

not ratified all of these ILO Conventions there will still be a need to respond to issues raised in the guidelines with respect to matters not dealt with in the ratified Conventions.

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

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

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

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

By contrast, information on legal and administrative provisions with respect to Article 7(d) – relating to rest, leisure, reasonable working hours, periodic holidays with pay, and remuneration for public holidays – would be of considerable value. In particular, reports should indicate whether there are any categories of workers who are not covered by appropriate provisions.

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

ARTICLE 8

Text of Article 8

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

Text of the guidelines on Article 8 of the Covenant

1. If your State is a party to any of the following conventions:
 - International Covenant on Civil and Political Rights
 - ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)
 - ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
 - ILO Labour Relations (Public Service) convention, 1978 (No. 151),
 and has already submitted reports to the supervisory committee(s) concerned which are relevant to the provisions of Article 8, you may wish to refer to the respective parts of those reports rather than repeat the information here. However, all matters which arise under the present Covenant and are not covered fully in those reports should be dealt with in the present report.
2. Please indicate what substantive or formal conditions, if any, must be fulfilled in order to join and form the trade union of one's choice.
 - (a) Please specify whether there exist any special legal provisions regarding the establishment of trade unions by certain categories of workers and, eventually, what these special provisions are, how they have been applied in practice, as well as the number of persons subjected to them.
 - (b) Are there any restrictions placed upon the exercise of the right to join and form trade unions by workers? Please provide a detailed account of the legal provisions prescribing such restrictions and their application in practice over time.
 - (c) Please supply information on how your Government secures the right of trade unions to federate and join international trade union organizations. What legal and practical restrictions are placed upon the exercise of this right?
 - (d) Please indicate in detail what conditions or limitations are placed upon the right of trade unions to function freely. Which trade unions have been adversely affected in practice by these conditions or limitations? What measures are being taken to promote free collective bargaining?

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

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

Persons with disabilities**

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

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

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

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

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

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

The economic, social and cultural rights of older persons

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

Commentary

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

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

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

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

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

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

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

ARTICLE 9 ¹⁸⁹²

Text of Article 9

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

Text of the guidelines on Article 9 of the Covenant

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

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

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

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

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

- 26.** Article 9 of the Covenant provides generally that States Parties "recognize the right of everyone to social security", without specifying the type or level of protection to be guaranteed. However, the term "social security" implicitly covers all the risks involved in the loss of means of subsistence for reasons beyond a person's control.
- 27.** In accordance with Article 9 of the Covenant and the provisions concerning implementation of the ILO social security conventions – Convention No. 102 concerning Social Security (Minimum Standards) (1952) and Convention No. 128 concerning Invalidity, Old-Age and Survivors' Benefits (1967) – States Parties must take appropriate measures to establish general regimes of compulsory old-age insurance, starting at a particular age, to be prescribed by national law.

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

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

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

Commentary

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

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

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

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

ARTICLE 10 अन्या

Text of Article 10

The States Parties to the present Covenant recognize that:

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

Text of the guidelines on Article 10 of the Covenant

1. If your State is a party to any of the following conventions:
 - International Covenant on Civil and Political Rights
 - Convention on the Rights of the Child
 - Convention on the Elimination of all Forms of Discrimination against Women
 - ILO Maternity Protection Convention (Revised), 1952 (No. 103)
 - ILO Minimum Age Convention, 1973 (No. 138),
 or to any other ILO convention on the protection of children or young persons in relation to employment and work, and if your Government has already submitted reports to the supervisory committee(s) concerned which are relevant to the provisions of Article 10, you may wish to refer to the respective parts of those reports rather than repeat the information here. However, all matters which arise under the present Covenant and are not covered fully in these reports should be dealt with in the present report.
2. Please indicate what meaning is given in your society to the term "family".
3. Please indicate the age at which in your country children are deemed to attain their majority for different purposes.
4. Please supply information on the ways and means, both formal and informal, employed in your country to grant assistance and protection to the family. In particular:
 - (a) How does your country guarantee the right of men and, particularly, women to enter into marriage with their full and free consent and to establish a family? Please indicate and eventually give specifics about cases where the measures taken were not successful in abolishing practices adversely affecting the enjoyment of this right.
 - (b) By what measures does your country facilitate the establishment of a family as well as maintain, strengthen and protect it, particularly while it is responsible for the care and education of dependent children? Despite these measures, are there families which do not enjoy the benefit of such protection and assistance at all or which do to a significantly lesser degree than the

majority of the population? Please give specifics of these situations. Are extended families or other forms of familial organization recognized in determining the availability or applicability of these measures, particularly with respect to government benefits?

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

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

(a) In particular:

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

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

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

- (a) What are the age limits in your country below which the paid employment of child labour in different occupations is prohibited?
- (b) Please specify how many children, and of which age groups, engage in paid employment, and to what extent.
- (c) Please specify to what extent children are being employed in their families' households, farms or businesses.

- (d) Please indicate whether there are in your country any groups of children and young persons which do not enjoy the measures of protection and assistance at all or which do to a significantly lesser degree than the majority. In particular, what is the respective situation of orphans, children without living biological parents, young girls, children who are abandoned or deprived of their family environment, as well as physically or mentally handicapped children?

- (e) How are the persons mentioned in the preceding paragraph informed of their respective rights?

- (f) Please give specifics on any difficulties and shortcomings. How have such adverse situations developed over time? What measures are being taken to remedy these situations? Please describe the effect of these measures over time and report on successes, problems and shortcomings.

7. In case of subsequent reports, give a short review of the changes, if any, in national legislation, court decisions as well as administrative rules, procedures and practices during the reporting period affecting the rights enshrined in Article 10.

8. Please describe the role of international assistance in the full realization of the right enshrined in Article 10.

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

Persons with disabilities**

30. In the case of persons with disabilities, the Covenant's requirement that "protection and assistance" be rendered to the family means that everything possible should be done to enable such persons, when they so wish, to live with their families. Article 10 also implies, subject to the general principles of international human rights law, the right of persons with disabilities to marry and have their own family. These rights are frequently ignored or denied, especially in the case of persons with mental disabilities. In this and other contexts, the term "family" should be interpreted broadly and in accordance with appro-

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

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

appropriate local usage. States Parties should ensure that laws and social policies and practices do not impede the realization of these rights. Persons with disabilities should have access to necessary counselling services in order to fulfil their rights and duties within the family.

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

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

The economic, social and cultural rights of older persons

- 31.** On the basis of Article 10, Paragraph 1, of the Covenant and Recommendations 25 and 29 of the Vienna International Plan of Action on Ageing, States Parties should make all the necessary efforts to support, protect and strengthen the family and help it, in accordance with each society's system of cultural values, to respond to the needs of its dependent ageing members. Recommendation 29 encourages Governments and non-governmental organizations to establish social services to support the whole family when there are elderly people at home and to implement measures especially for low-income families who wish to keep elderly people at home. This assistance should also be provided for persons living alone or elderly couples wishing to remain at home.

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

Commentary 하경

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

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

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

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

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

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

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

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

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

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

7 2/03

ARTICLE 11

Text of Article 11

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

Text of the guidelines on Article 11 of the Covenant

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

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

2. The right to adequate food

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

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

3. The right to adequate housing

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

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

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

Text of General Comment No. 4 (1991)

The right to adequate housing

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

2. The Committee has been able to accumulate a large amount of information pertaining to this right. Since 1979, the Committee and its predecessors have examined 75 reports dealing with the right to adequate housing. The Committee has also devoted a day of general discussion to the issue at each of its third (see E/1989/22, Para. 312) and fourth sessions (E/1990/23, Para. 281-285). In addition, the Committee has taken careful note of information generated by the International Year of Shelter for the Homeless (1987) including the Global Strategy for Shelter to the Year 2000 adopted by the General Assembly in its resolution 42/191 of 11 December 1987. The Committee has also reviewed relevant reports and other documentation of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities.
3. Although a wide variety of international instruments address the different dimensions of the right to adequate housing, Article 11(1) of the Covenant is the most comprehensive and perhaps the most important of the relevant provisions.
4. Despite the fact that the international community has frequently reaffirmed the importance of full respect for the right to adequate housing, there remains a disturbingly large gap between the standards set in Article 11(1) of the Covenant and the situation prevailing in many parts of the world. While the problems are often particularly acute in some developing countries which confront major resource and other constraints, the Committee observes that significant problems of homelessness and inadequate housing also exist in some of the most economically developed societies. The United Nations estimates that there are over 100 million persons homeless worldwide and over 1 billion inadequately housed. There is no indication that this number is decreasing. It seems clear that no State Party is free of significant problems of one kind or another in relation to the right to housing.
5. In some instances, the reports of States Parties examined by the Committee have acknowledged and described difficulties in ensuring the right to adequate housing. For the most part, however, the information provided has been insufficient to enable the Committee to obtain an adequate picture of the situation prevailing in the State concerned. This General Comment thus aims to identify some of the principal issues which the Committee considers to be important in relation to this right.

6. The right to adequate housing applies to everyone. While the reference to "himself and his family" reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitations upon the applicability of the right to individuals or to female-headed households or other such groups. Thus, the concept of "family" must be understood in a wide sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with Article 2(2) of the Covenant, not be subject to any form of discrimination.
7. In the Committee's view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. Thus "the inherent dignity of the human person" from which the rights in the Covenant are said to derive requires that the term "housing" be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in Article 11(1) must be read as referring not just to housing but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: "Adequate shelter means... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost".
8. Thus the concept of adequacy is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute "adequate housing" for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to

identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following:

- (a) **Legal security of tenure.** Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States Parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;
- (b) **Availability of services, materials, facilities and infrastructure.** An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;
- (c) **Affordability.** Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States Parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States Parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States Parties to ensure the availability of such materials;
- (d) **Habitability.** Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical

safety of occupants must be guaranteed as well. The Committee encourages States Parties to comprehensively apply the **Health Principles of Housing** prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;

- (e) **Accessibility.** Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States Parties, increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement;
- (f) **Location.** Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants;
- (g) **Cultural adequacy.** The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.

9. As noted above, the right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments. Reference has already been made in this regard to the concept of human dignity and the principle of non-discrimination. In addition, the full enjoyment of other rights – such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom of residence and the right to participate in public decision-making – is indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing.
10. Regardless of the state of development of any country, there are certain steps which must be taken immediately. As recognized in the Global Strategy for Shelter and in other international analyses, many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices and a commitment to facilitating "self-help" by affected groups. To the extent that any such steps are considered to be beyond the maximum resources available to a State Party, it is appropriate that a request be made as soon as possible for international cooperation in accordance with Articles 11(1), 22 and 23 of the Covenant, and that the Committee be informed thereof.
11. States Parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others. The Committee is aware that external factors can affect the right to a continuous improvement of living conditions, and that in many States Parties overall living conditions declined during the 1980s. However, as noted by the Committee in its General Comment 2 (1990) (E/1990/23, annex III), despite externally caused problems, the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States Parties, and in the absence of accompanying compensatory

measures, would be inconsistent with the obligations under the Covenant. *AGW*

12. While the most appropriate means of achieving the full realization of the right to adequate housing will inevitably vary significantly from one State Party to another, the Covenant clearly requires that each State Party take whatever steps are necessary for that purpose. This will almost invariably require the adoption of a national housing strategy which, as stated in Paragraph 32 of the Global Strategy for Shelter, "defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals and the most cost-effective way of using them and sets out the responsibilities and time frame for the implementation of the necessary measures". Both for reasons of relevance and effectiveness, as well as in order to ensure respect for other human rights, such a strategy should reflect extensive genuine consultation with, and participation of, all of those affected, including the homeless, the inadequately housed and their representatives. Furthermore, steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations under Article 11 of the Covenant.
13. Effective monitoring of the situation with respect to housing is another obligation of immediate effect. For a State Party to satisfy its obligations under Article 11(1) it must demonstrate, *inter alia*, that it has taken whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of homelessness and inadequate housing within its jurisdiction. In this regard, the revised general guidelines regarding the form and contents of reports adopted by the Committee (E/C.12/1991/1) emphasize the need to "provide detailed information about those groups within... society that are vulnerable and disadvantaged with regard to housing". They include, in particular, homeless persons and families, those inadequately housed and without ready access to basic amenities, those living in "illegal" settlements, those subject to forced evictions and low-income groups.
14. Measures designed to satisfy a State Party's obligations in respect of the right to adequate housing may reflect whatever mix of public and private sector measures are considered appropriate. While in some States public financing of housing might most usefully be spent on

direct construction of new housing, in most cases experience has shown the inability of Governments to fully satisfy housing deficits with publicly built housing. The promotion by States Parties of "enabling strategies", combined with a full commitment to obligations under the right to adequate housing, should thus be encouraged. In essence, the obligation is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.

15. Many of the measures that will be required will involve resource allocations and policy initiatives of a general kind. Nevertheless, the role of formal legislative and administrative measures should not be underestimated in this context. The Global Strategy for Shelter (para. 66-67) has drawn attention to the types of measures that might be taken in this regard and to their importance.
16. In some States, the right to adequate housing is constitutionally entrenched. In such cases, the Committee is particularly interested in learning of the legal and practical significance of such an approach. Details of specific cases and of other ways in which entrenchment has proved helpful should thus be provided.
17. The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to: (a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (d) allegations of any form of discrimination in the allocation and availability of access to housing; and (e) complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness.
18. In this regard, the Committee considers that instances of forced eviction are **prima facie** incompatible with the requirements of the Covenant and can only be justified in the most exceptional circum-

stances, and in accordance with the relevant principles of international law.

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

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

Persons with disabilities**

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

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

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

session, 1991), the right to adequate housing includes the right to accessible housing for persons with disabilities.

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

The economic, social and cultural rights of older persons

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

Commentary

This provision is of central importance to the overall objectives of the Covenant. Although paragraph 2 is devoted exclusively to an elaboration of aspects of the right to adequate food, the article as a whole is much more wide-ranging. It covers the right to an adequate

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

standard of living, the right to the continuous improvement of living conditions, and the rights to adequate food, clothing and housing.

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

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

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

- (d) a general indication of the type of policies envisaged in order to address existing shortcomings in the realization of each right. While the particular policy and programme measures to be adopted are matters for the State Party alone to decide, the Committee needs to know that Government policies have in fact been formulated in an attempt to promote the progressive realization of the rights in question. Of particular importance in this regard is the identification by the State Party of specific benchmarks against which the realization of each of the rights recognized in Article 11 can be assessed.

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

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

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

Reporting officers should note that the rights dealt with in Article 11 are also protected by other international instruments. They include Article 6(1) of ICCPR, Articles 11(2) and 14(2) (g) and (h) of CEDAW, Article 5(e)(iii) of ICERD, and Article 27 of the CRC. 179

ARTICLE 12

Text of Article 12

1. *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
- The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - The improvement of all aspects of environmental and industrial hygiene;
 - The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Text of the guidelines on Article 12 of the Covenant

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

- Population access to safe water (please disaggregate urban/rural);
 - Population access to adequate excrete disposal facilities (please disaggregate urban/rural);
 - Infants immunized against diphtheria, pertussis, tetanus, measles, poliomyelitis and tuberculosis (please disaggregate urban/rural and by sex);
 - Life expectancy (please disaggregate urban/rural, by socio-economic group and by sex);
 - Proportion of the population having access to trained personnel for the treatment of common diseases and injuries, with regular supply of 20 essential drugs, within one hour's walk or travel;
 - Proportion of pregnant women having access to trained personnel during pregnancy and proportion attended by such personnel for delivery. Please provide figures on the maternity mortality rate, both before and after childbirth,
 - Proportion of infants having access to trained personnel for care.
(Please provide breakdowns by urban/rural and socio-economic groups for indicators (f) to (h)).
5. Can it be discerned from the breakdown of the indicators employed in paragraph 4, or by other means, that there are any groups in your country whose health situation is significantly worse than that of the majority of the population? Please define these groups as precisely as possible and give specifics. Which geographical areas in our country if any, are worse off with regard to the health of their population?
- During the reporting period, have there been any changes in national policies, laws and practices negatively affecting the health situation of these groups or areas? If so, please describe these changes and their impact.
 - Please indicate what measures are considered necessary by your Government to improve the physical and mental health situation of such vulnerable and disadvantaged groups or in such worse-off areas.

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

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

Persons with disabilities**

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

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

The economic, social and cultural rights of older persons

34. With a view to the realization of the right of elderly persons to the enjoyment of a satisfactory standard of physical and mental health, in accordance with Article 12, paragraph 1, of the Covenant, States Parties should take account of the content of Recommendations 1 to 17 of the Vienna International Plan of Action on Ageing, which focus entirely on providing guidelines on health policy to preserve the health of the elderly and take a comprehensive view, ranging from prevention and rehabilitation to the care of the terminally ill.
35. Clearly, the growing number of chronic, degenerative diseases and the high hospitalization costs they involve cannot be dealt with only by curative treatment. In this regard, States Parties should bear in mind that maintaining health into old age requires investments during the entire life span, basically through the adoption of healthy lifestyles (food, exercise, elimination of tobacco and alcohol, etc.). Prevention, through regular checks suited to the needs of the elderly, plays a decisive role, as does rehabilitation, by maintaining the

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

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

functional capacities of elderly persons, with a resulting decrease in the cost of investments in health care and social services.

Commentary

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

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

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

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

affected, the measures taken to provide them with appropriate care, preventive measures and measures to ensure non-discrimination in relation to those infected by the virus.

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

ARTICLE 13

Text of Article 13

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

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

Text of the guidelines on Article 13 of the Covenant

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

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

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

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

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

Persons with disabilities**

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

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

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

to the same level of education as their non-disabled peers. In the case of deaf children, for example, sign language should be recognized as a separate language to which the children should have access and whose importance should be acknowledged in their overall social environment.

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

The economic, social and cultural rights of older persons

36. Article 13, paragraph 1, of the Covenant recognizes the right of everyone to education. In the case of the elderly, this right must be approached from two different and complementary points of view: (a) the right of elderly persons to benefit from educational programmes; and (b) making the know-how and experience of elderly persons available to younger generations.
37. With regard to the former, States Parties should take account of: (a) the recommendations in Principle 16 of the United Nations Principles for Older Persons to the effect that older persons should have access to suitable education programmes and training and should, therefore, on the basis of their preparation, abilities and motivation, be given access to the various levels of education through the adoption of appropriate measures regarding literacy training, life-long education, access to university, etc.; and (b) Recommendation 47 of the Vienna International Plan of Action on Ageing which, in accordance with the concept of life-long education promulgated by the United Nations Educational, Scientific and Cultural Organization (UNESCO), recommends informal, community-based and recreation-oriented programmes for the elderly in order to develop their sense of self-reliance and the community's sense of responsibility. Such programmes should enjoy the support of national Governments and international organizations.
38. With regard to the use of the know-how and experience of older persons, as referred to in the part of the recommendations of the Vienna International Plan of Action on Ageing dealing with education (para. 74-76), attention is drawn to the important role that elderly and old persons still play in most societies as the transmitters of

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

information, knowledge, traditions and spiritual values and to the fact that this important tradition should not be lost. Consequently, the Committee attaches particular importance to the message contained in Recommendation 44 of the Plan: "Educational programmes featuring the elderly as the teachers and transmitters of knowledge, culture and spiritual values should be developed".

Commentary

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

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

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

In reporting on progress towards the various goals set in Article 13(2), States Parties could usefully take account of the principles and objectives laid down in the World Declaration on Education for All and the accompanying Framework for Action to Meet Basic Learning Needs, adopted by the World Conference held in Jomtien, Thailand in March 1990. In that regard, paragraph 6 of the Framework notes the importance of "time-bound targets"

which "convey a sense of urgency and serve as a reference against which indices of implementation and accomplishment can be compared". This approach would seem to be particularly apposite in the context of implementing Article 13 of the Covenant.

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

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

ARTICLE 14

Text of Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Text of the guidelines on Article 14 of the Covenant

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

Commentary

This article need only be reported upon by those States Parties to the Covenant which have not yet been able to secure primary education on a compulsory basis and free of charge for all citizens. This would thus cover any State which has moved from such a system to one in which some charges now apply, whatever the reasons for that regressive

move might be. The requirement that such education be "free of charge" cannot be circumvented by the introduction of other "user fees" such as compulsory charges for school-building funds or other such mandatory contributions to the basic service.

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

ARTICLE 15

Text of Article 15

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

Text of the guidelines on Article 15 of the Covenant

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Commentary

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

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

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

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

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

(a) The Committee: its composition

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

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

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

...

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

tee within three months, the Secretary-General shall prepare a list of the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the Council no later than one month before the date of each election;

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

...

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

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

centralize the activities of the various human rights treaty bodies in Geneva, rather than New York.

(b) The Committee: its methods of work

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

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

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

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

arising out of their reports. Such an arrangement also enhances the likelihood that the State Party will be able to provide precise and detailed information.

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

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

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

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

The Committee has agreed that every effort should be made to limit the overall number of questions included in the list of written questions drawn up by the Working Group and to ensure that they are all pertinent to issues arising out of the Covenant. The list of issues

thus drawn up is transmitted directly to the permanent mission of the State concerned with a note stating, *inter alia*, the following:

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

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

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

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

observations by a country rapporteur who consults all available sources. The final step is the adoption of concluding observations.

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

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

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

(c) Constructive dialogue

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

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

(d) Presentation and examination of reports

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

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

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

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

The outcome of the Committee's deliberations is very similar to that of the other treaty bodies. As noted above, the Committee as a whole formulates concluding observations addressed directly to each individual reporting State. These comments are then published in the Committee's report to the Economic and Social Council, as well as being widely distributed by all other appropriate means.

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

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

representative(s) will wish to gather information from all available sources. The representative(s) will also have the task of considering whether the programme of advisory services administered by the Centre for Human Rights could be of assistance in connection with the specific issue at hand.

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

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

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

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

application of the obligations incumbent on States Parties (twelfth session); and a draft optional protocol to the Covenant (thirteenth session).

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

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

Text of Article 22

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

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

Text of General Comment No. 2 (1990)

International technical assistance measures

1. Article 22 of the Covenant establishes a mechanism by which the Economic and Social Council may bring to the attention of relevant United Nations bodies any matters arising out of reports submitted under the Covenant "which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the... Covenant". While the primary responsibility under Article 22 is vested in the Council, it is clearly appropriate for the Committee on Economic, Social and Cultural Rights to play an active role in advising and assisting the Council in this regard.

2. Recommendations in accordance with Article 22 may be made to any "organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance". The Committee considers that this provision should be interpreted so as to include virtually all United Nations organs and agencies involved in any aspect of international development cooperation. It would therefore be appropriate for recommendations in accordance with Article 22 to be addressed, *inter alia*, to the Secretary-General, subsidiary organs of the Council such as the Commission on Human Rights, the Commission on Social Development and the Commission on the Status of Women, other bodies such as UNDP, UNICEF and CDP, agencies such as the World Bank and IMF, and any of the other specialized agencies such as ILO, FAO, UNESCO and WHO.
3. Article 22 could lead either to recommendations of a general policy nature or to more narrowly focused recommendations relating to a specific situation. In the former context, the principal role of the Committee would seem to be to encourage greater attention to efforts to promote economic, social and cultural rights within the framework of international development cooperation activities undertaken by, or with the assistance of, the United Nations and its agencies. In this regard, the Committee notes that the Commission on Human Rights, in its resolution 1989/13 of 2 March 1989, invited it "to give consideration to means by which the various United Nations agencies working in the field of development could best integrate measures designed to promote full respect for economic, social and cultural rights in their activities".
4. As a preliminary practical matter, the Committee notes that its own endeavours would be assisted, and the relevant agencies would also be better informed, if they were to take a greater interest in the work of the Committee. While recognizing that such an interest can be demonstrated in a variety of ways, the Committee observes that attendance by representatives of the appropriate United Nations bodies at its first four sessions has, with the notable exceptions of ILO, UNESCO and WHO, been very low. Similarly, pertinent materials and written information had been received from only a very limited number of agencies. The Committee considers that a deeper understanding of the relevance of economic, social and cultural rights in the context of international development cooperation activities would be considerably facilitated through greater interaction between

the Committee and the appropriate agencies. At the very least, the day of general discussion on a specific issue, which the Committee undertakes at each of its sessions, provides an ideal context in which a potentially productive exchange of views can be undertaken.

5. On the broader issues of the promotion of respect for human rights in the context of development activities, the Committee has so far seen only rather limited evidence of specific efforts by United Nations bodies. It notes with satisfaction in this regard the initiative taken jointly by the Centre for Human Rights and UNDP in writing to United Nations Resident Representatives and other field-based officials, inviting their "suggestions and advice, in particular with respect to possible forms of cooperation in ongoing projects [identified] as having a human rights dimension or in new ones in response to a specific Government's request". The Committee has also been informed of long-standing efforts undertaken by ILO to link its own human rights and other international labour standards to its technical cooperation activities.
6. With respect to such activities, two general principles are important. The first is that the two sets of human rights are indivisible and interdependent. This means that efforts to promote one set of rights should also take full account of the other. United Nations agencies involved in the promotion of economic, social and cultural rights should do their utmost to ensure that their activities are fully consistent with the enjoyment of civil and political rights. In negative terms this means that the international agencies should scrupulously avoid involvement in projects which, for example, involve the use of forced labour in contravention of international standards, or promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. In positive terms, it means that, wherever possible, the agencies should act as advocates of projects and approaches which contribute not only to economic growth or other broadly defined objectives, but also to enhanced enjoyment of the full range of human rights.
7. The second principle of general relevance is that development cooperation activities do not automatically contribute to the promotion of respect of economic, social and cultural rights. Many activities undertaken in the name of "development" have subsequently been recog-

nized as ill-conceived and even counter-productive in human rights terms. In order to reduce the incidence of such problems, the whole range of issues dealt with in the Covenant should, wherever possible and appropriate, be given specific and careful consideration.

8. Despite the importance of seeking to integrate human rights concerns into development activities, it is true that proposals for such integration can too easily remain at a level of generality. Thus, in an effort to encourage the operationalization of the principle contained in Article 22 of the Covenant, the Committee wishes to draw attention to the following specific measures which merit consideration by the relevant bodies:
 - (a) As a matter of principle, the appropriate United Nations organs and agencies should specifically recognize the intimate relationship which should be established between development activities and efforts to promote respect for human rights in general, and economic, social and cultural rights in particular. The Committee notes in this regard the failure of each of the first three United Nations Development Decade Strategies to recognize that relationship and urges the fourth such strategy, to be adopted in 1990, should rectify that omission;
 - (b) Consideration should be given by United Nations agencies to the proposal, made by the Secretary-General in a report of 1979(*) that a "human rights impact statement" be required to be prepared in connection with all major development cooperation activities;
 - (c) The training or briefing given to project and other personnel employed by the United Nations agencies should include a component dealing with human rights standards and principles.
 - (d) Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenants are duly taken into account. This would apply, for example, in the initial assessment of the priority needs of a particular country, in the identification of particular projects, in project design, in the implementation of the project, and in its final evaluation.

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

9. *A matter which has been of particular concern to the Committee in the examination of the reports of States Parties is the adverse impact of the debt burden and of the relevant adjustment measures on the enjoyment of economic, social and cultural rights in many countries. The Committee recognizes that adjustment programmes will often be unavoidable and that these will frequently involve a major element of austerity. Under such circumstances, however, endeavours to protect the most basic economic, social and cultural rights become more, rather than less, urgent. States Parties to the Covenant, as well as the relevant United Nations agencies, should thus make a particular effort to ensure that such protection is, to the maximum extent possible, built in to programmes and policies designed to promote adjustment. Such an approach, which is sometimes referred to as "adjustment with a human face" or as promoting "the human dimension of development" requires that the goal of protecting the rights of the poor and vulnerable should become a basic objective of economic adjustment. Similarly, international measures to deal with the debt crisis should take full account of the need to protect economic, social and cultural rights through, inter alia, international cooperation. In many situations, this might point to the need for major debt-relief initiatives.*
10. *Finally, the Committee wishes to draw attention to the important opportunity provided to States Parties, in accordance with Article 22 of the Covenant, to identify in their reports any particular needs they might have for technical assistance or development cooperation.*

(e) Follow-up

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

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

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

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

C. PERIODIC REPORTS

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

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