人人生而自由,在尊严和权利上一律...

ALL HUMAN BEINGS ARE BORN FREE AND...

Все люди рождаются свободными и...

HUMAN RIGHTS

HANDBOOK FOR PARLIAMENTARIANS

Tous les êtres humains naissent libres et...

يولد جميع الناس أحرارًا...

Todos los seres humanos nacen libres e...

Nº 8 - 2005

INTER-PARLIAMENTARY UNION

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

HUMAN RIGHTS: A HANDBOOK FOR PARLIAMENTARIANS

بنـی آدم اعضای یکدیگرنـد که در آفرینش ز یک گوهرند
چو عضوی بدرد آورد روزگـار دگـــر عضوها را نماند قرار
تو کز محنت دیگران بی غمی نشایـــد که نامت نهند آدمی

The sons of Adam are like the limbs of the same body.
For they share the same essence in creation.
When one limb is put to pain
The other limbs cannot remain at rest
O thou who do not feel the sufferings of mankind
Thou deservest not to be called a human being.

Sadi, Gulistan (The Rose Garden, 1258)

Author:

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Foreword

Human rights have pervaded much of the political discourse since the Second World War. While the struggle for freedom from oppression and misery is probably as old as humanity itself, it was the massive affront to human dignity perpetrated during that War, and the need felt to prevent such horror in the future, which put the human being back at the centre and led to the codification at the international level of human rights and fundamental freedoms. Article 1 of the Charter of the United Nations declares "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion" as one of the purposes of the Organization.

The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, was the first step towards achieving this objective. It is seen as the authoritative interpretation of the term "human rights" in the Charter of the United Nations. The Universal Declaration together with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both adopted in 1966, constitute what has become known as the International Bill of Human Rights. Since 1948, human rights and fundamental freedoms have indeed been codified in hundreds of universal and regional, binding and non-binding instruments, touching almost every aspect of human life and covering a broad range of civil, political, economic, social and cultural rights. Thus, the codification of human rights has largely been completed. As the Secretary-General of the United Nations, Mr. Kofi Annan, has recently pointed out, today's main challenge is to implement the adopted standards.

In previous years, attention has increasingly turned towards the parliament as the State institution through which people exercise their right, enshrined in article 21 of the Universal Declaration, to participate in the conduct of the public affairs of the country. Indeed, if human rights are to become a reality for everyone, parliaments must fully play their role and exercise to this effect the specific powers they have, namely legislating, adopting the budget and overseeing the Government.

As an organization that shares the United Nations concern for human rights, the Inter-Parliamentary Union (IPU) seeks to strengthen the role of parliaments as guardians of human rights. The activities it has undertaken over the years to this end have shown that all too often parliamentarians know little about the international legal human rights framework, the obligations their countries have entered into by signing human rights treaties, and the various international and regional human rights bodies and mechanisms that exist to monitor their implementation. Indeed, parliamentarians could do a lot more in favour of human rights.

Hence, the suggestion that IPU and the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations body specifically mandated to promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights, should publish a handbook with basic information about human rights and the international and regional systems designed to promote and protect them.

The task of drawing up the *Handbook* was entrusted to a renowned human rights expert, Mr. Manfred Nowak, currently the United Nations Special Rapporteur on Torture. In carrying out this task he drew on the input and guidance of the IPU Committee on the Human Rights of Parliamentarians and officials of both OHCHR and IPU.

It is not difficult to see that, in spite of the human rights norms, standards and principles that have been established by the international community, we are far from living in a world "free from fear and want" to which the founders of the United Nations had aspired. It is therefore the hope of both organizations that the *Handbook* will become a major tool for parliamentarians all over the world to gauge their legislative, oversight and representative activities against the human rights obligations their countries have entered into, and will assist them in playing the important role they have for the promotion and protection of human rights at home, and worldwide.



Louise Arbour
United Nations
High Commissioner for Human Rights



Anders B. Johnsson
Secretary General
Inter-Parliamentary Union

WHAT DOES THE HANDBOOK CONTAIN?

- Part I provides an overview of the general principles governing human rights law and the obligations States have entered into under international human rights law. It presents the international and regional legal framework in the field of human rights and explains the functioning of the different international and regional human rights bodies, including those that monitor the implementation of the major international human rights treaties.

- In Part II, Chapter 11 is devoted to parliamentary action to promote and protect human rights. It gives concrete examples of what parliaments and their members can do in this area. "What you can do" boxes provide a checklist for such action.

- Chapters 12 and 13 aim to describe the core content of each right guaranteed in the Universal Declaration of Human Rights and answer questions such as "What does the right to fair trial mean?" or "What is the right to an adequate standard of living?" The chapters deal only with the fundamental rights that were further elaborated in the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and do not include the right to property.

HUMAN RIGHTS:
A HANDBOOK FOR PARLIAMENTARIANS

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PART I

CHAPTER 1: WHAT ARE HUMAN RIGHTS?

Definition

HUMAN RIGHTS ARE RIGHTS THAT EVERY HUMAN BEING HAS BY VIRTUE OF HIS OR HER HUMAN DIGNITY

Human rights are the most fundamental rights of human beings. They define relationships between individuals and power structures, especially the State. Human rights delimit State power and, at the same time, require States to take positive measures ensuring an environment that enables all people to enjoy their human rights. History in the last 250 years has been shaped by the struggle to create such an environment. Starting with the French and American revolutions in the late eighteenth century, the idea of human rights has driven many a revolutionary movement for empowerment and for control over the wielders of power, Governments in particular.

HUMAN RIGHTS ARE THE SUM OF INDIVIDUAL AND COLLECTIVE RIGHTS LAID DOWN IN STATE CONSTITUTIONS AND INTERNATIONAL LAW

Governments and other duty bearers are under an obligation to respect, protect and fulfil human rights, which form the basis for legal entitlements and remedies in case of non-fulfilment (see Chapter 2). In fact, the possibility to press claims and demand redress differentiates human rights from the precepts of ethical or religious value systems. From a legal standpoint, human rights can be defined as the sum of individual and collective rights recognized by sovereign States and enshrined in their constitutions and in international law. Since the Second World War, the United Nations has played a leading role in defining and advancing human rights, which until then had developed mainly within the nation State. As a result, human rights have been codified in various international and regional treaties and instruments that have been ratified by most countries, and represent today the only universally recognized value system.

Box 1

Examples of human rights: freedoms, rights and prohibitions related to human rights

In the area of civil and political rights

- Right to life
- Freedom from torture and cruel, inhuman or degrading treatment or punishment
- Freedom from slavery, servitude and forced labour
- Right to liberty and security of person
- Right of detained persons to be treated with humanity
- Freedom of movement
- Right to a fair trial
- Prohibition of retroactive criminal laws
- Right to recognition as a person before the law
- Right to privacy
- Freedom of thought, conscience and religion
- Freedom of opinion and expression
- Prohibition of propaganda for war and of incitement to national, racial or religious hatred
- Freedom of assembly
- Freedom of association
- Right to marry and found a family
- Right to take part in the conduct of public affairs, vote, be elected and have access to public office
- Right to equality before the law and non-discrimination

In the area of economic, social and cultural rights

- Right to work
- Right to just and favourable conditions of work
- Right to form and join trade unions
- Right to social security
- Protection of the family
- Right to an adequate standard of living, including adequate food, clothing and housing
- Right to health
- Right to education

In the area of collective rights

- Right of peoples to:
  - Self-determination
  - Development
  - Free use of their wealth and natural resources
  - Peace
  - A healthy environment
- Other collective rights:
  - Rights of national, ethnic, religious and linguistic minorities
  - Rights of indigenous peoples

Human rights cover all aspects of life. Their exercise enables women and men to shape and determine their own lives in liberty, equality and respect for human dignity. Human rights comprise civil and political rights, social, economic and cultural rights and the collective rights of peoples to self-determination, equality, development, peace and a clean environment. Although it has been — and sometimes still is — argued that civil and political rights, also known as "first generation rights", are based on the concept of non-interference of the State in private affairs, whereas social, economic and cultural — or "second generation" — rights require the State to take positive action, it is today widely acknowledged that, for human rights to become a reality, States and the international community must take steps to create the conditions and legal frameworks necessary for the exercise of human rights as a whole. The "generation" terminology harks back to language used during the cold war; nowadays, the emphasis is placed on the principles of universality, indivisibility and interdependence of all human rights.

Box 2

The right to development

The right to development places the human person at the centre of the development process and recognizes that the human being should be the main participant and beneficiary of development.

The 1986 UN Declaration on the Right to Development states that:

1. "… every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized", [and]
2. "The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources."

The right to development is based on the principle of the indivisibility and interdependence of all human rights and fundamental freedoms. Equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.

The Millennium Development Goals of September 2000 define the eradication of poverty as the overarching objective of the development process. United Nations Member States have pledged to meet, inter alia, the following goals, most of them by the year 2015: reduce by half the proportion of people living on less than a dollar a day and who suffer from hunger; achieve universal primary education for all boys and girls; reduce child mortality by two thirds; reduce the maternal mortality rate by three quarters; combat HIV/AIDS, malaria and other major diseases; ensure environmental sustainability and develop a global partnership for development (for a complete list of the Goals, see Box 76).

Basic human rights principles

HUMAN RIGHTS ARE UNIVERSAL

"Human rights are foreign to no culture and native to all nations; they are universal."

Kofi A. Annan, Secretary-General of the United Nations,
Address at the University of Tehran on Human Rights Day, 10 December 1997.

Human rights are universal because they are based on every human being's dignity, irrespective of race, colour, sex, ethnic or social origin, religion, language, nationality, age, sexual orientation, disability or any other distinguishing characteristic. Since they are accepted by all States and peoples, they apply equally and indiscriminately to every person and are the same for everyone everywhere.

Box 3

Human rights: a Western concept?

The universality of human rights has sometimes been challenged on the grounds that they are a Western notion, part of a neocolonial attitude that is propagated worldwide. A study published by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1968 [1] clearly showed that the profound aspirations underlying human rights correspond to concepts — the concepts of justice, an individual's integrity and dignity, freedom from oppression and persecution, and individual participation in collective endeavours — that are encountered in all civilizations and periods. Today, the universality of human rights is borne out by the fact that the majority of nations, covering the full spectrum of cultural, religious and political traditions, have adopted and ratified the main international human rights instruments.

HUMAN RIGHTS ARE INALIENABLE

Human rights are inalienable insofar as no person may be divested of his or her human rights, save under clearly defined legal circumstances. For instance, a person's right to liberty may be restricted if he or she is found guilty of a crime by a court of law.

HUMAN RIGHTS ARE INDIVISIBLE AND INTERDEPENDENT

Human rights are indivisible and interdependent. Because each human right entails and depends on other human rights, violating one such right affects the exercise of other human rights. For example, the right to life presupposes respect for the right to food and to an adequate standard of living. The right to be elected to public office implies access to basic education. The defence of economic and social rights presupposes freedom of expres-

[1] *Le Droit d'être un homme*, anthology of texts prepared under the direction of Jeanne Hersch, UNESCO and Robert Laffont, 1968.

sion, of assembly and of association. Accordingly, civil and political rights and economic, social and cultural rights are complementary and equally essential to the dignity and integrity of every person. Respect for all rights is a prerequisite to sustainable peace and development.

The international community affirmed the holistic concept of human rights at the World Conference on Human Rights, held in Vienna in 1993.

"All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."

World Conference on Human Rights, Vienna 1993, Vienna Declaration and Programme of Action, paragraph 5.

Box 4

Civil and political rights and economic and social rights are indissociable

Amartya Sen, Nobel Laureate in economics, has provided empirical proof that all human rights are indivisible and interdependent. In his research on famines, for instance, he found that among rich and poor countries alike, no functioning democracy has ever suffered a major famine, because in such States it is inter alia likely that the media will call attention to the risk of famine and that political parties and the public will respond. Democracy makes parliaments, Governments and other policymakers aware of the dangers of ignoring such risks.[2]

THE PRINCIPLE OF NON-DISCRIMINATION

Some of the worst human rights violations have resulted from discrimination against specific groups. The right to equality and the principle of non-discrimination, explicitly set out in international and regional human rights treaties, are therefore central to human rights. The right to equality obliges States to ensure observance of human rights without discrimination on any grounds, including sex, race, colour, language, religion, political or other opinion, national, ethnic or social origin, membership of a national minority, property, birth, age, disability, sexual orientation and social or other status. More often than not, the discriminatory criteria used by States and non-State actors to prevent specific groups from fully enjoying all or some human rights are based on such characteristics.

[2] Amartya Sen, *Poverty and Famines: An Essay on Entitlements and Deprivation*, Clarendon Press, 1982.

Box 5

Prohibition of discrimination

- Non-discrimination is a pillar of human rights.
- Differentiation in law must be based on difference in facts.
- Distinctions require reasonable and objective justification.
- The principle of proportionality must be observed.
- Characteristics that have been — and still are — used as grounds for discrimination include sex, race, colour, language, religion, political or other opinion, national, ethnic or social origin, membership of a national minority, property, birth, age, disability, sexual orientation and social or other status.

Difference in fact may justify difference in law

Not every differentiation constitutes discrimination. Factual or legal distinctions based on **reasonable and objective criteria** may be justifiable. The burden of proof falls on Governments: they must show that any distinctions that are applied are actually reasonable and objective.

Box 6

Justified differentiation with regard to employment

Two European Union directives on racial equality and equality in employment [3] allow Governments to authorize differentiated treatment in certain circumstances. Differentiation is thus allowed in a small number of cases involving jobs whose performance actually requires distinction on such grounds as racial or ethnic origin, religion or belief, disability, age or sexual orientation. Examples include acting and modelling jobs, where authenticity or realism may require performers to be of a particular origin or age, and some positions in church or similar organizations which involve contact with the public and (unlike other jobs in the same bodies, such as office work or catering) should be staffed with persons of a given confession or belief.

Some groups may enjoy special rights

The principles of equality, universality and non-discrimination do not preclude recognizing that specific groups whose members need particular protection should enjoy special rights. This accounts for the numerous human rights instruments specifically designed to protect the rights of groups with special needs, such as women, aliens, stateless persons, refugees, displaced persons, minorities, indigenous peoples, children, persons with disabilities, migrant workers and detainees. Group-specific human rights, however, are compatible with

[3] Council directives 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation.

Box 7

Special rights of persons with disabilities: an example

In the United Kingdom, the Disability Discrimination Act of 1995 obliges employers to make "reasonable adjustments" to work organization and premises to accommodate disabled workers. The Act contains a detailed list of the types of measures required. It includes modifying premises and equipment, transferring disabled persons to suitable places of work, reassigning some of their duties to other workers and providing for alternative working hours.

the principle of universality only if they are justified by special (objective) reasons, such as the group's vulnerability or a history of discrimination against it. Otherwise, special rights could amount to privileges equivalent to discrimination against other groups.

Temporary special measures

To redress the long-term effects of past discrimination, temporary special measures may be necessary. General recommendation No. 25[4] on article 4 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[5] defines such measures as "a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as outreach or support programmes; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with time frames; and quota systems".

Box 8

Affirmative action: an example

In Norway, the Gender Equality Ombudsman has in recent years focused on men in the context of gender equality. As a result, the maternity leave legislation has been amended to extend rights to them. One change has been that four weeks of the leave period are now reserved for the father. If he fails to use that entitlement, known as the "father's quota", the family loses its entitlement to that part of the leave. The "father's quota" was introduced in 1993, and in the next two years the percentage of new fathers taking paternity leave increased from 45 to 70 per cent. The Ombudsman further proposed positive action in favour of men in a limited number of care-related occupations in order to activate men's potential in that area and thereby counteract strict gender segregation in that labour market segment, and to provide children with a less stereotyped concept of gender roles.

For instance, temporary quota systems designed to give women preferential treatment regarding access to specific jobs, political decision-making bodies or university education

[4] The bodies that monitor the implementation of international human rights instruments elaborate on the various rights and corresponding State obligations in "general recommendations" and "general comments". For further details see Chapter 5.

[5] For further information on CEDAW and parliaments, see *The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol: a Handbook for Parliamentarians,* IPU, Geneva 2003.

can be considered as affirmative action aimed at accelerating the attainment of actual gender equality in areas where women have traditionally been underrepresented and have suffered from discrimination.

Under article 4 of CEDAW, these temporary measures are encouraged and shall, therefore, not be considered as discrimination against men. However, as soon as the objectives of equality of opportunity and treatment have been achieved, these measures must be discontinued. Otherwise, they would constitute unjustified privileges for women and, consequently, discrimination against men.

According to general recommendation No. 25, no proof of past discrimination is necessary for such measures to be taken: "While the application of temporary special measures often remedies the effects of past discrimination against women, the obligation of States parties under the Convention to improve the position of women to one of de facto or substantive equality with men exists irrespective of any proof of past discrimination".

Human rights and State sovereignty

In the past, when human rights were still regarded as a country's internal affair, other States and the international community were prevented from interfering, even in the most serious cases of human rights violations, such as genocide. That approach, based on national sovereignty, was challenged in the twentieth century, especially by the actions of Nazi Germany and the atrocities committed during the Second World War. Today, human rights promotion and protection are considered a legitimate concern and responsibility of the international community. However, discrepancies between *universal legal obligations* and *State sovereignty* can be resolved only on a case-by-case basis, in accordance with the *principle of proportionality,* a principle according to which any action taken by an authority pursuant to the concept of universality must not go beyond what is necessary to achieve compliance with human rights.

"The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international cooperation. In the framework of these purposes and principles, the promotion and protection of all human rights is a legitimate concern of the international community."

World Conference on Human Rights, Vienna 1993,
Vienna Declaration and Programme of Action, paragraph 4.

Democracy, human rights and parliaments

In the past decade, the interrelationship between democracy and human rights was studied extensively. Democracy is no longer considered as a mere set of procedural rules for the constitution and exercise of political power, but also, along with human rights, as a way of preserving and promoting the dignity of the person. In 1995, the Inter-Parliamentary

Union embarked on the process of drafting a Universal Declaration on Democracy to advance international standards and to contribute to ongoing democratization worldwide. In the Declaration, adopted in 1997, democracy and human rights are so closely linked as to be considered inseparable.

Democracy is premised on the idea that all citizens are equally entitled to have a say in decisions affecting their lives. This right to participation in the conduct of public affairs is enshrined in article 21 of the Universal Declaration of Human Rights and article 25 of the International Covenant on Civil and Political Rights (CCPR). However, for citizens to effectively exercise that right, they must first enjoy other rights such as freedom of expression, assembly and association, and basic economic and social rights. Institutions making possible the people's participation and control are a further prerequisite. Parliaments — sovereign bodies constituted through regular, free and fair elections to ensure government of the people, for the people and by the people — are therefore a key institution in a democracy. As the body competent to legislate and to keep the policies and actions of the executive branch under constant scrutiny, parliament also plays a key role in the promotion and protection of human rights. Furthermore, parliaments establish the legal framework that guarantees the independence of the judiciary and, therefore, the rule of law, a cornerstone of democracy and human rights protection. For all these reasons, parliaments are crucial to democracy and human rights.

"As an ideal, democracy aims essentially to preserve and promote the dignity and fundamental rights of the individual, to achieve social justice, foster the economic and social development of the community, strengthen the cohesion of society and enhance national tranquillity, as well as to create a climate that is favourable for international peace. As a form of government, democracy is the best way of achieving these objectives; it is also the only political system that has the capacity for self-correction."

Inter-Parliamentary Union, Universal Declaration on Democracy, Cairo September 1997, paragraph 3.

CHAPTER 2: WHAT STATE OBLIGATIONS ARISE FROM HUMAN RIGHTS?

Although in principle human rights can be violated by any person or group, and in fact human rights abuses committed against the backdrop of globalization by non-State actors (transnational corporations, organized crime, international terrorism, guerrilla and paramilitary forces and even intergovernmental organizations) are on the increase, under present international law, *only States assume direct obligations in relation to human rights.*

By becoming parties to international human rights treaties, States incur three broad obligations: the duties to respect, to protect and to fulfil. While the balance between these obligations or duties may vary according to the rights involved, they apply in principle to all civil and political rights and all economic, social and cultural rights. Moreover, States have a duty to provide a remedy at the domestic level for human rights violations.

What does the "obligation to respect" mean?

The State "obligation to respect" means that the State is obliged to refrain from interfering. It entails the prohibition of certain acts by Governments that may undermine the enjoyment of rights. For example, with regard to the right to education, it means that Governments must respect the liberty of parents to establish private schools and to ensure the religious and moral education of their children in accordance with their own convictions.

What does the "obligation to protect" mean?

The "obligation to protect" requires States to protect individuals against abuses by non-State actors. Once again, the right to education can serve as an example. The right of children to education must be protected by the State from interference and indoctrination by third parties, including parents and the family, teachers and the school, religions, sects, clans and business firms. States enjoy a broad margin of appreciation with respect to

Box 9

The State's obligation to respect, to protect and to fulfil: examples

	Right to life
Respect	The police shall not intentionally take the life of a suspect to prevent his or her escape in the event of a minor offence, such as theft.
Protection	Life-threatening attacks by an individual against other persons (attempted homicide) shall be crimes carrying appropriate penalties under domestic criminal law. The police shall duly investigate such crimes in order to bring the perpetrators to justice.
Fulfilment	The authorities shall take legislative and administrative measures to reduce progressively child mortality and other types of mortality whose underlying causes can be combated.
	Prohibition of torture or cruel, inhuman or degrading treatment or punishment
Respect	The police shall not use torture in questioning detainees.
Protection	The authorities shall take legislative and other measures against domestic violence.
Fulfilment	The authorities shall train police officers in acceptable methods of questioning.
	Right to vote
Respect	The authorities shall not interfere with the voting procedure and shall respect the election results.
Protection	The authorities shall organize voting by secret ballot to preclude threats by persons in power (such as politicians, heads of clan or family or employers).
Fulfilment	The authorities shall organize free and fair elections and ensure that as many citizens as possible can vote.
	Right to health
Respect	The authorities shall not restrict the right to health (inter alia through forced sterilization or medical experimentation).
Protection	Female genital mutilation (FGM) shall be prohibited and eradicated.
Fulfilment	An adequate number of hospitals and other public health-care facilities shall provide services equally accessible to all.
	Right to food
Respect	The authorities shall refrain from any measures that would prevent access to adequate food (for instance, arbitrary eviction from land).
Protection	The authorities shall adopt laws or take other measures to prevent powerful people or organizations from violating the right to food (examples: a company polluting the water supply, or a landowner evicting peasants).
Fulfilment	The authorities shall implement policies — such as agrarian reform — to ensure the population's access to adequate food and the capacity of vulnerable groups to feed themselves.

this obligation. For instance, the right to personal integrity and security obliges States to combat the widespread phenomenon of *domestic violence* against women and children: although not every single act of violence by a husband against his wife, or by parents against their children, constitutes a human rights violation for which the State may be held ac-

countable, Governments have a responsibility to take positive measures — in the form of pertinent criminal, civil, family or administrative laws, police and judiciary training or general awareness raising — to reduce the incidence of domestic violence.

What does the "obligation to fulfil" mean?

Under the "obligation to fulfil", States are required to take positive action to ensure that human rights can be exercised. In respect of the right to education, for instance, States must provide ways and means for free and compulsory primary education for all, free secondary education, higher education, vocational training, adult education, and the elimination of illiteracy (including such steps as setting up enough public schools or hiring and remunerating an adequate number of teachers).

The principle of progressive realization

The principle of progressive realization applies to the positive State obligations to fulfil and to protect. The right to health, for example, does not guarantee the right of everyone to be healthy. However, it does oblige States, in accordance with their respective economic capabilities, social and cultural traditions and observing international minimum standards, to establish and maintain a public health system that can in principle guarantee access to certain basic health services for all. Progressive realization means that Governments should establish targets and benchmarks in order progressively to reduce the infant mortality rate, increase the number of doctors per thousand inhabitants, raise the percentage of the population that has been vaccinated against certain infectious and epidemic diseases, or improve basic health facilities, etc. Obviously, the health standard in poor countries may

Box 10

The right to obtain remedy under international and regional human rights treaties: examples

According to article 2 (3) of CCPR, States parties undertake "to ensure that (a) ... any person whose rights or freedoms ... are violated shall have an effective remedy" and that (b) persons claiming such a remedy shall have their "right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State"; and "to develop the possibilities of judicial remedy".

Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms stipulates that: "Everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority ..."

Article 25 (1) of the American Convention on Human Rights (also known as the Pact of San José, Costa Rica) establishes this remedy as a separate human right: "Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the State concerned or by this Convention ..."

be lower than in rich countries without any violation of Governments' obligations to fulfil the right to health. The total absence of positive measures to improve the public health system, retrogressive measures or the deliberate exclusion of certain groups (such as women and religious or ethnic minorities) from access to health services can, however, amount to a violation of the right to health.

What does the "obligation to provide domestic remedies" mean?

The very notion of rights entails, in addition to a substantive claim, the possibility to have recourse to a national — judicial, administrative, legislative or other — authority in the event that a right is violated. Every person who claims that his or her rights have not been respected must therefore be able to seek an *effective remedy* before a competent domestic body vested with the power to provide redress and to have its decisions enforced.

The right to recourse to a supranational court

The right to have recourse to an international human rights court once all avenues of seeking redress at the domestic level are exhausted has been accepted only partially. According to advanced procedures established under the European Convention for the Protection of Human Rights and Fundamental Freedoms, individuals may appeal to the permanent European Court of Human Rights, whose judgements are legally binding. Provision is made for the right of individuals to file petitions with an international human rights court under the American Convention on Human Rights, but this is not currently the case under United Nations treaties (for details see Chapters 5 and 9).

The right to reparations

The right to effective remedy implies that the victim of a human rights violation is entitled to reparations for the harm suffered. The State's obligation entails inter alia bringing to justice those responsible for the violation, including public officials or State agents, and taking measures to prevent its recurrence. Box 11 lists various forms of reparation.

Box 11

Right of victims to reparation after human rights violations:

Restitution: release of detainees, restitution of property

Satisfaction: public apologies, truth commissions, criminal investigations against perpetrators of gross human rights violations

Rehabilitation: legal, medical, psychological and social measures to help victims recover (for instance, setting up centres for rehabilitation from torture)

Compensation: indemnification for financial or non-financial damages

Guarantee of non-recurrence: legislative and administrative changes, disciplinary measures

Remedies for violations of economic, social and cultural rights

The provisions for the right to a remedy cited above (see Box 10) refer primarily to civil and political rights, whereas most treaties relating to economic, social and cultural rights — such as the International Covenant on Economic, Social and Cultural Rights (CESCR) and the European Social Charter — contain no similar provisions. The reason is that the domestic or international justiciability of economic, social and cultural human rights is still questioned by many Governments, and even by some human rights scholars. The distinction between the two categories of rights dates back to the ideological debates of the cold war. Civil and political rights were then perceived as purely "negative" rights — directed against State interference — whereas economic, social and cultural rights were seen as "programme rights" — political claims requiring positive State action - aimed, for instance, at guaranteeing employment, good health and full social security for everyone. Such "programme rights" were considered unenforceable by the courts.

Supranational courts, such as the European or the Inter-American Court of Human Rights, have ruled that States must take action to ensure respect for civil and political rights. States must, for instance, establish a judicial system capable of fulfilling the obligation to guarantee a fair trial within a reasonable time. In cases of allegations of torture, enforced disappearances or arbitrary executions, they must carry out full criminal investigations to bring the perpetrators to justice and to provide compensation and other forms of reparation to victims and their families.

These same facilities may also be established with regard to economic, social and cultural rights. As mentioned above, international courts are capable of deciding in a judicial procedure that a State has not fulfilled its positive obligation with regard to civil and political rights, for example the obligation to organize a judicial system in accordance with the minimum guarantees set out in article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the right to fair trial). It can therefore be argued that the same court would also be fully empowered to decide whether States fulfilled their positive obligations to organize their school systems in accordance with the minimum guarantees of the right to education, as laid down in articles 13 and 14 of CESCR, or their public health systems in accordance with the minimum guarantees of the right to the enjoyment of the highest attainable standard of physical and mental health, as established under article 12 of CESCR.

Yet almost no international court has been mandated to rule on economic, social and cultural rights. The only exceptions are the Inter-American Court of Human Rights, which, by virtue of article 19 (6) of the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, is authorized to decide on individual petitions relating to the right to education and the right to organize trade unions; and the Human Rights Chamber for Bosnia and Herzegovina, which, pursuant to annex 6 to the Dayton Peace Agreement of 1995, handed down decisions in many cases relating to alleged or apparent discrimination in the enjoyment of various economic, social and cultural rights. Although in 1993 the Vienna World Conference on Human Rights decided to speed up the drafting of an optional protocol to the International Covenant

on Economic, Social and Cultural Rights in order to establish a right to submit individual complaints to the Committee on Economic, Social and Cultural Rights (which is, as the other United Nations treaty-monitoring bodies, only a quasi-judicial expert body — see Chapter 5), many Governments are still obstructing that important development.

Box 12

Competence of domestic courts in the area of economic, social and cultural rights: an example

In some countries, domestic courts are mandated to rule on economic, social and cultural rights. A pertinent example is provided by the jurisprudence of South Africa, where economic, social and cultural rights, such as the rights to food, access to health care and housing, enshrined in the Constitution, may be enforced by the courts. In the *Grootboom case* (*Government of the Republic of South Africa v. Irene Grootboom and others*, CCT 11/00), the Constitutional Court set a precedent. The case was appealed to the Court by the South African Government when the Cape High Court ordered it to provide a group of homeless children and their parents with shelters (tents, portable latrines and regular water supply). The group had lived in an informal settlement that flooded when it rained, then moved to another site from which they were evicted, and their shacks there were burnt down. Completely homeless, as their initial settlement had meanwhile been occupied by others, they squatted in a sports field and filed an application with the High Court, invoking the right to housing and children's rights as enshrined in the Constitution. The application on the basis of the right to housing failed, because the Court was satisfied that the State had taken "reasonable" measures towards the progressive realization of this right within the State's "available resources". However, it held that — by virtue of the children's constitutionally guaranteed right to shelter, and in accordance with the children's best interests — the children and their parents were entitled to shelter provided by the State.

It may still take years for the argument that economic, social and cultural rights are non-justiciable to be refuted, because of the following vicious circle: Governments refuse to authorize domestic and international courts to rule on economic, social and cultural rights; there is thus relatively little relevant judicial case law; and this fact is to some extent considered as evidence that these rights are not justiciable — or are less justiciable than civil and political rights.

CHAPTER 3:
INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

The emergence of international human rights law

International human rights law emerged in the nineteenth century when international law developed a doctrine under which "humanitarian intervention" was considered legitimate in cases in which a State committed against its own subjects atrocities that "shocked the conscience of mankind". Later, the influence of the Red Cross Movement and the establishment in 1919 of the International Labour Organization (ILO) led to the conclusion of, respectively, the Geneva Conventions[6] and the first international conventions designed to protect industrial workers from gross exploitation and to improve their working conditions. The minority treaties concluded after the First World War sought to protect the rights of ethnic and linguistic minorities, and are therefore sometimes seen as precursors of modern international human rights instruments. Strictly speaking, however, the first international human rights treaty — the Slavery Convention — was adopted in 1926 and entered into force the following year.

The International Bill of Human Rights

With the establishment in 1945 of the United Nations, "*promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion*"[7] became one of the fundamental goals pursued by the international community. The Universal Declaration of Human Rights (1948) provides the first authoritative interpretation of the term "human rights", as used in the Charter, and, although it was not drafted or voted upon as a legally binding instrument, the Declaration can now — more than 50 years later — be considered as *a general standard on human rights.*

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[6] For further information on the Geneva Conventions and humanitarian law, see *Respect for International Humanitarian Law: a Handbook for Parliamentarians*, IPU, Geneva 1999.

[7] *Charter of the United Nations*, Chapter I, Article 1, para.3.

The Universal Declaration of Human Rights was adopted in two years, but it took almost 20 years to agree on the text of the International Covenant on Civil and Political Rights (CCPR) and the International Covenant on Economic, Social and Cultural Rights (CESCR). After six years of drafting, they were finalized in the United Nations Commission on Human Rights in 1954, but the General Assembly took 12 more years to adopt them. It took a further 10 years until the required 35 instruments of ratification were deposited and the Covenants finally entered into force (1976). The Universal Declaration of Human Rights, and the two Covenants are the only general human rights instruments of the United Nations. Together with the two Optional Protocols to CCPR (1966 and 1989), they are usually referred to as the "International Bill of Human Rights".

"The Declaration is a timeless and powerful document that captures the profound aspirations of humankind to live in dignity, equality and security. It provides minimum standards and has helped turn moral issues into a legally binding framework…."

Sergio Vieira de Mello, former United Nations High Commissioner for Human Rights, Message delivered on Human Rights Day, 10 December 2002.

Box 13

The Universal Declaration of Human Rights

Under the leadership of such eminent personalities as Eleanor Roosevelt, René Cassin and Charles Malik, the United Nations Commission on Human Rights succeeded in drafting the Universal Declaration of Human Rights in two years. It was adopted by the General Assembly on 10 December 1948. The Declaration sets out civil, political, economic, social and cultural rights and the right of everyone "to a social and international order in which the rights and freedoms set forth in [the] Declaration can be fully realized". Although it is not a binding instrument, and the Socialist States and South Africa abstained when it was adopted, the Declaration has risen, morally and politically, to the status of an immensely authoritative instrument, expressing the United Nations understanding of human rights. Today, it serves as the substantive foundation of the charter-based system of human rights protection (see Chapter 8). The Declaration, together with the International Covenant on Civil and Political Rights (CCPR), the International Covenant on Economic, Social and Cultural Rights (CESCR) and the two Optional Protocols to CCPR, form the International Bill of Human Rights.

Core human rights treaties

The International Bill of Human Rights has been supplemented with a number of more specific binding instruments. Some treaties are subject to supervision by monitoring bodies and form, with the two Covenants, a set of instruments usually referred to as the core human rights treaties (see Chapter 5). These additional instruments are:

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD; adoption in 1965; entry into force in 1969);

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW; adoption in 1979; entry into force in 1981);
The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT; adoption in 1984; entry into force in 1987);
The Convention on the Rights of the Child (CRC; adoption in 1989; entry into force in 1990);
The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (known as the Migrant Workers Convention, or CMW; adoption in 1990; entry into force in 2003).

Box 14

Drafting and adopting international human rights treaties and related instruments

All human rights treaties and major declarations are adopted by the United Nations General Assembly, the only body where all — currently 191 — Member States are represented, with one vote each. The drafting process often begins with the adoption of a non-binding declaration, providing a common definition, and continues in the form of the more difficult task of developing legally binding standards.

The text of human rights instruments is generally first drafted by the United Nations Commission on Human Rights, which usually delegates the initial round of drafting to its standing Sub-Commission on the Promotion and Protection of Human Rights (see Chapter 8) or to an intersessional working group set up by the Commission for that purpose (for instance, at the time of writing, one such group was drafting a treaty on enforced disappearances). The drafting process in the Commission and its subsidiary bodies generally takes at least several years, and may even span two decades.

Once the text is adopted by the United Nations Commission on Human Rights, the drafting process usually speeds up. The text must then be approved by the Economic and Social Council. That is normally done within one session. Lastly, the draft must be discussed and formally adopted by the General Assembly, and in particular its Third Committee on Social, Humanitarian and Cultural Affairs. In the early years, it was not unusual for the Third Committee to redraft the text more or less from scratch. In recent years, however, the major political decisions are taken in the Commission, and work in the General Assembly is limited to solving a few remaining problems within one or two sessions.

Once a treaty is adopted by the General Assembly, usually by consensus, it is opened for *signature and ratification by Member States.* It enters into force after the deposit of a specific number of instruments of ratification or accession.

Other human rights instruments of the United Nations

The United Nations and its specialized agencies have adopted many other human rights instruments devoted to specific groups, including women, refugees, aliens and stateless persons, minorities and indigenous peoples, prisoners, persons with disabilities, children and adolescents, and victims of crime. Further universal instruments deal with major hu-

Box 15

Steps in defining and implementing human rights standards

Declarations: setting non-binding standards

- Universal Declaration of Human Rights (1948)
- American Declaration of Human Rights (1948)

Binding international treaties and conventions

- United Nations Covenants (1966-1976)
- European Convention for the Protection of Human Rights and Fundamental Freedoms (1950-1953)
- American Convention on Human Rights (1969-1978)
- African Charter on Human and Peoples' Rights (1981-1986)

Implementation: human rights treaty-monitoring bodies and mechanisms

- Complaints procedure
- Reporting procedure
- Inquiry procedure
- System of regular visits

man rights violations, such as slavery, torture, enforced disappearance, genocide, forced labour and religious intolerance, or focus on other specific human rights issues in the areas of education, employment, development, administration of justice, marriage, and the freedoms of association and of information.

A detailed list of human rights instruments is provided in annex 4.

Box 16

Human rights jurisprudence

Human rights treaties and conventions are living instruments, constantly developed through the jurisprudence of the *international courts and expert bodies* responsible for international monitoring. These bodies have given the initial standards dynamic interpretations far beyond their original meanings, adapting their provisions to current circumstances. For instance, the prohibition of inhuman and degrading treatment and punishment under article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) was not initially meant to apply to minor forms of corporal punishment (such as those practised in British schools); however, in the course of adaptation of the Convention as a living instrument, the European Court of Human Rights has found that no form of corporal punishment is permitted under article 3. Similarly, the United Nations Human Rights Committee (see Chapter 5) has found that the right to security of the person, guaranteed in article 9 of CCPR along with the right to liberty, was not intended to be narrowed down to mere formal loss of liberty: in a landmark decision (case of *Delgado Páez v. Colombia,* 195/1985), the Committee ruled that States may not ignore threats to the personal security of non-detained persons within their jurisdictions, and are obliged to take reasonable and appropriate measures to protect them.

CHAPTER 4:
MAY GOVERNMENTS RESTRICT HUMAN RIGHTS?

Some human rights, such as the prohibition of torture and slavery, *are absolute.* The application of interrogation techniques amounting to torture as defined under article 1 of CAT — for instance electric shocks and other methods causing severe physical pain or mental suffering — is not justified on any grounds whatsoever, including — in the area of counter-terrorism — such circumstances as the need to extract from a detainee information about an imminent terrorist attack.

States are allowed a *margin of appreciation* in relation to their obligations to respect, protect and fulfil most human rights. Most of these obligations are subject to progressive realization, and the particular social, political, economic, religious and cultural circumstances of every society must therefore be taken into account in assessing whether a State has violated its human rights obligations. Accordingly, the principle of the universality of human rights primarily applies to a core content of human rights, while Governments, by virtue of reservations, derogation and limitation clauses, and the principle of progressive realization, enjoy fairly broad powers to implement human rights in accordance with their national interests.

Limitation clauses

Many obligations to respect human rights are subject to so-called limitation clauses. The exercise of political freedoms, such as freedom of expression, assembly and association, carries with it duties and responsibilities and may, therefore, be subject to certain formalities, conditions, restrictions and penalties in the interests of national security, territorial integrity or public safety, the prevention of disorder or crime, the protection of public health or morals, or the protection of the reputation or rights and freedoms of others. If people misuse their freedom of speech and of participation in a demonstration for incitement to racial or religious hatred, for war propaganda or for instigating others to commit crimes, Governments have an obligation to interfere with the exercise of these freedoms in

Box 17

Rights, freedoms and prohibitions that are not subject to derogation even in times of war

Under article 4 of CCPR

- Right to life
- Prohibition of torture, or cruel, inhuman or degrading treatment or punishment
- Prohibition of slavery and servitude
- Prohibition of detention for debt
- Freedom from retroactive criminal laws
- Right to recognition as a person before the law
- Freedom of thought, conscience and religion

Under article 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms

- Right to life, except in respect of deaths resulting from lawful acts of war
- Prohibition of torture, cruel, inhuman and degrading treatment or punishment
- Prohibition of slavery and servitude
- Freedom from retroactive criminal laws

Under article 27 of the American Convention on Human Rights

- Right to legal personality
- Right to life
- Right to humane treatment
- Prohibition of slavery
- Freedom from retroactive criminal laws
- Freedom of conscience and religion
- Right to nationality
- Right to participate in government
- Right to judicial remedy
- Right to a name
- Rights of the family
- Rights of the child

Box 18

Legitimate restrictions

Reservations;
Derogation measures in cases of emergency;
Prohibition of human rights misuse;
Limitation clauses must:

- comply with domestic law;
- serve a legitimate purpose;
- be proportionate.

Box 19

Legitimate restrictions: examples of jurisprudence

It is the task of international human rights bodies to assess on a case-by-case basis whether a particular form of interference serves a *legitimate purpose,* is based on a valid and foreseeable *domestic law,* and is *proportional.* The European Court of Human Rights, for instance, has interpreted the relevant limitation clauses in ECHR in a way that on the one hand provides Governments with a fairly broad margin of appreciation, while on the other hand requiring them to show a *pressing social need* in order to justify restrictions. For instance, the Court did not accept the argument given by the Irish Government that the general prohibition of homosexuality under Irish criminal law was necessary in a democratic society for the protection of public morals, since in the absence of any comparable legislation in other European societies, there was no pressing social need for such a far-reaching restriction of the right to privacy.

order to protect the human rights of others. *Any interference, restriction or penalty must, however, be carried out in accordance with domestic law and must be necessary for achieving the respective aims and national interests in a democratic society. States must in any case demonstrate the necessity of applying such limitations, and take only those measures which are proportionate to the pursuance of the legitimate aims.*

Derogation in a state of emergency

In times of war, rioting, natural disasters or other public emergencies (such as terrorist attacks) that pose a serious threat to the life of a nation, Governments may take measures derogating from their human rights obligations, provided the following conditions are met:

- A state of emergency must be declared;
- The specific measures derogating from an international treaty must be officially notified to the competent international organizations and other States parties;
- Derogation is permissible only to the extent strictly required by the situation;
- The derogation must be lifted as soon as the situation permits;
- The rights subject to derogation must not be among those that admit no derogation (see Box 17).

Reservations to international or regional human rights treaties

In certain cases, States issue statements upon signature, ratification, acceptance, approval of, or accession to, a treaty. Such statements may be entitled "reservation", "declaration", "understanding", "interpretative declaration" or "interpretative statement".

Article 19 of the 1969 Vienna Convention on the Law of Treaties specifies that a State may, when signing, ratifying, accepting, approving or acceding to a treaty, make a reservation, unless:

1. The reservation is prohibited by the treaty;
2. The treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
3. In cases not falling under the above two categories, the reservation is incompatible with the object and purpose of the treaty.

Where a treaty is silent on reservations and a reservation is formulated and subsequently circulated, the States concerned have 12 months to object to the reservation, beginning on the date of the depositary notification or the date on which the State expressed its consent to be bound by the treaty, whichever is later (see article 20(5) of the Vienna Convention 1969).

A State may, unless the treaty stipulates otherwise, withdraw its reservation or objection to a reservation, either completely or partially, at any time.

Counter-terrorism measures and human rights

The *Digest of Jurisprudence of the United Nations and Regional Organizations on the Protection of Human Rights while Countering Terrorism*, published by the Office of the UN High Commissioner for Human Rights (OHCHR) in September 2003, presents a collection of excerpts from the jurisprudence of human rights bodies of the United Nations and other organizations (in particular, African, American and European regional organizations).

The *Digest* shows that during counter-terrorism activities, some issues have been found to be of particular relevance to the question of the protection of human rights and fundamental freedoms. One such issue is the definition of terrorism. Although the term has not yet been authoritatively defined, States have agreed on some key elements of its definition. On 9 December 1994, the United Nations General Assembly adopted the Declaration on Measures to Eliminate International Terrorism (A/RES/49/60). It states that terrorism includes "*criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes*" and further holds that such acts "*are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.*"

The issue of terrorism and human rights has long been a matter of concern to the United Nations human rights programme, but dealing with it became more urgent after the attacks of 11 September 2001 and the worldwide surge in terrorist acts. At a special meeting of the Security Council's Counter-Terrorism Committee with international, regional, and subregional organizations on 6 March 2003, Secretary-General Kofi Annan stated:

"Our responses to terrorism, as well as our efforts to thwart it and prevent it, should uphold the human rights that terrorists aim to destroy. Respect for human rights, fundamental freedoms and the rule of law are essential tools in the effort to combat terrorism — not privileges to be sacrificed at a time of tension."

Some United Nations human rights bodies have expressed concern that counter-terrorism measures may infringe on human rights. For example, United Nations special rapporteurs and independent experts, at their tenth annual meeting, held in Geneva in June 2003, stated:

"Although they [special rapporteurs and independent experts] share in the unequivocal condemnation of terrorism, they voice profound concern at the multiplication of policies, legislation and practices increasingly being adopted by many countries in the name of the fight against terrorism, which affect negatively the enjoyment of virtually all human rights — civil, cultural, economic, political and social.

"They draw attention to the dangers inherent in the indiscriminate use of the term 'terrorism', and the resulting new categories of discrimination. [They] deplore the fact that, under the pretext of combating terrorism, human rights defenders are threatened and vulnerable groups are targeted and discriminated against on the basis of origin and socio-economic status, in particular migrants, refugees and asylum-seekers, indigenous peoples and people fighting for their land rights or against the negative effects of economic globalization policies."

Under very specific conditions, terrorism may justify a state of emergency, in which some rights may be subject to derogation in accordance with CCPR and regional human rights instruments. Under the same provisions, however, certain human rights are not subject to suspension under any circumstances (see Box 17).

Under CCPR and regional human rights instruments, derogation from rights other than the above is permitted only in special circumstances; they must be exceptional, strictly limited in time and, to the extent required by the exigencies of the situation, subject to regular review, and consistent with other obligations under international law; and they must not entail discrimination. It is furthermore required that the State inform the Secretary-General of the United Nations or the relevant regional organization of the provisions from which it has derogated, and the grounds for the derogation.

Building on States' other obligations under international law, the Human Rights Committee has developed a list of elements that, in addition to the rights specified in article 4 of CCPR, cannot be subject to derogation. These elements include the following:

- All persons deprived of liberty must be treated with respect for their dignity; hostage-taking, abduction and unacknowledged detention are prohibited;
- Persons belonging to minorities are to be protected;
- Unlawful deportations or forcible transfers of population are prohibited; and
- "No declaration of a state of emergency … may be invoked as justification for a State party to engage itself … in propaganda for war, or in advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence".

Furthermore, as the right to a fair trial during armed conflict is explicitly guaranteed under international humanitarian law, the Human Rights Committee found that the prin-

ciples of legality and the rule of law require that fundamental fair trial requirements be respected during a state of emergency. The Committee stressed that it is inherent in the protection of those rights that are explicitly recognized as not being subject to derogation that they be secured by procedural guarantees, including, often, judicial guarantees.

Under CCPR and the regional human rights instruments, the principles of necessity and proportionality apply when it is exceptionally permissible to limit some rights for specific, legitimate and well-defined purposes other than emergencies. The measures taken must be appropriate and must be the least intrusive possibility to achieve their objectives. The discretion given to authorities to act in that connection must not be unfettered. In all cases, the principle of non-discrimination must be respected and special efforts must be made to safeguard the rights of vulnerable groups. Counter-terrorism measures targeting specific ethnic or religious groups are contrary to human rights, and may kindle an upsurge in discrimination and racism.

CHAPTER 5:
UNITED NATIONS HUMAN RIGHTS TREATY-MONITORING BODIES

Compliance of States parties with their respective obligations under the seven United Nations core human rights treaties (see Chapter 3) is monitored by seven expert organs, which are known as treaty-monitoring bodies or treaty bodies.

- The Human Rights Committee (CCPR);
- The Committee on Economic, Social and Cultural Rights (CESCR);
- The Committee on the Elimination of Racial Discrimination (CERD);
- The Committee on the Elimination of Discrimination against Women (CEDAW);
- The Committee against Torture, and its Subcommittee on Prevention (CAT);
- The Committee on the Rights of the Child (CRC);
- The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW).

With the exception of the CESCR Committee, which was created by a resolution of the Economic and Social Council in 1985, the above bodies were established by their respective instruments, and were set up as soon as the respective treaties entered into force.

Membership and functioning

The Committees for the CCPR, CESCR, CERD and CRC have 18 members each, the CAT and CMW Committees 10, and the CEDAW Committee consists of 23 experts. Their members are elected by the States parties to the respective treaties (with the exception of the CESCR Committee, which is elected by the Economic and Social Council), with due regard for equitable geographic distribution. The CCPR and CRC Committees meet three times a year, the CMW Committee once and the other treaty bodies twice. With the exception of the CEDAW Committee, which is serviced by the United Nations Division for

the Advancement of Women (UNDAW) of the Department of Economic and Social Affairs (DESA) of the United Nations at its New York Headquarters, all these treaty bodies are serviced by OHCHR in Geneva.

Reporting procedure

OBLIGATIONS OF STATES

The State reporting procedure is the only mandatory procedure common to all seven core human rights treaties. Governments have an obligation to submit to each treaty-monitoring body an initial report, followed by periodic reports, and emergency or other reports requested by the treaty-monitoring body. The treaty bodies provide States with guidelines aimed at assisting them in the preparation of the reports.

Generally speaking, the reports are expected to provide the following minimum information:

- All measures adopted by a State to give effect to the rights provided for in the treaty;
- Progress made in the enjoyment of those rights;
- Relevant empirical information, including statistical data;
- All problems and difficulties affecting the domestic implementation of the treaty.

As a rule, State reports are drafted by the respective Governments. However, to ensure completeness and objectivity, the involvement in report preparation of other State institutions (above all parliament), national human rights commissions and ombudsmen and relevant non-governmental organizations (NGOs) and civil society organizations (CSOs) is considered advisable.

EXAMINATION OF STATE REPORTS

Treaty bodies analyse State reports and discuss them in public sessions, in the presence of State representatives. Although the Committees aim at a constructive dialogue with Governments, State representatives may be confronted with highly critical questions and remarks formulated by Committee members. At the end of the examination of each State report, the treaty bodies adopt concluding observations and comments and recommendations that are subsequently released at the end of the session and published in the bodies' annual reports. States are expected to implement those recommendations and to provide, in their next reports, information on the measures taken to that end. Occasionally, the Committees request specific reports, particularly in emergency situations or other cases involving major human rights violations.

THE ROLE OF NGOS AND OTHER ORGANIZATIONS

International and domestic NGOs closely follow the examination of State reports and provide the experts with relevant information, or even shadow reports. The CCPR, CESCR

and CRC Committees allow NGOs to play a relatively active role, and to take the floor in special meetings. United Nations specialized agencies, such as ILO and UNESCO, and other United Nations organs are invited to assist in monitoring treaty implementation. The United Nations Children's Fund (UNICEF), in particular, with its worldwide network of country offices, provides the CRC Committee with active and valuable assistance in the ambitious task of monitoring compliance in 192 States parties.

GENERAL COMMENTS ISSUED BY TREATY-MONITORING BODIES

Treaty bodies adopt and publish *general comments* or *general recommendations* concerning the provisions and obligations contained in their respective treaties. These documents reflect the Committees' experience in the reporting procedure and constitute an authoritative source of interpretation of human rights instruments.

Box 20

Where to obtain information on the work of treaty-monitoring bodies

Detailed information on all treaty bodies and access to their general comments or recommendations is provided at http://www.ohchr.org/english/bodies/index.htm. Considerable guidance is also offered at **http://www.ohchr.org/english/contact**.

OHCHR contact information:
Mailing address: OHCHR – Palais des Nations
8-14 avenue de la Paix
CH – 1211 Geneva 10
Switzerland
Tel.: +41 (22) 917 9000
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Individual complaints procedure

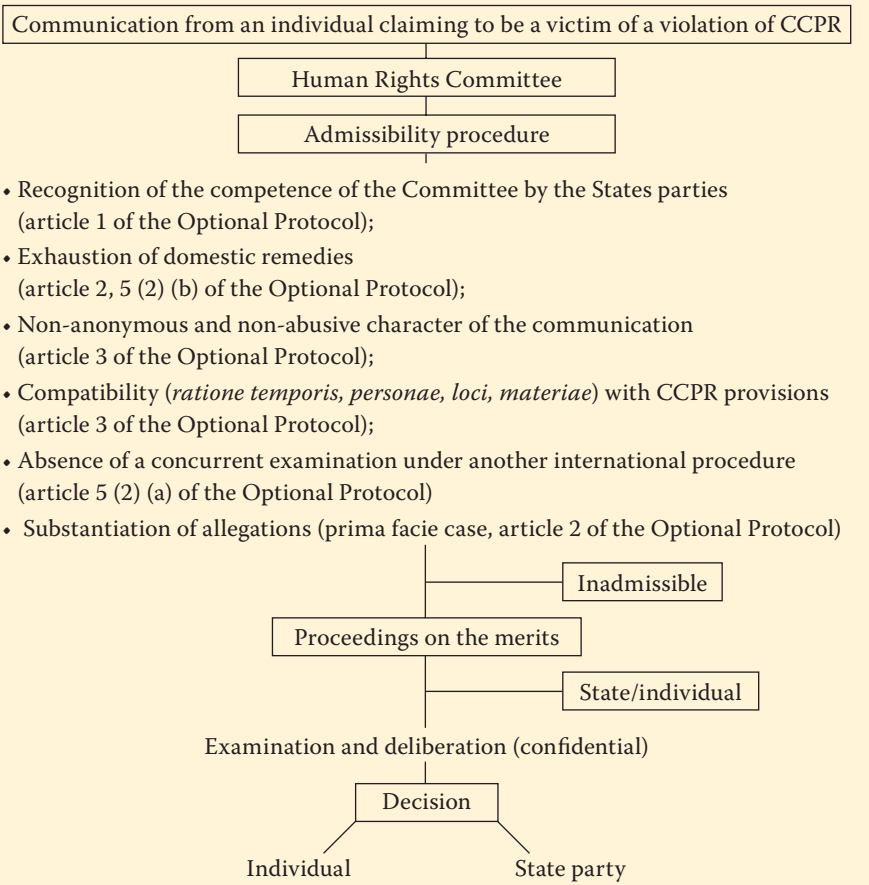
The Optional Protocols to CCPR and CEDAW, and optional clauses in CERD, CAT and the Migrant Workers Convention provide for procedures for individual complaints (called "communications"). A similar procedure is expected to figure in the optional protocol to the International Covenant on Economic, Social and Cultural Rights that is currently being drafted in the United Nations Commission on Human Rights.

Under those provisions, which are accepted by an ever greater number of States parties (see Box 22), any individual subject to the jurisdiction of a State party who (a) claims to be a victim of a human rights violation and (b) has exhausted all domestically available possibilities of seeking effective remedy is entitled to file a complaint with the competent treaty-monitoring body. The committees examine such complaints under a quasi-judicial, confidential procedure culminating in a final, non-binding decision (called "final views, suggestions or recommendations") that declares the complaint either inadmissible

Box 21

Complaints procedures

Example of the First Optional Protocol to CCPR



(if formal requirements are not met) or admissible, and — in the latter case — issues an opinion on the merits (determining whether the complainant's human rights have been violated).

Inter-State complaints procedure

CCPR, CERD, CAT and the Migrant Workers Convention provide for inter-State complaints procedures, under which a State party is entitled to submit a complaint to the respective committee, claiming that another State party is not fulfilling its treaty obligations. The procedure is based on the precept that under international law every State party has a legal interest in the fulfilment of the obligations of every other State party.

Box 22

Acceptance of individual complaints procedures by States, and effectiveness of the procedures

Ratification of the First Optional Protocol to CCPR (104 States parties as of November 2004)

Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Barbados, Belarus, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Estonia, Finland, France, Gambia, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Hungary, Iceland, Ireland, Italy, Kyrgyzstan, Latvia, Lesotho, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Mali, Malta, Mauritius, Mexico, Mongolia, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Saint Vincent and the Grenadines, San Marino, Senegal, Serbia and Montenegro, Seychelles, Sierra Leone, Slovakia, Slovenia, Somalia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Tajikistan, the former Yugoslav Republic of Macedonia, Togo, Turkmenistan, Uganda, Ukraine, Uruguay, Uzbekistan, Venezuela and Zambia.

Ratification of the Optional Protocol to CEDAW (68 States parties as of November 2004)

Albania, Andorra, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Belize, Bolivia, Bosnia and Herzegovina, Brazil, Canada, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Finland, France, Gabon, Georgia, Germany, Greece, Guatemala, Hungary, Iceland, Ireland, Italy, Kazakhstan, Kyrgyzstan, Lesotho, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Mali, Mexico, Mongolia, Namibia, Netherlands, New Zealand, Niger, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Senegal, Serbia and Montenegro, Slovakia, Slovenia, Solomon Islands, Spain, Sri Lanka, Sweden, Thailand, the former Yugoslav Republic of Macedonia, Timor-Leste, Turkey, Ukraine, Uruguay and Venezuela.

Acceptance of individual complaints procedure under article 22 of CAT (56 States parties as of November 2004)

Algeria, Argentina, Australia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Burundi, Cameroon, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Ghana, Greece, Guatemala, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Mexico, Monaco, Netherlands, New Zealand, Norway, Paraguay, Peru, Poland, Portugal, Russian Federation, Senegal, Serbia and Montenegro, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Togo, Tunisia, Turkey, Ukraine, Uruguay and Venezuela.

Acceptance of individual complaints procedure under article 14 of CERD (45 States parties as of November 2004)

Algeria, Australia, Austria, Azerbaijan, Belgium, Brazil, Bulgaria, Chile, Costa Rica, Cyprus, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Mexico, Monaco, Netherlands, Norway, Peru, Poland,

Portugal, Republic of Korea, Romania, Russian Federation, Senegal, Serbia and Montenegro, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Ukraine, Uruguay and Venezuela.

Effectiveness*:*

- Recourse to an individual complaints procedure has been most effective under the First Optional Protocol to CCPR: as of November 2004, after 27 years of existence, the Human Rights Committee (the body monitoring CCPR) had registered more than 1,300 cases and rendered decisions in about 480;
- In April 2004, the CAT Committee, established in 1987, had registered 242 cases and rendered decisions on more than 90. Most of the cases, however, did not involve direct allegations of torture in a State party, but rather violations of the principle of non-refoulement (or "non-repatriation", laid down in article 3 of the Convention) in relation to aliens' claims that expulsion or extradition by (most often European) States would expose them to torture in their countries of origin or destination;
- In March 2004, the CERD Committee, the oldest of the treaty bodies (established in 1970), had registered only 33 cases, and rendered decisions on 15.

In general comment No. 31 on the nature of the general legal obligation imposed on States parties to CCPR, the Human Rights Committee commends to States parties the view that violations of the rights guaranteed under CCPR by any State party deserve their attention. It points out that "to draw attention to possible breaches of Covenant obligations by other State parties and to call on them to comply with their Covenant obligations should, far from being regarded as an unfriendly act, be considered as a reflection of legitimate community interest".

The committees are expected to examine the complaints in closed meetings and, if necessary, to appoint an ad hoc conciliation commission to investigate and settle the matter between the States concerned. Although the inter-States complaint procedure before CERD is mandatory (which means that any of the 162 States parties is entitled to file a complaint alleging racial discrimination by any other State party), no inter-State complaint has so far been brought before any United Nations treaty-monitoring bodies.

Inquiry procedures under CAT and the Optional Protocol to CEDAW

CAT and the Optional Protocol to CEDAW provide for a procedure of *suo moto* inquiry by the respective treaty bodies (also known as "inquiry of its own motion"). This may be initiated if the committees receive reliable and plausible information to the effect that torture or discrimination against women, respectively, is being systematically practised in the territory of a State party. A treaty body that launches such an inquiry may carry out a fact-finding mission to the country concerned, subject to approval by its Government. All proceedings are confidential, but the committees may include a summary account of the

Box 23

A summary of procedures

Treaty	Date of adoption/ Entry into force	Body	Member-ship	Members elected by	State reporting	Inter-State complaints	Individual complaints	*Suo moto* inquiry
CAT	12 December 1984/ 26 June 1987	Committee against Torture	10	States parties	Mandatory article 19	Optional article 21	Optional article 22	Mandatory (possibility to opt out) articles 20 and 28
CCPR	16 December 1966/ 23 March 1976	Human Rights Committee	18	States parties	Mandatory article 40	Optional articles 41 and 42	First Optional Protocol	
CEDAW	18 December 1979/ 3 September 1981	Committee on the Elimination of Discrimination against Women	23	States parties	Mandatory article 18		Optional Protocol	Optional Protocol articles 8 and 10 (possibility to opt out)
CERD	21 December 1965/ 4 January 1969	Committee on the Elimination of Racial Discrimination	18	States parties	Mandatory article 9	Mandatory articles 11, 12 and 13	Optional article 14	
CESCR	16 December 1966/ 3 January 1976	Committee on Economic, Social and Cultural Rights	18	Economic and Social Council (1985)	Mandatory articles 16 and 17		Draft optional protocol	
CMW	18 December 1989/ 1 July 2003	Committee on Migrant Workers	10	States parties	Mandatory article 73	Article 76 (not yet in force)	Article 77 (not yet in force)	
CRC	20 November 1989/ 2 September 1990	Committee on the Rights of the Child	18	States parties	Mandatory article 44			

results of their inquiries in their annual reports. The CAT Committee has so far conducted six inquiries (concerning Egypt, Mexico, Peru, Serbia and Montenegro, Sri Lanka, and Turkey). The CEDAW Committee has initiated an inquiry procedure concerning Mexico.

The system of regular visits to detention centres established under the Optional Protocol to CAT

The Optional Protocol to CAT of December 2002[8] provides for a system of regular visits to places of detention by an international body, the Subcommittee on Prevention of the Com-

[8] By August 2005, the Optional Protocol had been ratified by 11 States; 20 ratifications are required for the Protocol to enter into force.

mittee against Torture, and by national bodies. The system is designed to prevent torture and other cruel, inhuman or degrading treatment or punishment. The international body and the national bodies formulate recommendations and issue them to the Government concerned. While the recommendations of the national bodies may be published in their annual reports, the recommendations and observations of the international Subcommittee may be made public only if a State party does not comply with its treaty obligations.

CHAPTER 6:
CHARTER-BASED SYSTEM OF HUMAN RIGHTS PROTECTION UNDER THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS

The United Nations Commission on Human Rights is the most important political organ of the United Nations in the area of human rights. It has developed gradually, and has over the years established various procedures to deal with important human rights issues and respond to the thousands of petitions that it receives regularly from NGOs and individuals with regard to alleged human rights violations.

The confidential "1503 procedure"

Under this confidential procedure (referred to as the "1503 procedure" because Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970 forms its legal basis), every year, a special working group of the Sub-Commission on the Promotion and Protection of Human Rights studies thousands of individual petitions, seeking to determine whether any countries display "a consistent pattern of gross and reliably attested violations of human rights". Such "country situations" are forwarded to a pre-sessional working group and ultimately to the Commission meeting in plenary. In a private session, attended only by the representatives of the Member States, the Commission may then decide to conclude the examination, to keep the respective country under surveillance (possibly for a number of years), to carry out a full, confidential investigation with the assistance of a special rapporteur or an ad hoc committee, or, as a measure of last resort, if the situation has not improved and/or the respective Government has refused to cooperate, "to go public". "Going public" consists of pursuing the examination of the country situation under one of the special procedures described below.

Box 24

The United Nations Commission on Human Rights

The United Nations Commission on Human Rights is one of the Economic and Social Council's functional commissions. As a United Nations political body, the Commission comprises representatives of States Members, elected by the Economic and Social Council, whose number has increased over the years (it is currently 53). However, other States, various intergovernmental organizations and many NGOs participate in the meetings of the Commission as observers, and may take the floor and submit written observations. The annual session of the Commission is held at the Palais des Nations in Geneva in March and April, lasts six weeks and is in fact a major human rights conference attended by some 3,000 delegates, including many heads of State and Government, ministers, human rights defenders and journalists, who participate in public discussions on all crucial human rights issues. Since the 1990s, the Commission has also held emergency sessions concerning the human rights situations in the former Yugoslavia, Rwanda, East Timor and the occupied Palestinian territories. It has set up the Sub-Commission on the Promotion and Protection of Human Rights, which consists of 26 independent experts and functions as the Commission's think tank (see Chapter 6).

In recent years there has been increasing criticism of the Commission's capacity to perform its tasks. As United Nations Secretary-General Kofi Annan put it in his report on the reform of the United Nations,[9] "States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others". He has therefore proposed to replace the Commission with a smaller permanent Human Rights Council, the members of which are to be elected directly by the General Assembly. The Council wou ld function as a chamber of peer review and be mandated to evaluate all States' fulfilment of all their human rights obligations.

In 2005, the following States were members of the Commission: Argentina, Armenia, Australia, Bhutan, Brazil, Burkina Faso, Canada, China, Congo, Costa Rica, Cuba, Dominican Republic, Ecuador, Egypt, Eritrea, Ethiopia, Finland, France, Gabon, Germany, Guatemala, Guinea, Honduras, Hungary, India, Indonesia, Ireland, Italy, Japan, Kenya, Malaysia, Mauritania, Mexico, Nepal, Netherlands, Nigeria, Pakistan, Paraguay, Peru, Qatar, Republic of Korea, Romania, Russian Federation, Saudi Arabia, South Africa, Sri Lanka, Sudan, Swaziland, Togo, Ukraine, United Kingdom, United States of America and Zimbabwe.

The special procedures

Pursuant to Economic and Social Council resolution 1235 (XLII) of 6 June 1967, the United Nations Commission on Human Rights has established a number of special procedures to deal with allegations of human rights violations. These procedures consist in examining, reviewing and publicly reporting on either human rights situations in specific countries or territories (under country mandates) or alleged major human rights violations worldwide (under thematic mandates).

[9] A/59/2005, page 45, paragraphs 182 and 183.

Box 25

Thematic monitoring mechanisms of the United Nations Commission on Human Rights (April 2005)

Theme	Since	Mandate
Enforced or involuntary disappearances	1980	Working Group
Extrajudicial, summary or arbitrary executions	1982	Special Rapporteur
Torture	1985	Special Rapporteur
Freedom of religion or belief	1986	Special Rapporteur
Use of mercenaries	1987	Special Rapporteur
Sale of children, child prostitution and child pornography	1990	Special Rapporteur
Arbitrary detention	1991	Working Group
Internally displaced persons	1992	Representative of the Secretary-General
Racism, racial discrimination, xenophobia and related intolerance	1993	Special Rapporteur
Promotion and protection of the right to freedom of opinion and expression	1993	Special Rapporteur
Missing persons in former Yugoslavia	1994-1997	Expert
Violence against women	1994	Special Rapporteur
Independence of judges and lawyers	1994	Special Rapporteur
Illicit movement and dumping of toxic and dangerous products and wastes	1995	Special Rapporteur
Human rights and extreme poverty	1998	Independent Expert
Right to education	1998	Special Rapporteur
Human rights of migrants	1999	Special Rapporteur
Structural adjustment policies	2000	Independent Expert
Human rights defenders	2000	Special Representative of the Secretary-General
Right to housing	2000	Special Rapporteur
Right to food	2000	Special Rapporteur
Human rights and fundamental freedoms of indigenous peoples	2001	Special Rapporteur
Legal questions related to disappearances	2001	Independent Expert
Right to health	2002	Special Rapporteur
Problems of racial discrimination faced by people of African descent	2002	Working Group
Options regarding the elaboration of an optional protocol to CESCR	2003	Open-ended Working Group
Impunity	2004	Independent Expert
Terrorism	2004	Independent Expert
Trafficking in persons	2004	Special Rapporteur
Human rights and international solidarity	2005	Independent Expert
Promotion and protection of human rights while countering terrorism	2005	Special Rapporteur
Use of mercenaries as a means of violating human rights and impeding the exercise of the right of the people to self-determination	2005	Working Group
Human rights of migrants	2005	Special Rapporteur

These procedures may take the form of a mandate implemented by a special rapporteur, representative of the United Nations Secretary-General, independent expert or working group. Special procedure tasks include making urgent appeals, conducting country visits and drawing up standards.

COUNTRY MANDATES

If the situation in a specific country is considered to indicate that there is a pattern of gross and systematic human rights violations, the Commission may adopt a resolution condemning the country concerned and/or may authorize a thorough investigation of the country situation by an expert. Country mandates are reviewed annually by the Commission.

THEMATIC MANDATES

A thematic special rapporteur, representative of the Secretary-General, expert or working group may investigate the occurrence of violations of specific human rights in all countries, and — subject to approval by the States concerned — may carry out on-site missions. Thematic mandates are reviewed by the Commission every three years.

The Sub-Commission on the Promotion and Protection of Human Rights

The Sub-Commission on the Promotion and Protection of Human Rights, the Commission's think tank, prepares studies, assists in drafting new standards and conducts investigations. Every August, it convenes in Geneva for three weeks, and States, intergovernmental organizations and NGOs participate in its meetings as observers. Many of its tasks are assigned to individual experts, who are designated to serve as rapporteurs on specific issues, or to working groups.

In addition to the Working Group on Communications, which plays a key role in the confidential "1503 procedure", and the long-standing working groups on contemporary forms of slavery, indigenous peoples and minorities, which serve as forums for the discussion of substantive issues among Governments, NGOs, victims and representatives of the groups concerned, new working groups have been set up on transnational corporations and the administration of justice.

CHAPTER 7:
THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

The Office of the United Nations High Commissioner for Human Rights (OHCHR), similar to the Office of the United Nations High Commissioner for Refugees (UNHCR), was established at the repeated request of leading NGOs, such as Amnesty International, and some Governments. Consensus was reached on the establishment of this Office by the delegates of the 171 States participating in the World Conference on Human Rights (Vienna, 1993), and on 20 December 1993 the General Assembly adopted resolution 48/141, creating the post of the High Commissioner for Human Rights, with the rank of Under-Secretary-General, as the "United Nations official with principal responsibility for United Nations human rights activities".

In the same resolution, the General Assembly listed the High Commissioner's specific responsibilities, which inter alia are:

- To promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights, including the right to development;
- To provide advisory services, technical and financial assistance in the field of human rights to States that request them;
- To coordinate United Nations education and public information programmes in the field of human rights;
- To play an active role in removing the obstacles to the full realization of human rights and in preventing the continuation of human rights violations throughout the world;
- To engage in a dialogue with Governments in order to secure respect for human rights;
- To enhance international cooperation for the promotion and protection of human rights;

- To coordinate human rights promotion and protection activities throughout the United Nations system;
- To rationalize, adapt, strengthen and streamline the United Nations machinery in the field of human rights in order to improve its efficiency and effectiveness.

Accordingly, OHCHR's mission consists in protecting and promoting all human rights, for all. It aims to strengthen the United Nations human rights programme and provide the United Nations treaty-monitoring bodies and special mechanisms established by the United Nations Commission on Human Rights with quality support. OHCHR cooperates with other United Nations bodies to integrate human rights standards into the work of the United Nations system as a whole.

OHCHR engages in dialogue with Governments on human rights issues with a view to building national capacities in the area of human rights and enhancing respect for human rights. It also provides advisory services and technical assistance when requested, and encourages Governments to pursue the development of effective national institutions and procedures for the protection of human rights.

A number of OHCHR field presences have been established to ensure that international human rights standards are progressively implemented and realized at the country level, both in law and in practice. This goal too is pursued by building national human rights capacities and institutions. It is also addressed by following up on the recommendations of

Box 26

Human rights in action: OHCHR in the field

Main field presences:

Bosnia and Herzegovina, Burundi, Cambodia, Colombia, Democratic Republic of the Congo, and Serbia and Montenegro

Human rights components of United Nations peace missions:

Abkhazia/Georgia, Afghanistan, Central African Republic, Côte d'Ivoire, Democratic Republic of the Congo, Ethiopia/Eritrea, Guinea-Bissau, Iraq (to be established), Liberia, Sierra Leone, Tajikistan and Timor-Leste

Regional offices:

Addis Ababa, Ethiopia; Almaty, Kazakhstan; Bangkok, Thailand; Beirut, Lebanon; Pretoria, South Africa; Santiago, Chile; Tashkent, Uzbekistan (to be established); and Yaoundé, Cameroon

Technical cooperation:

Angola, Azerbaijan, Brazil, Ecuador, El Salvador, Guatemala, Mexico, Mongolia, Nepal, Nicaragua, Palestine, Philippines, Somalia, Sri Lanka and Sudan

Box 27

United Nations High Commissioners for Human Rights

After a career in the diplomatic service of Ecuador, José Ayala-Lasso became the first United Nations High Commissioner for Human Rights in 1994. He was succeeded in 1997 by Mary Robinson, a former President of Ireland. She became responsible for the United Nations human rights programme at a time of structural reform: when she was appointed, her staff and the Centre for Human Rights were consolidated into a single Office of the High Commissioner for Human Rights (OHCHR). Under her leadership, the Office geared up to face existing and emerging human rights challenges more effectively and to harness the energies of new actors in the global quest for a universal culture of respect for fundamental rights and freedoms. On 12 September 2002, Sergio Vieira de Mello, after an impressive United Nations track record in tackling some of the world's most complicated humanitarian and peacekeeping challenges, became the third High Commissioner. In May 2003, he was asked by the Secretary-General to take a four-month leave of absence from OHCHR to serve as Special Representative of the Secretary-General in Iraq, where he was tragically killed on 19 August 2003. Until the appointment of a new High Commissioner, the Office was led by Acting High Commissioner Bertrand Ramcharan from Guyana. Since 1 July 2004, OHCHR has been headed by Louise Arbour, a former Justice of the Supreme Court of Canada and, from 1996 to 2000, Chief Prosecutor for the International Criminal Tribunals for the former Yugoslavia and for Rwanda. In her capacity as prosecutor, she indicted, among others, former Yugoslav and Serbian President Slobodan Milosevic for war crimes and crimes against humanity related to atrocities committed in Kosovo. The incrimination of Slobodan Milosevic was the first indictment of a serving head of State.

human rights treaty-monitoring bodies and the mechanisms of the United Nations Commission on Human Rights, and by promoting a culture of human rights.

An essential condition for the success of field presences is that Governments, national institutions, NGOs and the United Nations country teams must be increasingly empowered to take on rights-related activities on their own, within the context of regional or subregional strategies.

CHAPTER 8:
INTEGRATING HUMAN RIGHTS INTO THE WORK OF THE UNITED NATIONS

Promoting human rights and fundamental freedoms is a key objective of the United Nations. To that end, the Organization has adopted the policy of "integrating human rights", namely, ensuring that human rights — as a cross-cutting theme — are taken into consideration by all organs of the United Nations system. Accordingly, in addition to the United Nations Commission on Human Rights, which remains the main human rights body, a steadily growing number of specialized agencies, programmes, funds and other United Nations bodies have been developing human rights promotion and protection activities.

The Vienna World Conference on Human Rights (1993), and subsequent resolutions of the General Assembly and the United Nations Commission on Human Rights called upon the United Nations to make available, at the request of the Governments concerned, certain assistance programmes. These should address the reform of national legislation and the establishment and/or strengthening of national institutions and related structures to uphold human rights, the rule of law and democracy, the provision of electoral assistance and the promotion of human rights awareness through training, teaching and education, popular participation and the involvement of a vibrant civil society.

The United Nations Secretary-General's reform programme, launched in 1997, called for the integration of human rights into the work of the United Nations system as a whole and the development of practical tools to implement the Vienna blueprint. The result has been progress in the human rights policies and activities of several United Nations agencies and programmes.

The publication of the United Nations Secretary-General's 2001 report entitled *Strengthening of the United Nations: An agenda for further change* (A/57/387) represented a further important development. In that second reform report, the Secretary-General reiterated that the promotion and protection of human rights constitutes "a bedrock

requirement for the realization of the Charter's vision of a just and peaceful world". The main goal consists in building the capacities of United Nations humanitarian and development operations to enable them to support States Members' efforts to establish and strengthen national human rights promotion and protection systems, consistent with international human rights norms and principles. Paragraph 50 of the report reads as follows:

"In paragraphs 25 and 26 of the Millennium Declaration, Member States resolved to strengthen their capacity at the country level to implement the principles and practices of human rights, including minority rights, the rights of women, the rights of children and the rights of migrants. Building strong human rights institutions at the country level is what in the long run will ensure that human rights are protected and advanced in a sustained manner. The emplacement or enhancement of a national protection system in each country, reflecting international human rights norms, should therefore be a principal objective of the Organization. These activities are especially important in countries emerging from conflict."

Human rights in the General Assembly and its permanent programmes

The General Assembly, the highest United Nations law-making body, not only has ensured the adoption of an impressive set of human rights conventions, declarations, principles, rules and other instruments, but also discusses at every session, particularly in its Third Committee, which is responsible for social, humanitarian and cultural affairs, the factual human rights situation in many States, and adopts corresponding resolutions.

Many of the Organization's programmes, funds and institutes, such as the United Nations Development Programme (UNDP), the World Food Programme (WFP), the United Nations Children's Fund (UNICEF), the United Nations Human Settlements Programme (UN-HABITAT), the United Nations University (UNU), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Office of the United Nations High Commissioner for Human Rights (OHCHR - see Chapter 7) carry out important activities in the field of human rights.

Human rights and the Security Council

The Security Council, the sole United Nations body that is competent to adopt legally binding resolutions and enforce them when States Members fail to comply, has in recent years assumed an increasingly active role in the area of human rights. Human rights today form an essential component of peacekeeping and peacebuilding operations, and many human rights experts are deployed in the field to monitor the human rights situations in post-conflict contexts and assist the countries concerned in promoting the rule of law, in building an independent judiciary, in supporting law enforcement, in organizing prison administration, and in setting up national human rights commissions and other institutions necessary for the protection of human rights. In addition, the Secu-

rity Council, in an increasing number of cases, has considered gross and systematic human rights violations as a threat to the peace and, consequently, acted under Chapter VII of the Charter of the United Nations by imposing economic and other sanctions, authorizing military force and establishing ad hoc international criminal tribunals (see Chapter 10).

Human rights and the "United Nations family"

The United Nations system, informally referred to as the "United Nations family", consists of the United Nations and a growing number of specialized agencies that are legally independent intergovernmental organizations maintaining a special relationship with the Organization on the basis of agreements concluded with the Economic and Social Council under Article 63 of the Charter of the United Nations. Accordingly, the United Nations policy of "human rights integration" applies also to the specialized agencies, many of which have a long history of activity related to specific human rights.

Box 28

Key United Nations bodies active in the area of human rights

Specialized agencies

International Labour Organization (ILO)
Food and Agriculture Organization of the United Nations (FAO)
United Nations Educational, Scientific and Cultural Organization (UNESCO)
World Health Organization (WHO)

Programmes and funds

United Nations Children's Fund (UNICEF)
United Nations Development Programme (UNDP)
United Nations Development Fund for Women (UNIFEM)
United Nations Human Settlement Programme (UN-HABITAT)
United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)
World Food Programme (WFP)

Research and training institutes

United Nations Institute for Training and Research (UNITAR)
United Nations International Research and Training Institute for the Advancement of Women (INSTRAW)
United Nations Research Institute for Social Development (UNRISD)

Bodies established by the Security Council

International Criminal Tribunal for the former Yugoslavia (ICTY)
International Criminal Tribunal for Rwanda (ICTR)

Other United Nations entities

Office of the United Nations High Commissioner for Human Rights (OHCHR)
Office of the United Nations High Commissioner for Refugees (UNHCR)
United Nations University (UNU)

Box 29

Technical assistance to States and parliaments

OHCHR technical assistance in the area of human rights

The United Nations Technical Cooperation Programme in the Field of Human Rights assists States, at their request, in building and strengthening national structures that have a direct impact on the observance of human rights in general and the maintenance of the rule of law.

Components of the programme focus on the incorporation of international human rights standards in national laws and policies; building or strengthening national institutions capable of promoting and protecting human rights, democracy and the rule of law; formulating national plans of action for the promotion and protection of human rights; providing human rights education and training; and promoting a human rights culture. Such assistance takes the form of expert advisory services, training courses, workshops and seminars, fellowships, grants, the provision of information and documentation, and the assessment of domestic human rights needs.

The United Nations regards technical cooperation as a complement to, but never a substitute for, monitoring and investigation under the human rights programme. As emphasized in relevant reports of the Secretary-General and resolutions of the United Nations Commission on Human Rights, the provision of advisory services and technical assistance does not reduce a Government's responsibility to account for the human rights situation in its territory, nor does it exempt it from monitoring under the appropriate United Nations procedures.

IPU technical assistance

IPU provides advisory services on the entire spectrum of parliamentary life, in particular on the role, structure and working methods of a national parliament. Its programme comprises projects for training parliamentary staff, providing material resources and equipment and organizing seminars on topics of specific interest to parliamentarians. Most of those projects address inter alia human rights and gender issues. In that connection, IPU cooperates closely with UNDP and OHCHR. More information on IPU technical assistance can be obtained from the IPU Secretariat.

The International Labour Organization (ILO) is the main agency dealing with economic rights such as the rights to work, to equal and fair treatment and to healthy working conditions, with trade union rights, including the right to strike and to engage in collective bargaining, and with related provisions, such as the prohibition of forced labour, the worst forms of child labour and discrimination in hiring and the workplace. ILO, established in 1919 and run on the basis of a "tripartite system" which places employers' and employees' representatives on a more or less equal footing with Government representatives, has developed many fundamental international treaties, recommendations and procedures for the protection of economic and other human rights.

The **United Nations Educational, Scientific and Cultural Organization** (UNESCO) is the main agency in the area of cultural rights (especially the right to education) and has developed various instruments and procedures for their protection. It also played a key role in the implementation of the United Nations Decade for Human Rights Education (1995 to 2004) and the promotion of a universal culture of human rights and peace.

The **World Health Organization** (WHO) is the main agency for the promotion and protection of the right to health, and has developed, inter alia, a successful global programme on HIV/AIDS.

The **Food and Agriculture Organization of the United Nations** (FAO) is the biggest of the specialized agencies, and is the major actor in the promotion and protection of the right to food, which is one of the most important elements in the global fight against poverty. This major development goal was agreed upon by some 150 heads of State and Government during the Millennium Summit, held in September 2000.

CHAPTER 9:
REGIONAL HUMAN RIGHTS TREATIES AND MONITORING

In addition to the United Nations charter-based system of human rights protection, which applies to all States, and the United Nations treaty-based system, which applies only to States parties, many States in Africa, the Americas and Europe have also assumed binding human rights obligations at the regional level and have accepted international monitoring. No regional human rights treaty and monitoring mechanism has yet been adopted in the Asian and Pacific region.

Africa

In 1981, the member States of the Organization of African Unity, which has since become the African Union (AU), adopted the African Charter on Human and Peoples' Rights, which entered into force in October 1986. It is a general human rights treaty and has been ratified by all 53 States members of the African Union. As its title implies, this regional treaty, in addition to a number of civil, political, economic, social and cultural rights, also provides for collective rights of peoples to equality, self-determination, discretion over their wealth and natural resources, development, national and international peace and security and "a general satisfactory environment". Although such solidarity rights of the so-called "third generation" of human rights are of considerable political importance, their legal significance in a binding treaty is disputed (see Chapter 2). In addition to the Charter, AU has adopted treaties in the areas of refugee protection and children's rights.

The Charter provides for a complaints procedure before the African Commission on Human and Peoples' Rights, headquartered in Banjul, Gambia. Since complaints (or "communications") may be submitted by any person (including States, which may file inter-State complaints, and any individual or collective entity, such as NGOs, families, clans, communities or other groups), the legal question of the status of the victim does

not arise. The African Commission does not hear isolated complaints, but only communications suggesting the existence of a pattern of serious or massive violations of human and peoples' rights. In such cases, the African Commission may undertake an in-depth study only at the request of the Assembly of Heads of State and Government, the highest political body of AU. In addition to this complaints procedure, the Commission also examines State reports under a procedure similar to the one followed by the United Nations treaty bodies.

An Additional Protocol to the African Charter, adopted in 1998 and providing for the establishment of an African Court on Human and Peoples' Rights, entered into force on 25 January 2004.

Box 30

Regional human rights treaties

Council of Europe

European Convention for the Protection of Human Rights and Fundamental Freedoms (1950-1953) and Additional Protocols
European Social Charter (1961-1965), Additional Protocols and Revised European Social Charter (1996-1999)
European Convention on the Legal Status of Migrant Workers (1977-1983)
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987-1989)
European Charter for Regional or Minority Languages (1992-1998)
Framework Convention for the Protection of National Minorities (1995-1998)
European Convention on the Exercise of Children's Rights (1996-2000)
Convention on Human Rights and Biomedicine (1997-1999)
European Convention on Nationality (1997-2000)

Organization of American States

American Convention on Human Rights (1969-1978) and Additional Protocols
Inter-American Convention to Prevent and Punish Torture (1985-1987)
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1994-1995)
Inter-American Convention on the Forced Disappearance of Persons (1994-1996)
Inter-American Convention on International Traffic in Minors (1994-1997)
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (1999-2001)

African Union (formerly Organization of African Unity)

African Charter on Human and Peoples' Rights (1981-1986)
Convention Governing the Specific Aspects of Refugee Problems in Africa (1969-1974)
Convention on the Rights and Welfare of the African Child (1990-1999)

The Americas

The inter-American system for the protection of human rights comprises two distinct processes, based on the one hand on the Charter of the Organization of American States (OAS), and on the other hand on the Pact of San José, Costa Rica (the American Convention on Human Rights). While the charter-based process is applicable to all OAS member States, the American Convention on Human Rights is legally binding only on States parties. The Convention, adopted in 1969 and in force since 1978, focuses on civil and political rights, but is supplemented with an Additional Protocol (1988-1999) addressing economic, social and cultural rights. Furthermore, OAS has adopted special treaties on enforced disappearances, torture, violence against women, international trafficking in minors and discrimination against persons with disabilities.

The Convention provides for an inter-State and an individual complaints procedure before the Inter-American Commission on Human Rights (IACHR), a quasi-judicial monitoring body located in Washington, DC, and the Inter-American Court of Human Rights, located in San José (Costa Rica). Of the 35 States members of OAS, only 25 are parties to the Convention. For the 10 States that have not ratified the Convention, only the weaker, charter-based system before the Inter-American Commission applies; and even for the States that are party to the Convention, the jurisdiction of the Inter-American Court is optional.

The overwhelming majority of the thousands of complaints that are filed under this system are dealt with only by the Inter-American Commission, which either declares them inadmissible, facilitates an amicable settlement or publishes its conclusions on the merits of the cases in a report. Such reports contain non-binding recommendations that are in practice all too often ignored by the respective Governments. The applicants themselves are not entitled to bring their cases before the Inter-American Court of Human Rights; only the States concerned and the Commission may do so. Although the Commission, in accordance with its recently revised rules of procedure, has begun to refer an increasing number of cases to the Court, only about 50 individual petitions have so far given rise to final and legally binding judgements of the Court. Those cases addressed human rights violations in certain South and Central American countries. In most of them, it was established that gross and systematic human rights violations (including torture, arbitrary executions and enforced disappearances) had taken place, and the Court granted far-reaching measures of reparation beyond monetary compensation to the victims and their families.

In addition to its "contentious jurisdiction" (competence to hear cases between contending parties), the Court is also competent to render advisory opinions interpreting international human rights treaties (especially the American Convention on Human Rights) and assessing the compatibility of domestic laws with these treaties.

Arab region

On 15 September 1994, the States members of the Arab League adopted the Arab Charter on Human Rights, but none of the League's 22 member States signed it. In March 2003,

the Arab League Council decided to redraft the Charter in line with international human rights law and standards. A committee of experts, consisting of Arab members of the United Nations treaty-monitoring bodies, was formed on the basis of a memorandum of understanding signed by the League of Arab States and OHCHR in April 2002 to assist the Arab League in that exercise. The draft proposed by the experts was subsequently taken up by the Standing Committee on Human Rights of the Arab League in its redrafting exercise. The draft was then presented for final discussion and adoption at a Summit of the League of Arab States in May 2004, where it was endorsed. A number of Arab States are in the process of ratifying the Charter.

Although OHCHR has voiced concern about some of the provisions of the Charter in its current form, the new provisions are much more advanced than the previous version in respect of such issues as states of emergency, fair trial guarantees, slavery, sexual violence, disabilities and trafficking. As the Charter also provides for a monitoring mechanism similar to the UN Human Rights Committee, the instrument's adoption paves the way for the establishment of one more regional human rights protection and promotion mechanism. However, this new system does not envisage any individual complaints procedure, but article 52 of the Charter provides for the possibility of adopting optional protocols.

Asia and the Pacific

There is no Asian and Pacific regional convention on human rights. Through OHCHR, however, the countries of the region have focused on strengthening regional cooperation to promote respect for human rights. In a series of Asian and Pacific regional workshops, notably a workshop held in Tehran in 1998, a framework of cooperation was established and a consensus was reached on principles and a "step-by-step", "building-block" approach that could lead to regional arrangements through extensive consultations among Governments. It has been agreed that the regional arrangements must address the needs and priorities defined by the Governments of the region. Roles, functions, tasks, outcomes and achievements are to be determined by consensus.

Europe

The primary goal of the Council of Europe is the protection of human rights and fundamental freedoms. As soon as it was established in 1949, the Council began to draw up the European Convention for the Protection of Human Rights and Fundamental Freedoms, which was signed in 1950 and came into force in 1953. The European Convention and its Additional Protocols constitute a general human rights treaty focused on civil and political rights. Social, economic and cultural rights are enshrined in the European Social Charter (1961-65) and its Additional Protocols and revisions (the Revised European Social Charter, 1996-99). Furthermore, the Council of Europe has adopted special treaties in the areas of data protection, migrant workers, minorities, torture prevention and biomedicine.

Today, the European Convention provides for the most advanced system of human rights monitoring at the supranational level. Under article 34 of the European Conven-

tion, any person, NGO or group of individuals claiming to be a victim of a human rights violation, under the Convention and its protocols, committed by one of the currently 46 member States of the Council of Europe is entitled, once all domestically available possibilities of seeking remedy have been exhausted, to file a petition to the European Court of Human Rights, whose seat is in Strasbourg (France). If a violation is found, the Court may provide satisfaction to the injured party. Its decisions are final and legally binding on the States parties. Their implementation is monitored by the Committee of Ministers, the highest political body of the Council of Europe.

Under a Protocol to the European Social Charter that entered into force in 1998, some organizations may lodge complaints with the European Committee on Social Rights. Once a complaint has been declared admissible, a procedure is set in motion, leading to a decision on the merits by the Committee. The decision is transmitted to the parties concerned and the Committee of Ministers in a report, which is made public within four months. Lastly, the Committee of Ministers adopts a resolution, in which it may recommend that the State concerned take specific measures to ensure that the situation is brought into line with the Charter.

CHAPTER 10: COMBATING IMPUNITY: THE INTERNATIONAL CRIMINAL COURT (ICC)

An appalling series of the worst crimes known to humanity — war crimes, genocide, crimes against humanity, including systematic practices of torture, extrajudicial executions and enforced disappearances — were committed throughout the world in the twentieth century, during international wars, in regional conflicts and in times of peace. The vast majority of the perpetrators of such crimes — "that deeply shock the conscience of humanity" [10] — were not punished.

The first efforts to end such impunity followed in the aftermath of the Second World War, when the Allies set up at Nuremberg and Tokyo international military tribunals whose exclusive task was to bring major war criminals to justice. The tribunals therefore were strongly related to the application of international humanitarian law, the law of armed conflict.

Since then, the focus has gradually shifted. Today international criminal law covers both war crimes (which can be committed only during armed conflict) and major "human rights crimes": genocide and crimes against humanity (which can be committed in peacetime as well as in war). Although the creation of an "international penal tribunal" was envisaged as early as 1948 under article 6 of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, the first such tribunal was established only in 1993, by means of a Security Council resolution adopted under Chapter VII of the Charter of the United Nations and relating exclusively to the former Yugoslavia.

The International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)

Under Security Council resolution 827 (1993), the competence of the International Criminal Tribunal for the former Yugoslavia to prosecute crimes against humanity is restricted

[10] *Rome Statute of the International Criminal Court* (ICC), preamble.

to acts committed during armed conflict. Security Council resolution 955 (1994) established the International Criminal Tribunal for Rwanda one year later and gave it competence to prosecute the main perpetrators of the Rwandan genocide and related crimes against humanity, without making any reference to armed conflict.

The International Criminal Court (ICC)

The competence of the International Criminal Court (ICC), like that of the International Criminal Tribunal for Rwanda, is not restricted to armed conflict. Established pursuant to the adoption of the Rome Statute of the International Criminal Court on 17 July 1998, ICC, in addition to war crimes, deals with genocide and a broad range of crimes against humanity, irrespective of the existence of an armed conflict. The Rome Statute builds upon the concept of State responsibility for human rights violations, by adding the individual responsibility of both State and non-State agents for such violations when they are gross and systematic. It can therefore be considered an important victory in the fight against impunity — a major reason such violations occur — and thus one of the most significant and innovative developments in the protection of human rights at the international level.

"Successive generations have for over a century progressively weaved an impressive fabric of legal and moral standards based on respect for the dignity of the individual. But the Court is the first and only permanent international body with the power to bring to justice individuals — whoever they are — responsible for the worst violations of human rights and international humanitarian law. We are finally acquiring the tools to translate fine-sounding words into action…."

Sergio Vieira de Mello,
former United Nations High Commissioner for Human Rights,
Statement on the occasion of the inauguration of ICC on 11 March 2003.

Box 31

Rome Statute of the International Criminal Court (ICC):

- Adopted on 17 July 1998 by 120 votes to 7 (China, Iraq, Israel, Libyan Arab Jamahiriya, Qatar, United States of America, Yemen), with 21 abstentions
- Signed by 139 States
- Ratified by 99 States (as of June 2005)

Significant dates:

- Entry into force: 1 July 2002
- Election of the Court's 18 judges by the Assembly of States Parties: February 2003
- Election of the Court's Prosecutor, Luis Moreno Ocampo, by the Assembly of States Parties: 21 April 2003

Box 32

ICC concept and jurisdiction

Why was ICC created?

- To end impunity;
- To help end conflicts;
- To deter future perpetrators;
- To take over when national criminal justice bodies are unable or unwilling to act and to make up for any shortcomings of ad hoc tribunals (such as those established for the former Yugoslavia and Rwanda).

How is ICC's jurisdiction defined in the Rome Statute?

Article 5: Crimes within the jurisdiction of ICC are: genocide,[11] crimes against humanity[12] and war crimes;

Article 25: Every (natural) person shall be responsible for a crime within the jurisdiction of ICC, if he or she — as an individual, jointly or through another person — commits, orders or solicits such a crime or induces, aids, abets or otherwise assists in its commission;

Article 11: ICC has jurisdiction only with respect to crimes committed after the entry into force of the Statute (1 July 2002) on the territory of a State party or by nationals of a State party anywhere in the world.

Who can refer cases to the court ?

- A State party (article 14);
- The United Nations Security Council (article 13 (b));
- The ICC Prosecutor, initiating on his/her own initiative investigations based on credible information received from States, NGOs, victims, or any other source (article 15).

Relationship between ICC and other courts

ICC and national courts: National courts have jurisdiction in all relevant cases and, under the principle of "complementarity", ICC may act only when national courts are unable or unwilling to prosecute;

ICC and the International Court of Justice (ICJ): ICJ deals only with disputes between States, not criminal acts committed by individuals;

➥

[11] Genocide occurs when acts are "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group", *Rome Statute of the International Criminal Court*, article 6.

[12] Crimes against humanity are crimes "committed as part of a widespread or systematic attack directed against any civilian population". They include murder, extermination, enslavement, deportation, forcible transfer of population, imprisonment, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, other forms of sexual violence, persecution against any identifiable group or category of people, enforced disappearance of persons, apartheid, and similar inhuman acts intentionally causing suffering or serious injury to the body or to mental or physical health. Ibid., article 7.

ICC and the ad hoc international tribunals (ICTY and ICTR): Ad hoc tribunals are subject to time and place limits ("selective justice"), while a permanent court such as ICC can operate with greater consistency.

The agreement on the privileges and immunities of the Court

Under article 48 of the Rome Statute, the Court shall "enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes." An agreement on ICC privileges and immunities concluded concurrently with the Statute's adoption provides for appropriate protection and assurances and, specifically, for the protection of the ICC staff, defence counsel, victims and witnesses during an investigation. Although by ratifying the Statute States parties are bound to respect ICC staff privileges and immunities and ICC documents, only 16 States had ratified the agreement as of 20 October 2004.

Box 33

Challenges for ICC

Failure to reach a consensus in Rome, and measures taken by the Government of the United States of America to conclude bilateral agreements with States parties exempting its nationals from the jurisdiction of ICC;

Presence of indicted criminals in the territory of States which have not ratified the ICC Statute or refuse to cooperate with ICC;

Narrow definition of crimes against humanity committed in peacetime;

Role of the Security Council;

Weakness in the principle of complementarity: How is ICC to determine that national courts are unwilling or unable to prosecute?

STATE OBLIGATIONS UNDER THE ROME STATUTE OF ICC

By ratifying the Statute, States assume the following three fundamental obligations, in whose fulfilment parliaments play a key role:[13]

1. *An obligation resulting from ICC's complementary nature*: Since ICC may act only when States are unable or unwilling to do so, they carry primary duty for bringing to justice those responsible for crimes under international law. States must therefore enact and enforce national legislation ensuring that such crimes are also crimes under their national law - irrespective of where they were committed, who committed them or who are the victims.

2. *An obligation to cooperate fully*: Under article 86 of the Statute, States parties shall "cooperate fully with the Court in its investigation and prosecution of crimes within the

[13] Source: Amnesty International, *The International Criminal Court: Checklist for effective implementation* (AI Index: IOR 40/011/2000).

jurisdiction of the Court". States must therefore enable the Prosecutor and the defence to conduct effective investigations in their jurisdictions and ensure that their courts and other authorities cooperate fully in the areas of obtaining documents, conducting searches, locating and protecting witnesses and arresting and surrendering persons indicted by ICC. States should also cooperate with ICC on sentence enforcement and in developing and implementing public information initiatives and training programmes for officials on Statute implementation.

3. *An obligation to ratify the agreement on ICC privileges and immunities*, thus enabling ICC to function independently and unconditionally.

In a study on action taken by States parties to enact effective implementing legislation,[14] Amnesty International identified the following most frequent inadequacies of draft national legislation:

a. Weak definition of crimes;

b. Unsatisfactory principles of criminal responsibility and defence;

c. Failure to provide for universal jurisdiction to the full extent permitted by international law;

d. Political control over the initiation of prosecution;

e. Failure to provide for the speediest and most efficient procedures of compensating victims;

f. Inclusion of provisions that prevent, or could potentially prevent, cooperation with ICC;

g. Failure to provide for persons condemned by ICC to serve their sentence in national prisons;

h. Failure to establish training programmes for national authorities on the effective implementation of the Rome Statute.

The Set of Principles for the protection and promotion of human rights through action to combat impunity

Since 1991, the United Nations has accomplished considerable work on the issue of combating impunity, mainly through the United Nations Commission on Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights. Amnesty laws, which in the 1970s were invoked for the release of political prisoners and symbolized freedom, were later used to ensure the impunity of perpetrators of human rights violations. Aware of this problem, the Vienna World Conference on Human Rights (1993) supported, in its Declaration and Programme of Action, the efforts of the Commission and the Sub-Commission to examine all aspects of the issue. Accordingly, the Sub-Commission

[14] AI Index: IOR 40/019/2004.

Box 34

ICC at work: examples

In December 2003, the Government of Uganda referred the situation concerning the Lord's Resistance Army, which operates in northern Uganda, to the Prosecutor of ICC. In July 2004, the Prosecutor determined that there was a sufficient basis to start an investigation into this situation.

In March 2004, the Government of the Democratic Republic of the Congo referred to the Prosecutor the situation of crimes within ICC's jurisdiction allegedly committed in the country since the entry into force of the Rome Statute. Based on this request and information referred to the Court previously by NGOs, the Prosecutor decided in June 2004 to open an investigation into this situation, which involves mass murder, summary executions and a pattern of rape, torture, forced displacement and the illegal use of child soldiers.

In January 2005, the Government of the Central African Republic (CAR) referred to the Prosecutor the situation of crimes committed anywhere on its territory since the entry into force of the Rome Statute.

On 31 March 2005, the UN Security Council referred to the Prosecutor the document archive of the International Commission of Inquiry on Darfur. In addition, the Office of the Prosecutor requested information from a variety of sources, leading to the collection of thousands of documents. After a thorough analysis, the Prosecutor concluded that the statutory requirements for initiating an investigation were satisfied.

requested one of its members, Mr. Louis Joinet, to prepare a set of principles for the protection and promotion of human rights through action to combat impunity. The expert submitted his report and the set of principles to the Sub-Commission in 1997.[15] Under those principles, victims have the following rights:

- *The right to know*: This is not merely the right of any individual victim, or persons closely related to a victim, to know what happened, i.e., a right to the truth. It is also a collective right to draw on history in order to prevent the recurrence of violations. Its corollary is a State's "duty to remember" (paragraph 17 of the report).
- *The right to justice*: This right implies that all victims shall have an opportunity to assert their rights and receive a fair and effective remedy, ensuring that their oppressors stand trial and that the victims can obtain reparations.
- *The right to reparation*: This right entails individual and general collective measures. Details are laid down in a document entitled *Basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law*, drawn up by Mr. Theo van Boven for the Sub-Commission in 1996, and further developed by Mr. M. Cherif Bassiouni in 2000 at the request of the United Nations Commission on Human Rights.[16] These principles and guidelines are still pending before the Commission.

[15] E/CN.4/Sub.2/1997/20/Rev.1.
[16] E/CN.4/Sub.2/1996/17 and E/CN.4/2000/62, respectively.

Although the above set of principles has not yet been adopted by the United Nations Commission on Human Rights and the General Assembly, a report drawn up in 2004 at the request of the United Nations Commission on Human Rights on best practices and recommendations to assist States in strengthening their domestic capacity to combat all aspects of impunity [17] shows that the principles in question have already had a profound impact on efforts to combat impunity and are used as a key reference by regional and international supervisory bodies and by national authorities.

[17] E/CN.4/2004/88.

PART II

CHAPTER 11: THE ROLE OF PARLIAMENTARIANS IN THE PROTECTION AND PROMOTION OF HUMAN RIGHTS

Basic principles

When it comes to human rights promotion and protection, parliaments and members of parliament are essential actors: parliamentary activity as a whole — legislating, adopting the budget and overseeing the executive branch — covers the entire spectrum of political, civil, economic, social and cultural rights and thus has an immediate impact on the enjoyment of human rights by the people. As the State institution which represents the people and through which they participate in the management of public affairs, parliament is indeed a guardian of human rights. Parliament must be aware of this role at all times because the country's peace, social harmony and steady development largely depend on the extent to which human rights permeate all parliamentary activity.

For parliaments to fulfil effectively their role as guardians of human rights, specific criteria must be met and safeguards established.

ENSURING THE REPRESENTATIVE NATURE OF PARLIAMENT

Parliament's authority derives to a large extent from its capacity to reflect faithfully the diversity of all components of society. These include, inter alia, men and women, various political opinions, ethnic groups, and minorities. To achieve this, members of parliament must be chosen by the sovereign people in free and fair elections by universal, equal and secret suffrage, in accordance with the principles set forth in article 21 of the Universal Declaration of Human Rights and article 25 of CCPR.

GUARANTEEING THE SOVEREIGNTY OF PARLIAMENT BY PROTECTING THE FREEDOM OF EXPRESSION OF ITS MEMBERS

Parliament can fulfil its role only if its members enjoy the freedom of expression necessary in order to be able to speak out on behalf of constituents. Members of parliament must be free to seek, receive and impart information and ideas without fear of reprisal. They are therefore generally granted a special status, intended to provide them with the requisite independence: they enjoy parliamentary privilege or parliamentary immunities.

Parliamentary immunities ensure the independence and dignity of the representatives of the nation by protecting them against any threat, intimidation or arbitrary measure directed against them by public officials or other citizens. They thus ensure the autonomy

Box 35

Protecting parliamentarians' human rights: the IPU Committee on the Human Rights of Parliamentarians

- If parliamentarians are to defend the human rights of the people they represent, they must themselves be able to exercise their human rights, most importantly the right to freedom of expression. Noting that this often is not the case, IPU in 1976 adopted a procedure for the examination and treatment of alleged violations of the human rights of parliamentarians.
- It entrusted a Committee on the Human Rights of Parliamentarians with the task of examining complaints concerning parliamentarians "who are or who have been subjected to arbitrary actions during the exercise of their mandate, whether parliament is sitting, [is] in recess or has been dissolved as the result of unconstitutional or extraordinary measures." The procedure applies to members of the national parliament of any country.
- The Committee is composed of five full members and five substitutes, each elected on an individual basis to represent a geopolitical region for five years. It holds four closed meetings per year.
- Once it has found that a complaint is admissible, the Committee examines the case in the light of national, regional and international human rights law. The procedure is mainly based on comparative verification of all information referred to the Committee by the authorities of the country concerned, particularly parliament, and the complainants. All evidence before the Committee is dealt with confidentially.
- The Committee also holds hearings with the parties and — subject to approval by the State concerned and fulfilment of certain minimum conditions — may carry out on-the-spot missions.
- The Committee may bring a case to the attention of all IPU members in public reports. It does so to enable parliaments and their members to take action in favour of the colleagues concerned.
- The Committee pursues cases as long as it considers that their examination can help to find solutions respectful of human rights. When this is no longer applicable, it may close a case and recommend that the IPU Governing Council pronounce a condemnation of the authorities concerned.

and independence of the institution of parliament. The scope of immunities varies. The minimum guarantee, which applies to all parliaments, is *non-accountability.* Under this guarantee, parliamentarians in the exercise of their functions may say what they please without the risk of sanctions, other than that of being disavowed by the electorate, which may eventually not renew their mandates. In many countries, members of parliament also enjoy *inviolability:* it is only with the consent of parliament that they may be arrested, detained and subjected to civil or criminal proceedings. Inviolability is not equivalent to impunity. It merely entitles parliament to verify that proceedings brought against its members are legally founded.

"The protection of the rights of parliamentarians is the necessary prerequisite to enable them to protect and promote human rights and fundamental freedoms in their respective countries; in addition, the representative nature of a parliament closely depends on the respect of the rights of the members of that parliament."

Inter-Parliamentary Council,
Resolution establishing the procedure for the examination and treatment of communications concerning violations of the human rights of parliamentarians, Mexico City, April 1976.

UNDERSTANDING THE LEGAL FRAMEWORK, IN PARTICULAR PARLIAMENTARY PROCEDURE

It is essential that members of parliament be fully familiar with the constitution and the State's human rights obligations, the functioning of government and public administration and, of course, parliamentary procedure. Certain parliaments, for instance the Parliament of South Africa, organize seminars for newly elected parliamentarians to enable them to familiarize themselves with the legal framework of their work and parliamentary procedure.

To fulfil their functions, members of parliament must be provided with adequate resources.

Technical assistance can enhance the knowledge of parliamentarians in the area of human rights and help to overcome the inadequacy of available resources (see Part I, Box 29).

DETERMINING PARLIAMENT'S ROLE IN STATES OF EMERGENCY

When a state of emergency is declared, the first victim is often the parliament: its powers may be drastically reduced, or it may even be dissolved. To avoid such an eventuality, the parliament should ensure that:

- States of emergency do not open the door to arbitrary measures;
- The parliament is responsible for declaring and lifting a state of emergency in accordance with international human rights principles, including the fact that specific human rights are not subject to derogation (see Chapter 4);
- The dissolution or even suspension of parliament in a state of emergency is prohibited by law;

- In states of emergency, parliament closely monitors the activities of the authorities — particularly law enforcement agencies — invested with special powers;
- States of emergency are defined in constitutions or in laws having constitutional status, so that they are sheltered from opportunistic reforms.

Parliamentary action to promote and protect human rights

RATIFYING HUMAN RIGHTS TREATIES

The ratification of human rights treaties is an important means of demonstrating to the international community and domestic public opinion a State's commitment to human rights. Ratification — an expression of the State's resolve to implement the obligations laid down in the treaty and to allow international scrutiny of its progress in human rights promotion and protection — has far-reaching consequences for the ratifying State.

Human rights treaties are signed and ratified by a representative of the executive, usually the head of State or Government or the minister for foreign affairs. The ultimate decision, however, on whether or not a treaty should be ratified rests in most countries with the parliament, which must approve ratification. Ratification renders the international human rights norms guaranteed in a treaty legally effective in the ratifying country and obliges it to report to the international community on measures adopted to align its legislation with treaty norms.

Box 36

Involvement of parliament in the negotiation and drafting of treaties

Members of national parliaments are generally not directly involved in drafting international or regional treaties or in the related political decision-making processes. Only the Parliamentary Assembly of the Council of Europe, a regional parliamentary assembly established in 1949, plays an increasingly important role in human rights monitoring and in the drafting of new instruments. Its Committee on Legal Affairs and Human Rights cooperates closely with the Committee of Ministers (consisting of the ministers for foreign affairs of the Council's member States, which currently number 46) and the Steering Committee for Human Rights when new instruments are drawn up or major human rights problems emerge. For instance, the Committee of Ministers has invited the Parliamentary Assembly to assist it in addressing the problem posed by the steadily increasing number of applications referred to the European Court of Human Rights.

IPU has consistently called for greater involvement of members of parliament in negotiating international human rights instruments, insisting that parliament, since it must eventually enact relevant legislation and ensure its implementation, should intervene long before the ratification stage and participate, along with Government representatives, in the drafting of new instruments within international deliberative bodies.

What you can do as a parliamentarian

- ❑ Check whether your Government has ratified (at least) the seven core treaties (see Part I, Chapters 3 and 5) and the existing regional treaties on human rights.
- ❑ If not, ascertain whether the Government has the intention of signing those instruments. If not, use parliamentary procedure to determine the reasons for such inaction and to encourage the Government to start the signing and ratification process without delay.
- ❑ If a signing procedure is under way, check whether the Government intends to make reservations to the treaty and, if so, determine whether the reservations are necessary and compatible with the content and purpose of the treaty (see Chapter 4). If you conclude that they are groundless, take action to ensure that the Government reverses its position.
- ❑ Check whether any reservations made by your country to treaties already in force are still necessary. If you conclude that they are not, take action for their withdrawal.
- ❑ Check whether your Government has made the necessary declarations or ratified the relevant Optional Protocols (see Part I, Chapter 5) with a view to:

  (a) Recognizing the competence of treaty bodies to receive individual complaints (under CCPR, CEDAW, CERD, CAT and the Migrant Workers Convention);

  (b) Recognizing the competence of treaty-monitoring bodies (CAT and CEDAW) to institute an inquiry procedure;

  (c) Ratifying the Optional Protocol to CAT (the Optional Protocol provides for a system of regular visits to detention centres).
- ❑ If not, take action to ensure that the declarations are made or the Optional Protocols are ratified.
- ❑ Make sure that public officials, State agents and the general public are aware of ratified human rights treaties and their provisions.
- ❑ If your country has not yet signed and ratified the ICC Statute, take action to ensure that it does, and that it abstains from any agreements reducing the force of the Statute and undermining the Court's authority.

Box 37

Parliamentary action to preserve the integrity of the ICC Statute

Reacting to the proposal put forward by the Government of the United States of America to conclude bilateral agreements exempting United States nationals from ICC jurisdiction, many parliaments (for instance, the parliaments of Uruguay and Switzerland) have addressed messages to their Governments urging them to reject that proposal and to abstain from concluding any agreement implying a deviation from the Statute. Others have refused to ratify such bilateral agreements.

The Inter-Parliamentary Council "calls on all Parliaments and their members to take action at the national level to ensure that international and regional human rights treaties are ratified or acceded to promptly by their countries, in case they have not already done so, and that reservations are withdrawn whenever they conflict with the object and purpose of the treaty"

Resolution adopted on the occasion of the 50th anniversary of the Universal Declaration of Human Rights, Cairo, September 1997, paragraph 3 (i).

ENSURING NATIONAL IMPLEMENTATION

Adopting the budget

Guaranteeing enjoyment of human rights by all is not costless. Effective measures for human rights protection and, especially, for preventing human rights violations require considerable funds. In approving the national budget, thereby setting national priorities, the parliament must ensure that sufficient funds are provided for human rights implementation. Then, in monitoring Government spending, the parliament can, if necessary, hold the Government accountable for inadequate performance in the area of human rights.

Overseeing the executive branch

Through their oversight function, subjecting the policies and acts of the executive to constant scrutiny, parliaments and members of parliament can and must ensure that laws are actually implemented by the administration and any other bodies concerned. Under parliamentary procedure, the means available to members of parliament for scrutinizing Government action include:

- Written and oral questions to ministers, civil servants and other executive officials;
- Interpellations;
- Fact-finding or investigation committees or commissions;
- Votes of no confidence, if the above attempts fail.

Following up on recommendations and decisions

Recommendations formulated by United Nations treaty-monitoring bodies and special rapporteurs and by other international or regional monitoring bodies (see Part I, Chapters 5, 6 and 9) can be effectively used by members of parliament to scrutinize the compliance of executive action with the human rights obligations of the State.

The 100th Inter-Parliamentary Conference "calls on Parliaments to work actively to ensure … that national Governments fulfil their reporting responsibilities towards the human rights treaty bodies in a timely and effective way and that the

competent government agencies cooperate fully with the United Nations Special Rapporteurs so that they receive the necessary support to carry out their work effectively."

Resolution on "Strong action by national parliaments in the year of the 50th anniversary of the Universal Declaration of Human Rights to ensure the promotion and protection of all human rights in the 21st century", Moscow, September 1998, paragraph 4 (ii).

Box 38

Implementing recommendations of a regional treaty body: An example

Parliaments, particularly their human rights committees, can be instrumental in ensuring the implementation of decisions or recommendations of international or regional human rights bodies. For instance, the Human Rights Committee of the House of Representatives of Brazil played a decisive role in the implementation of the first decision of the Inter-American Commission on Human Rights in a case against Brazil: the case of João Canuto, Chairman of the Rural Labour Union of Rio Maria, State of Pará, who was assassinated in 1985. In 1998, the Commission concluded that the State of Brazil had violated the American Convention on Human Rights by failing to provide Mr. Canuto with due protection when he reported that he had received death threats, and by failing to conduct an effective investigation and initiate judicial proceedings in relation to his assassination. It recommended that Brazil should streamline criminal procedures and pay the victim's family compensation for physical and moral loss. In 1999, the Human Rights Committee of the House of Representatives organized a national campaign to make the authorities aware of the decision and the importance of implementing it. The decision was implemented soon thereafter.

Establishing parliamentary human rights bodies

Human rights should thoroughly permeate parliamentary activity. Within its area of competence, each parliamentary committee should consistently take into consideration human rights and assess the impact of bills and other proposed legal norms on the enjoyment of human rights by the population. To ensure that human rights are duly taken into account in parliamentary work, ever more parliaments set up specialized human rights bodies or entrust existing committees with the task of considering human rights issues. Many parliaments have also established committees for specific human rights issues, such as gender equality or minority rights. Moreover, informal groups of members of parliament are active in the area of human rights.

Parliamentary human rights bodies are assigned various tasks, including — almost always — assessing the conformity of bills or legislation with human rights obligations. In some cases such bodies are competent to receive individual petitions.

Adopting enabling legislation

If international legal obligations are not implemented at the domestic level, the respective treaties become dead letters. Parliaments and parliamentarians have a key role to play

What you can do as a parliamentarian

Parliaments should regularly follow and contribute to the work of treaty-monitoring bodies. Accordingly, you may wish to:

- ❑ Verify the status of cooperation between your State, the United Nations treaty bodies and other international or regional monitoring mechanisms (see Part I, Chapters 5, 6 and 9) by requesting information from your Government. You may wish to put a question to your Government on this subject;
- ❑ Ensure that the parliament is kept abreast of the work of the treaty bodies and related mechanisms, and that relevant information is regularly made available to it by the parliamentary support services;
- ❑ Follow up on the recommendations, concluding observations and other comments formulated by treaty bodies regarding your country;
- ❑ Study the recommendations formulated by United Nations special rapporteurs, particularly those addressing the situation in your country, if applicable;
- ❑ Check whether any action has been taken to implement these recommendations and, if not, use parliamentary procedure to determine the reasons and to initiate follow-up action;
- ❑ Make sure that special rapporteurs conducting on-site missions visit your parliament or the competent parliamentary committees, and that the parliament receives a copy of their reports;
- ❑ Make sure that standing invitations to visit your country are extended to special rapporteurs;
- ❑ Use your powers to carry out on-the-spot visits to schools, hospitals, prisons and other places of detention, police stations and private companies to personally ascertain whether human rights are respected.

To monitor your State's compliance with its obligations under human rights treaties, you may wish to ensure that:

- ❑ The required national reports are submitted regularly, by enquiring after your country's reporting timetable and ensuring that the Government respects it. When reporting is delayed, you may request an explanation and, if necessary, use parliamentary procedure to urge the Government to comply with its obligation;
- ❑ Complete reports are submitted.

To that end, make sure that:

- ❑ The parliament (through the competent committees) is involved in the preparation of the State report, provides input in terms of information, ensures that its action is properly included in the report and in any case is informed of its contents;
- ❑ The report complies with guidelines on reporting procedures (see Part I, Chapter 5) and takes account of the treaty bodies' general recommendations and concluding observations on preceding reports, with reference to any related lessons learned;
- ❑ A member of your parliament is present when the report is presented to the relevant treaty body. If this is not possible, recommend that your country's permanent mission to the United Nations (either in New York or Geneva, depending on where the treaty body meets) follow the work of the treaty body and ensure that its report is forwarded to your parliament.

Box 39

Ideal competence of a parliamentary human rights committee

To be fully effective, a parliamentary human rights body should:

- Have a comprehensive human rights mandate, encompassing legislative and oversight functions;
- Be competent to deal with any human rights issue it deems important, take legislative and other initiatives in the area of human rights and address human rights problems and concerns referred to it by third parties;
- Be competent to advise other parliamentary bodies on human rights issues;
- Have the power to send for persons and documents and to carry out on-site missions.

when it comes to adopting the necessary implementing legislation in any area (civil, criminal, administrative or labour law, education, health care or social security law).

The procedure for translating international treaties into national law is generally laid down in a State's constitution, which determines the extent to which individuals may

What you can do as a parliamentarian

You may:

- ❑ Ensure that international human rights provisions are incorporated into national law and, if possible, given constitutional status so that they enjoy maximum protection under national law;
- ❑ Ensure that bills brought before your parliament and the parliamentary committees on which you sit are consistent with the human rights obligations of your country, and review existing legislation to determine whether it is compatible with those obligations;
- ❑ To this end, familiarize yourself with the work of the treaty bodies, the recommendations formulated by them and other international or regional monitoring mechanisms (see Part I, Chapters 5, 6 and 9), and with the work of national or international human rights NGOs and national human rights institutions. If you find lack of conformity, take action to redress the situation by ensuring that amendments or new bills are drafted or that a petition is filed with the constitutional court or a similar judicial body in your country;
- ❑ Ensure that Government decrees issued under existing legislation do not run counter to the spirit of the laws and the human rights guarantees that they are intended to provide;
- ❑ Ensure that public officials, particularly law enforcement agencies, are aware of their duties under human rights law and receive appropriate training;
- ❑ In view of the importance of public awareness of human rights, ensure that human rights education is part of the curricula in your country's schools;
- ❑ Ensure that human rights obligations under constitutional and international law are implemented openly, constructively, innovatively and proactively.

directly invoke treaty provisions before national courts. There are basically two types of approaches:

(a) The system of automatic incorporation, under which treaties upon ratification or accession become part of domestic law and may therefore be invoked by individuals. In some cases, publication of the treaties in the official gazette or enactment of national implementing legislation is required before the treaties have the force of national law and individuals are able to invoke their provisions before domestic courts;

(b) The dualistic system, under which treaties become part of the national legal system only through actual enactment. Under this system, an individual may not invoke treaty provisions that are not part of national legislation. They do not prevail over contrary domestic law.

In civil law countries, it is essential that human rights be enshrined in the constitution, as that instrument sets the norms and serves as the framework for all other national legislation, which must be in conformity with its spirit and principles.

Box 40

Parliamentary action to promote the justiciability of economic, social and cultural rights

In many States, individuals may not claim their economic, social and cultural rights before a court of law. Parliaments can remedy that situation by enacting domestic laws enabling courts to rule on individual complaints regarding such rights. In practice, this may not require major reforms. For instance, most countries have labour courts competent to hear cases of arbitrary dismissal, discriminatory recruitment practices or unsafe working conditions. In that context, the main difference is that very few laws refer explicitly to the rights to work and to just and favourable working conditions as laid down in articles 6 and 7 of CESCR, and few judges realize that they are in fact implementing and enforcing those fundamental economic rights. Similarly, since most States implement laws ensuring free and compulsory primary education, parents whose children are denied access to schools on arbitrary or discriminatory grounds ought to have recourse to domestic administrative and judicial bodies. It should not be difficult to relate such claims and remedies to the human right to education, thereby ensuring the justiciability of that right.

The Inter-Parliamentary Council "calls on all Parliaments and their members to take action at the national level to ensure that enabling legislation is enacted and that the provisions of national laws and regulations are harmonized with the norms and standards contained in these (international) instruments with a view to their full implementation."

Resolution adopted on the occasion of the 50th anniversary of the Universal Declaration of Human Rights, Cairo, September 1997, paragraph 3 (ii).

Box 41

The legislative process and international human rights standards: an example

The legislative process in Finland — in particular the work of the parliamentary Constitutional Law Committee — exemplifies frequent use of international standards (including the output of treaty bodies) in drafting and scrutinizing legislative proposals. The framework for such use is laid down in section 22 of the Constitution (2000), which stipulates that "the public authorities shall guarantee the observance of basic rights and liberties and (international) human rights", and section 74, which provides that "the Constitutional Law Committee shall issue statements on the constitutionality of legislative proposals and other matters brought for its consideration, as well as on their relation to international human rights treaties".

The mandate of the Constitutional Law Committee is to review the consistency of proposed bills with the Constitution and human rights standards, and to address relevant opinions to the parliament and other institutions. The Committee relies heavily on external academic expertise.

The types of treaty body output — particularly the output of the Human Rights Committee — which are used extensively in the Finnish legislative process include primarily decisions on individual cases and general comments, but also concluding observations, reporting guidelines and other material. The country-specific material includes references not only to Finland, but to other countries as well. In some cases the reference to the treaty body source results directly from an international or constitutional legal obligation to comply. This may be done in response to a specific finding by a treaty body that a violation has occurred, or it may result from the general constitutional requirement to ensure compliance with human rights provisions.[18]

Box 42

The Paris Principles

In 1993, the United Nations General Assembly adopted a set of principles applicable to the establishment of national human rights institutions (see next page). Known as the "Paris Principles", these have become the internationally accepted benchmark setting out core minimum standards for the role and functioning of such institutions. According to these principles, national human rights institutions must:

- Be independent, and their independence must be guaranteed either by statutory law or constitutional provisions;
- Be pluralistic in their roles and memberships;
- Have as broad a mandate as possible;
- Have adequate powers of investigation;
- Be characterized by regular and effective functioning;
- Be adequately funded;
- Be accessible to the general public.

[18] International Law Association (ILA), *Final report of the Committee on International Human Rights Law and Practice of the International Law Association on the impact of UN human rights treaty bodies findings on the work of national courts and tribunals*, 71st Biennial ILA Conference, Berlin, August 2004, pp.36-38.

National human rights institutions (NHRIs)

Over the past 20 years, there has been growing awareness of the need to strengthen, at the national level, concerted action aimed at implementing and ensuring compliance with human rights standards. One of the means used to that end has been the establishment of national human rights institutions (NHRIs). While the term covers a range of bodies whose legal status, composition, structure, functions and mandates vary, all such bodies are set up by Governments to operate independently — like the judiciary — with a view to promoting and protecting human rights.

NHRIs, often called human rights commissions, should have the capacity and authority to:

- Submit recommendations, proposals and reports to the Government or parliament on any matter relating to human rights;
- Promote the conformity of national laws and practices with international standards;
- Receive and act upon individual or group complaints of human rights violations;
- Encourage the ratification and implementation of international human rights standards and contribute to reporting procedures under international human rights treaties;

Box 43

Countries that have established national human rights institutions

Countries with national institutions accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights:

Asia and the Pacific:	Australia, Fiji, India, Indonesia, Malaysia, Mongolia, Nepal, New Zealand, Philippines, Republic of Korea, Sri Lanka, Thailand
Africa:	Algeria, Cameroon, Ghana, Malawi, Mauritius, Morocco, Niger, Nigeria, Rwanda, Senegal, South Africa, Togo, Uganda
Americas:	Argentina, Bolivia, Canada, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, Venezuela
Europe:	Albania, Bosnia and Herzegovina, Denmark, France, Germany, Greece, Ireland, Luxembourg, Poland, Portugal, Spain, Sweden

Others:

Asia and the Pacific:	Hong Kong Special Administrative Region of China, Islamic Republic of Iran
Africa:	Benin, Burkina Faso, Chad, Madagascar, Namibia, United Republic of Tanzania, Zambia
Americas:	Antigua and Barbuda, Barbados
Europe:	Austria, Belgium, Netherlands, Norway, Russian Federation, Slovakia, Slovenia and United Kingdom

- Promote awareness of human rights through information and education, and carry out research in the area of human rights;
- Cooperate with the United Nations, regional institutions, national institutions of other countries and NGOs.

Relations between NHRIs and parliaments have great potential for human rights protection and promotion at the national level. They were discussed at an international workshop entitled *National Human Rights Institutions and Legislatures: Building an Effective Relationship*, which was held in Abuja, Nigeria, from 22 to 25 March 2004.[19]

A set of guidelines for strengthening cooperation between NHRIs and parliaments, known as the Abuja Guidelines, was drawn up during the above workshop.

Box 44

Recommendations for parliamentarians from the Abuja Guidelines

- Parliaments should produce an appropriate legislative framework for the establishment of NHRIs in accordance with the Paris Principles.
- Parliaments and NHRIs should evolve an effective working relationship to better promote and protect human rights.
- Parliaments should ensure that adequate resources and facilities are provided to NHRIs to enable them to perform their functions effectively. Parliaments should also ensure that resources are in fact made available to the NHRIs.
- NHRIs' annual reports and other reports should be debated — and the Government's response presented — in parliament promptly.
- An all-party parliamentary committee should have specific responsibility for overseeing and supporting the work of NHRIs. In smaller States, this function might be undertaken by an existing parliamentary standing committee.
- Members of NHRIs should be invited to appear regularly before the appropriate parliamentary committees to discuss the bodies' annual reports and other reports.
- Parliamentarians should invite members of NHRIs to meet regularly with them to discuss matters of mutual interest.
- Parliamentarians should ensure that sufficient time is given to the consideration of the work of NHRIs.
- Parliamentarians should ensure that their constituents are made aware of the work of NHRIs.
- Parliamentarians should scrutinize carefully any Government proposals that might adversely affect the work of NHRIs, and seek the views of NHRI members on such proposals.
- Parliamentarians should ensure that NHRI recommendations for action are followed up and implemented.

[19] The workshop was organized by the National Human Rights Commission of Nigeria, the Committee on Human Rights of the Nigerian House of Representatives, the Legal Resources Consortium of Nigeria and the British Council, and was supported by the United Kingdom's Foreign and Commonwealth Office.

Ombudsman's office

The ombudsman's office is a national institution found in many countries. There is some overlap between the activities of an ombudsman's office and those of a national human rights commission, but the ombudsman's role is usually somewhat more restricted, consisting generally speaking in ensuring fairness and legality in public administration. Ombudsmen generally report to parliament. Only an ombudsman with a specific human rights mandate can be properly described as a national human rights institution.

National human rights action plans

No State in the world has a perfect human rights record. Moreover, since every country must develop its human rights policy in the light of its specific political, cultural, historical and legal circumstances, there is no single approach for countries to tackle human rights problems. Accordingly, the Vienna World Conference on Human Rights, held in 1993, encouraged States to draw up national human rights action plans to develop a human rights strategy suited to their own situations. The adoption of national action plans should be a truly national endeavour, free from partisan political considerations. A national action plan must be supported by the Government and involve all sectors of society, because its success largely depends on the extent to which the population takes ownership of it.

The main function of such a plan is to improve the promotion and protection of human rights. To that end, human rights improvements are expressed as tangible objectives of public policy, which are to be attained through the implementation of specific programmes, the participation of all relevant sectors of Government and society, and the allocation of sufficient resources. The plan should be based on a solid assessment of a country's human rights needs. It should provide guidance to Government officials, NGOs, professional groups, educators and advocates and other civil society members on human rights promotion and protection tasks. It should also promote the ratification of human rights instruments and awareness of human rights standards, with particular regard for the human rights situation of vulnerable groups. Detailed information on national human rights action plans and how to develop them can be found in OHCHR's *Handbook on National Human Rights Plans of Action,* Professional Training Series No. 10, which is accessible at the following address: http://www.ohchr.org/english/about/publications/training.htm.

A national action plan requires considerable organizational effort. Some of the factors that have a direct positive impact on its effectiveness are:

- Steady political support;
- Transparent and participatory planning;
- Comprehensive assessment of the human rights situation;
- Realistic prioritization of problems to be solved, and action-oriented approach;

- Clear performance criteria and strong participatory mechanisms for monitoring and evaluation;
- Adequate commitment of resources.

Box 45

Establishing a national human rights action plan: an example

In Lithuania, the parliament, the parliamentary Committee on Human Rights and UNDP jointly developed a national human rights action plan. The process consisted of three phases. First, priority issues were identified through a participatory process, and experts prepared a baseline study on human rights in Lithuania. In a second phase, the study was then validated in a national conference and regional workshops. Lastly, the plan was drawn up on the basis of the baseline study and the broad consultation. The plan was debated in parliamentary committees and approved by the parliament on 7 November 2002. Subsequent analysis of the process showed that the leading role played by the parliamentary Committee on Human Rights had been instrumental, inasmuch as it had ensured broad public involvement.

What you can do as a parliamentarian

In view of the importance of parliamentary and non-parliamentary human rights mechanisms for human rights promotion and protection and for raising public awareness, you may wish to:

- ❑ Promote the establishment in your parliament of a parliamentary committee specializing in human rights;
- ❑ Promote in your country the establishment of a national human rights institution in accordance with the Paris Principles, and take action to implement the Abuja Guidelines (see Boxes 42 and 44);
- ❑ Propose the development of a national human rights action plan and, if such a decision is taken, ensure that the parliament participates in all stages of preparation, drafting and implementation.

MOBILIZING PUBLIC OPINION

Parliaments can contribute enormously to raising public awareness of human rights and mobilizing public opinion on related issues — all the more so since political debate often focuses on such questions as discrimination against various groups, gender equality, minority rights or social issues. Parliamentarians should at all times be sensitive to the impact that their public statements on a human rights issue can have on the public's perception of the issue in question.

To raise general human rights awareness in their country, parliamentarians should work with other national actors involved in human rights activities, including NGOs.

"Non-governmental organizations such as trade unions, private associations and human rights organizations constitute an invaluable source of information and expertise for parliamentarians who, in many countries, lack the resources and assistance needed if they are to be effective in monitoring the policy and practice of the Government in the field of human rights."

IPU Symposium on "The Parliament: Guardian of Human Rights", Budapest, May 1993, Deliberations.

What you can do as a parliamentarian

You can:

- ❑ Encourage parliamentary debate on human rights issues, particularly those on which public debate focuses;
- ❑ Encourage debate within your own political party on human rights issues and your country's international obligations in that area;
- ❑ Organize local, regional or national campaigns to raise awareness of human rights issues;
- ❑ Participate in debates on television or the radio or in meetings, or give interviews on human rights issues;
- ❑ Write articles on human rights issues for newspapers and magazines;
- ❑ Liaise with NGOs and other national human rights actors and political parties to mobilize public opinion and, where appropriate, to develop information strategies on human rights issues;
- ❑ Organize or contribute to workshops, seminars, meetings and other events in your constituency in favour of human rights;
- ❑ Support local human rights campaigns;
- ❑ Use the International Human Rights Day, observed on 10 December, to draw public attention to human rights.

PARTICIPATING IN INTERNATIONAL EFFORTS

Parliaments and parliamentarians can contribute significantly to international human rights protection and promotion efforts. As discussed earlier, respect for human rights is a legitimate concern of the international community and, under international law, States parties to human rights treaties have a legal interest in the fulfilment of the obligations by other States parties. In accordance with the inter-State complaints procedure provided for in some of the core human rights treaties (see Chapter 5), a State may therefore call attention to acts committed by another State in breach of a treaty. Parliaments, through their human rights bodies, may raise human rights issues involving such possible breaches and thereby promote compliance with human rights norms worldwide.

Parliaments and parliamentarians can support international human rights organizations by securing the funding that they require. They should participate actively in the

work of the United Nations Commission on Human Rights and in drawing up new international human rights instruments that they will eventually be called upon to ratify.

In our increasingly globalized world, decisions taken at the international level have an ever greater impact on national politics and limit the scope of national decision-making. Ever more frequently, major economic decisions affecting citizens' lives are taken outside their country's borders by international bodies that are not accountable, but that have an impact on the ability of the State to ensure the exercise of human rights, particularly economic, social and cultural rights.

There is consequently a need to "democratize" these institutions if individual countries are to maintain their capacity to ensure human rights, especially economic, social and cultural rights. Parliaments and their members must therefore take a more active part in the deliberations of these institutions so as to make their voices heard.

Box 46

International trade agreements, human rights and the obligations of States

At the request of the United Nations Commission on Human Rights, OHCHR issued several reports on human rights and trade, in particular on the human rights implications of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, known as the TRIPS Agreement,[20] the WTO Agreement on Agriculture[21] and the WTO General Agreement on Trade in Services, or GATS.[22] The reports point out that all WTO members have ratified at least one human rights instrument, most of them have ratified CESCR and all but one have ratified CRC. They also affirm that WTO members should therefore ensure that international rules on trade liberalization do not run counter to their human rights obligations under those treaties. Trade law and policy should therefore "focus not only on economic growth, markets or economic development, but also on health systems, education, water supply, food security, labour, political processes and so on". States have a responsibility to ensure that the loss of autonomy which they incur when they enter into trade agreements "does not disproportionately reduce their capacity to set and implement national development policy". All this requires "constant examination of trade law and policy as it affects the enjoyment of human rights. Assessing the potential and real impact of trade policy and law on the enjoyment of human rights is perhaps the principal means of avoiding the implementation of any retrogressive measure that reduces the enjoyment of human rights".[23]

In the same vein, CESCR general comment No. 14 on the right to health stipulates that States parties should ensure that the right to health is given due consideration in international agreements, and take steps "to ensure that these instruments do not adversely impact upon the right to health. Similarly, States parties have an obligation to ensure that their actions as members of international organizations take due account of the right to health…." (paragraph 39).

[20] E/CN.4/Sub.2/2001/13.
[21] E/CN.4/2002/54.
[22] E/CN.4/Sub.2/2002/9.
[23] E/CN.4/Sub.2/2002/9, paragraphs 7, 9 and 12.

In that context, IPU has embarked on a process of bringing parliaments closer to institutions such as the World Trade Organization (WTO).

The 107th Inter-Parliamentary Conference "calls on parliaments to play an active role in monitoring decisions taken and activities carried out by the multilateral institutions, in particular those affecting the development of nations; in bringing trade- and finance-related multilateral institutions closer to the peoples they are meant to serve; and in making multilateral institutions more democratic, transparent and equitable".

Resolution on "The role of parliaments in developing public policy in an era of globalisation, multilateral institutions and international trade agreements", Marrakech, March 2002, paragraph 9.

What you can do as a parliamentarian

Parliaments and parliamentarians should contribute to the promotion and protection of human rights at the international level and make their voices heard.

To this end, you may wish to:

- ❑ Establish contacts with parliamentarians in other countries in order to (a) share experiences, success stories and lessons learned, and (b) discuss possibilities of bilateral or multilateral cooperation, particularly regarding human rights violations that require cross-border cooperation (such as trafficking, migration and health issues);
- ❑ Ensure that your parliament participates (through the competent committees) in the work of the United Nations Commission on Human Rights, or at least is kept abreast of your Government's positions on the various issues debated in the Commission. If appropriate, you may address questions to your Government regarding the grounds for its positions;
- ❑ Ensure that your parliament is informed of any ongoing negotiations on new human rights treaties, and that it has the opportunity to contribute to such negotiations;
- ❑ Ensure that your parliament (through the competent committees) draws attention to breaches of human rights treaties in other countries and, if appropriate, invite your Government to lodge an inter-State complaint (see Part I, Chapter 5);
- ❑ Participate in electoral observer missions and other international human rights missions;
- ❑ Ensure that your parliament is informed of any international negotiations whose outcome may negatively impact on your country's ability to comply with its human rights obligations and, if appropriate, ask the Government how it intends to safeguard such compliance.

CHAPTER 12:
WHAT PARLIAMENTARIANS SHOULD KNOW ABOUT THE CIVIL AND POLITICAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)

The right to life

Article 3 of UDHR
"Everyone has the right to life, liberty and security of the person."

Article 6 (1) of CCPR
"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

The right to life is the most fundamental human right and cannot be subject to derogation even in war or in states of emergency. Unlike the prohibition of torture or slavery, however, the right to life is not an absolute right. The death of a combatant as a result of a "lawful act of war" within the meaning of international humanitarian law does not constitute a violation of the right to life. Similarly, if law enforcement agents take a person's life, that act may not violate the right to life either, for example if the death results from a use of force that was absolutely necessary for such legitimate purposes as self-defence or the defence of a third person, or from a lawful arrest, or from actions taken to prevent the escape of a person legally detained or to put down a riot or insurrection. Such absolute necessity can be determined only by a competent judicial body, on a case-by-case basis, taking into account the principle of proportionality and, in the final instance, by a treaty body. In addition, the right to life cannot be considered absolute in legal systems that authorize capital punishment (see below).

Box 47

The right to life and supranational jurisprudence

In 1995, hearing the case of *McCann and others v. the United Kingdom*, the European Court of Human Rights found that a military operation in which three terrorist suspects — whom British soldiers claimed they were attempting to arrest — were shot dead had been insufficiently planned, and hence amounted to a violation of the right to life.

In many cases, the European and Inter-American Courts of Human Rights and the UN Human Rights Committee have ruled that summary and arbitrary killings are by definition a violation of the right to life.

Furthermore, since the landmark judgement of the Inter-American Court of Human Rights in the 1988 case of *Velásquez Rodríguez v. Honduras*, it has also been established that the practice of enforced disappearances constitutes a violation of, or at least a grave threat to, the right to life.

THE RIGHT TO LIFE AND STATE OBLIGATIONS

As all other human rights, the right to life does not only protect individuals against arbitrary interference by Government agents, but also obliges States to take **positive measures** in order to provide protection from arbitrary killings, enforced disappearances and similar violent acts committed by paramilitary forces, organized crime or any private individual. States must therefore outlaw such acts as crimes, and must implement appropriate legislation.

Box 48

The case of Osman v. the United Kingdom (1998)

The European Court of Human Rights heard a claim filed by the relatives of Ahmed Osman — shot dead by his son's schoolteacher — that there had been a violation of the man's right to life. The Court considered that the following two conditions had to be met in order to substantiate the allegation according to which the authorities, by failing to take measures to protect a person whose life was endangered by the criminal acts of another, had violated their positive obligation to safeguard the victim's right to life:

(a) The authorities had known or ought to have known beforehand that there was a real and immediate risk to the victim's life from a third party's criminal behaviour; and

(b) The authorities had failed to take measures which were within their power and could reasonably have been expected to avoid that risk.

The Court found that in this case there had been no violation of the right to life, since the applicants did not show that the police knew or ought to have known that the lives of the Osman family were at real and immediate risk from the schoolteacher, or that the measures that the police could have taken would have produced any tangible results.

Accordingly, States have a duty to ensure that:

- A homicidal attack against a person by another person is an offence carrying appropriate penalties under domestic criminal law;
- Any violent crime is thoroughly investigated in order to identify the perpetrators and bring them to justice;
- Measures are taken to prevent and punish arbitrary killing by law enforcement officers;
- Effective procedures are provided by law for investigating cases of persons who have been subjected to an enforced disappearance.

The Human Rights Committee has held that States often interpret the right to life too narrowly, and that their obligation to protect and fulfil it is broader than merely incriminating murder, assassination and homicidal attacks. In general comment No. 6, it affirmed that States should "take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics" — which implies that States have a duty to take all possible measures to ensure an adequate standard of living — and that they have "a supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life".

In that vein, parliamentarians can contribute to the realization of the right to life by ensuring that:

- Measures are taken to improve the situation with regard to the rights to food, health, security, peace and an adequate standard of living, all of which contribute to protecting the right to life;
- The Government adopts and implements policies to provide staff such as police officers and prison guards with training in order to minimize the probability of violations of the right to life;
- Measures are taken to reduce infant mortality and increase life expectancy, especially by eliminating malnutrition and epidemics.

CONTROVERSIAL ISSUES RELATED TO THE RIGHT TO LIFE

Capital punishment

The issue of the death penalty is central to the right to life. The legal history of that issue and the related debates share many similarities with the history of — and debates on — two other practices: slavery and torture. Slavery, widely practised in the world throughout history, was abolished in law only in the nineteenth century, and torture was routinely accepted as part of criminal procedure until the Enlightenment. While both practices are now absolutely forbidden under customary and treaty-based international law, there has been only comparatively slow progress towards abolition of the death penalty.

Box 49

Arguments and counter-arguments concerning capital punishment

Arguments and justifications for the death penalty	Counter-arguments
Deterrence	The deterrent effect of the death penalty has not been supported by evidence
Retribution and justice for the victims	Modern standards of justice favour the rehabilitation and reintegration of offenders
Limitation of appeals and habeas corpus reform	This increases the risk of judicial error and of the execution of innocent persons
Explicit exception to the right to life under international law	This would endorse a form of cruel, inhuman and degrading punishment

In 1984, the United Nations Economic and Social Council adopted, and the United Nations General Assembly endorsed,[24] Safeguards guaranteeing protection of the rights of those facing the death penalty (sometimes referred to as the "ECOSOC Safeguards"). Although these safeguards — largely reflecting CCPR provisions — are minimum standards, they continue to be violated. Some pertinent considerations are outlined below.

Specific categories of offenders are or should be exempt from capital punishment. They include:

- *Minors*: CCPR and CRC clearly state that a person under 18 years of age at the time he or she commits an offence should not be subjected to the death penalty. That rule has become part of customary international law;
- *Elderly persons*: Neither CCPR nor the Safeguards provide for such exemption, although in 1988 the United Nations Committee on Crime Prevention and Control recommended to the Economic and Social Council that the States Members should be advised to establish a maximum age for sentencing or execution; article 4 (5) of ACHR provides that capital punishment shall not be imposed on persons who, at the time the crime was committed, were over 70 years of age;
- *Pregnant women*: The Safeguards preclude the execution of pregnant women, thereby protecting the unborn child (in conformity with article 6 of CCPR);
- *Mentally impaired persons:* The principle that people of unsound mind should not be sentenced or put to death — absent from CCPR and regional human rights treaties — is included in the Safeguards guaranteeing protection of the rights of those facing the death penalty.

[24] General Assembly resolution 39/118, 14 December 1984.

Moreover, international law provides for procedural requirements applicable to all death penalty cases: fair trial guarantees, the possibility of appeal to a higher court, and clemency. Under article 6 (4) of CCPR, amnesty, pardon or commutation of a death sentence may be granted at all times. Clemency may postpone or set aside a death sentence — for instance, by commuting it to life imprisonment — and can be used to make up for errors, mitigate a harsh punishment or compensate for any criminal law provisions that may disallow consideration of relevant factors. The right of any death convict to seek clemency is clearly affirmed in international human rights law.

Where it has not been abolished, the death penalty should constitute exceptional punishment, always meted out in accordance with the principle of proportionality. Article 6 of CCPR refers to "the most serious crimes" and, under the Safeguards, the definition of the "most serious crimes" punishable by death "should not go beyond intentional crimes, with lethal or other extremely grave consequences". This restriction is in line with the goal of total abolition of the death penalty. As the United Nations General Assembly affirmed in 1971, the right to life can be fully guaranteed only if the number of offences for which the death penalty may be imposed is progressively restricted, "with a view to the desirability of abolishing it in all countries".[25]

Movement towards the abolition of capital punishment

At the end of the Second World War, when international human rights standards were being drawn up, the death penalty was still applied in most States. Consequently, article 2 of ECHR, article 6 of CCPR and article 4 of ACHR provide for an exception to the principle of the right to life in the case of capital punishment. Since then, however, a clear trend for abolishing and prohibiting the death penalty has emerged, mainly in Europe and Latin America.

Abolition of capital punishment in Europe

The Sixth Additional Protocol to ECHR, adopted in 1983 and ratified by all Council of Europe States members with the exception of Monaco and the Russian Federation, forbids the death penalty in peacetime, and the thirteenth Additional Protocol to the European Convention, adopted in 2002, provides for an absolute prohibition of capital punishment in Europe (i.e., even in war). Since the abolition of capital punishment was adopted as an integral part of European Union and Council of Europe policy (and also as an admission requirement for new member States), Europe can today be considered a death penalty free zone.

Efforts to abolish capital punishment in the Americas and worldwide

A similar development can be observed in the Americas and on a global scale. In 1990, OAS adopted a Protocol to the American Convention on Human Rights abolishing the death

[25] General Assembly resolution 2857 (XXVI), 20 December 1971.

penalty, but only eight States (Brazil, Costa Rica, Ecuador, Nicaragua, Panama, Paraguay, Uruguay and Venezuela) have ratified it so far. Similarly, the Second Optional Protocol to CCPR (1989), which aims at the universal abolition of the death penalty, has been ratified by only 54 — predominantly European and Latin American — States. However, powerful countries such as the United States of America and China and many Islamic States not only continue to apply capital punishment, but also strongly oppose its abolition under international law.

Box 50

Trends in jurisprudence in support of non-extradition and the abolition of capital punishment

- In 1989, hearing the case of *Soering v. the United Kingdom,* the European Court of Human Rights decided that the extradition by the United Kingdom of a German citizen to the United States of America, where he would remain on death row for many years, constituted inhuman treatment under article 3 of ECHR.
- In 1993, in *Ng v. Canada,* another extradition case involving the United States of America, the Human Rights Committee decided that execution by gas asphyxiation, as practised in California, constituted inhuman punishment under article 7 of CCPR.
- In a landmark judgement of 1995, the South African Constitutional Court concluded that capital punishment as such, irrespective of the method of execution or other circumstances, was inhuman and violated the prohibition of inhuman punishment in South Africa.
- In 2003, hearing the case of *Judge v. Canada*, the UN Human Rights Committee considered "that Canada, as a State party which has abolished the death penalty, irrespective of whether it has not yet ratified the Second Optional Protocol to the Covenant Aiming at the Abolition of the Death Penalty, violated the author's right to life under article 6, paragraph 1, by deporting him to the United States of America, where he is under sentence of death, without ensuring that the death penalty would not be carried out".
- In the case of *Öcalan v. Turkey* (2003), the European Court of Human Rights held that the imposition of the death penalty after an unfair trial amounted to inhuman treatment and violated article 3 of ECHR.
- On 1 March 2005, the United States Supreme Court ruled that capital punishment of persons convicted of crimes committed when they were minors was unconstitutional. The Court cited the "overwhelming weight of international opinion against the juvenile death penalty" as providing "respected and significant confirmation" of its decision, stating that "It does not lessen fidelity to the Constitution or pride in its origins to acknowledge that the express affirmation of certain fundamental rights by other nations and peoples underscores the centrality of those same rights within our own heritage of freedom."

Abortion

Whereas article 4 of ACHR generally protects the right to life from the moment of conception, article 6 of CCPR and article 2 of ECHR do not explicitly determine the point at which the protection of life begins. Invoking a 1973 judgement of the United States Supreme

Box 51

The world situation with respect to capital punishment

According to Amnesty International, in 2004, at least 3,797 people were executed in 25 countries and at least 7,395 people were sentenced to death in 64 countries. These figures include only cases known to Amnesty International; actual figures are probably higher.[26]

Abolitionist and retentionist countries

Abolitionist for all crimes: 85
Abolitionist for all but exceptional crimes such as wartime crimes: 11
Abolitionist in practice: 24
Total of countries that are abolitionist in law or practice: 120

Retentionist (countries and territories): 76

1. Abolitionist for all crimes

Countries and territories where the law does not provide for capital punishment for any crime:

Andorra, Angola, Armenia, Australia, Austria, Azerbaijan, Belgium, Bhutan, Bosnia and Herzegovina, Bulgaria, Cambodia, Canada, Cape Verde, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Dominican Republic, Ecuador, Estonia, Finland, France, Georgia, Germany, Greece, Guinea-Bissau, Haiti, Holy See, Honduras, Hungary, Iceland, Ireland, Italy, Kiribati, Liechtenstein, Lithuania, Luxembourg, Malta, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niue, Norway, Palau, Panama, Paraguay, Poland, Portugal, Republic of Moldova, Romania, Samoa, San Marino, Sâo Tomé and Príncipe, Senegal, Serbia and Montenegro, Seychelles, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Timor-Leste, Turkey, Turkmenistan, Tuvalu, Ukraine, United Kingdom, Uruguay, Vanuatu, Venezuela.

2. Abolitionist for ordinary crimes only

Countries where the law provides for capital punishment only for such crimes as may be committed under military law or other exceptional circumstances:

Albania, Argentina, Armenia, Bolivia, Brazil, Chile, Cook Islands, El Salvador, Fiji, Greece, Israel, Latvia, Mexico, Peru and Turkey.

3. Abolitionist in practice

Countries which retain the death penalty for ordinary crimes such as murder, but which can be considered abolitionist in practice, insofar as they have not executed anyone during the past 10 years and are believed to have a policy or established practice of not carrying out executions, and countries which have made an international commitment not to use the death penalty:

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[26] Detailed information may be found at the website of Amnesty International under http://web.amnesty.org/pages/deathpenalty-facts-eng.

Algeria, Benin, Brunei Darussalam, Burkina Faso, Central African Republic, Congo, Gambia, Grenada, Kenya, Madagascar, Maldives, Mali, Mauritania, Nauru, Niger, Papua New Guinea, Russian Federation, Sri Lanka, Suriname, Togo, Tonga and Tunisia.

4. Retentionist

Countries and territories which retain the death penalty for ordinary crimes:

Afghanistan, Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Botswana, Burundi, Cameroon, Chad, China, Comoros, Cuba, Democratic People's Republic of Korea, Democratic Republic of the Congo, Dominica, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Ghana, Guatemala, Guinea, Guyana, India, Indonesia, Islamic Republic of Iran, Iraq, Jamaica, Japan, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Malawi, Malaysia, Mongolia, Morocco, Myanmar, Nigeria, Oman, Pakistan, Palestine, Philippines, Qatar, Republic of Korea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Sierra Leone, Singapore, Somalia, Sudan, Swaziland, Syrian Arab Republic, Tajikistan, Thailand, Trinidad and Tobago, Uganda, United Arab Emirates, United Republic of Tanzania, United States of America, Uzbekistan, Viet Nam, Yemen, Zambia and Zimbabwe.

Court in the case of *Roe v. Wade,* the domestic courts in other countries and some legal scholars have maintained that legal protection of the right to life begins when the foetus is able to survive on its own. Under this interpretation, persons who carry out abortion before approximately the end of the first trimester of pregnancy may be exempted from criminal responsibility for their actions. A law that exempts them would thus be consistent with the positive obligation of States to protect the foetus's right to life against interference by the parents or the physician, as the foetus's right to life would emerge only after it is able to survive without its mother. However, after the first trimester, the positive obligation of the State would arise, and the right of the unborn child to life must be balanced against other human rights, in particular the mother's rights to life, and possibly her right to health and privacy as well.

Genetic engineering

The Council of Europe plays a pioneering role in this controversial field, which is on the borderline between ethics, human rights and modern developments in biotechnology. In 1997, the Committee of Ministers adopted the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (Convention on Human Rights and Biomedicine). The Convention reaffirms the principle of free and informed consent for every intervention in the health field (article 5); stipulates that an intervention seeking to modify the human genome may be undertaken only for preventive, diagnostic or therapeutic purposes, and solely if its aim is not to introduce any modification in the genome of any descendants (article 13); and provides that the human body and its parts shall not, as such, give rise to financial gain (article 21). The

first Additional Protocol to the Convention, adopted a year later, aims at the prohibition of cloning human beings, and the second Additional Protocol, adopted in 2002, concerns the transplantation of organs and tissues of human origin.

Euthanasia

Doubtlessly, the obligation of States to protect the right to life applies especially to the incurably ill, to persons with disabilities and to other people who are particularly vulnerable to imposed measures of euthanasia. But in the case of a terminally ill person who explicitly and seriously wishes to die, the obligation to protect the right to life must be weighed against other human rights enjoyed by that person, above all the right to privacy and dignity. Domestic laws on active or passive euthanasia (such as the relevant legislation in the Netherlands) that limit criminal responsibility by providing for careful consideration of all rights involved and take adequate precautions against potential abuse are not inconsistent with the positive State obligation to protect the right to life. Yet, faced with difficult questions on the borderline between ethics and medicine, States may also decide to prohibit euthanasia, as the judgement of the European Court of Human Rights in the case of *Pretty v. the United Kingdom* (2002) shows (see Box 52).

Box 52

The case of Pretty v. the United Kingdom (2002)

Dianne Pretty was terminally ill, and paralysed from the neck down from motor neurone disease. Her intellectual and decision-making capacity, however, was unimpaired and she wanted to commit suicide, but her condition prevented her from performing this act alone. She therefore sought a guarantee from the Director of Public Prosecutions that her husband would not be prosecuted if he assisted her in ending her life. Her request was rejected pursuant to the relevant provisions of English law, which prohibit any assistance in committing suicide, and this decision was upheld in the last instance at the national level. In its decision on her application, which claimed that this judgement violated inter alia her right to life, the European Court held that the right to life, guaranteed under article 2 of ECHR, could not be interpreted as conferring the diametrically opposite right, the right to die, whether at the hands of another person or with the assistance of a public authority. As a consequence of that judgement, a private member bill (known as the Patient Assisted Dying Bill) was subsequently introduced in the British Parliament with the aim of making it lawful for a physician to assist a person to die under very stringently defined conditions and circumstances. The authors of the Bill, which is still being debated, consider that the right to assist a person to die derives from article 8 (1) of ECHR, an article that stipulates inter alia that everyone has the right to respect for his private and family life. In their view, it is not incompatible with the positive obligation of the State to protect life.

Prohibition of torture and cruel, inhuman or degrading treatment or punishment: the right to personal integrity and dignity

Article 5 of UDHR

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Article 7 of CCPR

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

Torture is one of the most serious human rights violations, as it constitutes a direct attack on the personality and dignity of the human being. The prohibition of torture and other forms of physical and mental ill-treatment, i.e., the right to personal integrity and dignity, is an *absolute human right* and is therefore not subject to derogation under any circumstances. This also means that no one may invoke an order from a superior as a justification of torture.

Box 53

Codification of the prohibition of torture

The prohibition of torture is codified in the Universal Declaration of Human Rights (article 5), CCPR (article 7) and CAT, and also in regional treaties such as ECHR (article 3), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ACHR (article 5), the Inter-American Convention to Prevent and Punish Torture and the African Charter on Human and Peoples' Rights (article 5), and in some legally non-binding but morally authoritative instruments, including the Standard Minimum Rules for the Treatment of Prisoners, the Basic Principles for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, and the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Torture is also absolutely prohibited by various provisions of the 1949 Geneva Conventions, in particular their common article 3. Furthermore, the Rome Statute of ICC defines torture as a "crime against humanity" when it is knowingly committed as part of a widespread or systematic attack against any civilian population.

WHAT IS TORTURE?

Article 1 of CAT defines torture as any act — committed by a public official or other person acting in an official capacity or at the instigation of or with the consent of such a person — by which severe physical or mental pain or suffering is intentionally inflicted on a person for a specific purpose, such as extortion of information or confession, punishment, intimidation or discrimination.

Actions that lack one of the essential elements of torture — perpetration by or with the consent of a public official, intent, specific purpose and intensity of suffering — are considered, depending on the form, purpose and severity of suffering, as cruel, inhuman or degrading treatment or punishment. Since all punishment inflicts suffering and contains an element of humiliation, an additional element must be present in order for it to qualify as cruel, inhuman or degrading punishment.

"Torture is intended to humiliate, offend and degrade a human being and turn him or her into a 'thing'".

Antonio Cassese, former President of the Council of Europe's Committee for the Prevention of Torture, in Inhuman States: Imprisonment, Detention and Torture in Europe Today, *Cambridge Polity Press, 1996, p. 47.*

"The legal and moral basis for the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is absolute and imperative and must under no circumstances yield or be subordinated to other interests, policies and practices."

Theo van Boven, Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment.

WHAT STATE OBLIGATIONS ARISE FROM THE PROHIBITION OF TORTURE?

Governments must not restrict or allow derogations from the right to personal integrity and dignity, even in war and in states of emergency. The CAT Committee has ruled that even when a suspect is believed to hold information about imminent attacks that could endanger the lives of civilians, the State thus threatened may not employ methods of in-

Box 54

Procedural safeguards during police custody

It is widely recognized that torture and ill-treatment occur mostly during police custody. The following procedural safeguards limit considerably the exposure of arrested persons to that risk:

- Notification of custody: The right of arrested persons to have the fact of their detention notified to a third party of their choice (family member, friend or consulate);
- The right of detainees to have access to a lawyer;
- The right of detainees to request a medical examination by a physician of their choice (in addition to any medical examination carried out by a physician called by the police authorities);
- Availability of centralized registers of all detainees and places of detention;
- Exclusion of evidence elicited through torture or other forms of compulsion;
- Audio- or videotaping of all police interrogations.

terrogation violating the prohibition of torture and ill-treatment, such as restraining a person under painful conditions, hooding, prolonged exposure to loud music or sleep deprivation, threats, violent shaking or use of cold air to chill the detainee. The absolute prohibition of torture and ill-treatment is founded on the premise that if limited exceptions are permitted, experience has shown that the use of torture tends to spread like a cancer.

The absolute character of the prohibition of torture must be guaranteed. States are therefore forbidden from derogating from rights which, if suspended, would result in a risk of torture, such as the right not to be held in detention for prolonged periods incommunicado and the right of arrested persons to have prompt access to a court. States have an obligation to prevent, investigate, prosecute and punish any act of torture. They must provide reparation to victims, including medical and psychological rehabilitation and compensation for material and moral damages (see Box 55).

Box 55

State obligations under CAT

States parties to the Convention have a duty to:

- Enact legislation to punish torture, empower the authorities to prosecute and punish the crime of torture wherever it has been committed and whatever the nationality of the perpetrator or victim, and prevent these practices (principle of universal jurisdiction);
- Ensure that education and information regarding the prohibition of torture are fully included in the training of civil or military law enforcement personnel, medical staff, public officials and other persons who may be involved in the custody, interrogation or treatment of arrested, detained or imprisoned individuals;
- Ensure that interrogation rules, instructions, methods and practices and the arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment are systematically reviewed by independent bodies;
- Ensure that complaints of torture and ill-treatment are investigated thoroughly by competent authorities, that torturers are brought to justice, that effective remedies are available to victims, and that laws are drawn up to implement measures that prevent torture and ill-treatment during detention;
- Refrain from expelling or returning ("refoulement") or extraditing a person to another State where it is likely that he or she will be exposed to torture (principle of "non-refoulement" or "non-repatriation");
- Submit periodic reports to the CAT Committee on the measures taken to give effect to the Convention, or other reports that the Committee may request;
- Establish independent national commissions (consisting of members of the judiciary, law enforcement officials, lawyers and physicians, independent experts and civil society representatives) to carry out preventive visits to all places of detention (Optional Protocol to CAT, adopted in 2002).

Box 56

United Nations minimum standards in respect of detention and the conduct of law enforcement

- Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, 1948
- Standard Minimum Rules for the Treatment of Prisoners, 1955
- Code of Conduct for Law Enforcement Officials, 1979
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1982
- Safeguards guaranteeing Protection of the Rights of those facing the Death Penalty, 1984
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), 1985
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990
- Basic Principles for the Treatment of Prisoners, 1990
- United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines"), 1990
- United Nations Standard Minimum Rules for Non-Custodial Measures ("The Tokyo Rules"), 1990
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990

PROHIBITION OF CRUEL, INHUMAN OR DEGRADING PUNISHMENT

Since any punishment implies suffering and humiliation, an additional element must be present for it to qualify as cruel, inhuman or degrading punishment. Minimum standards in this area vary from country to country. In Europe, the death penalty and all forms of corporal punishment are today considered as inhuman or degrading punishment, and are therefore prohibited, and in many countries life imprisonment is considered in the same vein. The Human Rights Committee has considered corporal punishment, such as chastisement of prisoners in Jamaica and in Trinidad and Tobago, as degrading punishment under article 7 of CCPR. Furthermore, it has maintained that certain methods of execution such as gas asphyxiation constitute inhuman punishment, and thus violate international law.

THE RIGHT OF DETAINEES AND PRISONERS TO BE TREATED WITH HUMANITY

Article 10 of CCPR guarantees the right of all persons deprived of their liberty to be treated with humanity and with respect for their inherent dignity. According to the Human Rights Committee, people deprived of their liberty may not be "subjected to any hardship or constraint other than that resulting from the deprivation of their liberty."

A number of soft law instruments specify minimum standards applicable to detention.

Box 57

Human rights and privatization of prisons

Private sector involvement in prison operations — construction of penitentiaries, transport of prisoners, procurement of supplies and even full management of detention centres — has been steadily increasing since the 1980s, when it was reintroduced first in the United States of America (where it had been abandoned half a century earlier). Prison privatization has reduced the States' ability to ensure respect for prisoners' rights. In a study carried out for the Sub-Commission on the Promotion and Protection of Human Rights,[27] Ms. Claire Palley, expert, set out the following five principled policy arguments against contracting out prison management:

a. Only the State should have the power to administer justice and enforce it by coercion, because the legitimacy of such inherently governmental powers with which, in a democracy, the people entrust the State depends on their exercise by the State;

b. Disciplinary powers and functions should be exercised only by the State, because such functions can result in the diminution of residual liberty or the prolongation of confinement;

c. Force in restraining prisoners should be exercised only by the State, the sole entity that may legitimately administer justice and enforce it by coercion;

d. Liability for human rights violations must be a State responsibility;

e. The State must ensure the accountability and public visibility of the criminal justice system and the public's access to information.

The study also addresses the problem of the creation of large prison trusts that are set up by building industry enterprises and security companies, and the interests that such trusts may have in influencing penal policy in general. Some have raised the question whether privatization of prisons may not be tantamount to privatizing prisoners.[28]

The right to personal liberty

Article 3 of UDHR

"Everyone has the right to life, liberty and security of the person"

Article 9 of UDHR

"No one shall be subjected to arbitrary arrest, detention or exile"

Article 9 (1) of CCPR

"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

[27] E/CN.4/Sub.2/1993/21.

[28] See, for instance, *CorpWatch,* "Prison privatization: the bottom line", 21 August 1999.

The right to personal liberty aims at providing protection against arbitrary or unlawful arrest and detention. This basic guarantee applies to everyone, including persons held on criminal charges or on such grounds as mental illness, vagrancy or immigration control. Other restrictions of movement, such as banishment to an island or a certain area of a country, curfews, expulsion from a county or prohibition to leave a country, do not constitute interference with personal liberty, although they may violate other human rights, such as freedom of movement and residence (article 14, UDHR).

Box 58

Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms: permissible grounds for arrest and detention

- Imprisonment of a person after conviction for a criminal offence
- Police custody and pre-trial detention of a criminal suspect in order to prevent flight, interference with evidence or recurrence
- Detention in a civil context to ensure that a witness appears in court or undergoes a paternity test
- Detention of aliens in connection with immigration, asylum, expulsion and extradition
- Detention of minors for the purpose of educational supervision
- Detention of persons with mental disabilities in a psychiatric hospital
- Quarantine of sick persons in order to contain infectious diseases
- Detention of alcoholics, drug addicts and vagrants

WHEN IS ARREST OR DETENTION LAWFUL?

An individual may be deprived of his or her liberty only on legal grounds and under a procedure established by law. The procedure must conform not only to domestic law, but also to international standards. The relevant domestic law must not be arbitrary, i.e., it must not be tainted by inappropriateness, injustice or unpredictability. Moreover, law enforcement

Box 59

Human Rights Committee jurisprudence on pretrial detention

According to the Human Rights Committee, pretrial detention must be not only lawful, but also necessary and reasonable under given circumstances. The Human Rights Committee has recognized that CCPR allows authorities to hold a person in custody as an exceptional measure, if it is necessary in order to ensure that person's appearance in court, but has interpreted the "necessity" requirement narrowly: suspicion that a person has committed a crime does not by itself justify detention pending investigation and indictment. The Human Rights Committee has also held, however, that custody may be necessary to prevent flight, avert interference with witnesses and other evidence, or prevent the commission of further offences.

in any given case must not be arbitrary or discriminatory, but should be proportionate to all of the circumstances surrounding the case.

Typical examples of *permissible grounds for arrest and detention* are to be found in article 5 of ECHR, which is understood to provide an exhaustive list of cases of lawful deprivation of liberty in Europe (see Box 58) and can serve as a basis for the interpretation of the term "arbitrary deprivation of liberty" in article 9 of CCPR. Any imprisonment on mere grounds of inability to fulfil a contractual obligation, such as reimbursing a debt, is explicitly prohibited by article 11 of CCPR, article 7 (7) of ACHR and article 1 of the Fourth Additional Protocol to ECHR.

WHAT RIGHTS DOES A PERSON HAVE WHILE IN CUSTODY?

- Arrested persons have the *right to be informed* promptly of the reasons for their arrest and detention, and of their right to counsel. They must be promptly informed of any charges brought against them in order to be able to challenge the lawfulness of their arrest or detention and, if they are indicted, to prepare their defence.
- Persons facing a possible criminal charge have the *right to be assisted by a lawyer* of their choice. If they cannot afford a lawyer, they should be provided with a qualified and effective counsel. Adequate time and facilities should be made available for communication with their counsel. Access to the counsel should be immediate.
- Persons in custody have the *right to communicate with the outside,* and in particular to have prompt access to their family, lawyer, physician, a judicial official and, if the detainee is a foreign national, to consular staff or a competent international organization. Access to the outside is an essential safeguard against such human rights violations as "disappearances", torture and ill-treatment, and is vital to obtaining a fair trial.
- Persons arrested on suspicion of a criminal offence have the *right to be brought promptly before a judge* or other judicial officer who must (a) assess whether there are sufficient legal grounds for the arrest, (b) assess whether detention before trial is necessary, (c) safeguard the well-being of the detainee and (d) prevent violations of the detainee's fundamental rights.
- Persons in pretrial detention have the *right to be tried within a reasonable time or else be released.* In accordance with the presumption of innocence, people awaiting trial on criminal charges should not be held in custody, as a general rule.
- Persons deprived of their liberty on whatever grounds have the *right to habeas corpus,* i.e., they may challenge the lawfulness of their detention before a court and have their detention regularly reviewed. The court must decide without delay, normally within a few days or weeks, on the lawfulness of the detention and order immediate release if the detention is unlawful. If detention for an unspecified period of time is ordered (for instance, in a psychiatric hospital), the detainee has a right to periodic review, normally every few months. Lastly, any victim of unlawful arrest or detention has an enforceable *right to compensation.*

Administration of justice: the right to a fair trial

Article 6 of UDHR
"Everyone has the right to recognition everywhere as a person before the law."

Article 7 of UDHR
"All are equal before the law and are entitled without any discrimination to equal protection of the law."

Article 8 of UDHR
"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

Article 10 of UDHR
"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

Article 11 of UDHR
"(1) Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
(2) No one shall be held guilty of any penal offence on account of any act that did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed."

Articles 14, 15 and 16 of CCPR also enshrine the right to a fair trial.

Articles 6 to 11 of UDHR can be grouped under a common heading: administration of justice. The right to a fair trial, guaranteed also under CCPR and regional human rights treaties, is a basic human right and requires procedural guarantees.

EQUALITY BEFORE THE LAW AND THE COURTS

Fair trial guarantees presuppose equality before the law and the courts. The right to equality before the law means that laws must not be discriminatory and that judges and officials must not enforce the law discriminatorily. The right to equality before the courts means that all persons are equally entitled to access to a court and have a right to equal treatment by that court.

CORE ELEMENTS OF THE RIGHT TO A FAIR TRIAL

In criminal, civil and other proceedings the basic elements of the right to a fair trial are the principle of "equality of arms" between the parties, and the requirement of a fair and public hearing before an independent and impartial tribunal.

- *"Equality of arms"* means that both parties — the prosecution and the accused in criminal proceedings, or the plaintiff and the defendant in civil proceedings — have equal rights and opportunities to be present at the various stages of the proceedings, to be kept informed of the facts and arguments of the opposing party and to have their arguments heard by the court *(audiatur et altera pars).* In principle, therefore, the principle of "equality of arms" requires adversarial proceedings.
- Court hearings and judgements must in general be public: not only the parties to the case, but also the general public, must have a right to be present. The idea behind the principle of a *public hearing* is transparency and control by the public, a key prerequisite for the administration of justice in a democratic society: *"Justice must not only be done; it must be seen to be done".* It follows that, as a general principle, trials must not be conducted by a purely written procedure in camera, but by oral hearings to which the public has access. Not all stages of the proceedings, in particular at the appeal level, require public hearings; and the public, including the media, may be excluded for reasons of morals, public order, national security, private interests and, in exceptional cases, the interests of justice. However, every judgement must be made public, by full oral delivery or by written announcement.

Box 60

Independent and impartial tribunals: independence of the judiciary

Tribunals (courts) must be constituted in a way ensuring their independence and impartiality. Independence entails safeguards relating to the manner of appointment of judges, the duration of their office and the provision of guarantees against outside pressure. Impartiality means that, in hearing the cases before them, judges must not be biased or guided by personal interests or political motives. The United Nations Basic Principles on the Independence of the Judiciary provide clear guidelines in that area.

The prerequisites for legal provisions ensuring court independence and impartiality are the following:

- First and foremost, the independence of the judiciary should be enshrined in the constitution or in national law;
- The method of selection of judicial officers should be characterized by balance between the executive and an impartial body, many of whose members should be appointed by professional organizations, such as law societies;
- The tenure of judges should be guaranteed up to a mandatory retirement age or the expiry of their terms of office;
- Decisions on disciplinary action, suspension or removal of a judge should be subject to an independent review.

THE RIGHTS OF THE ACCUSED IN CRIMINAL TRIALS

In addition to the right to "equality of arms" and to a public hearing, international human rights law provides for a number of specific rights that persons charged with a criminal offence should enjoy:

- The right to be presumed innocent. The prosecution must prove the person's guilt, and, in case of doubt, the accused should not be found guilty, but must be acquitted;
- The right not to be compelled to testify or to confess guilt. This prohibition is in line with the presumption of innocence, which places the burden of proof on the prosecution, and with the prohibition of torture and ill-treatment. Evidence elicited by torture or ill-treatment may not be used in court;
- The right to defend oneself in person or through counsel of one's own choosing, and the right to be provided with legal assistance free of charge;
- The right to have adequate time and facilities for one's defence, and the right to communicate with one's counsel;
- The right to be tried without undue delay, as "justice delayed is justice denied". In principle, criminal proceedings must be conducted more speedily than other proceedings, particularly if the accused is in detention;
- The right to be present at one's trial;
- The right to call and examine witnesses;
- The right to be provided with language interpretation free of charge if the accused cannot understand or speak the language used in court;
- The right to appeal to a higher tribunal;
- The right not to be tried and sentenced twice for the same offence (prohibition of double jeopardy, or principle of *ne bis in idem*);
- The right to receive compensation in the event of a miscarriage of justice;
- The principles of *nullum crimen sine lege* and *nulla poena sine lege* prohibit the enactment of retroactive criminal laws and ensure that convicted persons benefit from lighter penalties if they are enacted after the commission of the offence.

SPECIAL COURTS AND MILITARY COURTS

Special, extraordinary or military courts have been set up in many countries to try specific types of offences or to try people with special legal statuses. Frequently, such courts offer fewer guarantees of fair trial than ordinary courts and, as noted by the Human Rights Committee, "quite often the reason for the establishment of such courts is to enable exceptional procedures to be applied which do not comply with normal standards of justice".[29]

Most international standards do not prohibit the establishment of special courts per se, but require that they be competent, independent and impartial, and that they afford judicial guarantees ensuring fair proceedings.

[29] HRC, *general comment* No. 13, para. 4.

Box 61

Trials of military personnel in military courts for common crimes

Trials of military personnel in military courts for ordinary crimes and human rights violations often result in impunity. The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions has expressed concern over reports of "trials of members of the security forces before military courts, where, it is alleged, they evade punishment because of an ill-conceived esprit de corps, which generally results in impunity".[30] The Inter-American Commission of Human Rights has considered that the extension of military jurisdiction to include common crimes solely on the grounds that they have been committed by military personnel does not offer the guarantees of an independent and impartial court as laid down in article 8 (1) ACHR.[31]

THE RIGHT TO FAIR TRIAL IN A STATE OF EMERGENCY AND IN ARMED CONFLICT

As stated in Part I, some human rights may not be suspended under any circumstances. Some of these rights — such as the right to protection against torture and retroactive criminal laws — are part of fair trial guarantees. There is, moreover, a growing international consensus that derogation from habeas corpus should not be possible either. The United Nations Commission on Human Rights has called on all States "to establish a procedure such as habeas corpus or a similar procedure as a personal right not subject to derogation, including during states of emergency".[32]

It is precisely during a national emergency that States are most likely to violate human rights. *Parliaments should use their powers to ensure that fair trial guarantees and the independence of the judiciary, which are vital to the protection of human rights, apply also in states of emergency.*

International humanitarian law governs conduct during armed conflict. The Geneva Conventions of 1949 set out fair trial guarantees for people charged with criminal offences.

The right to privacy and the protection of family life

Article 12 of UDHR

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

Article 16 of UDHR

"1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

[30] UN Doc.A/51/457, para. 125, October 1996.
[31] IACHR, *Annual report*, 1993.
[32] Commission resolution 1994/32.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

Article 17 of CCPR

"1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks."

Article 23 of CCPR

"1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children."

The right to privacy is central to the notion of freedom and individual autonomy. Many of the controversial issues that have arisen in the context of privacy litigation, such as State interference with homosexuality, transsexuality, prostitution, abortion, (assisted) suicide, dress codes and similar codes of conduct, private communication, marriage and divorce, reproductive rights, genetic engineering, cloning and the forced separation of children from their parents, touch upon fundamental moral values and ethical issues, which are viewed differently in various societies. Furthermore, the liberal concept of privacy is based on the private versus public dichotomy, and on the philosophy that Governments should not interfere with essentially private and family matters. However, it is precisely that dichotomy that is challenged directly, above all by modern feminist theory, and blamed for major violations of the human rights of women and children, including domestic violence and female genital mutilation (FGM).

THE RIGHT TO PRIVACY: A COMPLEX AND MULTIFACETED HUMAN RIGHT

This right guarantees

- respect for the individual existence of the human being, i.e., his or her particular nature, idiosyncrasy, appearance, honour and reputation.
- It protects individual autonomy and entitles individuals to isolate themselves from their fellow human beings and withdraw from public life into their own private spheres in order to shape their own lives according to their personal wishes and expectations. Certain institutional guarantees, such as protection of *home, family, marriage* and the *secrecy of correspondence* support this aspect of the right to privacy.

- It includes the right to be different and to manifest one's difference in public by behaviour that runs counter to accepted morals in a given society and environment. Government authorities and international human rights bodies, therefore, face a delicate and difficult task of *striking a balance* between the right to privacy and legitimate public interests, such as the protection of public order, health, morals and the rights and freedoms of others.

The following paragraphs touch upon only some of the more salient aspects of the right to privacy. In view of the controversial nature of most of the issues involved, it is often impossible to provide definite answers, as they depend on carefully weighing countervailing interests on a case-by-case basis, taking into account the special circumstances prevailing in a given society.

MAJOR ASPECTS OF THE RIGHT TO PRIVACY

Preservation of individual identity and intimacy

Privacy starts with respect for an individual's specific identity, which includes one's name, appearance, clothing, hairstyle, gender, feelings, thoughts and religious and other convictions. Mandatory clothing or hairstyle rules, a forced change or non-recognition of a change of one's name, religion or gender (for instance, a State's refusal to alter the birth registration of a transsexual) or any form of indoctrination ("brainwashing") or forced personality change interfere with the right to privacy. The intimacy of a person must be protected by respecting generally acknowledged obligations of confidentiality (for instance, those of physicians and priests) and guarantees of secrecy (for instance, in voting), and by enacting appropriate data protection laws with enforceable rights to information, correction and deletion of personal data.

Protection of individual autonomy

The extent to which the sphere of autonomy is protected by the right to privacy is a highly controversial issue. Individual autonomy — i.e., the area of private life in which human beings strive to achieve self-realization through action that does not interfere with the rights of others — is central to the liberal concept of privacy. In principle, autonomy gives rise to a right to one's own body, which also comprises a right to act in a manner injurious to one's health, including committing suicide. Nevertheless, societies have consistently deemed such behaviour to be harmful to the common good and morals, and have often prohibited and penalized its manifestations (for instance, suicide, passive euthanasia and drug, alcohol and nicotine consumption). Whether the right of a woman over her own body gives rise to a right to abortion is a disputed question to which different answers have been provided by various supreme courts and constitutional courts. The right to privacy also implies an individual's right to communication with others, including the right to develop emotional relationships. The right to sexual autonomy and sexual relations is especially important, and Governments must be particularly careful when interfering with sexual matters.

Box 62

What does "family" mean in international human rights law?

In addition to support under the Universal Declaration of Human Rights, the institution of the family, as the "natural and fundamental group unit of society", enjoys special protection under article 23 of CCPR, article 10 of CESCR, article 16 of the European Social Charter, article 8 of ECHR, article 17 of ACHR and article 18 of African Charter on Human and Peoples' Rights. This broad range indicates that the meaning of the term "family" transcends the concept of a nuclear family prevalent in highly industrialized countries, and encompasses much larger units, such as the extended family, for example in African societies. In addition to blood relations and statutory ties (marriage, adoption, registration of homosexual partnerships, etc.), cohabitation, an economic relationship and the specific social and cultural values in a given society are the key criteria used to determine whether a group with a given type of relationship between human beings constitutes a family.

Protection of the family

Protection of the family is essential to the right to privacy. Institutional guarantees for the family (i.e., its legal recognition and specific benefits deriving from that status, and the regulation of the legal relationship between spouses, partners, parents and children, etc.) is intended to protect the social order from trends towards disintegration and to preserve specific family functions (such as reproduction or bringing up children) — considered indispensable to a society's survival — rather than condone their transfer to other social institutions or the State. The human rights to *marry and found a family, including reproductive rights, to equality of spouses, to protection of motherhood and the special rights of children* as laid down in CRC are directly linked to the institutional guarantee of the family. The right of children not to be separated from their parents, the common responsibilities of both parents for the upbringing and development of the child and the rights to family reunification, foster placement and adoption are particularly important.

The right to privacy entails the protection of family life against arbitrary or unlawful interference, above all by State authorities. One typical interference is the mandatory separation of children from their parents on grounds of gross disregard of parental duties and the placement of the children under the guardianship of the State. Having heard a number of cases, the European Court of Human Rights developed certain minimum guarantees for the parents and children concerned, such as participation in the respective administrative proceedings, judicial review and regular contact between parents and children during the time of their placement in foster homes in order to allow family reunification. In the same vein, after a divorce, both spouses retain the right of access to their children.

Protection of the home

The protection of the home is another important aspect of privacy, since the home conveys a feeling of familiarity, shelter and security, and therefore symbolizes a place of refuge from

Box 63

Limits on State interference with family life in relation to immigration, expulsion, deportation and extradition laws and policies

Although there is no general right of aliens to enter and reside in a country, arbitrary and discriminatory immigration policies violate the right to family protection and reunification. The longer an alien has lived in a country, especially after marrying and establishing a family there, the stronger the arguments of the Governments must be to justify the person's expulsion and deportation. For instance, in the case of *Berrehab v. the Netherlands* (1988), the European Court of Human Rights held that the mere fact of divorce from his Dutch wife could not justify the expulsion of a Moroccan man who had maintained close ties with his daughter in the Netherlands. On the other hand, if an alien's right to family life must be weighed against such legitimate State interests as the prevention of disorder or crime, then serious criminal conduct by the person in question would usually justify the break-up of a family, even after a long term of residence. Only in exceptional cases of second-generation immigrants with no real attachment to their country of origin or of persons with serious disabilities or diseases has the European Court found that there was a violation of the right to family life. In other words, States enjoy a wide margin of discretion in implementing policies regarding aliens, but must try to strike a balance between legitimate public interests and the requirement to protect family life and other private circumstances, such as a regular occupation or property or homeownership in the country of residence.

public life where one can best shape one's life according to one's own wishes without fear of disturbance. In practice, "home" does not apply only to actual dwellings, but also to various houses or apartments, regardless of legal title (ownership, rental, occupancy, and even illegal use) or nature of use (as main domicile, weekend house or even business premises). Every invasion of that sphere — described under the term "home" — that occurs without the consent of the individuals concerned represents an interference. The classic form of interference is a police search for locating and arresting someone or finding evidence to be used in criminal proceedings. But it is not the only type of interference. The violent destruction of homes by security forces, forced evictions, the use of hidden television cameras or listening devices, electronic surveillance practices or extreme forms of environmental pollution (such as noise or noxious fumes) may constitute interference with the right to protection of the home. Such interference is permissible only if it complies with domestic law and is not arbitrary, i.e., if it occurs for a specific purpose and in accordance with the principle of proportionality. Police searches, seizure and surveillance are usually permissible only on the basis of a written warrant issued by a court, and must not be misused or create disturbance beyond the pursuit of a specific purpose, such as securing evidence.

Protection of private correspondence

Although the term "correspondence" was initially applied to written letters, it now covers all forms of communication at a distance: by telephone, cable, telex, facsimile, electronic mail or other mechanical or electronic means. Protection of correspondence means respect for the secrecy of such communication. Any withholding, censorship, inspection,

interception or publication of private correspondence constitutes interference. The most common forms of such interference are surveillance measures secretly taken by State agencies (opening letters, monitoring telephone conversations and intercepting faxes and e-mails, etc.) for the purpose of administering justice, preventing crime (e.g., through censorship of detainees' correspondence) or combating terrorism. As is the case for house searches, interference with correspondence must comply with domestic law (i.e., as a rule, it requires a court order) and with the principle of proportionality.

Box 64

The right to privacy and the fight against terrorism

The right to privacy has been particularly affected by laws enacted recently in a number of countries to broaden police and intelligence service powers to combat terrorism. In addition to the extension of traditional police functions such as search, seizure and surveillance (often without prior authorization by a court), typical examples include electronically supported surveillance of "sleeper units" and other potential terrorists by means of screening, scanning, processing, combining, matching, storing and monitoring huge amounts of private data, and such methods as the automatic taking of fingerprints and blood and DNA samples of target groups, which are often selected through racial profiling.

In this area (as in connection with other human rights, such as the rights to personal liberty and fair trial), *members of parliament bear a key responsibility:* they must ensure that any extension of police and intelligence powers, if necessary at all, takes place:

1. Transparently and democratically;
2. With due respect for international human rights standards;
3. Without undermining the precious values of a free and democratic society: individual liberty, privacy and the rule of law.

Freedom of movement

Article 13 of UDHR

"1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country."

Article 12 of CCPR

"1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country."

Article 13 of CCPR

"An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority."

The Universal Declaration of Human Rights and CCPR protect the right of every person sojourning lawfully in a country to move freely and choose a place of residence anywhere on the territory of that country. This right should be protected from both public and private interference.

THE FREEDOM OF MOVEMENT OF ALIENS WITHIN A STATE

Since this right relates only to persons who are lawfully in the territory of a State, Governments may impose restrictions on the entry of aliens, screening those who seek entry. Whether an alien is "lawfully" in the territory of a State should be determined according to domestic law, which may specify entry restrictions, provided that they meet the State's international obligations.

Aliens who enter a country illegally but whose status is subsequently regularized must be considered to be in the territory lawfully. If a person is lawfully in a country, any restriction imposed on that person or any treatment of that person other than the treatment reserved to nationals must be justified under article 12 (3) of CCPR.

A good example of restrictions imposed on an alien and admissible under that article is provided by the case of *Celepli v. Sweden* before the Human Rights Committee (1994). Mr. Celepli, a Turkish citizen of Kurdish origin living in Sweden, was ordered to leave the country on grounds of suspected involvement in terrorist activities. That order was not enforced, and he was allowed to stay on, in a municipality where he had to report regularly to the police. The Human Rights Committee found that these restrictions were in conformity with the provisions of article 12 (3) of CCPR, and were therefore legal.

FREEDOM TO LEAVE A COUNTRY

Article 12 (2) of CCPR stipulates that all persons (citizens and aliens, and even persons sojourning in a country illegally) are free to leave the territory of a State. This right applies to short and long visits abroad and to (permanent or semi-permanent) emigration. Enjoyment of this right should not depend on the purpose or duration of travel abroad.

This right imposes obligations on both the State of residence and the State of nationality. For instance, the State of nationality must issue travel documents or passports to all citizens both within and outside the national territory. If a State refuses to issue a passport or requires its citizens to obtain exit visas in order to leave, there is interference, which is difficult to justify. Moreover, the Human Rights Committee has condemned a national

law which restricted the right of women to leave the country by requiring their husbands' consent.

Box 65

Barriers to freedom of movement: examples

Freedom of movement is often subjected to the unnecessary barriers listed below, which make travelling within or between countries difficult or impossible. Parliamentarians may wish to oppose such measures.

Movement within the country

- Obligation to obtain a permit for internal travel
- Obligation to apply for permission to change residence
- Obligation to seek approval by the local authorities of the place of destination
- Administrative delays in processing written applications

Movement to another country

- Lack of access to the authorities or to information regarding requirements
- Requirement to apply for special forms in order to obtain the actual application forms for the issuance of a passport
- Requirement to produce statements of support by employers or relatives
- Requirement to submit an exact description of the travel route
- High fees for the issuance of a passport
- Unreasonable delays in the issuance of travel documents
- Restrictions on family members travelling together
- Requirement to make a repatriation deposit or have a return ticket
- Requirement to produce an invitation from the State of destination
- Harassment of applicants

LIMITATIONS

Freedom of movement must not be restricted except where such restrictions are provided for by law and where they are necessary on grounds of national security, public order, public health or morals or the rights and freedoms of others (article 12 (3) of CCPR).

According to the Human Rights Committee, these requirements would not be met, for instance, "if an individual were prevented from leaving a country merely on the grounds that he or she is the holder of 'State secrets', or if an individual were prevented from travelling internally without a specific permit". Likewise, preventing women from moving freely or from leaving the country without the consent or the escort of a male person constitutes a violation of article 12 of CCPR. On the other hand, restrictions on access to military zones on national security grounds or limitations on the freedom to settle in areas inhabited by indigenous or minority communities may constitute permissible restrictions.

Box 66

Enacting limitations and overseeing their implementation

Drawing up legislation

In adopting laws that provide for restrictions under article 12 (3) of CCPR, parliaments should always be guided by the principle that the restrictions must not defeat the purpose of the right. The laws must stipulate precise criteria for the restrictions — which should be implemented objectively — and respect the principle of proportionality; the restrictions should be appropriate, should be the least intrusive possible, and should be proportionate to the interest to be protected.

Implementation

If a State decides to impose restrictions, they should be specified in a law. Restrictions not provided for by law and not in conformity with article 12 (3) of CCPR directly violate freedom of movement. Actual implementation of any restrictions should meet the requirements of necessity and proportionality, as explained above. Furthermore, the restrictions must be consistent with other rights provided for under CCPR and with the principles of equality and non-discrimination.

THE RIGHT TO ENTER ONE'S OWN COUNTRY

Article 12 (4) of CCPR implies that one has the right to remain in one's own country and to return to it after having left it, and it may entitle a person to enter a country for the first time (if he or she is a national of that country but was born abroad). The right to return is particularly important for refugees seeking voluntary repatriation.

The wording "one's own country" refers primarily to citizens of that country. In exceptional cases, persons who have resided for a very long period in a country as aliens, or who were born there as second-generation immigrants, may consider their country of residence as their "own" country.

Freedom of thought, conscience and religion

Article 18 of UDHR

"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

Article 18 of CCPR

"1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."

The right to freedom of thought, conscience and religion is so essential that it is not subject to derogation, even in a state of emergency. What is known as the *forum internum,* i.e., the right to form one's own thoughts, opinions, conscience, convictions and beliefs, is an absolute right protected against any form of State interference, such as indoctrination ("brainwashing"). However, the public manifestation of religion or belief may be restricted on legitimate grounds.

The terms "religion" and "belief" should be interpreted broadly, to include traditional as well as non-traditional beliefs and religions, whether theistic, non-theistic or atheist. The freedom to have or to adopt a religion or belief includes the freedom to choose, which may entail replacing a previously held religion or belief with another, or to adopt atheist views, or to retain one's religion or belief.

PROHIBITION OF COERCION

Under no circumstances may a person be coerced by the use or threat of physical force or penal sanctions to adopt, adhere to or recant a specific religion or belief. The prohibition also applies to policies or measures that have the same effect. For instance, membership per se in a religious group may not disqualify a person from public service positions.

MANIFESTING A RELIGION OR BELIEF

The meaning of "manifestation" is very broad. It encompasses:

- Worship: performing ritual and ceremonial acts, building places of worship, using ritual formulae and objects, displaying symbols, and observing holidays and days of rest;
- Observance: performing ceremonial acts, applying dietary regulations, wearing distinctive clothing or headgear, and using a specific language;
- Practice and teaching: choosing religious leaders, priests and teachers, setting up seminaries or religious schools, and producing or distributing religious texts or publications.

Since the manifestation of one's religion or belief is necessarily active, it may affect the enjoyment of some rights by other persons, and in extreme cases even endanger society. Under article 18 (3) of CCPR, therefore, it can be subject to specific limitations.

LIMITATIONS ON THE MANIFESTATION OF ONE'S RELIGION OR BELIEF

Limitations on the freedom to *manifest* one's religion or beliefs are subject to strictly specified conditions, and are allowed only if they are:

- Prescribed by law; and
- Necessary for protecting public safety, order, health, or morals or the fundamental rights and freedoms of others.

One example of permissible grounds for a limitation of the freedom to manifest one's religion or belief is when such manifestations amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. All too often, religious intolerance is the source of violent conflicts between ethnic and religious groups.

Box 67

The ban on overt religious symbols in French schools

Controversy over a French law enacted in 2004 shows how sensitive the issue of placing limits on manifestations of religion or belief can be. A bill was passed by a massive majority of members of parliament, banning overt religious symbols from French State schools. The law has been widely seen as targeting the Islamic headscarf, although the ban includes Jewish skullcaps and large Christian crosses.

While the French parliament and Government justify the law by invoking the principle of secularity (strict separation of State and religion) and the need to protect Muslim girls against gender-specific discrimination, many human rights groups have argued that the ban violates the right to freedom of religion or belief and that it constitutes coercion, expressly forbidden under article 18 (2) of CCPR.

RELIGIOUS AND MORAL EDUCATION

Article 18 (4) of CCPR requires States to respect the freedom of parents and legal guardians to bring up their children in accordance with their own religious and moral convictions.

Compulsory religious or moral education in public schools is not incompatible with that provision, if religion is taught in an objective and pluralistic manner (for instance, as part of a course on the general history of religion and ethics). If one religion is taught in a public school, provisions should be made for non-discriminatory exemptions or alternatives, accommodating the wishes of all parents or legal guardians.

Freedom of opinion and expression

Article 19 of UDHR

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

Article 19 of CCPR

"1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
(a) For respect of the rights or reputations of others;
(b) For the protection of national security or of public order, or of public health or morals."

Two main elements can be distinguished in the above provisions:

- Freedom of opinion; and
- Freedom of expression.

FREEDOM OF OPINION

The right to hold opinions is by nature passive and forms an absolute freedom. CCPR allows for no exceptions or restrictions in the enjoyment of that freedom — whose absolute nature, however, vanishes as soon as the holder of an opinion manifests it, as that aspect is related to the freedom of expression. As we shall see, the latter can and even must be restricted under some circumstances.

FREEDOM OF EXPRESSION

Freedom of expression, along with freedom of assembly and association, is a cornerstone of democratic society. Democracy cannot be realized without a free flow of ideas and information, and the possibility for people to gather, to discuss and voice ideas, criticism and demands, to defend their interests and rights and to set up organizations for that purpose, such as trade unions and political parties. The United Nations Special Rapporteur on freedom of expression has described that right as "an essential test right, the enjoyment of which illustrates the degree of enjoyment of all human rights enshrined in the International Bill of Human Rights, and that respect for this right reflects a country's standards of fair play, justice and integrity." [33]

All regional and international monitoring bodies have underlined the paramount importance of this right for democracy. The African Commission on Human and Peoples' Rights did so by adopting the Declaration of Principles on Freedom of Expression in Africa in October 2002.

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[33] UN Commission on Human Rights, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression* (E/CN.4/2002/75), January 2002.

Freedom of expression comprises not only the right of individuals to express their own thoughts, but also the right to seek, receive and impart information and ideas of all kinds. It has therefore an individual and social dimension: it is a right that belongs to individuals, and also implies the collective right to receive any information whatsoever and to have access to the thoughts expressed by others.

Box 68

Freedom of expression – a broad right

In the case of *Handyside v. the United Kingdom* (1976), a publishing firm put out "the Little Red Book", intended for — and made available to — schoolchildren aged 12 or more. The book contained chapters on sex and addresses for help and advice on sexual matters. As a result of a number of complaints received by the authorities, the applicant's premises were searched, copies of the book were seized, and the applicant was found guilty of having in his possession obscene books for publication for gain. He was fined and ordered to pay costs. The conviction was upheld on appeal, and the books that had been seized were destroyed. A revised edition was later issued. The European Court of Human Rights ruled that there had been no violation of the right to freedom of expression, since the authorities had limited themselves to what was strictly necessary in a democratic society. However, it stressed that the utmost attention should be paid to the principles characterizing a democratic society. It held that freedom of expression constituted one of the essential foundations of such a society, and was a basic condition for its progress and for the development of every individual. Subject to legitimate restrictions, it was applicable "not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broad-mindedness without which there is no democratic society".

In the case of *Feldek v. Slovakia* (2001), in which the applicant had been found guilty of defamation for accusing a newly appointed minister of having a fascist past, the European Court reaffirmed that freedom of expression was of the highest importance in the context of political debate, and considered that very strong reasons were required to justify restrictions on political speech. It held that the applicant's statement was a value judgement, the truthfulness of which was not susceptible to proof, and stated that the "requirement to prove the truth of a value judgement is impossible to fulfil and infringes freedom of opinion itself". Elaborating on the extent to which a value judgement had to be linked to facts, the Court concluded that the applicant's freedom of expression had been violated, because the domestic courts had failed to establish any pressing social need for protecting the personal rights of the minister which would have been stronger than the applicant's right to freedom of expression and the general interest in promoting freedoms on issues of public interest.

In the *Jersild case* (1994), a reporter had been sentenced for incitement to discrimination after he had interviewed skinheads who had expressed radical racist and anti-foreign statements. The European Court found that the sentence violated freedom of expression, especially because the programme, on the whole, was critical of skinheads and their ideology, and therefore did not constitute incitement to discrimination.

"Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a conditio sine qua non for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free."

Inter-American Court of Human Rights,
Advisory Opinion OC-5/85, paragraph 70 .

Freedom to impart information and ideas

This aspect of the freedom of expression is of particular importance to parliamentarians, because it entails the freedom to express oneself politically. In the case of *Kivenmaa v. Finland* (1994) concerning a demonstration to denounce the human rights record of a foreign head of State who was on an official visit to Finland, the Human Rights Committee found that "the right for an individual to express his political opinions, including obviously his opinions on the question of human rights, forms part of the freedom of expression guaranteed by article 19 of the Covenant". It is, as the European Court of Human Rights has consistently stated, "not only applicable to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb" (see Box 68).

Freedom to seek and receive information

"Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject to clearly defined rules established by law."

Declaration of Principles on Freedom of Expression in Africa, article IV.

Without freedom to seek and receive information, the media, members of parliament and others would be unable to expose cases of possible corruption, mismanagement or inefficiency and to ensure transparent and accountable government. In his 1995 report to the United Nations Commission on Human Rights, the Special Rapporteur on freedom of opinion and expression stressed that "freedom will be bereft of all effectiveness if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is therefore strongly to be checked." [34]

[34] E/CN.4/1995/32, paragraph 35.

Box 69

Laws on access to information

Many countries have adopted access-to-information laws. Such laws have proved instrumental in exposing human rights violations and fighting impunity. In her study on impunity prepared for the United Nations Commission on Human Rights in 2004, the Independent Expert (to update the set of principles for the protection and the promotion of human rights through action to combat impunity) provided a number of examples in which such laws enabled victims of human rights violations to know the truth. For instance, "the South African History Archive of the University of Witwatersrand has utilized South Africa's Promotion of Access to Information Act, which was adopted in 2000, to pursue 'missing' records and expose the degree to which some files were concealed from the country's truth commission." The expert recommended that, "in view of their potential for enhancing citizens' access to the truth concerning human rights violations, States that have not already done so adopt legislation enabling citizens to obtain access to Government documents, including those disclosing information concerning human rights violations." She cited as model in this regard Mexico's Federal Access to Information Act (*Ley Federal de Acceso a la Información*), enacted in 2002, "which bars the withholding of documents that describe 'grave violations' of human rights".[35]

Media freedom

A crucial aspect of freedom of expression is freedom of the press and other media. The Human Rights Committee stated in its general comment No. 10 that "… because of the development of modern mass media, effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression in a way that is not provided for …".

Restrictions

Article 19 (3) of CCPR underscores that the exercise of the right to freedom of expression carries with it special duties and responsibilities, and that this justifies some restrictions on that right.

Any restriction on the right to freedom of expression must, however, meet the following strict tests of justification:

- The restriction must be *provided by law* (legislation enacted by parliament, common law articulated by the courts or professional rules). The restriction must be precise and meet the criteria of legal certainty and predictability: it must be accessible to the individual concerned and its consequences for him or her must be foreseeable. Laws that are too vague or allow for excessive discretion in their application fail to protect individuals against arbitrary interference and do not constitute adequate safeguards against abuse;

[35] E/CN.4/2004/88, paragraph 20.

Box 70

Safeguarding freedom of the media

Parliament may take a number of steps that can contribute to ensuring that there are free and independent media, including the following measures:

- Revising media laws and amending them, if necessary, to bring them into conformity with article 19 of CCPR, in particular, as recommended by the United Nations Special Rapporteur on the freedom of opinion and expression, abolishing any laws that punish press offences with imprisonment, except in cases involving racist or discriminatory comments or calls to violence, and ensuring that any fines for offences such as libel, defamation and insults, etc., are not out of proportion with the harm suffered by the victims;
- Encouraging plurality and independence of newspapers;
- Ensuring that broadcasters are protected against political and commercial influence, including through the appointment of an independent governing board and respect for editorial independence;
- Ensuring that an independent broadcasting licensing authority is set up;
- Establishing clear criteria for payment and withdrawal of Government subsidies to the press, in order to avoid the use of subsidies for stifling criticism of the authorities;
- Avoiding excessive concentration of media control; implementing measures ensuring impartial allocation of resources and equitable access to the media; and adopting antitrust legislation regarding the media;
- Promoting universal access to the Internet.

- The restriction must be *necessary* for:

  respecting the rights or reputations of others;
  protecting national security, public order, public health or morals.

The latter criterion can be met only if the restriction addresses a pressing social need and is proportional to the legitimate aim pursued, so that the harm to freedom of expression does not outweigh the benefits.

Restriction on grounds of national security and public order

In the case of *Mukong v. Cameroon* (1994), a journalist claimed that his right to freedom of expression and opinion had been violated, and that he had been repeatedly arrested and some of his books had been banned by the State because of his activities as an advocate of multiparty democracy. The State invoked national security and public order under article 19 (3) of CCPR. The Human Rights Committee concluded that the measures taken by the State were not necessary, and considered that "the legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multiparty democracy, democratic tenets and human rights".

Restriction on grounds of public morals

In the case of *Open Door Counselling and Dublin Woman Well Centre and Others v. Ireland* (1992), two corporate applicants had engaged in non-directive counselling of pregnant women in Ireland, concerning the possibility of obtaining abortions in clinics in Great Britain. A perpetual injunction had been issued to restrain them from that activity on the grounds that abortion was illegal under the Irish Constitution. The European Court of Human Rights, while stating that a State's discretion in the area of protection of morals was not unfettered and unreviewable, stressed that the national authorities enjoyed a wide margin of appreciation in matters of morals and reiterated its position that it was not possible to find among the legal and social orders of the States parties a uniform European concept of morals. However, it considered that the injunction imposed was too broad and disproportionate. It held therefore that it constituted a violation of the applicants' right both to disseminate information and to receive such information.

Restriction on the ground of respect for the rights and reputation of others

In the case of *Krone Verlag GmbH & Co. KG v. Austria* (2002) concerning the prevention of a newspaper from publishing the picture of a politician in conjunction with allegations

Box 71

Freedom of expression and parliamentarians: closer scrutiny of any interference with their freedom of expression, but also greater tolerance of criticism

Freedom of expression is the parliamentarians' main working tool. The IPU Committee on the Human Rights of Parliamentarians has consistently stressed that, in accordance with their representative mandates, parliamentarians must be able to express themselves freely as defenders of the rights of the citizens who elect them.

In the important case of *Castells v. Spain* (1992), which involved a member of parliament who had been convicted for publishing an article accusing the Government of complicity in several attacks and murders, the European Court of Human Rights stated that "while freedom of expression is important for everybody, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests. Accordingly, interferences with the freedom of expression of an opposition member of parliament … call for the closest scrutiny on the part of the Court...". It also affirmed that "the limits of permissible criticism are wider with regard to the Government than in relation to a private citizen, or even a politician. In a democratic system the actions or omissions of the Government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the press and public opinion. Furthermore, the dominant position which the Government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media …". In many instances, the European Court has ruled that in order to protect freedom of expression, people should be allowed to criticize politicians more harshly than those who had not chosen to be public figures (see, for instance, the cases of *Lingens v. Austria* (1986) and *Dichand and Others v. Austria* (2002).

about his financial situation, the European Court of Human Rights found that the interference by the authorities was prescribed by law and pursued the legitimate aim of protecting the privacy of a person, but did not meet the test of necessity in a democratic society. It found that the issue raised was of public interest, that it concerned a public figure and that the publication of the picture in itself did not disclose any details of the politician's private life. Consequently, the interference did not address a pressing social need, and constituted a violation of freedom of expression.

Mandatory limitations on freedom of expression

Article 20 of CCPR lists mandatory limitations to article 19 in relation to propaganda for war and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. The Human Rights Committee has stated that "for article 20 to become fully effective, there *ought to be a law* making it clear that propaganda and advocacy as described therein are contrary to public policy, and providing for an appropriate sanction in case of violation" (general comment No. 11).

The Human Rights Committee has encouraged Governments to take legal measures to restrict the publication or dissemination of obscene and pornographic material portraying women and girls as objects of violence or degrading or inhuman treatment (general comment No. 28).

Box 72

The case of *Faurisson v. France* (Human Rights Committee, 1996)

Mr. Faurisson was a professor of literature at the University of the Sorbonne in Paris until 1973 and at the University of Lyons until 1991, when he was removed from his chair for having questioned the existence of extermination gas chambers in Nazi concentration camps. In 1990, the French legislature passed the Gayssot Act, which amended the 1881 law on the freedom of the press by making it an offence to contest the existence of the category of crimes against humanity defined in the London Charter of 8 August 1945, on the basis of which the Nazi leaders were tried and convicted by the Nuremberg Tribunal in 1945-1946. In 1991, the author was convicted of repeating the same views in a published interview.

The author submitted a communication to the Human Rights Committee, contending that the Gayssot Act violated his right to freedom of expression and academic freedom. The Human Rights Committee found that the restriction of Mr. Faurisson's freedom of expression was permissible under article 19 (3) of CCPR, because that restriction served the aspirations of the Jewish community to live free from fear of an atmosphere of anti-Semitism. The Human Rights Committee also found that the restriction was necessary to fight racism and anti-Semitism.

Freedom of peaceful assembly and association

Article 20 of UDHR

"1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association."

Article 21 of CCPR

"The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."

Article 22 (1) and (2) of CCPR

"1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right."

Freedom of peaceful assembly and of association are, together with freedom of expression, key rights in a democratic society, since they enable the people to participate in the democratic process. As is the case for freedom of expression, they too are subject to certain limitations.

FREEDOM OF ASSEMBLY

Scope

Protecting freedom of assembly guarantees the right to hold meetings aimed at discussing information or ideas publicly or at disseminating them. However, assemblies are protected only if they are "peaceful" — a term that must be interpreted broadly. For instance, States parties must prevent a peaceful assembly from leading to a riot as a result of provocation or the use of force by security forces or private parties, such as counter-demonstrators or agents provocateurs.

States are under an obligation to take positive measures to guarantee this right and protect it against interference by State agencies and private parties alike. To that end, the authorities must take measures to ensure the smooth functioning of gatherings and demonstrations. Accordingly, they should be informed of the location and time of a planned assembly with sufficient advance notice, and should be granted access to it.

Limitations

The right to assemble peacefully is subject to restrictions, which must be:

- In conformity with the law: interference with the freedom of assembly can be undertaken independently by administrative authorities, particularly the police, on the basis of a general statutory authorization;

- Necessary in a democratic society: for instance, they must be proportional and compatible with the basic democratic values of pluralism, tolerance, broad-mindedness and people's sovereignty; accordingly, breaking up an assembly forcefully is permissible only if all other milder means have failed;
- Aimed at a legitimate purpose, such as national security, public safety (an assembly may be broken up if it constitutes a specific threat to persons or passers-by), public order, public health and public morals and the rights and freedoms of others.

FREEDOM OF ASSOCIATION

Scope

Protecting freedom of association guarantees the right of anyone to found an association with like-minded persons or to join an existing association. Thus, a strict one-party system that precludes the formation and activities of other political parties violates freedom of association. The formation of and membership in an association must be voluntary; nobody may be forced — directly or indirectly — by the State or by private parties to join a political party, a religious society, a commercial undertaking or a sports club. States are under an obligation to provide the legal framework for setting up associations and to protect this right against interference by private parties.

Freedom of association includes the right to form and join trade unions to protect one's interests. Trade union rights are more specifically laid down in article 8 of CESCR.

Box 73

The case of *Socialist Party of Turkey (STP) and Others v. Turkey* (European Court of Human Rights, 2003)

STP was formed on 6 November 1992, but on 30 November 1993 the Constitutional Court of Turkey ordered its dissolution on the grounds that its programme was liable to undermine the territorial integrity of the State and the unity of the nation. It found that STP had called for a right of self-determination for the Kurds and supported the right to "wage a war of independence", and likened its views to those of terrorist groups. The applicants alleged, inter alia, that the party's dissolution had infringed their rights, as guaranteed under article 11 of ECHR on freedom of association.

The European Court of Human Rights found that the dissolution of STP amounted to an interference with the applicants' right to freedom of association. There could be no justification for hindering a political group merely because it sought to debate in public the situation of part of the State's population and to participate in the nation's political life in order to find, by democratic means, solutions capable of satisfying every group concerned. Moreover, since the Constitutional Court had ruled even before STP had begun its activities, the European Court found that there was no evidence before it to support the allegation that STP had any responsibility for the problems posed by terrorism in Turkey. According to the European Court, the dissolution was therefore disproportionate and unnecessary in a democratic society.

Limitations

Freedom of association is subject to the same restrictions as freedom of assembly: any limitations must be provided for by law, necessary in a democratic society and serve one of the purposes justifying interference, namely protection of national security, public safety, public order, public health or morals and the interests and freedoms of others. Associations that advocate national, racial or religious hatred should be banned in the interest of others, pursuant to article 20 (2) of CCPR, which prohibits any advocacy of national, racial or religious hatred.

The right to participate in government

Article 21 of UDHR

"1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."

Article 25 of CCPR

"Every citizen shall have the right and the opportunity:
(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
(b) To vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
(c) To have access, on general terms of equality, to public service in his country."

The right to take part in government is a cornerstone of modern democracy and therefore crucial for parliament. The correct implementation of this right has direct implications for the democratic nature of parliament, and ultimately for the legitimacy of the Government and its policies.

The right in fact has three components, which are explained below:

- The general right to public participation;
- The right to vote and be elected;
- Equal access to public service.

THE GENERAL RIGHT TO PUBLIC PARTICIPATION

The right to public participation consists of (a) indirect participation in public affairs through elected representatives, and (b) direct participation in public affairs.

Indirect participation

It is mainly through elections and the constitution of representative bodies — particularly a national parliament — that the people participate in the conduct of public affairs, express their will and hold the Government to account. The Human Rights Committee has stated that the powers of representative bodies should be legally enforceable and should not be restricted to advisory functions, and that the representatives should exercise only the powers given to them in accordance with constitutional provisions (general comment No. 25).

For parliaments truly to reflect the will of the people, elections must be genuine, free and fair and held at not unduly long intervals. In 1994, IPU adopted the Declaration on Criteria for Free and Fair Elections, which specifies criteria for voting and election rights; candidature, party and campaign rights and responsibilities; and the rights and responsibilities of States. The United Nations — as part of its electoral assistance and electoral observation activities — has also established clear criteria for what should be common elements of electoral laws and procedures.

Direct participation

Direct participation means that not only elected representatives, but citizens too are able to participate directly in public affairs, either through public debate and dialogue with elected representatives, referendums and popular initiatives, or through self-organization, guaranteed under the freedoms of expression, assembly and association. In the case of *Marshall v. Canada* (1991), however, the Human Rights Committee recognized a broad margin of discretion of States with regard to granting direct rights of political participation:

"It must be beyond dispute that the conduct of public affairs in a democratic State is the task of representatives of the people, elected for that purpose, and public officials appointed in accordance with the law. Invariably, the conduct of public affairs affects the

Box 74

The IPU Declaration on Criteria for Free and Fair Elections (1994)

The authority of parliament derives largely from its capacity to reflect faithfully the diversity of all components of society, and this in turn depends on the way elections are organized. IPU has therefore put considerable effort into the formulation of election criteria. An important outcome of that work is the Declaration on Criteria for Free and Fair Elections, which was adopted in 1994. It is mainly based on a study of the content and rules of international law and State practice in respect of elections, covering the entire electoral process, from the electoral law to balloting, monitoring the poll, counting ballots, proclaiming the results, examining complaints and resolving disputes. The Declaration also addresses the issues of voting and election rights; candidature, party and campaign rights and responsibilities; and the rights and responsibilities of the State. The first such document to express a worldwide political consensus on the subject, the Declaration has been used as a guideline for elections in many countries.

interests of large segments of the population or even the population as a whole, while in other instances it affects more directly the interests of more specific groups of society. Although prior consultations, such as public hearings or consultations with the most interested groups, may often be envisaged by law or have evolved as public policy in the conduct of public affairs, article 25 (a) of the Covenant cannot be understood as meaning that any directly affected group, large or small, has the unconditional right to choose the modalities of participation in the conduct of public affairs. That, in fact, would be an extrapolation of the right to direct participation by the citizens, far beyond the scope of article 25 (a)."

THE RIGHT TO VOTE AND BE ELECTED

The right to vote and be elected is crucial for parliament as a democratic institution, for members of parliament, and for democracy as a whole. Its proper implementation and realization has a direct impact on the way voters perceive their elected representatives, on the legitimacy of the legislation that parliament enacts and on the decisions it takes. It is therefore directly related to the essence of parliament and the idea of popular rule through representatives. Any breach of this right has direct consequences for parliament's legitimacy and even an impact — in the most serious cases — on law and order and on stability in a country. Moreover, parliamentarians are guardians of the proper exercise of the right to vote and to stand for election.

For elections to be free and fair, they must take place in an atmosphere free from intimidation and respectful of fundamental human rights, particularly with respect for freedom of expression, of assembly and of association, with independent judicial procedures and with protection from discrimination. Elections must be organized in a way ensuring that the will of the people is freely and effectively expressed and the electorate is offered an actual choice.

The right to vote and be elected should be established by law on the basis of non-discrimination and equal access of all persons to the election process. Although participation in elections may be limited to the citizens of a State, no restriction on unreasonable grounds, such as physical disability, illiteracy, educational background, party membership or property requirements, is permitted.

The right to vote

Persons entitled to vote should be able to register, and any manipulation of registration and the voting itself, such as intimidation or coercion, should be prohibited by law. The elections should be based on the principle of "one person, one vote". The drawing of electoral boundaries and the methods of vote allocation should not distort the distribution of voters or discriminate against any social groups.

Positive measures should be taken to solve difficulties such as illiteracy, language barriers (information should also be made available in minority languages), poverty or obstacles to freedom of movement.

Citizens should be protected from coercion or from attempts to compel them to reveal their voting intentions or preferences, and the principle of the secret ballot must be upheld.

The right to be elected

The right to stand for election may be subject to restrictions, such as minimum age, but they must be justifiable and reasonable. As said, physical disability, illiteracy, educational background, party membership or property requirements should never apply as restrictive conditions.

Furthermore, conditions relating to nomination dates, fees or deposits should be reasonable and not discriminatory. The Human Rights Committee has expressed concern over the financial costs involved in seeking election to public office in the United States of America, and considered that they adversely affect the right to stand for election.

Voting procedures

Elections should be free and fair, and periodic. Voters should be free to support or oppose the Government, and form opinions independently. Elections must be held by secret ballot, ensuring that the will of the electors is expressed freely.

Measures should be adopted to guarantee genuine, free, fair and periodic elections, and laws and procedures should be introduced ensuring that the right to vote can actually be freely exercised by all citizens.

One such crucial measure is the establishment of an independent authority to supervise the electoral process. It is important to ensure the security of ballot boxes during voting. After the voting, ballots should be counted in the presence of (international) observers, candidates or their agents.

EQUAL ACCESS TO PUBLIC SERVICE

As regards public service positions, the basic principle of equality must govern the appointment criteria and processes, promotion, suspension and dismissal, which should be objective and reasonable.

In their oversight functions, parliamentarians should pay particular attention to conditions for access, existing restrictions, the processes for appointment, promotion, suspension and dismissal or removal from office, and the judicial or other review mechanisms available with regard to these processes.

MEDIA AND POLITICAL PARTIES

Lastly, it is essential that citizens, candidates and elected representatives be able freely to discuss and communicate information and ideas on political affairs, hold peaceful dem-

onstrations and meetings, publish political material and campaign for election. An independent press and free media — key elements of such an environment — and respect for freedom of association, ensuring the possibility to form and join political parties, are crucial for a well-functioning democracy.

CHAPTER 13:
WHAT PARLIAMENTARIANS SHOULD KNOW ABOUT THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The most serious violations of economic, social and cultural rights today are attributable to poverty. Accordingly, addressing poverty is key to the prevention of human rights violations and the promotion and protection of human rights. A discussion of the main economic, social and cultural rights should therefore be preceded by an examination of the social and economic trends that currently have an impact on their enjoyment by all.

Social and economic trends and developments

Rapid globalization affects the enjoyment of human rights considerably. Both its positive and negative effects in that area are well known. At the World Summit for Social Development held in Copenhagen in 1995, it was underscored that while the enhanced mobility and communications, the increased trade and capital flows and the technological advances generated by globalization had opened new opportunities for sustained economic growth and development worldwide and for a creative sharing of experiences, ideals, values and aspirations, globalization had also been "accompanied by intensified poverty, unemployment and social disintegration".[36]

In many countries, deregulation, liberalization, privatization and similar trends towards a reduction of the role of the State and a transfer of traditional governmental functions to market forces have negatively affected the enjoyment of the rights to education, health care and water and of labour rights — especially in the case of vulnerable groups. The following sections, which set out international standards in the area of economic and social

[36] World Summit for Social Development, *Copenhagen Declaration on Social Development*, paragraph 14.

rights, show that there is a significant and possibly widening gap between State obligations and the ability or willingness of States to fulfil them. Moreover, globalization has led to a "privatization of human rights abuses". In many countries (not only the so-called "failed States"), such non-State actors as intergovernmental organizations, transnational corporations, private security companies, paramilitary and guerrilla forces, organized crime and terrorist groups are responsible for more serious and widespread human rights abuses than Governments (see Box 57 on the privatization of prisons).

Box 75

Globalization and human rights

In 2000, the United Nations Commission on Human Rights designated two Special Rapporteurs to study globalization and its impact on the full enjoyment of human rights. Their 2001 progress report contained the following statements:

"In reviewing the global communications and technological developments heralded by those who can only see the bright side of globalization, it is also essential to remain cognizant of the fact that they are taking place in what can only be described as a sea of stark disparity. The persistence (and growth) of the problems of fatal disease, hunger, inadequate clothing, insufficient shelter, labour dislocation and the lack of food in many parts of the world is an increasing cause for concern. The growing competition for and exploitation of mineral and other natural resources are heightening tensions and conflicts….

It is of considerable concern that the processes of globalization are taking place within a context of increased social tension and political discordance…. Viewed from a human rights perspective, the organization and operation of these (anti-globalization) movements and the retaliation against them raise numerous questions concerning the rights to free expression, assembly and association. Ultimately, they also raise questions about participation, exclusion and discrimination – features of the human rights regime that lie at the core of the many instruments that make up the human rights corpus…. Globalization is therefore not simply an issue of economics; it is very much a political phenomenon… Coming to grips with the politics of globalization is thus an essential prerequisite to the design of alternative structures of international economy and governance."

In the opinion of the Special Rapporteurs, "globalization is not divinely ordained" but "rather… the product of human society". "As such, it is motivated by specific ideologies, interests and institutions. We must ask ourselves what the possibilities and limitations presented by globalization are, and how we can strategically and creatively engage them. Most importantly, how do we ensure that in the discussion about globalization and its impact on human rights, we adhere to the principles of meaningful participation and inclusion in the decision-making processes?"[37]

The gap between rich and poor countries, and within the same society between rich and poor people, has continued to widen. Roughly one billion people live in conditions of ex-

[37] J. Olaka-Onyango and Deepika Udagama, Special Rapporteurs of the United Nations Sub-Commission on the Promotion and Protection of Human Rights, *Progress report on globalization and its impact on the full enjoyment of human rights*, E/CN.4/Sub.2/2001/10, paragraphs 7, 10, 11 and 12.

treme poverty worldwide, without adequate food, shelter, education and health care. At the same time, globalization helps to provide accurate information on living conditions in any part of the world, to make rich and poor societies ever more interdependent and to develop advanced scientific means and technology to combat poverty. In our "global village", it is therefore inadmissible that such a significant part of humanity is destitute.

THE ERADICATION OF POVERTY

"Eradicating poverty must be our first goal in this new millennium. Governments have committed themselves to taking action through strategies and programmes, which aim to reduce poverty and eliminate extreme poverty. The denial of human rights is inherent in poverty."

Mary Robinson, former United Nations High Commissioner for Human Rights, Preface in Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies, OHCHR, Geneva, September 2002.

In the light of the preceding considerations, poverty eradication has in the past decade emerged as the overarching objective of development. At the same time, the definition of poverty has gradually been broadened. While for a long time the poor had been described only in material terms (such as "those living on less than a dollar a day"), it is in fact the non-material dimensions of poverty that shock. Those characteristics are increasingly used in statistics to describe the phenomenon of poverty. Worldwide, roughly one billion people lack adequate shelter, sufficient food, literacy and access to safe drinking water and to basic health services. Every day, 34,000 children under five die from hunger and preventable diseases. These facts are not new, and yet as stated above, the gap between the rich and the poor is widening, making the failure effectively to address poverty in the face of rapid globalization increasingly indefensible. In that context, in September 2000 the United Nations General Assembly adopted several Millennium Development Goals, including the goal to halve the number of people living in extreme poverty by 2015, and by the same year to achieve a number of ambitious targets, such as universal primary education, reduction of under-five child mortality by two thirds and maternal mortality by three quarters, and a halving of the proportion of people who suffer from hunger and lack access to safe drinking water.

Since poverty constitutes a denial of several human rights, a human rights approach is needed to strengthen poverty reduction strategies. In response to a request made by the CESCR Committee in July 2001, Ms. Mary Robinson, the United Nations High Commissioner for Human Rights at that time, developed, with the assistance of three experts, Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies (published in September 2002). In defining poverty, they adopt the widely accepted view, first advocated by Amartya Sen, that a poor person is an individual deprived of basic capabilities, such as the capability to be free from hunger, live in good health and be literate. Examples of human rights with constitutive relevance to poverty are the rights to food, shelter, health and education. Other human rights have instrumental relevance to poverty; their enjoyment helps to enjoy the constitutively relevant ones. For instance, enjoyment of the right to work is conducive to the enjoyment of such other human rights as the rights to food, health and housing. Such civil

Box 76

United Nations Millennium Development Goals

1. **Eradicate extreme poverty and hunger**
   Target for 2015: Halve the proportion of people living on less than a dollar a day and those who suffer from hunger.
2. **Achieve universal primary education**
   Target for 2015: Ensure that all boys and girls complete primary school.
3. **Promote gender equality and empower women**
   Targets for 2005 and 2015: Eliminate gender disparities in primary and secondary education preferably by 2005, and at all levels by 2015.
4. **Reduce child mortality**
   Target for 2015: Reduce by two thirds the mortality rate among children under five.
5. **Improve maternal health**
   Target for 2015: Reduce by three quarters the ratio of women dying in childbirth.
6. **Combat HIV/AIDS, malaria and other diseases**
   Target for 2015: Halt and begin to reverse the spread of HIV/AIDS and the incidence of malaria and other major diseases.
7. **Ensure environmental sustainability**
   Integrate the principles of sustainable development into country policies and programmes and reverse the loss of environmental resources.
   By 2015, reduce by half the proportion of people without access to safe drinking water.
   By 2020, achieve significant improvement in the lives of at least 100 million slum-dwellers.
8. **Develop a global partnership for development, with targets for aid, trade and debt relief**
   Develop further an open trading and financial system that includes a commitment to good governance, development and poverty reduction – nationally and internationally.
   Address the least developed countries' special needs, and the special needs of landlocked and small island developing States.
   Deal comprehensively with developing countries' debt problems.
   Develop decent and productive work for youth.
   In cooperation with pharmaceutical companies, provide access to affordable essential drugs in developing countries.
   In cooperation with the private sector, make available the benefits of new technologies — especially information and communications technologies.

and political rights as the rights to personal security, equal access to justice and political rights and freedoms also have instrumental relevance to the fight against poverty.

INTERNATIONAL FINANCIAL INSTITUTIONS AND THE FIGHT AGAINST POVERTY

Since 1996, the international financial institutions have started to recognize the importance of poverty reduction. In their Comprehensive Development Programme, the World Bank Group and the International Monetary Fund (IMF), also known as the Bretton

Woods Institutions, make poverty reduction a basis for a new strategy of debt relief and development cooperation. Highly indebted and other poor countries are encouraged to develop, in a participatory process, poverty reduction strategy papers (PRSPs) specifying poverty reduction and eradication targets and benchmarks in various areas, such as food production, health, education, labour, justice, good governance and democratization. Still, such programmes have been criticized by many, including the United Nations Special Rapporteurs on globalization and human rights (see Box 75), for insisting on macroeconomic discipline and effectively negating the claims of local ownership and participation.[38] A survey conducted for the United Nations Population Fund (UNFPA) examined the extent to which PRSPs covered seven thematic population and development issues, including human rights, in 44 developing countries up until 2001. It revealed that human rights issues linked explicitly to international treaties were the theme least covered, and that most countries did not mention human rights at all.[39]

Although human rights have not yet played a major role in PRSP development and implementation, the general United Nations policy of human rights integration will lead to a

Box 77

Added value of a human-rights-based approach

Responding to the question about the added value of a human-rights-based approach to poverty reduction, and to development in general, the Draft Guidelines provide a convincing answer: empowerment.

A human-rights-based approach offers an explicit and compelling normative framework for the formulation of poverty-reduction strategies because effective poverty reduction is not possible without empowerment of the poor. The norms and values of international human rights law have the potential to achieve such empowerment. Once such an approach is adopted, poverty reduction no longer means merely satisfying the needs of the poor. It also means recognizing that the poor have rights, and that there are concomitant legal obligations for others. Poverty reduction then becomes more than charity, more than a moral obligation; it becomes a legal obligation, which implies that the entities bound by duty, including States, intergovernmental organizations and global actors, should be held accountable.

In addition to the concepts of legality, accountability and empowerment, other distinguishing features of a human rights approach include the principles of universality, non-discrimination and equality, participation and the recognition of the interdependence of all human rights.

Several United Nations institutions and programmes, in particular UNDP and OHCHR, have adopted a rights-based approach to human development, defining the objectives of development in terms of legally enforceable entitlements. The approach aims to heighten the level of accountability in the development process by identifying rights holders (and their entitlements) and corresponding duty bearers (and their obligations) and by translating universal standards into locally defined targets for measuring progress.

[38] Oloka-Onyango and Udagama, op. cit, paragraph 53.

[39] Coverage of population and development themes in poverty reduction strategy papers, challenges and opportunities for UNFPA, 11 March 2002.

human rights approach to poverty reduction strategies in the activities of UNDP, the Bretton Woods Institutions and other multilateral and bilateral donor agencies.

This chapter's remaining sections — largely based on the general comments of the CESCR Committee — focus on economic, social and cultural rights guaranteed under the Universal Declaration of Human Rights and CESCR, and highlight related practical issues.

The right to social security

Article 22 of UDHR

"Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."

Article 25 of UDHR

"1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection."

Article 9 of CESCR

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

WHAT IS A SOCIAL SECURITY SYSTEM?

Ideally, a social security system should aim to provide comprehensive coverage against all situations that may threaten a person's ability to earn an income and maintain an adequate standard of living. Social security areas are summed up in the Social Security (Minimum Standards) Convention, 1952 (No. 102). They are:

- Medical care;
- Sickness benefits;
- Unemployment benefits;
- Old-age benefits;
- Employment injury benefits;
- Family and maternity benefits;
- Invalidity benefits;
- Survivors' benefits.

In a social security system, a distinction is drawn between social insurance programmes — which provide for benefits tied to the interruption of employment earnings — and social assistance programmes — which provide for benefits that supplement insufficient incomes of members of vulnerable groups. Both types of programmes are intended to guarantee the material conditions required for an adequate standard of living and to offer protection from the effects of poverty and material insecurity.

As regards the developing world, the following observations on social security are in order:

- Few countries have set up comprehensive social security schemes providing universal coverage;
- Social security schemes tend to target special groups (such as children or pregnant women);
- Social security schemes are often emergency relief programmes providing support in the event of calamities.

Obstacles frequently encountered by developing countries in trying to establish a social security system include poverty, administrative incapacity, debt and the structural adjustment policies imposed by international financial institutions.

KEY FACTORS TO BE CONSIDERED IN RELATION TO THE RIGHT TO SOCIAL SECURITY

In their efforts to ensure the exercise of the right to social security, States and particularly parliaments should keep in mind the following recommendations:

- A national plan of action — including goals, measurable progress indicators and clear time frames — should be drawn up; and mechanisms should be set up to monitor advancement in realizing the right;
- Relevant legislative measures should provide for the progressive realization of the right and be non-discriminatory;
- During the progressive realization of the right, a minimum level of social security should be guaranteed to the most vulnerable social groups (such as the elderly, children in poor families, sick and disabled persons);

Box 78

Social security for the elderly: CESCR general comment No. 6

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

- The adoption of social security measures should be monitored; and retrogressive measures (reducing social security benefits or coverage) should be avoided;
- Administrative and judicial procedures should be made available to enable potential beneficiaries to seek redress;
- Provisions should be drawn up to implement measures to avoid corruption and fraud with regard to social security benefits.

The right to work and rights at work

Article 23 (1) of UDHR

"Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment."

Article 6 of CESCR

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

Article 7 of CESCR

"The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:
(a) Remuneration which provides all workers, as a minimum, with:
(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
(b) Safe and healthy working conditions;
(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."

THE RIGHT TO WORK

The right to work primarily protects individuals against exclusion from the economy, and also the unemployed against social isolation.

Free choice, provided for in article 6 (1) of CESCR, should be stressed: work and access to resources should be distributed in a way ensuring that anyone who wishes to work can do so and freely choose or accept a job, for the purpose of, inter alia, earning one's living with that job.

In the context of human rights, "work" means more than mere "wage labour". But whether it is more integrated into other activities and aspects of life (for instance, among indigenous peoples) or less (for instance, in the case of wage labourers), work always signifies performance of activities that meet needs and provide services to the group or society, and are therefore accepted and rewarded.

Box 79

Work-related duties of States under article 1 of the European Social Charter

- To accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment.
- To protect effectively the right of the worker to earn his or her living in an occupation chosen freely.
- To establish and maintain free employment services for all workers.
- To provide or promote appropriate vocational guidance, training and rehabilitation.

When legislation is being drafted on the right to work and its implementation through policies or programmes, particular attention should be paid to prohibiting discrimination with regard to access to work. Legislation should also aim at facilitating the entry of specific groups — such as women, the elderly and the disabled — into the labour market, and in general at protecting and upholding a worker's right to earn his or her living by taking up a freely chosen occupation.

The main goal of employment policies should be the attainment of full employment as quickly as possible, in accordance with a nation's resources. Over and above social benefits, those policies should address the concerns of the long-term unemployed and low-income earners through the development of public work programmes.

The State should ensure that generally accessible and free or reasonably priced technical and vocational guidance and training programmes are established, and that free employment services for all workers are put in place.

RIGHTS AT WORK

Article 7 of CESCR guarantees the right of every person to just and favourable conditions of work. These conditions include:

- A remuneration which provides all workers, as a minimum, with:

- Fair wages and equal payment for work of equal value, without any discrimination (particularly against women);
- A decent living for the workers and their families;

- Safe and healthy working conditions;
- Equal opportunities for promotion on the basis of seniority and competence;
- Reasonable working hours, rest, leisure, periodic paid holidays and remunerated public holidays.

Therefore, parliamentarians should ensure that the following key elements are stipulated in legislation and implemented in practice:

- A minimum wage, enough for decent living conditions for the workers and their families, and prohibition of forced labour;
- Standards for safe, healthy and systematically monitored working conditions;
- The right to form and join trade unions, which should be able to function autonomously at the national and international levels;
- Non-discrimination in the workplace (against inter alia women, minorities, disabled persons and religious groups) in respect of:
  - Wages: pay should always be equal for equal work;
  - Opportunities for promotion: these should be equal and based on seniority and performance.

The right to an adequate standard of living

Article 25 of UDHR

"1. Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection."

Article 11 of CESCR

"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 cooperation 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 cooperation, 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."

Article 12 of CESCR

"1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
(b) The improvement of all aspects of environmental and industrial hygiene;
(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness."

Article 25 of UDHR guarantees a social right that — in a way — is an umbrella entitlement: the right to an adequate standard of living. In addition to the right to social security dealt with above, this right also comprises the following rights:

- The right to adequate food;
- The right to adequate clothing;
- The right to housing;
- The right to health.

Article 11 of CESCR covers the core of the right to an adequate standard of living (food, clothing and housing) and recognizes the right to continuous improvement of living conditions. States parties to the Covenant commit themselves to "take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent". Under article 11 of CESCR, the CESCR Committee has also derived the right to water.

Hunger and poverty in the world fly in the face of the right to an adequate standard of living. This right should therefore form the basis of all national and international hunger- and poverty-reduction plans and strategies.

THE RIGHT TO FOOD

Although the international community has often reaffirmed the importance of respecting fully the right to adequate food, there are still considerable gaps in this area between international law standards and the situation actually prevailing in many parts of the world.

More than 840 million people throughout the world are chronically hungry, and millions of people suffer from famine caused by natural disasters, civil strife, wars and the use of food as a political weapon. Moreover, the CESCR Committee has observed that "malnutrition and undernutrition and other problems which relate to the right to adequate food and the right to freedom from hunger also exist in some of the most economically developed countries".[40] The problem is therefore global, and needs the international community's full attention.

In 1996, the World Food Summit set the goal of halving the number of undernourished people by 2015; and the first Millennium Development Goal consists in halving both the proportion of people living on less than a dollar a day and those who suffer from hunger by the same year.

While some developing countries have succeeded in reducing hunger steadily, the overall picture remains grim. According to FAO estimates, although the proportion of people who are chronically undernourished continued to fall slowly between 1995-1997 and 2000-2002, the number of undernourished people actually increased by 18 million. In the period 2000-2002, it was estimated that some 852 million people were undernourished worldwide (9 million in industrialized countries, 28 million in countries in transition and 815 million in developing countries).[41]

In countries that have succeeded in reducing hunger, GDP per capita has increased more than five times faster (at 2.6 per cent per annum.) than in countries where undernourishment has risen (0.5 per cent per annum). The most successful countries also display faster agricultural growth, lower rates of HIV/AIDS infection and slower population growth.[42]

How can the right to food be realized?

"Hunger and malnutrition are by no means dictated by fate or a curse of nature; they are man-made"

Jean Ziegler, United Nations Special Rapporteur on the right to food, Report on the right to food (E/CN.4/2001/53), 2001, paragraph 6.

The right to adequate food is inseparable from the inherent dignity of the person and indispensable to the enjoyment of other human rights.

The right to food is realized when every woman, man and child, alone or in community with others, has physical and economic access at all times to adequate food or to means for its procurement. It does not mean that a Government must hand out free food for all, but it entails a Government duty to respect, to protect, to fulfil and, under certain circumstances, to provide for that right.

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[40] CESCR, general comment No. 12 (1999).
[41] Food and Agriculture Organization of the United Nations, The State of Food Insecurity in the World 2004, Rome, 2004.
[42] Ibid.

Box 80

A framework law on food

While under CESCR States have an obligation to ensure the exercise of the right to food and must legislate to that effect, hungry citizens may seek redress only if the Covenant can be directly invoked before the national courts — which is rarely the case — or has been incorporated into the national laws. Therefore, the Committee which monitors implementation of the Covenant has insisted that countries should pass laws protecting the right to food, and has recommended in particular that States consider the *adoption of a framework law* ensuring, inter alia, that redress is provided for violations of the right to food.

CESCR general comment No. 12 states: "The framework law should include provisions on its purpose; the targets or goals to be achieved and the time frame to be set for the achievement of those targets; the means by which the purpose could be achieved described in broad terms, in particular the intended collaboration with civil society and the private sector and with international organizations; institutional responsibility for the process; and the national mechanisms for its monitoring, as well as possible recourse procedures. In developing the benchmarks and framework legislation, States parties should actively involve civil society organizations."

Specific examples of measures to take and activities to carry out follow.

A framework law should be adopted as a key instrument for drawing up and implementing national strategies on food and food security for all.

In reviewing the constitution and national laws, and in aligning them with international human rights law on the right to food, particular attention should be paid to the need to *prevent discrimination* in relation to the access to food or to related resources. The following measures are called for:

1. Guaranteeing *access to food*, both economically and physically, to the members of all groups, including the poor and segments of society that are vulnerable or suffer from discrimination.

   No acts should disrupt access to adequate food (for instance, evicting people from their land arbitrarily, introducing toxic substances into the food chain knowingly, or, in situations of armed conflict, destroying productive resources and blocking the provision of relief food supplies to the civilian population).

   Measures should be adopted to prevent enterprises or individuals from impairing people's access to adequate food. The obligation to protect entails enactment of consumer protection laws and action if, for instance, a company pollutes water supplies or if monopolies distort food markets or the seed supply.

2. Guaranteeing that all, and particularly women, have full and equal *access to economic resources,* including the right to inherit and own land and other property, and access to credit, natural resources and appropriate technology.

To guarantee and strengthen people's access to and use of resources and means of livelihood, measures should be taken to ensure that:

- People have adequate wages or access to land, respectively to buy or produce food;
- Vulnerable groups are identified and policies are implemented to provide them with access to adequate food by enhancing their ability to feed themselves (for instance, through improved employment prospects, an agrarian reform programme for landless groups or the provision of free milk in schools to improve child nutrition).

3. Measures should be taken to respect and protect self-employment and remunerated work that ensures decent living conditions for workers and their families, and to prevent denial of access to jobs on the basis of gender, race or other discriminatory criteria, since such discrimination would affect the ability of workers to feed themselves.
4. Maintaining land registries.

The Government should devise adequate farmer-support programmes with particular emphasis on those most in need, for example by securing indigenous peoples' rights to their ancestral lands, empowering women and supporting small-scale producers and peasants in remote locations (such as mountains or deserts).

Food should be provided whenever individuals or groups are unable to feed themselves for reasons beyond their control, including natural or other disasters (forms of support might include direct food distributions, cash transfers or food-for-work programmes).

Must action be taken immediately?

Like other economic, social and cultural rights, the obligation of States to fulfil and protect the right to adequate food is subject to progressive realization, which means that States are not required to achieve its full realization immediately, but must take measures to achieve it progressively *by maximum use of available resources.* However, the following obligations are not subject to progressive realization, and States have a duty to take immediate action in respect of them:

- Refraining from any discrimination in relation to access to food and to means and entitlements for its procurement;
- Providing basic minimum subsistence (thereby ensuring freedom from hunger);
- Avoiding retrogressive measures.

THE RIGHT TO CLOTHING

The right to adequate clothing is the third explicitly stated component of the right to an adequate standard of living (after the right to social security and the right to food). Governments must respect the way people, particularly members of minorities and indigenous people, dress, and must protect them against arbitrary or discriminatory dress codes, harassment and similar interferences by State and non-State actors. Moreover, Governments must make adequate clothing available to those in need, including the poor, detainees, ref-

ugees and internally displaced persons. The type of clothing depends on local — cultural, social and climatic — conditions. At the very least, poor people are entitled to clothing that enable them to appear in public without shame.

THE RIGHT TO HOUSING

The right to adequate housing should not be understood narrowly as the right to have a roof over one's head, but should rather be seen as the right to live somewhere in security, peace and dignity.

Homelessness is the extreme form of denial of the right to housing and is constitutive of poverty. But the precarious situation of millions of slum-dwellers and inhabitants of remote rural areas, who face problems of overcrowding, lack of sewage treatment, pollution, seasonal exposure to the worst conditions and lack of access to drinking water and other infrastructure, also constitutes a serious denial of the right to adequate housing. The Millennium Development Goals include a specific goal in this area: "to achieve a significant improvement in the lives of at least 100 million slum-dwellers by 2020".

The right to housing: realization of its elements

CESCR general comment No. 4 on the right to adequate housing defines that right as comprising the following specific concerns.

a. Legal security of tenure

All persons should possess a degree of security of tenure guaranteeing legal protection against forced eviction, harassment and other threats. Governments should consequently take immediate measures aimed at conferring legal security of tenure on households that have none. Such steps should be taken in consultation with the affected persons and groups.

b. Availability of services, materials and infrastructure

All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources: clean drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, food storage facilities, refuse disposal, site drainage and emergency services.

c. Affordable housing

Personal or household costs associated with housing should be such that they do not compromise or threaten the satisfaction of other basic needs. Housing subsidies should be available for those unable to obtain affordable housing, and tenants should be protected from unreasonable rent levels or rent increases. Plans of action must be drawn up, including public expenditure programmes for low-income housing and housing subsidies, giving priority to the most vulnerable groups, such as persons with disabilities, the elderly, minorities, indigenous peoples, refugees and internally displaced persons.

In societies where the main housing construction materials are natural, steps should be taken by the authorities to ensure the availability of such materials.

d. Habitable housing

To be adequate, housing must provide the occupants with adequate space and protect them from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors. The physical safety of the occupants must be guaranteed.

e. Accessible housing

To be adequate, housing must be accessible to those entitled to it. Disadvantaged groups must be provided with full and sustainable access to adequate housing resources. Accordingly, such groups as the elderly, children, disabled people, the terminally ill, HIV-positive individuals, persons with persistent medical problems, mentally ill persons, victims of natural disasters, and people living in disaster-prone areas should enjoy priority in respect of housing. Housing laws and policy should take into account the special housing needs of these and other vulnerable groups.

f. Fitting location

To be adequate, housing must be located so as to allow access to employment, health-care services, schools, childcare centres and other social facilities; it should not be built on polluted sites or in immediate proximity to pollution sources infringing on the occupants' right to health.

g. Culturally adequate housing

Housing construction, the building materials used and the underlying policies must preserve cultural identity and diversity. The cultural dimensions of housing should not be sacrificed to facilitate housing development or modernization projects.

The list of these extensive rights highlights some of the complexities associated with the right to adequate housing, and reveals the many areas that a State must consider in fulfilling its legal obligation to satisfy the housing needs of the population. Any persons, families, households, groups or communities living in conditions below the level of these entitlements may reasonably claim that they do not enjoy the right to adequate housing as enshrined in international human rights law.

Furthermore, it is necessary to:

- Ensure that this right is protected from:
  - Arbitrary demolitions;
  - Forced or arbitrary evictions;
  - Ethnic and religious segregation and displacement;
  - Discrimination;
  - Harassment and similar interferences;
- Take positive measures to reduce the number of homeless people and to provide them with adequate living space, protected from harsh weather and health hazards;
- Set up judicial, quasi-judicial, administrative or political enforcement mechanisms capable of providing redress to victims of any alleged infringement of the right to adequate housing.

Box 81

The Villa la Dulce case: including the excluded in social housing plans by means of judicial action[43]

In October 2000, a group of families that had been living in precarious housing conditions occupied a building in Buenos Aires, the Villa la Dulce, which had been vacant for more than 10 years. In July 2001, a judge ordered the immediate eviction of the 180 people then living in the house. They obeyed the judicial order but, as they had nowhere else to go, built shacks on the paths and streets around the building. With the support of several officials, negotiations were opened with the local authorities and an agreement was signed in November 2001 under which the Government would provide the evicted people with shelter within 60 days. That did not happen.

With a local NGO's support, the evicted people brought legal action to have their right to adequate housing, guaranteed in the Argentine Constitution, enforced. Following an on-site visit, the judge hearing the case issued a temporary order sequestrating US$ 500,000 out of the municipal budget's funds for the construction of adequate housing. In order to solve the immediate housing problem, the judge also negotiated a judicial agreement to move the families to city hotels. Owing to problems regarding the construction of the houses, the Government renegotiated with the evicted families, and a final agreement incorporating international standards applicable to the right to adequate housing was signed in December 2003. The agreement provided for the construction of 91 homes. It gave preference to builders who had homeless workers representing at least 20 per cent of their staff, and involved leases with viable purchase options and special funding facilities enabling the beneficiaries to own their homes.

This case shows that using judicial strategies and litigation to enforce constitutionally guaranteed social rights can influence housing policy decisions.

THE RIGHT TO HEALTH

Article 25 (1) of the Universal Declaration of Human Rights, which provides for health and well-being guarantees, lays down the basis for an international legal framework ensuring the right to health. Article 12 of CESCR further elaborates that right and outlines relevant State obligations.

According to WHO, health is "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity".[44] The right to health is therefore an inclusive right that not only relates to personal physical health, but also overlaps with many other human rights and various human rights issues. In 1997, the States, NGOs and private actors participating in the Fourth International Conference on Health Promotion adopted the Jakarta Declaration on Leading Health Promotion into the 21st Century. The Declaration reflects the inclusive character of the right to health and defines the requirements for policies aimed at its enjoyment: "peace, shelter, education, social security, social

[43] See *Housing and ESC Rights Law Quarterly*, Vol.1-No.1, pages 1-4.
[44] Constitution of the World Health Organization, Principles, 1946.

relations, food, income, the empowerment of women, a stable ecosystem, sustainable resource use, social justice, respect for human rights, and equity. Above all, poverty is the greatest threat to health".

This section does not address the extended meaning of the right to health and the relations between health and the rights to food, housing and life, which are discussed elsewhere in this handbook.

The narrower definition of the right to health

Taking a focused approach, one may break down the right to health into its application in four separate areas:

1. Maternal, child and reproductive health;
2. Healthy workplaces and natural environments;
3. Prevention, treatment and control of diseases, including access to essential medicines and basic medical services;
4. Access to safe drinking water.

Box 82

Health and poverty

In the developing countries and in the West, there is a pronounced correlation between health problems and poverty. Poor people — with relatively limited access to health care and social protection — are in general less healthy, die younger and have higher child and maternal mortality. At the same time, illness aggravates poverty — through income loss and health-care costs — transforming the poverty cycle into a downward spiral. Therefore, improving the health of the poor is a crucial development objective.

Of the eight Millennium Development Goals, three call for specific health improvements by 2015: reducing child mortality, reducing maternal mortality and checking the spread of HIV/AIDS, malaria and tuberculosis. Health is also a key factor in respect of the first Millennium Development Goal (eradication of poverty and extreme hunger).

Good health contributes to development and poverty reduction in several ways. It raises labour productivity, thereby encouraging domestic and foreign investment, improves human capital, and increases the rate of national savings. Investment in health is therefore a sustainable measure ensuring many positive external benefits.

Various measures can be taken to ensure that the right to health is implemented. By bringing their own functions and powers to bear, parliaments can play a decisive role in that process.

Generally speaking, enjoyment of the right to health implies primary health care for all, without discrimination; a national public health strategy and plan of action; and the establishment of national health indicators, benchmarks and monitoring mechanisms.

Health insurance mechanisms and educational programmes on health problems and prevention are necessary, and members of parliament should ensure that sufficient funding is made available for such efforts and for health-related research and development.

Groups in need of special attention

Health issues specific to particular groups such as persons with physical or mental disabilities, the poor, women, children and people living with HIV/AIDS require special attention. Targeted policies and sufficient health budgets geared to the needs of these groups are necessary.

Regarding the poor, key health issues include the enhancement of access to health services, the introduction of appropriate immunization programmes and the implementation of basic environmental measures (especially waste disposal). Members of parliament can be highly instrumental in drafting relevant laws, ensuring their implementation and raising public awareness of the situation of the poor.

Women's access to health, medical care and family planning services requires special attention. Parliamentarians should ensure enactment of laws that prohibit and eradicate FGM.[45]

Laws ensuring the provision to all children of necessary medical assistance and health care should be enacted and implemented. It is essential to launch programmes designed to reduce infant and child mortality and to conduct information programmes on children's health and nutrition, the advantages of breastfeeding, the importance of hygiene and environmental sanitation and accident prevention.

Disabled children should have access to and receive education, training and health-care services, and should benefit from rehabilitation services, preparation for employment and recreation opportunities, with a view to ensuring maximum social integration and individual development.

Lastly, people living with HIV/AIDS — in December 2004 they were close to 40 million worldwide[46] - should be protected against all forms of discrimination. The costs of their medical examinations should be covered, and drugs should be provided to them on a regular basis.[47]

THE RIGHT TO WATER

In addition to the rights to food, housing and clothing (provided for explicitly under article 25 of the Universal Declaration of Human Rights and article 11 of CESCR), the right to an

[45] In September 2001, IPU launched a parliamentary campaign to stop violence against women, focused on the eradication of FGM. Further information may be found on the IPU website http://www.ipu.org/wmn-e/fgm.htm.
[46] Dr. Peter Piot, Executive Director of UNAIDS, Message on the occasion of World AIDS Day, 1 December 2004.
[47] For detailed information on this subject, see Handbook for Legislators on HIV/AIDS, Law and Human Rights, UNAIDS/IPU, Geneva 1999.

adequate standard of living may comprise other basic needs. General comment No. 15 of the CESCR Committee, adopted in November 2002, identifies the "human right to water" as an essential component of that umbrella right, stating that it "clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival". The right to water is also referred to in article 14 (2) of CEDAW and article 24 (2) of CRC.

What is the right to water?

The right to water entitles all human beings to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. It is essential for the realization of many other rights, such as the right to life, health and food. Although what constitutes water adequacy varies depending on conditions, the following factors apply in all circumstances:

Availability: A regular water supply must be available to every person in a quantity sufficient for personal and domestic uses. These uses ordinarily include drinking, personal hygiene, laundering, food preparation, sanitation and household cleanliness. The volume of water available for each person should meet WHO guidelines. Some individuals and groups may need additional water because of particular health, climate and work conditions;

Quality: The water available for personal and domestic use must be safe, i.e., free from micro-organisms, chemical substances and radiation detrimental to health. Its colour, odour and taste should be appropriate for the various personal and domestic uses;

Accessibility: Water and water facilities and services must be accessible to *all* persons living in the territory of a State, without discrimination. Accessibility has four overlapping dimensions:

Physical access: For all population groups, water and adequate water facilities and services must physically be within safe reach. Enough, safe and acceptable water must be accessible in every household, educational institution, health-care establishment and workplace, or in their immediate vicinity. The quality of all water facilities and services must be sufficiently good and culturally appropriate, and must meet gender, life-cycle and privacy requirements. The physical security of persons accessing water facilities and services must be guaranteed;

Economic access: Water and water facilities and services must be universally affordable. The direct and indirect costs and charges associated with securing water must be reasonable and not compromise or threaten the enjoyment of other rights guaranteed under CESCR;

Non-discriminatory access: By law and in practice, water and water facilities and services must be accessible to all, including the most vulnerable or marginalized population groups, without discrimination on any grounds;

Information access: Accessibility includes the right to seek, receive and impart information concerning water issues.

Box 83

Water and the right to life

- Every year, 2.2 million people die of diarrhoea.
- Millions more suffer nutritional, educational and economic loss through diarrhoeal disease that improvements in water supply and sanitation could prevent.
- Nearly 3.4 million people die annually from water-related diseases.
- At any one time 1.5 billion people — one in every four people worldwide — suffer from parasitic worm infections, stemming from human excreta and solid wastes in the environment.[48]

Box 84

Types of violations of the right to water

Violations of the obligation to respect the right to water:

- Arbitrary or unjustified disconnection or exclusion from water services or facilities;
- Discriminatory or unaffordable increases in the price of water;
- Pollution and diminution of water resources, affecting human health.

Violations of the obligation to protect the right to water:

- Failure to enact or enforce laws to prevent the contamination and inequitable extraction of water;
- Failure to effectively regulate and control private water-service providers;
- Failure to protect water distribution systems (e.g., piped networks and wells) from interference, damage and destruction.

Violations of the obligation to fulfil the right to water:

- Failure to adopt or implement a national water policy designed to ensure the right to water for everyone;
- Insufficient expenditure or misallocation of public resources, resulting in the non-enjoyment of the right to water by individuals or groups, particularly vulnerable or marginalized groups;
- Failure to monitor the realization of the right to water at the national level inter alia by using right-to-water indicators and benchmarks;
- Failure to take measures to reduce the inequitable distribution of water facilities and services;
- Failure to adopt mechanisms for emergency relief;
- Failure to ensure that everyone enjoys the right at a minimum essential level;
- Failure of a State to take into account its international legal obligations regarding the right to water when entering into agreements with other States or with international organizations.

[48] Global Water Supply and Sanitation Assessment 2000 Report, Summary of the Report.

What activities can contribute to ensuring the enjoyment of the right to water?

First, Governments should provide for the availability, adequate quality and accessibility of water, as outlined above. Progressive implementation of all of the measures described above will eventually lead to full realization of the right to water. Parliaments can monitor and promote the following specific Government measures:

- If necessary, Governments should adopt a national water strategy and plan of action to ensure a water supply and management system that provides all inhabitants with a sufficient amount of clean and safe water for their personal and domestic use. The strategy and plan of action should include tools — such as right-to-water indicators and benchmarks — for monitoring progress closely, and should specifically target all disadvantaged or marginalized groups;
- Governments should take effective measures to prevent third parties, including transnational corporations, from obstructing equal access to clean water, polluting water resources and engaging in inequitable water extraction practices;
- Governments should take measures to prevent, treat and control water-related diseases and, in particular, ensure access to adequate sanitation.

The right to education

Article 26 (1) of UDHR

"Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."

Article 13 of CESCR

"1. The States Parties to the present Covenant recognize the right of everyone to education. […]

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."

Article 14 of CESCR

"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."

In addition to being enshrined and outlined in international law and core treaties as shown above, the right to education is also referred to in articles 28 and 29 of CRC, and the second and third Millennium Development Goals, which lay down important standards and goals concerning its enjoyment. The right is inextricably linked to the dignity of the human being, and its realization is conducive to the development of the individual and of society as a whole. It empowers economically and socially marginalized people, is crucial in the *fight against poverty,* safeguards children from exploitation and has a limiting effect on population growth. It is therefore key to the realization of many other human rights.

"A sustained state of democracy thus requires a democratic climate and culture constantly nurtured and reinforced by education and other vehicles of culture and information. Hence, a democratic society must be committed to education in the broadest sense of the term, and more particularly civic education and the shaping of a responsible citizenry.

Inter-Parliamentary Union, Universal Declaration on Democracy, Cairo, September 1997, paragraph 19.

The above provisions of the Universal Declaration of Human Rights and CESCR set clear goals that States parties should aim to meet in order to ensure the realization of the human right to education. But what are the *practical* implications of those provisions for States, and in particular for parliaments? To provide an answer, the right to education may be broken down into the following two components:

1. Enhancement of access to education;
2. Freedom to choose the type and content of education.

Box 85

Poverty and education[49]

Globally, 113 million children, two thirds of whom are girls, do not attend school. Moreover, improving the quality of education, expanding basic education towards international universal primary education targets, and reducing disparities in access and coverage present major challenges. There is long-standing international agreement that primary education should be universal in the early twenty-first century. The gaps in educational attendance and attainment according to wealth imply that the poor are much farther away from achieving this goal than others. But why are enrolment rates lower and educational outcomes worse among the poor?

The supply

First, it is harder for poor children to reach a school. Schools tend to be concentrated in wealthier cities and areas. In Guinea, for instance, the average travel time required to reach the nearest primary school is 47 minutes in rural areas, but only 19 minutes in urban areas.

In most countries, however, the physical accessibility of schools is not the central issue. Expenditure on education has in many places increased over the past few decades, but spending increases that are not accompanied by special attention to the needs of the poor can reinforce wealth-related disparities rather than reduce them.

Evidence from a range of developing countries suggests that Government activities that benefit the wealthy absorb a larger share of public spending on education. In Latin America, disparities in scholastic achievement have been attributed to the ineffectiveness of publicly run schools, mainly attended by the poor, and primary and secondary education — the level of schooling that most benefits the poor — receives a relatively small share of total education expenditures. Even when Governments allocate sufficient resources to the aim of enhancing the accessibility and quality of education available to the poor, the administrative capacity may be insufficient for delivering the services.

The quality of education, including curricula, textbooks, teaching methods, teacher training, pupil-teacher ratios and parental participation, determines the outcomes (such as retention rates, attainment levels and test scores).

The demand

Demand for education depends on perceived returns to the family. This mainly includes expected income, but also involves better health and lower fertility rates. According to one study, average earnings may increase by 10 per cent for each additional year of schooling, provided that opportunities for educated workers are available.

In some countries, demand for education is lower because expected returns on education are reduced inter alia by the cost of education, the low quality of public schooling and discrimination against ethnic or linguistic groups and against women in the labour market.

School fees

Recent research, including research based on State reports submitted to the CRC and CESCR Committees, shows that (even compulsory) basic education is not always free. School fees have a direct impact on the accessibility of the educational system, and place the poor at a disadvantage.

[49] Data based on "People, Poverty, Possibilities", State of the World Population 2002, United Nations Population Fund.

These two components can be further subdivided into four areas of obligation: availability, accessibility, acceptability and adaptability, as stipulated in general comment No. 13 of the CESCR Committee. These concepts comprise the following practical measures:

Availability of functioning educational institutions and programmes

- Obligatory and free primary education for all (to protect children from child labour);
- Teacher training programmes;
- Adequate working conditions for teachers, including the right to form unions and bargain collectively.

Accessibility of education to everyone

- Economically affordable secondary and higher education;
- Non-discriminatory access to education;
- Adequate education-grant system for disadvantaged groups;
- Adequate funding for education in rural areas;
- Mechanisms for monitoring policies, institutions, programmes, spending patterns and other practices in the education sector.

Acceptability of form and substance

- Legislation guaranteeing the quality of curricula and teaching methods;
- Minimum educational standards (on admission, curricula, recognition of certificates, etc.) and related monitoring mechanisms;
- Guarantee of the right to establish private institutions.

Adaptability of curricula

- Curriculum design and education funding in conformity with the pupils' and students' actual needs.

Plans of action

State efforts to realize the right to education should be progressive. They should be effective and expeditious to a warranted degree. State obligations are not of equal urgency in all areas (basic, primary, secondary and higher education): Governments are expected to give priority to the introduction of compulsory and free primary education while taking steps for the realization of the right to education at other levels.

States that at the time of becoming a party to CESCR have not been able to secure compulsory and free primary education should adopt and implement a national educational plan, as laid down in article 14 of the Covenant. The plan should be drawn up and adopted within two years for the progressive implementation, within a reasonable number of years to be fixed in that plan, of the principle of compulsory education free of charge for all. The two-year specification does not absolve a State party from this obligation in case it fails to act within that period.

The 105th Inter-Parliamentary Conference "asserts that education is a prerequisite for promoting sustainable development, securing a healthy environment, ensuring peace and democracy and achieving the objectives of combating poverty, slowing population growth, and creating equality between the sexes; culture is a fundamental component of the development process".

Resolution on "Education and culture as essential factors in promoting the participation of men and women in political life and as prerequisites for the development of peoples", Havana, April 2001, paragraph 1

Concluding remark

Human rights are an evolving concept. Their evolution is a process in which members of parliament and parliamentary bodies can play a leading role. This role can be instrumental in all phases of the process: initiating and promoting a national or international dialogue, supporting standard-setting bodies, participating in drawing up legal instruments, ensuring the adoption and ratification of international treaties, following up on them and monitoring their implementation. That way, parliamentarians can be essential partners in remoulding the world on the basis of fairness, equality and human rights.

List of abbreviations

ACHR	American Convention on Human Rights, also known as «Pact of San José, Costa Rica»
AU	African Union
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCPR	International Covenant on Civil and Political Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CESCR	International Covenant on Economic, Social and Cultural Rights
CMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CRC	Convention on the Rights of the Child
DAW	Division for the Advancement of Women
DESA	United Nations Department of Economic and Social Affairs
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECOSOC	Economic and Social Council
FAO	Food and Agriculture Organization of the United Nations
FGM	Female genital mutilation
GATS	General Agreement on Trade in Services
IACHR	Inter-American Commission on Human Rights
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
ILO	International Labour Organization
IMF	International Monetary Fund
INSTRAW	United Nations International Research and Training Institute for the Advancement of Women
IPU	Inter-Parliamentary Union
NGO	Non-governmental organization

NHRI	National human rights institution
OAS	Organization of American States
OHCHR	Office of the United Nations High Commissioner for Human Rights
OP	Optional Protocol
PRSP	Poverty reduction strategy paper
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UN-HABITAT	United Nations Human Settlement Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
UNITAR	United Nations Institute for Training and Research
UNRISD	United Nations Research Institute for Social Development
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNU	United Nations University
WFP	World Food Programme
WHO	World Health Organization
WTO	World Trade Organization

Annex 1

Universal Declaration of Human Rights

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

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

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community

with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and

necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Annex 2

International Covenant on Civil and Political Rights

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

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

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:

   (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

   (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

   (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

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

Article 4

1 . In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from

which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

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

PART III

Article 6

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

Article 7

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

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour;

   (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

   (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

   (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

   (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

   (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

   (iv) Any work or service which forms part of normal civil obligations.

Article 9

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

Article 10

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

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

   (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

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

Article 12

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

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order *(ordre public)* or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise

requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

   (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

   (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

   (c) To be tried without undue delay;

   (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

   (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

   (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

   (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1 . No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subse-

quent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

   (a) For respect of the rights or reputations of others;

   (b) For the protection of national security or of public order *(ordre public),* or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order *(ordre public),* the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order *(ordre public),* the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of

protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.
2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.
3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.
2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.
3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.
4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.
2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.
2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.
2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.
2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.
3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.
2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

   (a) Twelve members shall constitute a quorum;

   (b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

   (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

   (b) Thereafter whenever the Committee so requests.
2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.
3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.
4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.
5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declara-

tion recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such dec-

larations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

   (b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.
2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.
3. The Commission shall elect its own Chairman and adopt its own rules of procedure.
4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.
5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.
6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.
7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

   (a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.
9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.
10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

Annex 3

International Covenant on Economic, Social and Cultural Rights

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

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

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

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

Article 5

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

PART III

Article 6

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

Article 7

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

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

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 in-

terests 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 Organisation 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.

Article 9

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

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.

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 cooperation 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 cooperation, 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.

Article 12

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

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

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.

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.

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 cooperation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.
2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

   (b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.
2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.
3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

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.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 26;

(b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

Annex 4

INTERNATIONAL INSTRUMENTS ON THE INTERNET

The following texts can be accessed through the OHCHR web page:
http://www.ohchr.org/english/law/index.htm

THE INTERNATIONAL BILL OF HUMAN RIGHTS

- Universal Declaration of Human Rights
- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights
- Optional Protocol to the International Covenant on Civil and Political Rights
- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

WORLD CONFERENCE ON HUMAN RIGHTS AND MILLENNIUM ASSEMBLY

- Vienna Declaration and Programme of Action
- United Nations Millennium Declaration

THE RIGHT OF SELF-DETERMINATION

- United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples
- General Assembly resolution 1803 (XVII) of 14 December 1962: "Permanent sovereignty over natural resources"
- International Convention against the Recruitment, Use, Financing and Training of Mercenaries

RIGHTS OF INDIGENOUS PEOPLES AND MINORITIES

- Indigenous and Tribal Peoples Convention, 1989 (ILO Convention No. 169)
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

PREVENTION OF DISCRIMINATION

- ILO Convention No. 100 concerning equal remuneration
- ILO Convention No. 111 concerning discrimination in respect of employment and occupation
- International Convention on the Elimination of all Forms of Racial Discrimination
- Declaration on Race and Racial Prejudice

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UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

2005

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...平等。他们赋有理性和良心,并应以兄弟关系的精神相对待。

...EQUAL IN DIGNITY AND RIGHTS. THEY ARE ENDOWED WITH REASON AND CONSCIENCE AND SHOULD ACT TOWARDS ONE ANOTHER IN A SPIRIT OF BROTHERHOOD.

...равными в своем достоинстве и правах. Они наделены разумом и совестью и должны поступать в отношении друг друга в духе братства.

...égaux en dignité et en droits. Ils sont doués de raison et de conscience et doivent agir les uns envers les autres dans un esprit de fraternité.

...متساوين في الكرامة و
الحقوق. وقد وهبوا عقلاً وضميرًا وعليهم
أن يعامل بعضهم بعضًا بروح الإخاء.

...iguales en dignidad y derechos y, dotados como están de razón y conciencia, deben comportarse fraternalmente los unos con los otros.

This publication is intended for parliamentarians who want to familiarize themselves with the framework that has been set up since 1945 by the United Nations and regional organizations to protect and promote human rights. It presents the notion of human rights and the meaning of the rights enshrined in the Universal Declaration of Human Rights.
It specifies the State's obligations to protect and promote human rights, and contains suggestions as to action parliaments and their members may take to contribute to their implementation.