanisms at both the national and international levels to address ESC rights issues in Nepal.

As a result of this two-year project, the NHRC, together with a selected group of its stakeholders, will have:

- strengthened their knowledge, skills and expertise to formulate, organise and implement concrete activities in the monitoring, protection and promotion of ESC rights; and
- strengthened national networks for continued capacity building activities in the area of ESC rights.

#### Project Activities

1. **First Workshop** (July 2004): ESC Rights Standards and Concepts / ESC Rights Protection and Promotion – General ESC rights workshop for the NHRC and selected stakeholders in government and civil society.
2. **\*HRE Workshop** (February 2005): ESC Rights Promotion and Education (\*with the assistance of the Canadian Human Rights Commission and the Canadian International Development Agency)
3. **Second Workshop** (Fall 2005): In-Depth Analysis of ESC Rights Protection and Promotion – Focusing on particular ESC rights issues relevant to the NHRC and selected stakeholders.

Cont'd ► ► ►

### Activity 4 cont'd

4. **Three (3) Regional Meetings** (2004/2005): Three three-day workshops on ESC rights at the regional level which will allow the transfer of knowledge and skills to regional organisations and networks, including local NHRC volunteers, field officers, selected local NGOs and decision makers.
5. **Working Groups** (2004/2005): Established at the First Workshop, these Working Groups (comprised of NHRC members and staff, and external stakeholders) will develop specific policies and procedures to ensure ESC rights concepts are being integrated into the various functions of the NHRC.

It is also expected that the NHRC, together with its stakeholders, will continue to develop activities and initiatives for the protection and promotion of ESC rights beyond the two-year term of this project.

**Cont'd ▶ ▶ ▶**

## Day 1 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

### Activity 4 cont'd

20 min

#### Part B Workshop Overview

The facilitator provides an overview of the workshop, referring back to participants' expectations and resources expressed in Activity 2.

The facilitator also discusses the participatory training approach of this workshop. The learning model used for this workshop is that of the "Spiral Model" diagram on the next page. Refer to **Appendix 1** for more information on the participatory approach.

Questions for discussion related to a participatory approach:

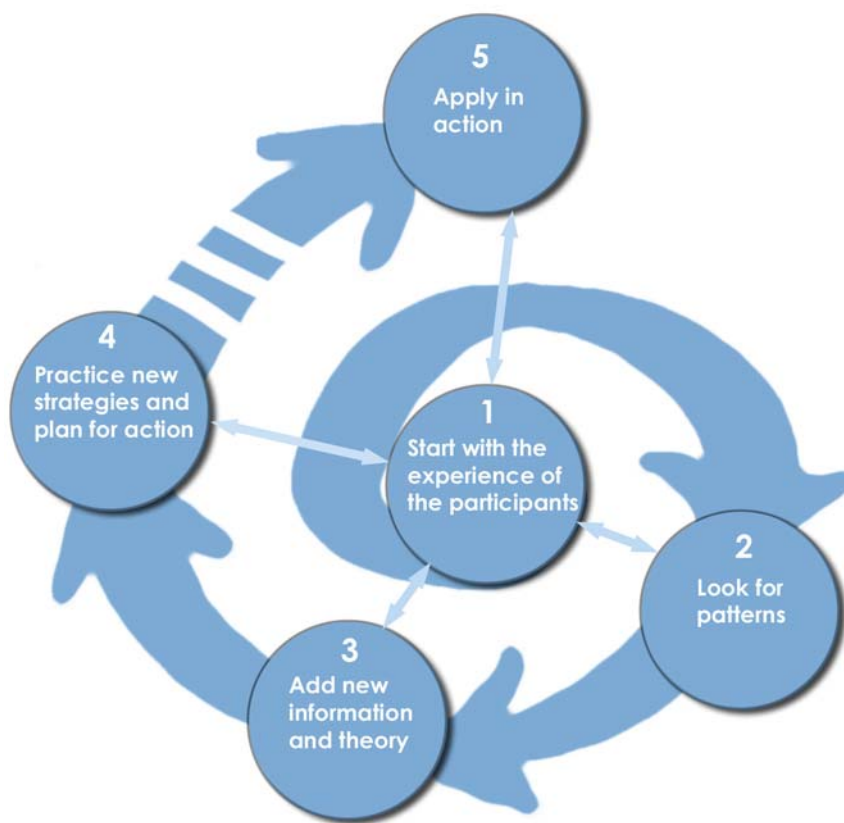
1. Why is a participatory approach appropriate for human rights education?
2. What are the advantages of using a participatory approach?
3. Have you ever used the participatory approach? If so, what are some of the difficulties you have encountered in using this approach?

Cont'd ► ► ►



Activity 4 cont'd

**The Spiral Model**



End of Activity ■



## Module 2: The Current Situation of ESC Rights in Nepal

Activity 1	The Current Situation of ESC Rights in Nepal	1 hour 30 min
Activity 2	Contributing Factors to ESC Rights Issues	1 hour 30 min



## Day 1 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

### Activity 1 The Current Situation of ESC Rights in Nepal

#### Objective

To identify key ESC rights issues in Nepal.

#### Time

1 hour 30 min

#### Description

This activity is divided into two parts.

In **Part A**, you will work in small groups to identify key ESC rights issues in Nepal.

In **Part B**, each group will present the issues they identified to the larger group. A resource person comments on the presentations.

40 min

#### Part A Group Work

1. The facilitator divides participants into small groups.
2. Together with the members of your group, agree on **five (5) key ESC rights issues** you will discuss. Refer to the issues you identified in your **Pre-workshop Assignment**.
3. Then, using **Worksheet 1**, discuss each of the issues using the questions provided in the worksheet. An explanation of the questions is outlined below.
  - **ESC rights issues/problems.** What are the main ESC rights issues in Nepal?
  - **Which groups are affected?** Identify the main groups in society that are affected by the ESC rights issues you identified.
  - **Who is/are responsible?** Identify the individuals or groups responsible for the ESC rights issues.

Cont'd ► ► ►

### Activity 1 cont'd

- **How are the issues addressed by the NHRC, the government and civil society?** What activities have been undertaken or are being planned to redress these problems and to promote and protect ESC rights?
4. Using **Worksheet 1**, prepare a 5-minute report on the key ESC rights issues in Nepal.
  5. Choose a reporter to do the presentation for your group and to prepare a flipchart version of **Worksheet 1**.

20 min

## Part B Group Presentations

The facilitator reconvenes the whole group. Each group has 5 minutes to present its summary report.

30 min

## Part C Group Discussion

The resource person facilitates a large group discussion on the results of the small group work.

Questions for discussion:

1. What other types of human rights violations (e.g., civil and political) do the NHRC and other organisations address in their work? How are these human rights issues addressed? Refer to your **Pre-workshop Assignment**.
2. Which other institutions and organisations are involved in the promotion and protection of ESC rights in Nepal? Briefly define their roles and the similarities and differences of these roles.

## End of Activity ■

Day 1 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

## Worksheet 1: ESC Rights Issues in Nepal

ESC rights issues/problems	Which groups are affected?	Who is/are responsible?	How are the issues addressed by the NHRC, the government and civil society?

## Activity 2 Principal Factors Contributing to Violations of ESC Rights

## Objective

To identify the principal factors contributing to violations of ESC rights in Nepal.

## Time

1 hour 30 min

### Description

This activity is divided into two parts.

In **Part A**, you will examine the principal factors contributing to violations of ESC rights in Nepal.

In **Part B**, you will examine how these factors impact your work when trying to address ESC rights.

45 min

## Part A Group Work

1. The facilitator divides participants into five groups and assigns to each group, one (1) of the issues identified in **Activity 1**.
2. Together with the members of your group, examine the **principal factors** contributing to violations of ESC rights in Nepal. Refer to Question 4, Part 2 of your **Pre-workshop Assignment**. Try to identify factors that could be the result of the Maoist/HMG conflict or other factors. Use **Worksheet 2** to record your answers.
3. Prepare a flipchart version of **Worksheet 2** to present to the other participants.

**45 min**

## Part B Gallery Presentations and Discussion

Each group displays its flipchart in a gallery and all participants review the results. The resource person leads a discussion on the results.

**Cont'd** ▶ ▶ ▶

## Day 1 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

### Activity 2 cont'd

Questions for discussion:

1. Do you agree with the factors that were labelled as a result of the conflict and the factors that were not?
2. Do the identified factors affect more than one specific ESC rights issue?
3. Do the factors affect women and men differently? If so, how?
4. How are these violations of ESC rights linked to the civil and political rights violations taking place in Nepal?
5. How are these factors addressed in your human rights education work?
6. How can human rights education be used to help address violations? How could human rights education positively or negatively contribute to the current conflict?


End of Activity ■



## Worksheet 2: Factors Contributing to Violations of ESC Rights

## Conflict-related factors

## Other contributing factors



ESC Rights Issue:



## Module 3: The Role of the NHRC in Protecting and Promoting Human Rights

Activity 1	Identifying Common Challenges	1 hour 30 min
Activity 2	Examining the Capacity of the NHRC	1 hour 30 min
Activity 3	ESC Rights and the NHRC	2 hours



## Day 1 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

### Activity 1 Identifying Common Challenges

#### Objective

To identify some of the main challenges that organisations face when trying to address ESC rights.

#### Time

1 hour 30 min

#### Description

In order to strengthen the capacity of any organisation, it is important to identify challenges that the organisation faces when conducting its work. One of the questions of the **Pre-workshop Assignment** asked participants to indicate the main challenges faced when trying to address ESC rights issues.

As organisations or bodies (NHRC, the government, members of civil society) that work together to address ESC rights, it is useful to understand the challenges faced by all organisations. The following activity will enable participants to examine what they think are the challenges faced by other organisations other than their own.

This activity is divided into two parts.

In **Part A**, you will work in groups to reflect on the challenges faced by other organisations/bodies.

In **Part B**, you will share your findings with the other groups.

45 min

#### Part A Group Work

1. The facilitator divides the participants into three groups: 1) NHRC staff, 2) government officials, and 3) members of civil society.
2. Using **Worksheet 3**, each group examines the challenges of the other two groups.
3. Prepare to share your findings with the members of the other groups in Part B.

Cont'd ► ► ►



## Worksheet 3: Common Challenges

My organisation/body (NHRC, government, civil society): \_\_\_\_\_

The organisation/body I am reflecting on (NHRC, government, civil society): \_\_\_\_\_

Challenges	
<p><i>If I were a member of this organisation/body, I would have to face the following <b>internal</b> challenges when addressing ESC rights violations:</i></p>	<p><i>If I were a member of this organisation/body, I would have to face the following <b>external</b> challenges when addressing ESC rights violations:</i></p>

### Worksheet 3 cont'd

My organisation/body (NHRC, government, civil society): \_\_\_\_\_

The organisation/body I am reflecting on (NHRC, government, civil society): \_\_\_\_\_

Challenges	
<p><i>If I were a member of this organisation/body, I would have to face the following <b>internal</b> challenges when addressing ESC rights violations:</i></p>	<p><i>If I were a member of this organisation/body, I would have to face the following <b>external</b> challenges when addressing ESC rights violations:</i></p>

## Day 2 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

### Activity 2 Examining the Capacity of the NHRC

#### Objective

To examine the capacity of the NHRC.

#### Time

1 hour 30 min

#### Description

This activity is divided into three parts.

In **Part A**, the resource person will present the existing international standards for the effective functioning of human rights commissions (i.e., the Paris Principles).

In **Part B**, you will be grouped to examine the NHRC in terms of the standards discussed in Part A.

In **Part C**, you will discuss your group's examination of the NHRC with the larger group.

20 min

#### **Part A Presentation**

The resource person provides an overview of the Paris Principles (refer to **Appendix 2**). The Paris Principles are internationally-recognised guidelines on the role, composition and functions of national human rights institutions.

40 min

#### **Part B Small Group Work**

1. The facilitator divides you into small groups.
2. Together with the members of your group, examine strengths and challenges of the NHRC in relation to the areas of responsibility discussed in Part A. Use the second and third columns of **Worksheet 4** to record your findings. Refer to **Appendix 3** for a description of the NHRC's function and duties as specified in the *Human Rights Commission Act*.

Cont'd ► ► ►



## Activity 2 cont'd

3. For each area of responsibility, reflect on ways in which the government and civil society can strengthen and/or collaborate with the NHRC in carrying out its responsibilities. Use the fourth column of **Worksheet 4** to record your findings.

This grid in **Worksheet 4** is based on five areas of responsibilities for national human rights commissions as defined by the Paris Principles.

30 min

## Part C Group Presentations

The large group reconvenes. Each group reports on how they assessed the NHRC's responsibilities identified in **Worksheet 4**. (5 min each)

The facilitator synthesizes the common elements.

## End of Activity ■

## Day 2

## Worksheet 4: Capacity of the National Human Rights Commission

NHRC Responsibilities	Strengths	Challenges	How can the government bodies and civil society represented work with the NHRC to strengthen this area of responsibility?
<p>1. <b>Monitor</b> any situation of violation of human rights.</p> <p>In order to carry out this function, the NHRC needs sufficient staff to follow developments in any part of Nepal, and it must furthermore not be limited in its access to any NGO, group or individual, which may be threatened or possess knowledge about violations.*</p> <p>* Source: Kjærø, M. (2003). <u>National Human Rights Institutions Implementing Human Rights</u>. Danish Institute for Human Rights.</p>			

NHRC Responsibilities	Strengths	Challenges	How can the government bodies and civil society represented work with the NHRC to strengthen this area of responsibility?
<p>2. <b>Advise</b> on issues related to human rights.</p> <p>To <i>advise</i> the government, the parliament and any other competent body on specific violations, on issues related to legislation and its compliance with international human rights instruments, and on the implementation of these instruments.</p>			

## Day 2 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

NHRC Responsibilities	Strengths	Challenges	How can the government bodies and civil society represented work with the NHRC to strengthen this area of responsibility?
<p>3. <b>Relate</b> to regional and international organisations.</p> <p>The NHRC should encourage the government to ratify human rights instruments, and the NHRC should contribute to the reports which States are required to submit to international institutions or committees.</p>			

NHRC Responsibilities	Strengths	Challenges	How can the government bodies and civil society represented work with the NHRC to strengthen this area of responsibility?
<p>4. <b>Educate</b> and inform in the field of human rights.</p> <p>The NHRC should assist in the formulation of educational human rights programs and in human rights research, and take part in their implementation at schools, universities and in professional circles. Finally, the NHRC should be able to prepare and publicize reports on any human rights matter and make use of all press organs.</p>			

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NHRC Responsibilities	Strengths	Challenges	How can the government bodies and civil society represented work with the NHRC to strengthen this area of responsibility?
<p>5. Given a <b>quasi-judicial competence</b>.</p> <p>Some NHRC's are given a <i>quasi-judicial competence</i>. Whereas an institution can hardly be recognized as fulfilling the Paris Principles if one of the first four elements is left out of its mandate, it is optional to give it the mandate to hear and consider individual complaints and petitions.</p>			

## Objective

## Time

### Description

In **Part A**, you will work in small groups to examine the mandate of the NHRC and its relative strengths and challenges in terms of addressing ESC rights.

In **Part B**, you will discuss your group's findings with the larger group.

## Part A Group Work

1. The facilitator divides participants into small groups.
2. Together with the members of your group, analyse the mandate of the NHRC by addressing the questions in **Worksheet 5**. Refer to **Appendix 3** for a description of the NHRC's function and duties as specified in the *Human Rights Commission Act*.
3. Choose a reporter to do the presentation for your group and to prepare a flipchart version of **Worksheet 5**.

## Part B Large Group Discussion

Each group presents their findings to the larger group and the facilitator/resource person leads a group discussion.

## End of Activity ■

## Day 2

## Worksheet 5: Examining the NHRC's Mandate

Questions	The NHRC's mandate	How can the government bodies and civil society represented work with the NHRC to strengthen the NHRC's work?
<p>1. What is the NHRC's mandate in relation to ESC rights? Provide examples from the legislation and/or other appropriate sources that illustrate this mandate.</p> <p>2. What are the strengths and challenges of the mandate as it appears in the legislation?</p>		



Questions	The NHRC's mandate	How can the government bodies and civil society represented work with the NHRC to strengthen the NHRC's work?
3. What kind of activities does the NHRC undertake for the promotion and protection of ESC rights?		
4. What factors have determined the success or failure of these initiatives?		



## Module 4: ESC Rights in Theory and Practice

Activity 1	ESC Rights Concepts	2 hours
Activity 2	What is Meant by a Rights-Based Approach?	1 hour
Activity 3	Applying a Rights-Based Approach to Education	1 hour 30 min



## Day 2 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

### Activity 1 ESC Rights Concepts

#### Objective

To explore ESC rights concepts and the related international framework.

#### Time

2 hours

#### Description

This activity is divided into three parts.

In **Part A**, you will take part in an “energizer” activity related to ESC rights.

In **Part B**, a resource person will discuss ESC rights concepts.

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

15 min

#### **Part A Dinamica**

In this activity you will indicate your response to different questions by standing in a certain part of the room. Your facilitator will explain this activity further.

45 min

#### **Part B Presentation**

The resource person provides an overview of the following topics:

- Interdependence and interrelatedness of all human rights
- Immediate implementation and progressive realisation of ESC rights
- Minimum core content
- Obligations of State and non-state actors
- Maximum use of available resources

Cont'd ► ► ►

### Activity 1 cont'd

- Justiciability of ESC rights
- Non-discrimination and gender equality

**1 hr.**

## Part C Large Group Discussion

The facilitator leads a group discussion.

**End of Activity** ■

## Day 2 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

## Activity 2 What is Meant by a Rights-Based Approach?

## Objective

To reflect on the meaning of a rights-based approach to examining ESC rights.

## Time

1 hour

### Description

This activity is divided into three parts.

In **Part A**, you will discuss in a large group what is meant by a rights-based approach.

In **Part B**, you will work in small groups to share your experiences in using a rights-based approach.

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

**10 min**

## Part A Brainstorming – Your Understanding of a Rights-Based Approach

The facilitator leads the group in a brainstorming session to have you reflect on your understanding of a rights-based approach. Use the table below to take notes.

## A rights-based approach is...

Cont'd ▶ ▶ ▶

## 30 min

1. The facilitator divides participants into small groups.
2. Together with the members of your group, conduct a brainstorming session on examples of a rights-based approach in your work. In particular, each group focuses on **one** of the following three areas:
  - Individual complaints of ESC rights violations
  - Systemic violations of ESC rights
  - Conflict-related issues
3. Use **Worksheet 6** to report your findings. Refer to **Reference Sheet 1** for more information on a rights-based approach. Prepare to present your ideas to the other groups in Part B.

## 20 min

Each group shares their findings with the other groups. The facilitator leads a discussion on the use of a rights-based approach in the work of the NHRC, the government and civil society.

**End of Activity** ■

### Reference Sheet 1: A Rights-Based Approach

#### Human Rights

A human right is something I am entitled to simply because I am a human being. Human rights belong to every individual, man or woman, girl or boy, infant or elder simply because he or she is a human being. A human right is what enables me to live in dignity. Once something is defined or identified as a right it means that:

- There is an obligation on the part of the government to respect, promote, protect, and fulfill that right.
- The right can be enforced.

#### Rights and Needs

A right is different from a need. A need is an aspiration. A need can be legitimate however; it is not necessarily associated with a government obligation. Satisfying a need cannot be enforced. A right entails a government obligation and can be enforced. Rights are associated with “being”. Needs are associated with “having”.

A rights-based approach is founded on the conviction that every human being, by virtue of being human, is a holder of rights. A rights-based approach:

- Assumes that all human beings, including children should have equal opportunity to realize their full developmental potential.
- Involves a process of empowering those who do not enjoy their rights to claim their rights. It does not involve charity or simple economic development.
- Integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development programs, social programs and other programs.
- Supports the concept that all children, regardless of gender, race, religion, ethnicity, social status or any other difference, have a basic right to life with dignity. Rights-based programs address all aspects of a child’s life (for example, from ensuring basic survival through meeting psychological needs). They are holistic and inclusive.

The principles of a rights-based approach include equality and equity, accountability, empowerment and participation.



## Human Rights Education and a Rights-Based Approach

Human rights education involves learning how to put a rights-based approach into practice. Two essential objectives of human rights education are:

- Learning about human rights (i.e., human rights history, documents, implementation mechanisms).
- Learning for human rights (i.e., understanding and embracing the principles of human equality and dignity and the commitment to respect and protect the rights of all people). It includes values clarification, attitude change, development of solidarity and the skills for advocacy and action.

The elements of a rights-based approach should guide the content and practice of human rights education. These elements include:

## 1. DIRECT LINKS TO RIGHTS

- Establishes direct links to international, regional and national human rights instruments.
- Considers the full range of indivisible, interdependent and interrelated rights: civil, cultural, economic, political and social.

## 2. *Increased levels of ACCOUNTABILITY*

- Identifies claim-holders (and their entitlements) and corresponding duty-holders (and their obligations).
- Identifies the positive obligations of duty-holders (to protect, promote and provide) and their negative obligations (to abstain from violations).

### 3. *Move from dependency to EMPOWERMENT*

- Focuses on beneficiaries as the owners of rights and the directors of development instead of the objects of programs and actions to address their needs.
- Gives people the power, capabilities and access needed to change their own lives, improve their own communities and influence their own destinies. Places a higher emphasis on the strengths of individuals and communities including children to play a more active part in the societies in which they live.

## 4. PARTICIPATION

- Aims for a high degree of participation, from communities, civil society, minorities, indigenous peoples, women, children and others.
- Sees youth and children as active participants in finding constructive solutions.

## 5. NON-DISCRIMINATION

- Gives particular attention to discrimination, equality, equity and marginalized groups. These groups may include women, minorities, indigenous peoples and

## Day 2 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

prisoners. A rights-based approach requires that the question of who is marginalized here and now be answered locally.

Information on a rights-based approach has been adapted from:

UNICEF Canada, Children's Rights, CIDA, Continuous Learning Human Resources, December 2001.

World Health Organisation, 25 Questions & Answers on Health & Human Rights, Health & Human Rights Publication Series, Issue No. 1, July 2002.

Rios-Kohn, Rebecca, A Review of a UNICEF Country Programme, Based on Human Rights: The Case of Peru, UNICEF, November 2001.

Institute for Child Rights & Interagency Coalition on AIDS and Development, Filling the Gaps: Using a Rights-Based Approach to Address HIV/AIDS and its Affects on South African Children, Youth and Families, Care and Support Guidelines, 2001.

UNHCR website, <http://www.unhchr.ch/development/approaches-04.html>

## Worksheet 6: Rights-Based Approach

Areas	Examples of using a rights-based approach in these areas
1. Addressing individual complaints of ESC rights violations (specify the kind of individual ESC rights violations)	
2. Addressing systemic violations of ESC rights	
3. Dealing with conflict-related issues	

## Day 3 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

### Activity 3 Applying a Rights-Based Approach to Education

#### Objective

To practice applying a rights-based approach to address the right to education in Nepal.

#### Time

1 hour 30 min

#### Description

This activity is divided into three parts.

In **Part A**, you will work in small groups to develop a rights-based response to education.

In **Part B**, each group will present their findings to the larger group.

In **Part C**, there will be a large group discussion.

30 min

#### **Part A Small Group Work**

1. The facilitator divides participants into small groups.
2. Read the situation described in **Reference Sheet 2** about the recent *bandh* in schools in Nepal.
3. Together with the members of your group, determine possible **rights-based interventions** from the NHRC, the government, and civil society in response to the closing of schools in Nepal in **two response areas**:
  - 1) Access to schools
  - 2) Safe environment in schools

Use **Worksheet 7** to record your findings.

Cont'd ► ► ►

### Activity 3 cont'd

4. Classify the interventions at three levels:
  - a. Immediate interventions
  - b. Short-term interventions
  - c. Long-term interventions
5. Specify persons, organisations and/or systems having obligations regarding the intervention.
6. Prepare to present your ideas to the other groups in **Part B**.

## Applying a rights-based approach

Remember that when applying a rights-based approach it is important to:

- Use as the foundation the basic principles, which include **equality** and **equity**, **accountability**, **empowerment** and **participation**.
- With respect to education, The Committee on ESC Rights, in its General Comment 13, identifies four elements of the state's obligations with respect to the right to education. These are (1) availability, (2) accessibility, (3) acceptability and (4) adaptability. Some examples are provided below:
  - **Availability**. Provide free primary education, resources (human and material).
  - **Accessibility**. Non-discrimination, equality.
  - **Acceptability**. Rights of minorities to set up and manage their own educational institutions, child-friendly school environment.
  - **Adaptability**. Adaptable curriculum in the best interests of the child.

40 min

## Part B Group Presentations

Each group in turn presents the results of their discussion to the other groups.

20 min

## Part C Large Group Discussion

The facilitator synthesizes and comments on the ideas presented by the small groups.

Questions to consider:

1. Do the interventions reflect more a rights-based or needs-based response? What is the difference?
2. What is the value of a rights-based approach?

**End of Activity** ■

## Reference Sheet 2: School Closings in Nepal

### End of Nepal School Strike Near

Thousands of schools and colleges have remained closed since Sunday due to the indefinite strike called by a Maoist student group.

Both national organisations and foreign donors and aid agencies have urged the Maoist rebels to end the strike in schools and colleges, stating that the strike is a serious breach of children's right to education.

A statement prepared by one group advocating an end to the strike calls for children not to be caught up in Nepal's conflict and for schools to be peace zones. The statement is signed by major foreign donors and aid agencies including the UN, the World Bank and the European Commission.

"We consider it a serious breach of children's right to education and an undermining of the future of Nepal's children," it says.

**We appeal to all parties to immediately abstain from intimidating, interference, harassment and violence in or near schools**

Statement made by international donors

The All Nepal National Free Students Union – Revolutionary (ANNSFU-R), a student wing of the Maoist rebel movement, demanded that schools and colleges in Nepal stop functioning indefinitely. The ANNSFU-R demanded that its name be struck off from the government's list of terrorist organisations. It also demanded the release of detained leaders, as well as lower fees in private schools.

National NGOs and the government of Nepal have said that the Maoists must ensure that schools are zones of peace. However, many agree that little has been done to convince the strike organisers that they must refrain from holding the education sector to ransom.

The strike was called off after the Sher Bahadur Deuba government Thursday night agreed to the main demand of the ANNSFU-R

A 13-member team comprising of rights activists mediated between the government and the underground student organisation for several days before the impasse was resolved.

The 12-day strike, which paralysed the education system of the country, affecting over 6.5 million students, is estimated to have caused a financial loss of over NRS 600 million (US\$8.1. million).

Human rights groups say that schools are increasingly getting caught in the fighting between government troops and Maoist guerrillas who control parts of the countryside.

The rebels are accused of forcing teachers and students in remote villages to support them while government troops are blamed for targeting students during operations against suspected Maoists.

In recent years there have been frequent reports of Maoists abducting thousands of students who are forced to attend indoctrination classes on Maoist ideas before being freed a few days later.

Teachers also have been abducted. During one week at the beginning of June, the Maoist rebels abducted approximately 500 teachers from 30 different villages of Udaypur. This resulted in over 30,000 students denied education because most schools in Udaypur were forced to close down due to the abductions.

It is estimated that around half of Nepal's 24 million population cannot read or write. It is also estimated that 25% of women in Nepal are literate, as compared to 61% of men. School enrolment rates in Nepal are 57% for girls and 70% for boys.

The country is among the world's 10 poorest with international aid accounting for 60% of the cost of economic development.

Story adapted from:

1. BBC News. [http://news.bbc.co.uk/go/pr/fr/-/2/hi/south\\_asia/3793487.stm](http://news.bbc.co.uk/go/pr/fr/-/2/hi/south_asia/3793487.stm). Published: 2004/06/10.
2. Indo-Asian News Service. Published: 2004/07/01.
3. Nepal News. <http://nepalnews.com>. Published: 2004/06/04.
4. UNDP Human Development Report 2003. <http://hdr.undp.org/reports/global/2003>.

**Worksheet 7: Applying a Rights-Based Approach to the Issue of Education**

Response Areas	Possible interventions (specify persons, organisations and/or systems having obligations regarding the intervention)		
	Immediate	Short-term	Long-term
<b>1. Access to schools</b> - Ability to attend the school due to the conflict			



## Day 3

### Worksheet 7 cont'd

Response Areas	Possible interventions (specify persons, organisations and/or systems having obligations regarding the intervention)		
	Immediate	Short-term	Long-term
<p><b>2. Safe environment in schools</b></p> <ul style="list-style-type: none"> <li>- Safe for the children</li> <li>- No fear of abduction or threats</li> </ul>			



## Module 5: Responding to Violations of ESC Rights

Activity 1	Protection and Promotion Framework	30 min
Activity 2	Overview of International Instruments	1 hour 15 min
Activity 3	Working with International Instruments	2 hours
Activity 4	National Provisions Relating to ESC Rights	1 hour
Activity 5	Using International and National Mechanisms for the Protection of ESC Rights	2 hrs. 30 min



## Day 3 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

### Activity 1 Protection and Promotion Framework

#### Objective

To present a “protection and promotion framework” used to respond to violations of ESC rights.

#### Time

30 min

#### Description

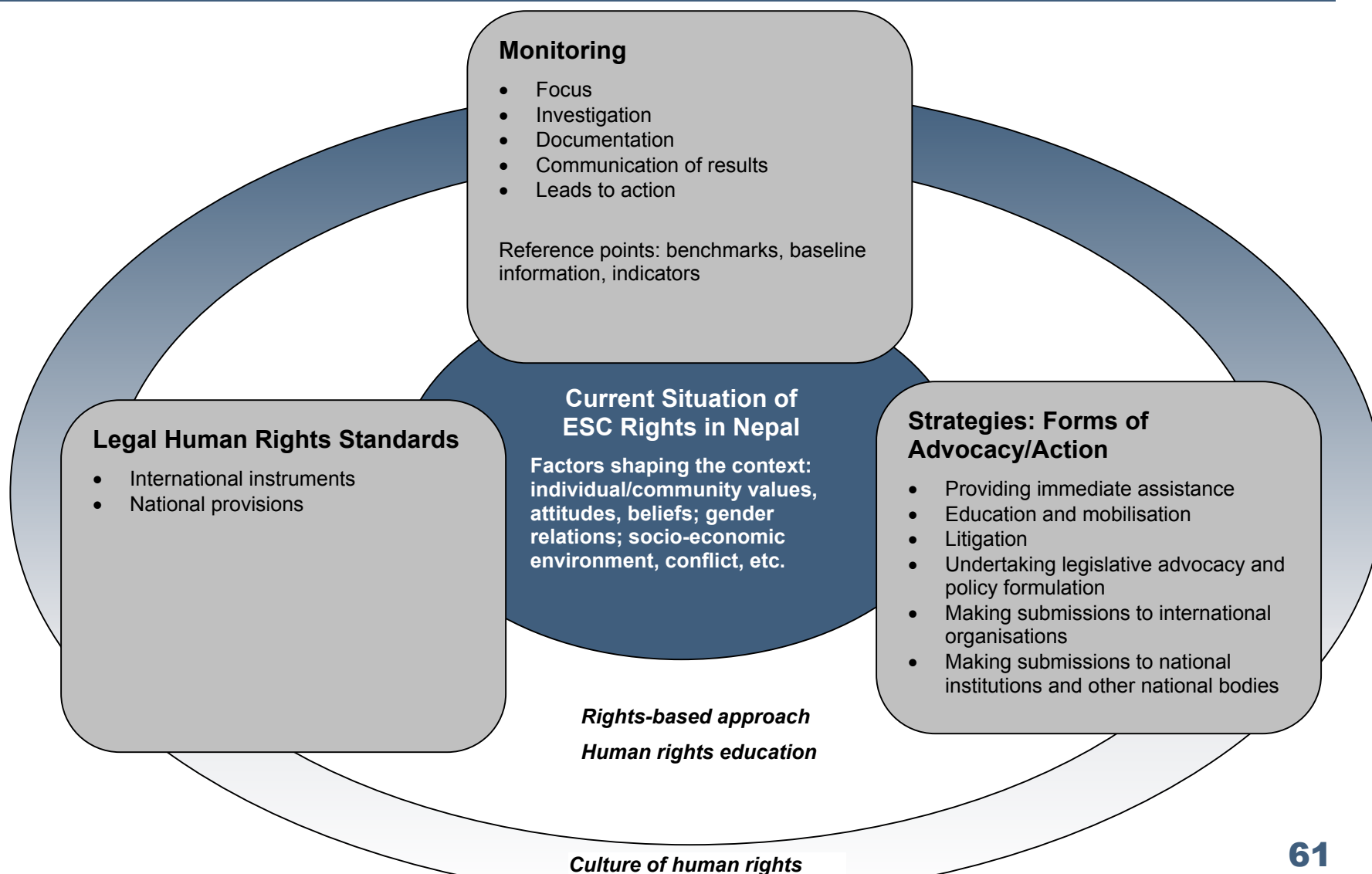
The facilitator describes the protection and promotion framework (**Reference Sheet 3**) and how it could be used as a framework for responding to violations of ESC rights.

Questions to consider:

1. Do you agree with the elements of this framework? Are there any elements missing?
2. How does this framework compare to other models you may have seen?

End of Activity ■

### Reference Sheet 3: Protection and Promotion Framework



## Day 3 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

### Activity 2 Overview of International Instruments

#### Objective

To provide a brief overview of ESC rights in international instruments.

#### Time

1 hour 15 min

#### Description

This activity is divided into three parts.

In **Part A**, you will list your ideas about the advantages and limitations of the international instruments.

In **Part B**, a resource person will present an overview of international instruments.

In **Part C**, a resource person will lead a large group discussion.

10 min

#### **Part A Individual Work**

Based on your knowledge and experience, state one **Advantage** and one **Limitation** of using international instruments to address ESC rights issues in Nepal.

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.

Once you have finished, paste your cards on the flipchart version of **Worksheet 8**.

30 min

#### **Part B Presentation**

Referring to the results of Part A, a resource person discusses the existing framework at the international level for addressing violations of ESC rights:

Cont'd ► ► ►

## Activity 2 cont'd

- Universal Declaration of Human Rights (UDHR)
- International Covenant on Economic, Social, and Cultural Rights (ICESCR)
- International Covenant on Civil and Political Rights (ICCPR)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Convention on the Rights of the Child (CRC)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Optional Protocols

**35 min**

## Part B Large Group Discussion

The resource person leads a discussion.

## End of Activity ■

**Worksheet 8: Advantages and Limitations of International Instruments**

ADVANTAGES of using international instruments to address ESC rights	LIMITATIONS of using international instruments to address ESC rights



## Objective

## Time

### Description

In **Part A**, you will work in small groups to prepare a presentation on the application of international standards to a particular violation of ESC rights.

50 min

1. The facilitator divides participants into small groups and assigns to each group, **one** of the issues identified in **Module 2, Activity 1**.
2. Using the complete texts of the instruments, the overview of the relevant articles, and the experience of the members of the group, examine each of the six (6) international instruments (ICESCR, ICCPR, CEDAW, CERD, CRC, and CAT) to identify the relevant articles which address the ESC rights issue assigned to your group. You may want to divide into pairs and work on different instruments or work as a group. Also refer to **Reference Sheet 4** and **Appendices 5 and 6** (on the Limburg Principles and the Maastricht Guidelines).
3. Record your answers on a flipchart version of **Worksheet 9**.
4. Choose a reporter to present the results of your discussion in **Part B**.

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## Day 3 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

### *Activity 3 cont'd*

**1 hr. 10 min**

#### **Part B    Group Presentations and Discussion**

The facilitator reconvenes the whole group. Each group has 10 minutes to present. (50 min)

A resource person comments and elaborates on the information provided by each group. (20 min)

**End of Activity ■**

## Worksheet 9: Working with International Instruments

**Issue:** \_\_\_\_\_

ICESCR	ICCPR	CEDAW	CERD	CRC	CAT

### Reference Sheet 4: International Covenant on Economic, Social and Cultural Rights

#### 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 June 9, 2004, 149 States have become parties to the Covenant (7 States are remaining signatories). Nepal ratified the ICESCR on August 14, 1991.

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, economic, social and cultural rights are most often accorded secondary status by governments and non-governmental organisations (NGOs).

However, economic, social and cultural rights are an indivisible part of human rights. First, economic, social and cultural rights have intrinsic value. They create the condition for enhancing a person's capability by eradicating deprivation. They expand the freedom to lead a life that we value. The potentialities of the human person may be expressed through civil and political rights but the unfolding of these potentialities requires adequate social and economic circumstances.

The concept of human dignity is the foundation for 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 and economic, social and cultural 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 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 Discriminations Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) incorporate protection of both sets of rights.

#### Violations of Economic, Social and Cultural Rights

The notion of violation which is applied vigorously to civil and political rights is normally not used regarding economic, social and cultural 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 right of the ICESCR. The Committee has clarified that a State party 'in which any

Thus, it can be construed that failure to fulfill minimum core obligations will be a violation of the rights enshrined in the ICESCR. However, the notion of violation of economic, social and cultural 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 economic, social and cultural 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.'

A State party will be in violation of the ICESCR, *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 realisation 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.'

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

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## Day 3 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

submit periodic reports to the Committee-within two years of the entry into force of the ICESCR 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 ICESCR. 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 ICESCR 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 ICESCR by issuing specific legislative, policy and other suggestions and recommendations such that economic, social and cultural rights are more effectively secured.

The Committee decided in 1988 to prepare "General Comments" on the rights and provisions contained in the ICESCR 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 ICESCR. The General Comments, the most recent being General Comment No. 15 on the right to water (2002), can be found on the UN's web site ([www.unhchr.ch](http://www.unhchr.ch)). Two other General Comments are currently pending with the Committee – one on the equal right of men and women to the enjoyment of ESC rights and the other on the right to work.

The Committee was the first treaty body to provide 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 ICESCR 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 obligation to ensure the equal rights of men and women includes affirmative action to eliminate conditions that contribute to discrimination.

## Article 4: Limitations

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

Article 2 (1) of the ICESCR states that,

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 realisation,' and 'by all appropriate means including particularly the adoption of legislative measures.'

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that the rights contained in the ICESCR do 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 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 concept of obligation of conduct and result provides an effective tool for monitoring the implementation of economic, social and cultural rights. It also shows that realisation of economic, social and cultural 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 (CAT). 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 realisation of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations 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 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 State 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 realisation of economic, social and cultural rights, they are incapable of immediate implementation. On the other hand, the Committee has stated that,

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

The Committee has made it clear that 'progressive realisation' 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 percolate to 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 realisation of human rights.

The Committee has also concluded that 'progressive realisation' 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.'

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

The notion that economic resources are essential for the implementation of economic, social and cultural 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 resource' 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 right of the Covenant. It has clarified that a State party 'in which an, 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.'

## Optional Protocol

The Committee on Economic, Social and Cultural Rights has been considering 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 in Vienna.

Upon the advice of an independent expert, the Commission on Human Rights established a Working Group for an Optional Protocol to the ICESCR. At the close of its 60th session in April 2004, the Commission on Human Rights approved the renewal for a further two years of the mandate of the open-ended Working Group to consider options regarding the elaboration of an Option Protocol to the ICESCR. This continues the process for the adoption of the Optional Protocol. Currently there is no mechanism for individual complaints when their rights under the ICESCR are violated. Mechanisms for individual complaints already exist under the ICCPR, CEDAW, CAT,

CERD and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, but several governments have resisted a similar move for the ICESCR. 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](mailto:webadmin.hchr@unog.ch)). Refer to **Appendix 8** for more information on the Optional Protocol.

## Rights Under the ICESCR

- Article 6: The right to work
- Article 7: 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)
- Article 12: The right to health
- Article 13: The right to education

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### Activity 4 National Provisions Relating to ESC Rights

#### Objective

To examine national provisions for the protection of ESC rights.

#### Time

1 hour

#### Description

This activity is divided into two parts.

In **Part A**, you will work in small groups to review constitutional provisions and national legislation relevant to addressing ESC rights issues.

In **Part B**, a resource person summarizes and comments on the information from the different groups.

20 min

#### **Part A Small Group Work**

1. The facilitator divides participants into small groups.
2. Together with the members of your group, determine which articles in the Constitution address **one (1)** of the violations of ESC rights identified in **Module 2, Activity 1**. List any relevant provisions from national legislation that you are aware of. Refer to **Appendix 4** for relevant provisions of the Constitution of Nepal.
3. Use the first table of **Worksheet 10** to record the information. Begin by listing the issues identified in **Module 2, Activity 1**, in the first column of the chart.
4. Once you have completed the first table of **Worksheet 10**, transfer the information from your discussion onto metacards and paste the metacards in the appropriate column of a flipchart version of **Worksheet 10**. Comment on obstacles to effective implementation of the provisions identified.

Cont'd ► ► ►

## 40 min

Using the information posted by participants on the flipchart version of **Worksheet 10**, a resource person comments on the information, highlighting strengths and weaknesses of the provisions. You can use the second table of **Worksheet 10** to take notes from the findings of the other groups. A resource person also comments on some obstacles to effective implementation of the provisions identified.

1. Are there any gaps in addressing violations of ESC rights between international standards and national provisions? If so, what are the gaps?
2. How can the gaps be addressed by the NHRC? By the government and civil society?
3. Do the national provisions favour an equitable distribution of power, responsibilities, and resources between men and women?

## End of Activity

## Day 3 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

### Worksheet 10: How ESC Rights Are Protected in Nepal

**Issue:** \_\_\_\_\_

Relevant national provisions (legal or constitutional)	Effectiveness of implementation of national provisions

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**Notes from the issues presented by the other groups:**

Issues identified in Module 2, Activity 1	Relevant national provisions (legal or constitutional)	Effectiveness of implementation of national provisions

## Day 4 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

### Activity 5 Using International and National Mechanisms for the Protection of ESC Rights

#### Objective

To practice using international and national mechanisms for the protection of ESC rights.

#### Time

2 hours 30 min

#### Description

This activity is divided into three parts.

In **Part A**, the resource person(s) will give a brief overview of the complaints mechanisms available at the international and national levels for the protection of ESC rights.

In **Part B**, you will practice using the mechanisms to address an ESC rights issue.

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

45 min

#### **Part A Presentations**

##### **1. Presentation on International Mechanisms**

A resource person presents the key international complaints mechanisms that may be used to address ESC rights violations and explains how and when they should be used.

These complaints mechanisms include:

- Individual complaints mechanisms under various treaty bodies
- Special Rapporteurs

Cont'd ► ► ►



### Activity 5 cont'd

## 2. Presentation on National Mechanisms

A resource person presents the key national mechanisms that may be used to address ESC rights violations and explains how and when they should be used.

These national mechanisms include:

- National Human Rights Commission
- Courts

### 3. Other Topics Presented

The resource person(s) also address:

- Admissibility criteria of each mechanism
- If, when, and how the international and national mechanisms can be used concurrently
- How to determine which mechanism(s) to use

1 hr.

## Part B Small Group Work

1. The facilitator divides participants into small groups.
2. Together with the members of your group, read the case study provided on **Worksheet 11 (Part 1 of the Worksheet)**.
3. Determine which international and/or national mechanism(s) you would use to address the ESC rights issues in the case study. The steps to follow are outlined on **Worksheet 11 (Part 2 and Part 3 of the Worksheet)**. Refer to the texts of the international instruments.
4. Record your answers on a flipchart version of **Worksheet 11**.
5. Choose a reporter to present the results of your discussion in **Part C**.

45 min

## Part C Large Group Discussion

Each group presents their findings and the facilitator leads a group discussion.

**End of Activity** ■

### Worksheet 11: Case Study on ESC Rights

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”. This case study focuses on the following types of ESC rights violations:

- Women’s rights
- Right to land and right to food

Participants will be divided into six (6) groups. Each group examines either 1) women’s rights, or 2) right to land and right to food.

The case study is divided into three parts:

- Part 1: A general overview of the “Kinori” minority and the issues of women’s rights and the right to land and the right to food.
- Part 2: The second part is an examination of the violations using a rights-based approach.
- Part 3: The third part is an analysis of the international mechanisms and national provisions that are most appropriate to use in this case.

## Worksheet 11 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 of their communities. Clean water and sanitations 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 mountainous West District of Lapeni a separate state. This group, known as the United

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Progressive Liberation Front (UPLF), started as a student's movement about 8 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.

### Women's Rights

Manisha is a 20 year old Kinori woman. Last year, Manisha lived in the village of Nagreb. Her family had a small plot of land on which they had lived and worked for generations. As a result of the acquisition of the land by the government to construct an army barrack, Manisha's family was forcibly evicted, along with other members of her community. They resettled in the village of Warka in the West District. Manisha and her family are now forced to find other ways to earn a living.

In Warka, land is held by few rich landowners who are mostly non-Kinori persons, while the labourers who toil on the land are mostly of the Kinori community. Manisha and her family were badly in need of money and food.

Through an older female friend, a Kinori widow named Anita, Manisha found work as a housekeeper in the house of Mahendra, a rich landowner in a neighbouring village. Manisha's work hours were usually 6 am to 9 pm six days a week. She lived and worked in Mahendra's house. She was paid low wages – less than the average wage earned by a Kinori man in a similar job, and much less than the average wage of a non-Kinori domestic worker. Manisha returned home to her family once a month and to bring her earning to them.

Mahendra, however, was physically and verbally abusive to Manisha. If she did anything even slightly wrong, or not to his high standards, he beat her with his fists or with iron rods. Manisha could not leave, as she knew her family needed the money. Within three months of the commencement of her employment, Manisha was raped by

Mahendra, and she became pregnant.

When Mahendra found out about the pregnancy, he wanted nothing to do with her and her baby and threatened to have her arrested by the police if she told anyone she was raped. He threw her out, and she returned home. Her family, upon knowing that she was pregnant, disowned her. Manisha went to Anita for help and there she stayed for some months.

After some time, Manisha began to feel unwell in her pregnancy. At this time, the UPLF had blocked all roads to the village of Warka and there were few supplies coming into the area. The UPLF had also declared a general bandh in Warka. Manisha went to the local Kinori doctor, but found his office closed because of the bandh. She then went to the house of another doctor nearby, but he refused to see her because she was Kinori. She went home, and with the untrained assistance of Anita, the baby was born, but because of complications and no proper facilities or medication, the baby died a few hours later.

## Right to Land and Right to Food

Arjun and Sushila are a married couple within the Kinori community. They have four children, two boys and two girls. They live on a plot of land owned by Raja Babu, one of the rich landowners in the village of Bawana in the West District of Lapeni.

Arjun's parents had also lived on the land. Years ago, Arjun's father took out a loan of Rs.7,000 to pay for his daughter's wedding. In return, Arjun's father agreed to live and work on Raja Babu's land as repayment of the interest. Raja Babu in return provided Arjun's family with a small share of the crops for food. This arrangement continued until the death of Arjun's parents. As the capital portion of the loan was never repaid, when his parents died Arjun was obliged to take over the debt. Raja Babu continued to have the same arrangement with Arjun and Sushila.

Arjun and Sushila continued to work on Raja Babu's land for very little food, and the repayment of the 'interest' on the debt which was provided to Arjun's father. Because of their poverty and marginalisation, this arrangement existed for many Kinori families in several villages in the West District.

Two years ago, the government of Lapeni passed legislation to “free” labourers who were in the situation of Arjun and Sushila. The legislation imposes a 10 year jail sentence and a Rs.10,000 fine for anyone who maintains “bonded labourers”. Consequently, Raja Babu threw Arjun and Sushil, and other Kinori labourers off his land. With nowhere to turn, they created a makeshift camp for themselves near a

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stream located on government land.

Despite the legislation in place, the desperate situation for Arjun and Sushila continues, as with many other Kinori families. The Kinori community continues to live in severe poverty in makeshift camps as they have no land, no food and no jobs. As ex-bonded labourers, without any land, it is difficult for Arjun and Sushila to get food to feed their family while residing in the camp. They are lucky if they have one meal per day. Two of their children are already sick and close to death. It is also very hard for Arjun to find a job, especially since the camp is so far from the road.

The process of being legally recognised as an ex-bonded labourer in order to receive support and other entitlements from the government is lengthy and arduous. Inconsistent policies are hindering the process of rehabilitation for many Kinori families. Without government-issued identity cards, without land, without proper housing and opportunities for the children of going to school, many of the Kinori community are left in a vacuum between legal and real freedom. The government of Lapeni will not take responsibility for the ex-bonded labourers until the paper procedures are settled, as they claim they cannot assist anyone who is residing illegally in the country. Without identity cards Arjun and Sushila cannot receive land, government housing, or any other form of government support. A clean water supply too is only for those certified with identity cards.

Those ex-bonded labourers who have received identity cards have a certified right to land and rehabilitation, including training, economic support for house building, as well as supplies of firewood, however, in reality even those with identity cards are still waiting for their land.

Over a few weeks, the food situation in the camp continued to get worse. Recently, however, a local NGO arranged to have food supplies brought into the camp for the ex-bonded labourers. This allowed Arjun, Sushila and their family to have some rice and at least one good meal a day. This lasted for about two weeks, until the UPLF blocked the roads leading to the village. Now, trucks of food and other needed supplies are prevented from entering the camp. In addition, Arjun cannot leave the camp in search of food or work in order to sustain his family because of fear of the UPLF.

Case Study adapted from:

1. International Human Rights Training Program (IHRTIP) Manual 2004. Published by the Canadian Human Rights Foundation.
2. *Caught between legal and real freedom* by Birgitte Lind Petersen, Danish Association for International Cooperation. Published in The Himalayan, August 2003.  
[www.msnepal.org/stories\\_articles/od/nov\\_03/caught\\_between.htm](http://www.msnepal.org/stories_articles/od/nov_03/caught_between.htm)

## Worksheet 11 cont'd

## Part 2: Examination of the Violations

Examine the events presented in the case study using a rights-based approach. For each event determine the specific rights issues, the victims and violators, the respective international instruments to address the issues and the corresponding State and/or non-state obligations. Record your answers in the table below.

**Worksheet 11, Table 1: Analysis of State and Non-State Obligations**

Issue (specify women's rights OR right to land and right to food):

Specific human rights issues	Victim/Violator	Relevant International Instruments	State and/or non-state obligations

## Day 4 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

### Worksheet 11 cont'd

#### Part 3: Analysis of the International and National Mechanisms

Answer the questions below with respect to the international and national mechanisms to use with respect to this case.

##### Questions to address:

1. What are the available international and national mechanisms given the facts of this case?

2. Which of these mechanism(s) would be the most effective to use?

3. What additional information do you need to present this case to an international mechanism? To a national mechanism?



## Module 6: Monitoring ESC Rights

Activity 1	Challenges with Monitoring ESC Rights	2 hours
Activity 2	Best Practices in Monitoring ESC Rights	2 hours 30 min



## Day 4 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

### Activity 1 Overview of Monitoring ESC Rights

#### Objective

To provide an overview of monitoring ESC rights.

#### Time

2 hours

#### Description

This activity is divided into three parts.

In **Part A**, there will be a presentation by the resource person.

In **Part B**, you will work in “buzz groups”.

In **Part C**, you will carry out a discussion.

45 min

#### **Part A Presentation**

In his/her presentation, the resource person will address the following issues:

- Goals and objectives of monitoring
- Differences between a violations approach to monitoring and progressive realisation
- The importance of systematic approaches
- Tools for monitoring progressive realisation: benchmarks, indicators, budget analysis, reporting

Questions to consider during the presentation and discussion:

1. In what ways might monitoring ESC rights be different from monitoring civil and political rights?
2. How does the current conflict in Nepal affect monitoring of ESC rights?

Cont'd ► ► ►

### Activity 1 cont'd

15 min

## Part B “Buzz Groups”

You form “buzz groups” with the people sitting next to you to discuss the presentation and identify two questions for the resource person to answer. Refer to **Reference Sheets 5 and 6** for more information on monitoring.

1 hr.

## Part C Group Discussion

There is a discussion of the questions presented by the “buzz groups” and the resource person responds to the questions raised.

**End of Activity** ■

### Reference Sheet 5: What Monitoring Involves

#### Monitoring

Monitoring means the close observation of a certain situation or individual case to find out what is going on or what is going wrong in order to determine what further action needs to be taken.

**Human rights monitoring** involves systematically tracking activities and actions of institutions, organisations and government bodies to ensure compliance with human rights standards. Human rights monitoring includes gathering information about incidents, observing events (elections, trials, demonstrations, etc.), visiting sites such as places of detention and refugee camps, discussions with government authorities to obtain information and to pursue remedies and other immediate follow-up.

The main purpose of monitoring is to provide a basis for action in a certain situation or case.

#### Types of monitoring

Guzman and Verstappen identify two types of monitoring: situation monitoring and case monitoring. Under each kind, there can be various forms, as summarised below:

Situation monitoring	Case monitoring
<ul style="list-style-type: none"> <li>• Human rights violations</li> <li>• Drafting and passing of legislation</li> <li>• Implementation of laws and policies</li> <li>• Establishment and progress of human rights institutions</li> </ul>	<ul style="list-style-type: none"> <li>• Legal proceedings of a case</li> <li>• Relief and rehabilitation services provided to a client</li> <li>• Other forms of intervention in a case</li> </ul>

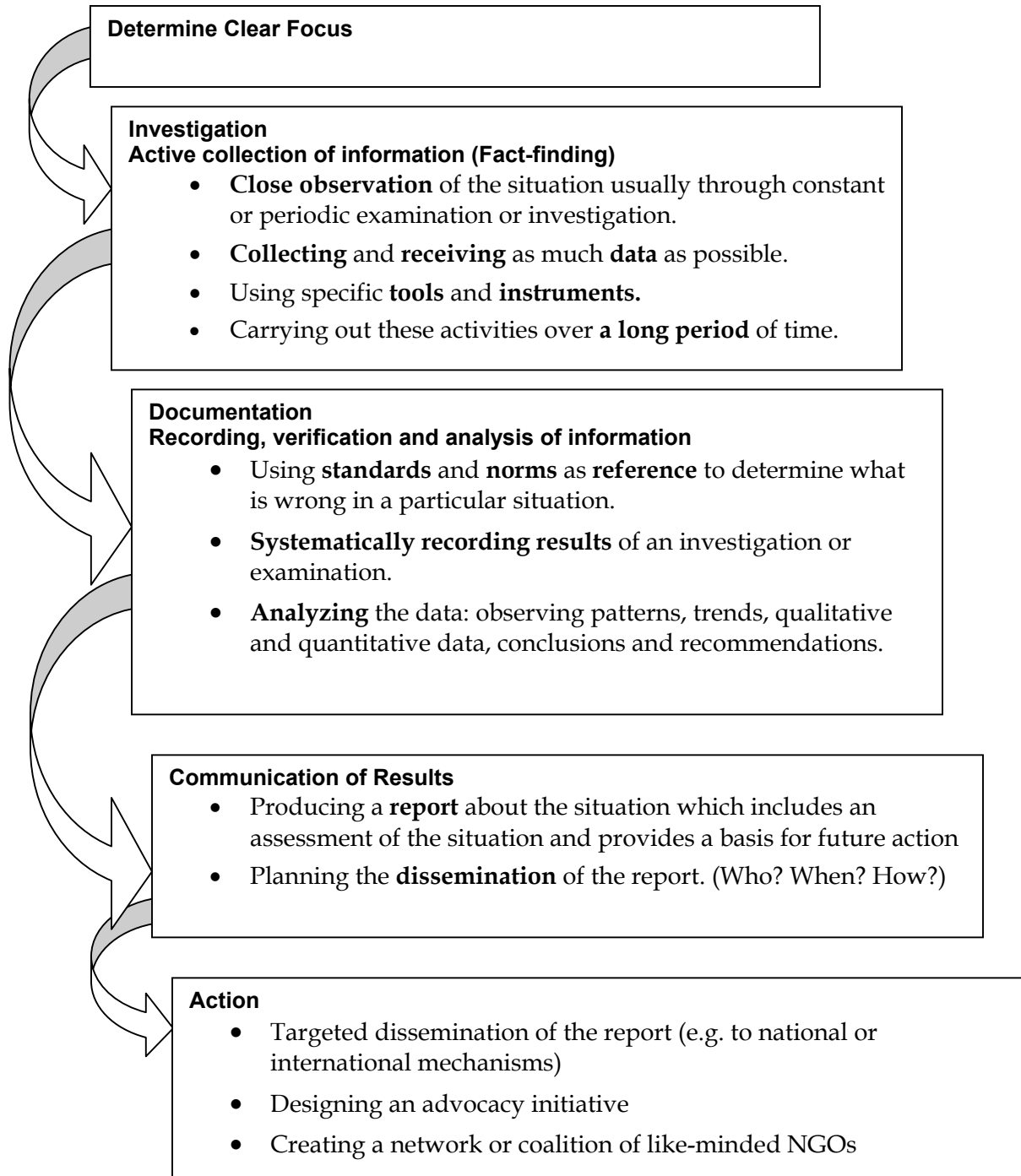
**Situation monitoring** focuses on a situation in general. Many human rights groups produce reports that describe and analyse the occurrence of violations in a country. Aside from documentation of events, a situation report may also include an assessment of the progress of a country in terms of relevant human rights legislation and the performance of human rights institutions.

**Case monitoring** is victim-focused and victim-oriented. Case monitoring is consistent work for or on behalf of a client, whether an individual victim or a group of victims, such as in pursuing justice or in providing medical attention. Following and documenting the developments in the case of a client is an essential and integral part of casework.

Adapted from: Training Manual on Human Rights Monitoring, Professional Training Series No. 7. (2001). New York and Geneva: United Nations.

Guzman, M., & Verstappen, B. (2001). What is Monitoring: Human Rights Monitoring and Documentation. Versoix, Switzerland: Human Rights Information and Documentation Systems, International (HURIDOCs).

## Reference Sheet 6: Monitoring Process



Adapted from: Guzman, M., & Verstappen, B. (2001). What is Monitoring: Human Rights Monitoring and Documentation. Versoix, Switzerland: Human Rights Information and Documentation Systems, International (HURIDOCs).

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### Activity 2 Best Practices in Monitoring ESC Rights

#### Objective

To exchange best practices between organisations for monitoring ESC rights.

#### Time

2 hours 30 min

#### Description

Many participants already have experience in monitoring human rights violations (either civil, political, economic, social or cultural). This activity provides the opportunity for some participants to share their experiences in monitoring with the other participants.

This activity is divided into four parts.

In **Part A**, three participants will share their experiences in monitoring ESC rights with the other members of the group.

In **Part B**, participants will ask questions to the three presenters.

In **Part C**, participants will work in small groups to analyse each of the experiences presented.

In **Part D**, there will be a large group discussion based on the findings of the small groups.

30 min

#### **Part A Presentations**

Three participants share their experiences (cases) in monitoring ESC rights (10 min each). Each participant bases his or her presentation on the monitoring process outlined in **Reference Sheet 6**:

Cont'd ► ► ►

## Activity 2 cont'd

1. A clear focus
2. Investigation – active collection of information
3. Documentation – recording, verification and analysis of information
4. Communication of results
5. Action
6. Reflections on the monitoring *process* and *results*

You can use **Worksheet 12** to take notes from the presentations.

30 min

## Part B Question and Answer Period

The rest of the participants have the opportunity to ask the presenters questions about their monitoring examples.

45 min

## Part C Small Group Work

1. The facilitator divides participants into three groups. Each group is assigned one of the three cases presented in Part A.
2. Together with the members of your group, answer the questions in **Worksheet 12** to determine the obligations of State and non-state actors in this case.
3. Then, using **Worksheet 13**, discuss a framework for progressive realisation of one of the obligations of the State in the case.

45 min

## Part C Presentations and Large Group Discussion

Each group presents their findings to the large group and the facilitator leads a discussion.

**End of Activity ■**

**Worksheet 12: Analysis of Case Studies for Monitoring ESC Rights**

**Notes on the presentations:**

Presentation 1

Presentation 2

Presentation 3



**Case Study:** \_\_\_\_\_

### Questions to address:

1. What are some of the relevant obligations of the State and non-state actors in this case? List them below.
2. Does it appear that the State is meeting its obligations to protect, promote, respect, and fulfill these rights? Is the State taking appropriate steps to achieve full realisation of the rights in question? Explain.
3. Are there non-state actors involved? If so, what are their obligations? (Refer to **Appendix 7** for more information on non-state actors.)

## Day 4 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

### Worksheet 13: Monitoring Progressive Realisation

Use this Worksheet to describe the progressive realisation of one of the State obligations you identified in the previous Worksheet.

**State Obligation:** \_\_\_\_\_

#### 1. Set benchmarks

- Explain the process the NHRC would follow to set benchmarks for monitoring this case
- Assess if the information from your source is sufficient
- If the information is not sufficient, determine how to obtain the additional necessary information
- Determine who should be involved in this process and explain why

## 2. Develop indicators

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>▪ Describe the indicators that would be used to monitor progressive realisation</li> <li>▪ Determine who should be involved in developing the indicators and explain why</li> </ul> |  |
|--|--|

### 3. Collect data

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>▪ Identify some of the important steps in the data collection process</li> <li>▪ Determine who should be involved and why</li> </ul> |  |
|---|--|

#### 4. Formulate policy objectives

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>▪ Examine how the NHRC could use its monitoring to promote legislative and policy change</li> <li>▪ Explore strategies for human rights education</li> <li>▪ Determine who should be involved and why</li> </ul> |  |
|---|--|



## Module 7: Strategies for the Promotion and Protection of ESC Rights

Activity 1	Strategies for the Promotion and Protection of ESC Rights	4 hours
Activity 2	Next Steps	1 hour 30 min



## Day 5 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

### Activity 1 Strategies for the Promotion and Protection of ESC Rights

#### Objectives

To develop strategies for the NHRC, the government and civil society to protect and promote ESC rights. To discuss future project activities, including a) the Regional Workshops and b) the Working Groups.

#### Time

4 hours

#### Description

Throughout the workshop, you have had the opportunity to examine ESC rights issues and ways in which these issues may be addressed. Your “ESC Rights Workbook” provided you with a framework to analyse some of the issues and ideas presented. This happens at two levels:

1. **Individually.** Now that you have completed the workshop, how will you incorporate some of the issues/ideas presented in your work? How will this increase your capacity to address ESC rights?
2. **In collaboration with other participants.** How will the regional workshops and the working groups contribute to building the capacity of the NHRC, the government and civil society in relation to the protection and promotion of ESC rights?

This activity will enable you to identify strategies for implementation at both levels.

Cont'd ► ► ►

### Activity 1 cont'd

This activity is divided into four parts.

In **Part A**, you will work individually to reflect on ways you will implement the issues/ideas gained from this workshop.

In **Part B**, you will share your ideas with other members of the group.

In **Part C**, you will work in groups to develop strategies for the promotion and protection of ESC rights through a) the Regional Workshops and b) the Working Groups.

In **Part D**, you will present your findings to the larger group and the facilitator will lead a group discussion on the findings.

30 min

### Part A Work Individually

Work individually to summarise your work in your “ESC Workbook” and prepare to present it to other members of the group in Part B. Use **Worksheet 14** to take notes.

**1 hr.**

## Part B Small Group Discussion

1. The facilitator divides participants into small groups (NHRC, government, and civil society).
2. Each group member presents a summary of their “ESC Rights Workbook” to the other members of the group and responds to questions and feedback.

**1 hr. 30 min**

## Part C Small Group Work on Strategies

The facilitator divides participants into small groups. Each group conducts a brainstorming session on a) the Regional Workshops and b) Working Groups. Use **Worksheet 15** to take notes.

**1 hr.**

## Part D Large Group Discussion

Each group presents their findings.

The facilitator leads a discussion on the work presented by the participants.

## End of Activity ■

**Worksheet 14: Summary of the ESC Rights Workbook**

**Has your perception changed about the way you view your work?**

**What are some concrete examples of how your work will change now that you have participated in this workshop?**



## Worksheet 15: Strategies for Protection and Promotion of ESC Rights

Use this worksheet to identify areas of cooperation to develop strategies for protecting and promoting ESC rights. **Target areas** identified in the NHRC's mandate:

1. Conducting inquiries and investigations
2. Handling of complaints
3. Inspecting government organisations with respect to functions, procedures, facilities
4. Making recommendations with respect to the Constitution
5. Making recommendations for the effective implementation of international treaties
6. Conducting research in human rights
7. Conducting human rights education
8. Encouraging NGOs in their human rights work
9. Evaluating current human rights situation
10. Making recommendations to HMG
11. Carrying out activities for the enforcement, protection and promotion of human rights

**Cont'd** ▶ ▶ ▶

## Day 5 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

### *Worksheet 15 cont'd*

**Notes on the Regional Workshops:**

**Worksheet 15 cont'd**

### Notes on the Working Groups:

## Day 5 ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

### Activity 2    Next Steps

#### Objective

To determine the next steps in the project.

#### Time

1 hour 30 min

#### Description

The facilitator will lead a discussion on the next steps of the project.

**End of Activity ■**

# Workshop Evaluation

## Time

30 min

### Description

Participants evaluate the workshop.



# Appendices

Appendix 1	Participatory Training Approach
Appendix 2	The Paris Principles
Appendix 3	Human Rights Commission Act, Kingdom of Nepal
Appendix 4	Excerpts from in the Constitution of Nepal
Appendix 5	Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights
Appendix 6	Masstricht Guidelines on Violations of Economic, Social and Cultural Rights
Appendix 7	Holding Non-State Actors Accountable
Appendix 8	Proposed Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

## Appendices ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

### Appendix 1: Participatory Training Approach

#### Underlying Beliefs

People learn more effectively when:

- their own capacity and knowledge is valued
- they are able to share and analyse their experiences in a safe and collective environment
- they are active participants in the learning process

#### Some Assumptions About a Learning Event (program, workshop, activity)

1. Much of the content comes from the participants - the agenda or the program provides the framework for drawing out this content
2. Participants bring analysis and experience to the program
3. Participants will take responsibility for their own learning and interaction with other participants
4. Everyone will participate fully in the sessions
5. There will be tolerance of differences in approaches and strategies

#### Some Assumptions About Ourselves as Educators

1. We know less than the participants to our programs, about their particular social context
2. Who we are, has been shaped by our particular knowledge, experience, perspectives
3. We bring a knowledge of theory and practice of participatory education and will contribute it as appropriate

#### The Curriculum Design Model

What we understand about education is reflected in how we carry out our work.

The "design model", which we use in planning our programs incorporates what we know about effective adult education. This model suggests that:

1. Learning begins with the experience or knowledge of the participants



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### Appendix 2: The Paris Principles

#### 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;

- ## Composition and guarantees of independence and pluralism

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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.

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:

- 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.

## Appendices ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

### Appendix 3: Human Rights Commission Act, Kingdom of Nepal

#### Preamble:

Whereas, it is expedient to establish an independent and autonomous National Human Rights Commission for the effective enforcement as well as protection and promotion of Human Rights conferred by the Constitution and other prevailing laws;

Be it enacted by Parliament in the twenty-fifth year of the reign of His Majesty the King Birendra Bir Bikram Shah Dev.

#### Chapter - 1

##### Preliminary

##### 1. Short Title and Commencement:

- 1) This Act may be called "The Human Rights Commission Act, 2053 (1997)".
- 2) This Act shall come into force at once.

##### 2. Definitions: In this Act, unless the subject or context otherwise requires:

- a) "Commission" means the National Human Rights Commission constituted under Section 3.
- b) "Constitution" means the Constitution of the Kingdom of Nepal, 2047 (1990).
- c) "Chairperson" means the Chairperson of the Commission and this term also includes the Member of the Commission who acts as an Acting Chairperson pursuant to Section 20.
- d) "Member" means the Member of the Commission and this term also includes the Chairperson.
- e) "Secretary" means the Secretary of the Commission.
- f) "Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution and other prevailing laws and such other rights as are embodied in the international treaties relating to human rights to which Nepal is a party.
- g) "Prescribed" or "As prescribed" means prescribed or as prescribed in the Rules framed under this Act.

## Chapter - 2

## Provisions relating to the constitution of the Commission and terms of service of Members

### 3. Establishment and constitution of the Commission:

1. The National Human Rights Commission comprising the following Chairperson and Members shall be established and constituted:
  - a) One person from amongst the retired Chief Justices or Judges of the Supreme Court – Chairperson
  - b) Three persons from amongst persons who have rendered an outstanding contribution in the field of law, human rights, social work or communications and journalism, ensuring representation from all the fields to the extent possible – Members
  - c) One person from amongst the retired persons who have served in any office of constitutional bodies or who have served in the capacity of special class officer of His Majesty's Government – Member
2. In addition to the qualification referred to in sub-section (1) a person eligible for appointment as the Chairperson or Member must possess the following qualifications:
  - a) Be a citizen of Nepal
  - b) Have attained forty years of age
  - c) Not convicted by a court of any criminal offence involving moral turpitude.
3. The person once appointed as Member of the Commission shall not be eligible for appointment to any other government service.
4. The Chairperson or Member of the Commission shall not be entitled to carry on professional business as long as he/she holds office in the Commission.
5. The Commission shall be a body with perpetual succession.
6. The Commission shall have a separate seal of its own.
7. The Commission may, like an individual, acquire, use, sell, dispose of or otherwise deal with movable, immovable property.
8. The Commission may, like an individual, sue and be sued in its own name.

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### 4. Appointment of Chairperson and Member:

- 1) His Majesty the King shall, upon the recommendation of the Recommendation Committee constituted pursuant to sub-section (2), appoint the Chairperson and Members of the Commission.
- 2) For the purpose of recommending the appointment of the members of the Commission there shall be a Recommendation Committee consisting of the following office holders:
  - a) The Prime Minister Chairperson
  - b) The Chief Justice Member
  - c) The Leader of the Opposition in the House of Representative Member
- 3) The Committee constituted pursuant to sub-section (2) may regulate its own working procedures.
- 4) It shall be the responsibility of the Chief Secretary of His Majesty's Government to make necessary arrangements for holding the meetings of the committee mentioned in sub-section (2).

5. Terms of Office of Members: The term of office of the Members shall be five years from the date of appointment. They shall be eligible for reappointment.

6. Vacancy of Office: The office of a Member shall be vacant in the following circumstances:-

- a) In case of death ,
- b) In case of resignation accepted by His Majesty the King,
- c) In case of Completion of the term of office under section 5,
- d) If the Human Rights Committee of the House of Representatives, by a two-thirds majority of the meeting attended by at least two-third members of its total members, adopts a resolution that any Member of the Commission is not fit to hold office by reasons of incompetence or misbehavior, and the resolution so adopted is approved by the House of Representatives.  
Provided that a Member so charged shall be given a reasonable opportunity to defend himself /herself in the Human Rights Committee of the House of Representatives.

7. Conditions of Service of Members: The remuneration, facilities and other conditions of service of the Chairperson and Members of the Commission shall be as prescribed,



### 8. Meetings of the Commission:

- ## Chapter - 3

## Provisions Relating to the Functions and Procedures of the Commission

## 9. Functions and Duties of the Commission:

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## Appendices

- b) Inquiries in or investigations on the matters mentioned in clause (a) conducted by the Commission itself or caused to be conducted through any person or an authority or employee of HMG in accordance with the directions of the Commission and submit the report to the Commission,
- c) Order a petition or a complaint to be filed by giving reasons therefore if the Commission finds such a petition, complaint or information has no basis or is of such a nature that it cannot be enforced by the courts of Nepal,
- d) Inquire into a matter with the permission of the court in respect of any claim on violations of human rights which is sub-judice in the court,
- e) Visit, inspect and observe any authority, jail or any organization under His Majesty's Government and to submit necessary recommendations to His Majesty's Government on the reform to be made on the functions, procedures and physical facilities which may be necessary for such an organization for the protection of human rights,
- f) Review the provisions on safeguards provided by the Constitution and other prevailing law for the enforcement of human rights and submit necessary recommendations for the effective implementation of such provisions,
- g) Study international treaties and instruments on human rights and submit the necessary and appropriate recommendations to His Majesty's Government for effective implementation of the related provisions,
- h) Undertake or cause to be undertaken research in the field of human rights,
- i) Publicize and propagate human rights education among the various sections of society through various seminars, symposia, conferences and also build consciousness and awareness about the guarantees bestowed by law for the protection of human rights,
- j) To encourage the functioning and efforts of institutions working in the non-governmental sector,
- k) Evaluate the existing human rights situation of the country,
- l) Make necessary recommendations to His Majesty's Government regarding reports to be furnished by Nepal pursuant to the provisions of international treaties on human rights and

- (3) On the matter of Nepal's obligation to furnish reports under international treaties on human rights, His Majesty's Government shall furnish reports upon receiving the opinion of the Commission thereon.

(a) Any matter within the jurisdiction of the Military Act,  
Provided that nothing will bar the Commission from carrying out the functions  
mentioned in this Act on a matter in respect of which the court may exercise its  
jurisdiction pursuant to the Constitution and the prevailing law.

(c) Any matter certified by the Attorney General that it may have adverse effect on the conduct of an inquiry and investigation being carried out in accordance with the law for the purpose of identifying the crime or the criminal.

1. The Commission shall, while inquiring into the petition or complaints or reports within its jurisdiction, have the same powers as a court may have under the prevailing laws of Nepal in respect of the following matters:-

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1. The Commission may prescribe such limitation of time, as it may think fit for attendance of any person, production of any document or evidence pursuant to sub-section (1).
  2. In case, the Commission has the reasonable grounds to believe that any thing or document relating to the subject matter of its inquiry or investigation is in possession of any person or is in any place, it may, in pursuant to the existing law of Nepal, search or cause to be searched such person or place and seize or cause to be seized any such material or take or cause to be taken extracts or copies or duplicates of such document.
  3. The Commission may, if it thinks necessary, conduct a public hearing during its inquiry about any incident.
  4. The Commission may send along with special stricture to His Majesty's Government or authorized body or authority to take action against a person who does not send the documents or necessary evidences required by the Commission in connection with an inquiry or who does not cooperate in carrying out the Commission's functions or a person who does not appear before the Commission on being summoned.
  5. The Commission may, as required constitute committees or sub-committees to carry out its functions required to be performed by it under this Act, and the functions, duties and powers of such committees or sub-committees and allowances and facilities to be received by the members of such committees or sub-committees shall be as prescribed by the Commission.
  6. The Commission may, as required, avail itself of the services of experts or specialized agencies on a concerned subject. The service, condition and facilities of the experts rendering such a service shall be as prescribed by the Commission.
12. Complaints and Proceedings Relating to Violation of Human Rights: The procedures for filing complaints about violations of human rights and other proceedings relating thereto shall be as prescribed.
13. Process for Implementation of Decisions of the Commission:
- (1) If, during proceedings by the Commission on the complaints and petitions filed within its jurisdiction pursuant to Section 11, the accused is found guilty, it shall write to the organization or authority concerned to take necessary action against the guilty person.
  - (2) While writing pursuant to sub-section (1), if the Commission thinks it necessary to provide the victims with necessary compensation it shall also mention the nature of compensation in its recommendation.

- #### 14. To Submit Reports:

- (2) Each year the Commission shall prepare its annual report on its activities and submit it to His Majesty the King and His Majesty the King shall cause such report to be laid before the Parliament.
- (3) Each year the Commission shall publish details of the activities carried out by it for the purpose of public information, provided that if the Commission deems it necessary, it may publish these details at any time.

## 15. Financial Management:

- 1) The Commission may obtain such means and resources from different agencies by way of grants as are required for the performance of its functions.
- 2) The Commission may receive financial assistance with a view to enable itself to carry out the functions mentioned in Section 9.
- 3) The amount of financial assistance received pursuant to sub-section (2) shall be expended in accordance with the terms agreed upon between the donor agency and the Commission.
- 4) The Commission shall maintain accounts of its income and expenditure and other relevant records in accordance with the prevailing law.
- 5) The accounts of the Commission shall be audited by the Auditor General.
- 6) Other matters concerning the financial management of the Commission shall be as prescribed.

## Chapter - 4

## Miscellaneous

16. Office of the Commission: The Central Office of the Commission shall be located in the Kathmandu Valley. The Commission may when necessary set up branch offices in different areas in the Kingdom of Nepal.

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### 17. Secretary:

- (2) There shall be appointed a Secretary in the Commission.
- (3) The Secretary shall be appointed by His Majesty on the recommendation of the Commission. The terms of office, service, conditions and other facilities of the Secretary shall be equivalent to that of the Secretary of His Majesty's Government.

### 18. Employees of the Commission:

- (1) The Commission may appoint employees as may be required to carry out its functions, and the service, terms and facilities of the employees so appointed shall be as prescribed.
- (2) Notwithstanding anything contained in sub-section (1), the Commission may request His Majesty's Government to provide employees required by it. It shall be the duty of His Majesty's Government to so provide.
- (3) In case the Commission requests any government office for assistance in the performance of its functions, the office so requested must provide the required assistance.

19. Delegation of Powers: The Commission may delegate any of the powers conferred on it under this Act to the Chairperson or any Member or employee of the Commission or to an officer of His Majesty's Government or to the committee or sub-committee that may be constituted under this Act or to any person.

20. Acting Chairperson: In the event of vacancy of the Chairperson, His Majesty may authorize the senior Member of the Commission to act as Acting Chairperson until a new Chairperson is appointed.

21. Oath: Before assuming office, the Chairperson shall take an oath before His Majesty the King, similarly the Members will take the Oath before the Chairperson in the manner as specified in the Schedule of this Act.

22. Communication with His Majesty's Government: All communications of the Commission to His Majesty's Government shall be channeled through the Secretariat of the Council of Ministries.

23. Framing of Rules: The Commission may, in order to carry out the objectives of this Act, frame necessary rules. While doing so the Commission may consult His Majesty's Government.

Provided that in making rules relating to remuneration and facilities, His Majesty's Government shall be required to be consulted.

24. Saving: No suit or legal proceeding shall be instituted against the Commission or the Chairperson or a Member or an employee or any person designated by the Commission

## Appendices

I, ... .. swear in the name of god/solemnly affirm that I will bear loyalty to the Constitution of the Kingdom of Nepal, 1990 and faithfully discharge the responsibility and duty of the office of Chairperson/Member assumed by me, without fear, favour, partiality, ill-will or greed and that I will not communicate or divulge any matter which becomes known to me in the course of discharge of my duties in any circumstance whether I shall be holding office or not, except in pursuance of the prevailing law.

Date of Royal Seal :- 2053-9-24-4 (8 January, 1997)

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### Appendix 4: Excerpts from the Constitution of Nepal

WHEREAS, We are convinced that the source of sovereign authority of the independent and sovereign Nepal is inherent in the people, and, therefore, We have, from time to time, made known our desire to conduct the government of the country in consonance with the popular will;

AND WHEREAS, in keeping with the desire of the Nepalese people expressed through the recent people's movement to bring about constitutional changes, we are further inspired by the objective of securing to the Nepalese people social, political and economic justice long into the future;

AND WHEREAS, it is expedient to promulgate and enforce this Constitution, made with the widest possible participation of the Nepalese people, to guarantee basic human rights to every citizen of Nepal; and also to consolidate Adult Franchise, the Parliamentary System of Government, Constitutional Monarchy and the System of Multi Party Democracy by promoting amongst the people of Nepal the spirit of fraternity and the bond of unity on the basis of liberty and equality; and also to establish an independent and competent system of justice with a view to transforming the concept of the Rule of Law into a living reality:

NOW, THEREFORE, keeping in view the desire of the people that the State authority and sovereign powers shall, after the commencement of this Constitution, be exercised in accordance with the provisions of this Constitution, I, KING BIRENDRA BIR BIKRAM SHAH DEVA, by virtue of the State authority as exercised by Us, do hereby promulgate and enforce this CONSTITUTION OF THE KINGDOM OF NEPAL on the recommendation and advice, and with the consent of the Council of Ministers.

#### **PART 1: PRELIMINARY**

##### 1. Constitution as the Fundamental Law:

- (1) This Constitution is the fundamental law of Nepal and all laws inconsistent with it shall, to the extent of such inconsistency, be void.
- (2) It shall be the duty of every person to uphold the provisions of this Constitution.



## 11. Right to Equality:

- Provided that special provisions may be made by law for the protection and advancement of the interests of women, children, the aged or those who are physically or mentally incapacitated or those who belong to a class which is economically, socially or educationally backward.

- ## 12. Right to Freedom:

- Provided that -

## Appendices

(1) nothing in sub-clause (a) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of the Kingdom of Nepal, or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes or communities, or on any act of sedition, defamation, contempt of court or incitement to an offence; or on any act which may be contrary to decent public behaviour or morality;

(2) nothing in sub-clause (b) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty, integrity or law and order situation of the Kingdom of Nepal;

(3) nothing in sub-clause (c) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of the Kingdom of Nepal, which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes or communities, which may instigate violence, or which may be contrary to public morality;

(4) nothing in sub-clause (d) shall be deemed to prevent the making of laws which are in the interest of the general public, or which are made to impose reasonable restrictions on any act which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes or communities;

(5) nothing in sub-clause (e) shall be deemed to prevent the making of laws to impose restriction on any act which may be contrary to public health or morality, to confer on the State the exclusive right to undertake specified industries, businesses or services; or to impose any condition or qualification for carrying on any industry, trade, profession or occupation.

### 13. Press and Publication Right:

(1) No news item, article or any other reading material shall be censored. Provided that nothing shall prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of the Kingdom of Nepal, or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes or communities; or on any act of sedition, defamation, contempt of court or incitement to an offence; or on any act against which may be contrary to decent public behaviour or morality.

(2) No press shall be closed or seized for printing any news item, article or other reading material.

(3) The registration of a newspaper or periodical shall not be canceled merely for publishing any news item, article or other reading material.

(1) No person shall be punished for an act which was not punishable by law when the act was committed, nor shall any person be subjected to a punishment greater than that prescribed by the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted or punished for the same offence in a court of law more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

(4) No person who is detained during investigation or for trial or for any other reason shall be subjected to physical or mental torture, nor shall be given any cruel, inhuman or degrading treatment. Any person so treated shall be compensated in a manner as determined by law.

(5) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall be denied the right to consult and be defended by a legal practitioner of his choice.

Explanation: For the purpose of this clause, the words "legal practitioner" shall mean any person who is authorised by law to represent any person in any court.

(6) Every person who is arrested and detained in custody shall be produced before a judicial authority within a period of twenty-four hours after such arrest, excluding the time necessary for the journey from the place of arrest to such authority, and no such person shall be detained in custody beyond the said period except on the order of such authority.

(7) Nothing in clauses (5) and (6) shall apply to a citizen of an enemy state, and nothing in clause (6) shall apply to any person who is arrested or detained under any law providing for preventive detention.

(1) No person shall be held under preventive detention unless there is a sufficient ground of existence of an immediate threat to the sovereignty, integrity or law and order situation of the Kingdom of Nepal.

(2) Any person held under preventive detention shall, if his detention was contrary to law or in bad faith, have the right to be compensated in a manner as prescribed by law.

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### 16. Right to Information:

Every citizen shall have the right to demand and receive information on any matter of public importance;

Provided that nothing in this Article shall compel any person to provide information on any matter about which secrecy is to be maintained by law.

### 17. Right to Property:

(1) All citizens shall, subject to the existing laws, have the right to acquire, own, sell and otherwise dispose of, property.

(2) The State shall not, except in the public interest, requisition, acquire or create any encumbrance on, the property of any person.

(3) The basis of compensation and procedure for giving compensation for any property requisitioned, acquired or encumbered by the State for in the public interest, shall be as prescribed by law.

### 18. Cultural and Educational Right:

(1) Each community residing within the Kingdom of Nepal shall have the right to preserve and promote its language, script and culture.

(2) Each community shall have the right to operate schools up to the primary level in its own mother tongue for imparting education to its children.

### 19. Right to Religion:

(1) Every person shall have the freedom to profess and practise his own religion as handed down to him from ancient times having due regard to traditional practices; provided that no person shall be entitled to convert another person from one religion to another.

(2) Every religious denomination shall have the right to maintain its independent existence and for this purpose to manage and protect its religious places and trusts.

### 20. Right against Exploitation:

(1) Traffic in human beings, slavery, serfdom or forced labour in any form is prohibited. Any contravention of this provision shall be punishable by law; Provided that nothing herein shall be a bar to providing by law for compulsory service for public purposes.

## 21. Right against Exile:

## 22. Right to Privacy:

## 23. Right to Constitutional Remedy:

## PART 4: DIRECTIVE PRINCIPLES AND POLICIES OF THE STATE

## 24. Application of Directive Principles and Policies:

(2) The principles and policies contained in this part shall be fundamental to the activities and governance of the State and shall be implemented in stages through laws within the limits of the resources and the means available in the country.

## 25. Directive Principles of the State:

(2) The fundamental economic objective of the State shall be to transform the national economy into an independent and self-reliant system by preventing the available means and resources of the country from being concentrated within a limited section of society, by making arrangements for the equitable distribution of economic gains on the basis of social justice, by making such provisions as will prevent economic exploitation of any class or individual, and by giving preferential treatment and encouragement to national enterprises, both private and public .

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social inequalities and by establishing harmony amongst the various castes, tribes, religions, languages, races and communities.

(4) It shall be the chief responsibility of the State to maintain conditions suitable to the enjoyment of the fruits of democracy through wider participation of the people in the governance of the country and by way of decentralisation, and to promote general welfare by making provisions for the protection and promotion of human rights, by maintaining tranquility and order in the society.

(5) The State, in its international relations, shall be guided by the objective of enhancing the dignity of the nation in the international arena by maintaining the sovereignty, integrity and independence of the country.

### 26. State Policies:

(1) The State shall pursue a policy of raising the standard of living of the general public through the development of infrastructures such as education, health, housing and employment of the people of all regions by equitably distributing o investment of economic resources for balanced development in the various geographical regions of the country.

(2) The State shall, while maintaining the cultural diversity of the country, pursue a policy of strengthening the national unity by promoting healthy and cordial social relations amongst the various religions, castes, tribes, communities and linguistic groups, and by helping in the promotion of their languages, literatures, scripts, arts and cultures.

(3) The State shall pursue a policy of mobilising the natural resources and heritage of the country in a manner which might be useful and beneficial to the interest of the nation.

(4) The State shall give priority to the protection of the environment and also to the prevention of its further damage due to physical development activities by increasing the awareness of the general public about environmental cleanliness, and the State shall also make arrangements for the protection of the rare wildlife, the forests and the vegetation.

(5) The State shall create conditions for the economic progress of the majority of the people, who are dependent on agriculture, by introducing measures which will help in raising productivity in the agricultural sector and develop the agricultural sector on the principles of industrial growth by launching land reform programmes.

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relations in the economic, social and other spheres on the basis of equality with neighbouring and all other countries of the world.

### **PART 11 : JUDICIARY**

#### **84. Courts to Exercise Powers Related to Justice:**

Powers relating to Justice in the Kingdom of Nepal shall be exercised by courts and other judicial institutions in accordance with the provisions of this Constitution, the laws and the recognized principles of justice.

#### **85. Courts of Kingdom of Nepal:**

(1) Courts in the Kingdom of Nepal shall consist of the following three tiers:

- (a) Supreme Court,
- (b) Appellate Court; and
- (c) District Court.

(2) In addition to the Courts referred to in clause (1) above, the law may also establish special types of courts or tribunals for the purpose of hearing special types of cases:

Provided that no special court or tribunal shall be constituted for the purpose of hearing a particular case.

#### **86. Supreme Court:**

(1) The Supreme Court shall be the highest court in the judicial hierarchy. All other courts and judicial institutions of Nepal, other than the Military Court, shall be under the Supreme Court. The Supreme Court may inspect, supervise and give directives to its subordinate courts and other judicial institutions.

(2) The Supreme Court shall be a Court of Record. It may initiate proceedings and impose punishment in accordance with law for contempt of itself and of its subordinate courts or judicial institutions.

(3) The Supreme Court shall, in addition to the Chief Justice of Nepal, consist of up to a maximum of fourteen other Judges. If at any time, the number of existing Judges becomes insufficient due to an increase in the number of cases in the Supreme Court, ad hoc Judges may be appointed for a fixed term.



(1) Any Nepali citizen may file a petition in the Supreme Court to have any law or any part thereof declared void on the ground of inconsistency with this Constitution because it imposes an unreasonable restriction on the enjoyment of the fundamental rights conferred by this Constitution or on any other ground, and extraordinary power shall rest with the Supreme Court to declare that law as void either ab initio or from the date of its decision if it appears that the law in question is inconsistent with the Constitution.

(2) The Supreme Court shall, for the enforcement of the fundamental rights conferred by this Constitution, for the enforcement of any other legal right for which no other remedy has been provided or for which the remedy even though provided appears to be inadequate or ineffective, or for the settlement of any constitutional or legal question involved in any dispute of public interest or concern, have the extraordinary power to issue necessary and appropriate orders to enforce such rights or to settle the dispute. For these purposes the Supreme Court may, with a view to imparting full justice and providing the appropriate remedy, issue appropriate orders and writs including habeas corpus, mandamus, certiorari, Prohibition and quo warranto: -

Provided that:

(a) the Supreme Court shall not be deemed to have power under this clause to interfere with the proceedings and decisions of the Military Court except on the ground of absence of jurisdiction or on the ground that a proceeding has been initiated against, or punishment given to, a non-military person for an act other than an offence relating to the Army.

(b) except on the ground of absence of jurisdiction, the Supreme Court shall not interfere under this clause with the proceedings and decisions of Parliament concerning penalties imposed by virtue of its Privileges.

(3) The Supreme Court shall have original and appellate jurisdiction as defined by law.

(4) The Supreme Court may review its own judgment or final orders subject to the conditions and in the circumstances prescribed by law.

(5) If His Majesty wishes to have an opinion of the Supreme Court on any complicated legal question of interpretation of this Constitution or of any other law, the Court shall, upon consideration on the question, report to His Majesty its opinion thereon.

(6) Other powers and procedures of the Supreme Court shall be as prescribed by law.

### **89. Establishment and Management of Appellate Courts and District Courts:**

The establishment, management and jurisdiction of the Appellate Courts, District Courts and other courts subordinate to the Supreme Court shall be determined by law subject to this Constitution.

### **96. Orders and Decisions of the Courts to be Binding:**

(1) All shall abide by the orders and decisions made in the course of hearing of a suit by courts.

(2) Any interpretation given to a law or any legal principle laid down by the Supreme Court in the course of hearing of a suit shall be binding on His Majesty's Government and all offices and courts.

## Introduction

(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.

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

### A. General Observations

2. The International Covenant on Economic, Social and Cultural Rights, together with the International Covenant on Civil and Political Rights and the Optional Protocol,

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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,

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.

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.

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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

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.

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.

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.

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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.



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.

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.

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.

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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:

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

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.

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,

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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

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

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.

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.

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.

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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.



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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





## Introduction

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.

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

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

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.

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

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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.

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.

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.

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.

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.

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

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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;

- ### III Responsibility for violations

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.

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.

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.



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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.



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.

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.

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.

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.

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.

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.

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.

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### *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.

Where NHRI mandates dictate that investigation and other human rights protection functions only apply to allegations against the State, NHRIs will be challenged to find ways to hold non-state actors accountable for ESC rights violations. Though the general rule is typically that non-state actors cannot be held directly accountable for ESC rights, the obligation to “protect” might mean the State will need to regulate certain conduct of the private sector against the abuse of human rights.

## The Obligation to Protect

- Immediate steps to ensure that ongoing violations of ESC rights standards by the State and its agents are, to the maximum extent, prevented.
- Immediate steps to ensure that violations of ESC rights by third parties, including protection from abuse by landlords, are prevented.
- Ensuring access to impartial legal remedies in cases of alleged violations of ESC rights, by both State and non-State actors.
- Active measures designed to protect all persons against racial or other forms of discrimination, harassment and the withdrawal of services.

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## Non-State Actors

Private actors (often in conjunction with the State) may now be deemed liable for violations of economic, social and cultural rights, and human rights law has irrevocably entered the private domain. The horizontal effectiveness of rights implies the existence of correlative State duties to ensure the protection of individual's rights from violation by third parties, not generally linked to the State.<sup>53</sup> The potential impact of actions by third parties to the overall satisfaction of economic, social and cultural rights is substantial, and perhaps even more so than with regard to civil and political rights.

Employers, corporations, landlords, teachers, doctors and any other citizen capable of violating an individual's rights as a consequence of neglect or encouragement by the State to do so are increasingly being held accountable as notions of State responsibility expand beyond traditional confines.<sup>54</sup> For example, in its General Comment No. 12 on the right to adequate food, the Committee on ESC Rights stated, “the obligation to *protect* requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food.”

## Transnational Corporations

Developing regulatory mechanisms on TNC's remains a fundamental challenge to the protection and promotion of economic, social and cultural rights. Although codes of conduct have been issued by a range of international institutions, these remain both limited and non-binding. While it is legally possible to reach TNC's indirectly through a State's obligation to 'protect' human rights, the immense influence exerted by these powerful entities often make such options difficult. Although the financial wealth and power of TNC's eclipses that of many States, they are under no obligation to finance the realization of rights and are, in many respects, effectively non-accountable to persons and groups potentially threatened by their activities.

NHRIs could carry out efforts to contain such activities by proposing the establishment of legal standards capable of ensuring, at least in legal terms, that TNC's refrain from violating economic, social and cultural rights. Indeed, to be effective advocates for ESC rights, NHRIs will need to develop a capacity to monitor the impact of non-State actors on the full realization of these rights.

Human rights promotion activities should also address TNCs directly and encourage Government to ensure that citizens are adequately protected from non-state actors.

The international financial institutions (such as the World Bank, International Monetary Fund, etc.) have faced criticism for their involvement in projects where human rights violations occurred and for the imposition of adjustment, fiscal and other policies with detrimental effects on the enjoyment of ESC rights. Such institutions exert considerable influence over the policy-making (and sometimes law-making) process in borrower countries; yet have not fully taken heed of the human rights obligations held either by recipient States or these institutions themselves (pursuant to articles 55 and 56 of the Charter). These institutions, as UN entities and subjects of international law, must be considered as bound by its normative framework. The policies of the international financial institutions may lead to violations of economic, social and cultural rights within a range of developing nations, particularly the poorest countries with the least economic or political leverage. Indirect violations of civil and political rights also may occur in the context of structural adjustment programmes or large-scale project financing.

NHRIs will need to become familiar with the actual roles played by these institutions within their respective countries and how to work together with these institutions, where possible, to encourage them to adopt policies and economic prescriptions conducive to the full enjoyment of ESC rights.

Source: International Human Rights Internship Program and Asian Forum for Human Rights and Development (2000). Circle of Rights – Economic, Social & Cultural Rights Activism: A Training Resource. IHRIP Forum-Asia.

## The Question of a Proposed Optional Protocol to the International Convention on Economic, Social, and Cultural Rights

While state parties currently report to the Committee on Economic, Social, and Cultural Rights (the Committee on ESC Rights), the committee which monitors state compliance to the ICESCR, this process lacks true accountability. For example, an individual cannot file a complaint to the Committee on ESC Rights to allege that their rights have been infringed by a state party. The proposed Optional Protocol, however, would include provisions for individual complaints procedures or communications, as well provide the Committee on ESC Rights the capability to investigate violations of rights under the ICESCR. These components, which can be found in optional protocols to other international human rights conventions such as the International Convention on Civil and Political Rights (ICCPR), have contributed to and enhanced the development of legal protection for those human rights. For example, in the case of the ICCPR, the complaints mechanism within its Optional Protocol has led to legislative and political reforms in order to promote compliance with their human rights obligations under the ICCPR. In addition, a broader consensus of what state obligations under ICCPR entail has been developed. An Optional Protocol to the ICESCR, if given appropriate legal mechanisms, would similarly contribute to the realization of ESC rights.

It is important to note that a draft Optional Protocol would not involve the creation of additional rights or new obligations for States parties, but rather would create a new supervisory procedure for existing obligations under the ICESCR.

## Proposals for an Optional Protocol Mechanism

Although a number of drafts of the Optional Protocol have been completed, the final content of an Optional Protocol is still subject to agreement amongst state parties. That being said, four out of six major international human rights treaties, including the

A number of meetings, reports and resolutions, issued by the United Nations Commission on Human Rights and the United Nations Sub-Commission on Human Rights, have taken place where the content and scope of a draft Optional Protocol have been discussed.

Although a final Optional Protocol has yet to be drafted and agreed upon, the nature and scope of ESC rights and states' obligations under the ICESCR have been clarified through numerous international conferences and meetings. These include: the meetings that produced the Limburg Principles and the Maastricht Guidelines; the 1993 World Conference on Human rights; the World Summit for Social Development; the Round Table discussion by the International Commission of Jurists; conferences on the Optional Protocol to the ICESCR; meetings, reports and resolutions issued by the United Nations Commission on Human Rights and the United Nations Sub-Commission on Human Rights; and reports, studies, and commentaries by the Committee on ESC Rights. As well, a growing body of jurisprudence on ESC rights has been developing steadily in recent years through international, regional, and domestic arenas, including: the European Court of Human Rights, the African Commission of Human and People's Rights, and the Inter-American Commission on Human Rights



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and even decisions of UN treaty body committees on communications under optional protocols to other international human rights conventions.

The NGO coalition advocating for the creation of the Optional Protocol highlights the reasons why such a protocol is necessary and presents a proposal for its substantive content that is based on established legal principles such as the Maastricht Guidelines. It states that an Optional Protocol is necessary to assist States parties in protecting and promoting ESC rights, to provide international remedial and international enforcement mechanisms in the event of infringement, to identify and clarify state obligations under the ICESCR, to encourage the development of domestic ESC rights jurisprudence, to reinforce the universality, indivisibility, interrelatedness, and interdependence of human rights, and to increase public awareness of ESC rights. The same coalition suggests that the Protocol include: a Communications and Inquiry Procedure, the coverage of all rights set out in the ICESCR, the coverage of all aspects of state obligations including respect for, protection of, and fulfillment of ESC rights, the recognition of the role of NGOs, and the disallowance of reservations under the Protocol. For a more in depth discussion of the relevant ESC rights principles, please see the section of this guide concerning the Maastricht Guidelines.

The NGO movement advocating for the creation of the Optional Protocol categorically rejects the traditional argument that ESC rights are extremely difficult to adjudicate as compared with other rights such as civil and political rights. This argument concerning the ‘justiciability’ of ESC rights has been further discounted on a number of occasions in forums and by respected academic scholars and human rights advocates who, while recognizing that full realization of ESC rights may take time, have emphasized the obligation for progressive implementation.

## Implications of an Optional Protocol for the Domestic Implementation of ESC Rights

States parties to the ICESCR have an obligation to give effect to the rights set out in that document, and to do so by all appropriate means. Due to the diverse nature of legal, political, economic and administrative systems of each state, however, state parties are accorded flexibility in how their obligations are met. This flexibility, however, exists concurrently with the obligation to use all means at their disposal to give effect to those rights. Despite these obligations, many state parties have not revised their national laws to ensure compliance with the ICESCR, and their judicial systems often fail to recognize the international obligations of the state. An Optional Protocol would allow individuals to complain of violations of their rights under the ICESCR, as well as contribute to state compliance of their obligations under the ICESCR. As a complaints



It is also possible that an Optional Protocol to the ICESCR would trigger changes within domestic legislation and policy on ESC rights to ensure compliance with the Covenant, as has happened with some state parties after the development of the Optional Protocol to the ICCPR. If this does occur, it is likely that ESC rights within these states would be enhanced and furthered through domestic mechanisms and jurisprudence that increasingly acknowledges the obligation to respect ESC rights

## Status of a Draft Optional Protocol

The UN system has slowly worked towards the realization of this possibility, for example through: the drafting of an Optional Protocol to the ICESCR in 1997; the commissioning of reports by an independent expert; and the creation by the UN Commission on Human Rights in 2003 of an inter-sessional open-ended working group, mandated to consider options regarding the elaboration of the Optional Protocol. The Working Group met for the first time from February 23 to March 5 2004. Governments and civil society representatives attended the meeting. While the Working Group did not reach consensus at the meeting on whether to draft a final Optional Protocol, the chairperson made recommendations to renew the Working Group's mandate to continue considering options for the Optional Protocol (see Report of the chairperson of

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the Open Ended Working Group meeting:

<http://www.unhchr.ch/pdf/chr60/44AV.pdf> and

<http://www.unhchr.ch/pdf/chr60/44AV.pdf> Volume II [Economic, Social and Cultural Rights Around the Globe] of this publication includes UN reports and resolutions relevant to the establishment of the Working Group and other related developments, under the heading “Draft Optional Protocol to the ICESCR”.

The Commission on Human Rights considered these recommendations at its 2004 session, which was held from March 15 to April 23, 2004, and decided to renew the mandate of Working Group for a period of two years to consider options regarding the elaboration of an Optional Protocol to the ICESCR (see Commission on Human Rights resolution 2004/29).

Source: Human Rights Internet. (2004). Appendix II - Proposed Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

[http://www.hri.ca/forthecanada/vol\\_app/appendix2.htm](http://www.hri.ca/forthecanada/vol_app/appendix2.htm).