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## Economic and Social Rights

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### Introduction: Origin, Content and State Obligations

#### *Introducing Economic and Social Rights*

A normative system of internationally recognized human rights exists. These rights are interdependent and indivisible. Their content is found, in broad outline, in the International Bill of Human Rights, which consists of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

The moral foundation of international human rights is found in Article 1 of the Universal Declaration: 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and shall act towards each other in a spirit of brotherhood.'

When the General Assembly, on 10 December 1948, in its resolution 217A(III) adopted the Universal Declaration of Human Rights, it stated in the Preamble that the Universal Declaration of Human Rights was proclaimed

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.

At the time when the Universal Declaration was adopted, the rights were obviously not universally enjoyed. They were not even universally recognized. Now, 50 years later, their enjoyment has increased

and their recognition has undoubtedly become more widespread. However, much has still to be done, both in terms of increasing the recognition of the rights and, even more, in obtaining their actual enjoyment. This applies, in particular, to economic and social rights. In many parts of the world they are still not properly recognized: we continue to find both individuals and states which claim that economic and social rights are not proper human rights. Such scepticism, with outright negative attitudes to economic and social rights, derives from cultural traditions. One manifestation of the relativity inherent in cultural traditions is the assumption in some Western societies that human rights shall be construed as natural rights, securing the freedom of the individual from the state. On the basis of this narrow construction of human rights, significant parts of the International Bill of Human Rights can be challenged.

The International Bill of Human Rights was not drafted to codify a particular set of philosophical assumptions prevalent in the eighteenth century, but to develop a comprehensive system of rights which could constitute solutions to important moral and political problems. There is no single philosophical strand which can claim the property of human rights; consequently, the only platform on which a consensus can be built is, indeed, the International Bill of Human Rights, as adopted by the United Nations. It will therefore be taken for granted here that the whole Bill of Human Rights is equally valid.

A practical argument can be added to this. Anyone who wants to pick out some parts of human rights but deny the validity of others cannot refer to the Universal Declaration as the source of validity of the rights they refer to. What is left, therefore, is only a reference to their own particular subjective opinions.

In the next section, however, we shall also show that, even within Western societies, a broadening understanding of human rights took place as a consequence of the evolution of society, and that by the time of the adoption of the Universal Declaration in 1948, economic and social rights had become an important component of the legal and administrative systems of Western states. Indeed, there was solid support from the West for the introduction of economic and social rights in the International Bill of Human Rights, contrary to what has often been argued subsequently.

The International Bill of Human Rights should be seen as a global programme with a number of sub-projects. It is a global programme in the sense expressed in the Preamble to the Universal Declaration quoted above: that by teaching and education the human rights should be promoted, and that by progressive measures their universal and effective observance should be achieved. Only in a very philosophical sense were human rights universal by 1948. What is required is to make them universal by taking part in the programme established in

1948 and to pursue the various projects that can be derived from it. The realization of economic and social rights can be conceived of as one sub-programme within the overall task, and the realization of each of the particular rights could be looked at as projects within the wider task.

Economic and social rights are found as part and parcel of many international instruments, universal and regional. Among the universal instruments adopted by the United Nations are the following: the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; the Convention on the Rights of Migrant Workers and Their Families; the Convention on the Elimination of All Forms of Racial Discrimination; and the Convention on the Elimination of All Forms of Discrimination against Women. At the regional level, the following are of particular relevance: the American Declaration of the Rights and Duties of Man; the American Convention on Human Rights; the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights; the African Charter on Human and Peoples' Rights; and the European Social Charter. References to economic and social rights to be applied in particular circumstances are made in numerous other instruments.

Neither in 1948, at the time of the adoption of the Declaration, nor in many of the instruments adopted in more recent years, such as the Convention on the Rights of the Child in 1989, has any division been made between civil and political rights, on the one hand, and economic and social rights, on the other. In contrast to this, within the International Bill of Human Rights, the content of the Universal Declaration was divided in two: one covenant for civil and political rights, and one for economic, social and cultural rights.

The division must in part be explained by the intensification of the ideological controversy during the Cold War between what was then the East and the West in the Northern hemisphere. Notwithstanding their rather bad performance with regard to human rights as a whole, the socialist countries sought to justify their system by claiming that they were giving priority to economic and social rights. In response, some Western societies and their governments overstated their priority given to civil and political rights, to the extent of a near rejection of economic and social rights as part of the human rights system. This was in sharp contrast with their own political and social development within the last century, as we shall see in the next section. Since the ideological quarrel has ended with the disappearance of the communist systems, there should be no reason to continue this rather sterile dichotomy between the two sets of rights.

The division within the International Bill of Human Rights was also pursued within the Council of Europe, where the European

Convention of Human Rights contains mainly civil rights (political rights were added afterwards, in Protocol 1), while most of the economic and social rights are contained in the European Social Charter.

The separation between these instruments has often been used as evidence of inherent differences between the two categories of rights. This has not only led to a widespread philosophical and legalistic tradition to establish a hierarchy where civil rights are put at the top; it has also affected the work of non-governmental human rights organizations which pay much less attention to economic and social rights than to civil and political rights.

The United Nations Committee on Economic, Social and Cultural Rights noted, in an address to the World Conference on Human Rights in 1993, that:

The international community as a whole continues to tolerate all too often breaches of economic, social and cultural rights which, if they occurred in relation to civil and political rights, would provoke expressions of horror and outrage and would lead to concerted calls for immediate remedial action. In effect, despite the rhetoric, violations of civil and political rights continue to be treated as though they were far more serious, and more patently intolerable, than massive and direct denials of economic, social and cultural rights.<sup>1</sup>

It is a matter of urgency to develop and strengthen the discourse on all aspects of human rights, including economic and social rights. They need to become part of the national debate, to be taken up by individuals and groups in addressing their own governments, pointing out the responsibility that states have undertaken to ensure economic and social rights, and to bring about a dialogue about the ways in which they can be realized, in particular for the most vulnerable members of society.

One argument often used against economic and social rights from a legalistic point of view is that they are not 'justiciable'. This means that they are not suitable for handling by courts or similar institutions. Several arguments can be made against this.

First, many aspects of economic and social rights can be made justiciable, as can be seen in many domestic legal systems. Second, the concept of justiciability is in itself very fluid and reflects differences in legal traditions and in philosophical views about the relationship between courts and the state. Third, human rights can still be human rights even when they are not in all aspects justiciable. Compliance with the corresponding obligations can be monitored nationally and by international bodies, as indeed they are. Furthermore, rights which are not initially justiciable can gradually become so by concretization both through practice and through more detailed standard-setting at the international level and by legislation at

the national level. Again, we must revert to the point made above that the adoption of the Universal Declaration was the initiation of a programme by which, as stated in its Preamble: 'every individual and every organ of society' shall by progressive measures 'secure the universal and effective recognition and observance of these human rights'. To do so includes the concretization of the rights to such an extent that more and more components thereof also become justiciable in domestic legal systems. This is a continuing process and will not be solved in all its aspects in the near future.

The task has been set by adopting these rights; what is required is to make use of these rights not only at the international level, but even more at the national level. Individuals and groups should draw on these rights in their discourse with the state, through a dialogue demanding that the rights be implemented, and through a discussion on the ways in which this can be done, including the contributions to be made by individuals in order to secure the actual enjoyment of these rights. Subsequently, this chapter will have this overall task in mind by indicating elements which can be pursued in the discourse, both at the national and international levels, on the basis of the economic and social rights which have been adopted as part of the universal human rights system.

### National Origins of Economic and Social Rights: Experiences of the Early Industrialized Countries

The formulation of economic and social rights in the Universal Declaration is significantly influenced by the experience of industrialization in Western countries. In 1950, the British social historian T.H. Marshall presented a model of the evolution of the rights of citizens in Western societies, using the United Kingdom as an example. It corresponds to the understanding of the historical evolution of modern human rights in these societies. Marshall claimed that three sets of rights have emerged in some European states since the eighteenth century, and in the following order.

- 1 Civil rights, such as liberty of person, freedom of speech, thought and faith, the right to own property, expanded from the latter part of the seventeenth century and throughout the eighteenth century.
- 2 Political rights, such as the franchise and the right of access to public office developed in the nineteenth century.
- 3 Social rights ranging from 'the right to a modicum of economic welfare and security to the right to share to the full the social heritage and to live life as a civilized being according to the

standards prevailing in society', were gradually introduced in the late nineteenth and early twentieth century.<sup>2</sup>

This development took somewhat different paths in different Western countries. On the basis of comprehensive empirical material, Esping-Andersen (1990) has argued that three different systems of welfare capitalism emerged and, consequently, three different approaches to economic and social rights. He argues that the 'welfare state' is a system of social stratification which actively orders social relations. The earliest model, which still has its followers, developed poor laws and provided poor relief, but at extremely low levels. This had the effect of maintaining a social stigma for those who were given relief, with a view to preventing persons from wanting to obtain social assistance. It was based on an extreme reliance on the market and on contractual relations, coinciding with the elimination of the feudal system which pushed large numbers of people off the land where they had previously made their living as serfs and, later, as peasants without property. Having lost their means of livelihood, they became a cheap commodity for the emerging capitalist society. Only those who could not be absorbed, even at the lowest possible wages mainly in mining and in the budding industries, were given a modicum of poor relief in order not to die from starvation. This was an extreme reliance on the market, and any type of action which could interfere with labour as a cheap commodity was ideologically resisted. Remnants of this still exist in means-tested social assistance approaches, in societies where to be 'on welfare' is still considered a stigma.

A second approach was promoted by conservative reformers such as Bismarck in Germany, through the social insurance model. It sought, according to Esping-Andersen:

to achieve two simultaneous results in terms of stratification. The first was to consolidate divisions among wage-earners by legislating distinct programs for different class and status groups, each with its own conspicuously unique set of rights and privileges which was designed to accentuate the individual's appropriate station in life. The second objective was to tie the loyalties of the individual directly to the monarchy or to the central state authority. This was Bismarck's motive when he promoted a direct state supplement to the pension benefit. This state-corporatist model was pursued mainly in nations such as Germany, Austria, Italy and France, and often resulted in a labyrinth of status-specific insurance funds.<sup>3</sup>

The third approach is the universalistic system. Under this, all citizens are endowed with similar rights, irrespective of class or market position. The system is meant to cultivate cross-class solidarity, a

solidarity of the nation. This is the democratic, flat-rate, general revenue-financed model which was first formulated by Lord Beveridge, as Chairman of the Beveridge Commission in 1942.<sup>4</sup> It has subsequently been developed to its fullest extent in the Nordic countries.

From the above, it can be seen how economic and social rights emerged as a consequence of industrialization. Reflecting on the introduction in the United States of the Social Security Act in 1935, which introduced at a very modest level some old-age pension and unemployment benefits, the American economist J.K. Galbraith observed:

The need for protection of the old and the unemployed is inescapably allied with industrial development and had for long been so recognized. An industrial society has its own built-in system of social security. The farms or peasant holdings are passed on to the offspring, and the latter, often by rigorously enforced custom, look after their elders. A major reason for rural population increase in much of the world is the need to be assured of sons who will do the work in the fields and be responsible for their parents in their old age. As to unemployment compensation, there is the stolid fact that there is no unemployment on a farm. By lowering the effective wage, some or much of which can be earned in kind, some employment can always be provided or invented. It is with urbanization and industrialization that old age pension and unemployment compensation become socially essential. It is then that, with a much loosened family structure, the old have no support, the unemployed have no income.<sup>5</sup>

While this gives a useful description of the historical process within the industrialized north, it does not fully take into account the problems of the landless and dispossessed, of whom there were many in the early industrialization of England (the effect of the 'Enclosure Acts') and are currently in parts of the Third World, partly as a consequence of the 'Green Revolution'.

Since economic and social rights have now been introduced at the universal level, they have had to relate not only to industrial but also to agricultural societies. This makes it necessary to develop different approaches depending on the circumstances of the particular situations.

Generally, however, it can be observed that fewer efforts are made to secure economic and social rights to the rural than to the urban population in many parts of the world. This may in part be due to the different needs mentioned by Galbraith above, but also to the lesser influence of the rural poor on the policy and decision making of their respective governments.

Human rights are therefore all the more important since their application can compensate for political weakness. One illustration in

this respect is the provision in Article 14 of the Convention on the Elimination of All Forms of Discrimination Against Women. Not only is the rural population often the weakest part of society, but rural women are doubly weak. The emphasis in Article 14 on the economic and social rights of rural women constitutes one of the most important challenges to the whole edifice. To this we shall return later.

*Origins and Evolution of Economic and Social Rights at the International Level*

The evolution of human rights at the national level was closely related to the expansion of the concept and content of citizenship. However, even when human rights are lifted up to the international level, we have either to separate them from the notion of citizenship or to broaden the content of that concept.

Since trade and investment cross borders, there also emerged in the process of industrialization a concern with labour relations in other countries, and gradually also with social rights applying in other countries. Differences in wages and in social security have an influence on the cost of production. In order to ensure that countries with a relatively high level of social security are not at a disadvantage in competition on the international market, there emerges a concern with equalizing the treatment of labour and of social security. Added to this are the ties of solidarity which to some extent have existed between workers and labour movements in different parts of the industrialized world. International cooperation related to labour laws emerged as a result of the desirability of harmonization in this field.

International cooperation related to economic and social rights preceded cooperation related to civil and political rights. In the area of labour rights, such cooperation emerged as a result of the desirability of harmonizing labour laws among industrialized countries. The first efforts were made as early as the latter part of the nineteenth century, on the urging of personalities such as Robert Owen in England and Daniel Legrand in France.

A conference convened by the German government was held in Berlin in 1890 to consider an international agreement on labour conditions. It adopted resolutions on work in mines, weekly rest and the work of children, young persons and women. However, the resolutions were not followed up. In 1900, a group of scholars and administrators formed the International Association for the Legal Protection of Workers, which set up an office in Basle and which undertook studies and dissemination of labour laws. At its initiative, the Swiss government convened conferences in 1905 and 1906 which led to the adoption of the first international labour conventions,

which prohibited nightwork by women in industry and the use of white phosphorous in the production of matches.<sup>6</sup>

At the end of the First World War, this was given impetus by the establishment of the International Labour Organisation, founded in 1919. One of its main activities was, and still is, to adopt conventions and recommendations on labour standards, and to supervise the implementation of these instruments.

Cooperation related to what is now called 'the right to health' has its origin in the efforts to develop conventions to prevent the spread of communicable diseases, in particular the adoption of sanitary conventions on cholera and the plague. A number of these conventions were consolidated into a single text in 1903. In 1907, the Office International d'Hygiène Publique (OIHP) was established. The Health Organization of the League of Nations was established on the basis of Article 23(f) of the Covenant of the League of Nations, which called for joint steps to prevent and control disease. A much more comprehensive approach to international cooperation in the field of health was introduced with the establishment of the World Health Organization<sup>7</sup> in 1946.

International cooperation related to what is now called 'the right to education' has a more limited history. A private organization, the International Bureau of Education, was established in Geneva in 1924 and was transformed into an intergovernmental organization in 1929 as an international coordinating centre for institutions concerned with education. A much broader approach was chosen, however, with the establishment of UNESCO in 1945.

These and various other early international efforts were brought together when the United Nations was founded. The need to develop universal standards in the economic and social field was recognized from the earliest preparations for the United Nations. The main initiatives came from the United States. The 'Four Freedoms' address made in January 1941 by the President of the United States, Franklin D. Roosevelt, called for measures to ensure the enjoyment 'everywhere in the world', of four freedoms, one of which was the freedom from want. The same concern was repeated in the Common Programme of Purposes and Principles, known as the Atlantic Declaration, adopted by the American President and the British Prime Minister, Winston Churchill, in August 1941, which listed eight purposes and principles. Under the fifth of these, they declared that they would endeavour 'to bring about the fullest collaboration between all nations in the economic field with the object of securing, for all, improved labour standards, economic advancement and social security. Less than six months later, on 1 January 1942, at the initiative of the United States, the programme of the Atlantic Charter was subscribed to by 25 states which signed the Declaration of the United Nations.



Against this background, a number of initiatives were taken during the Second World War to draft an international bill of human rights. One of the most successful efforts was undertaken by a United States-based institution, the American Law Institute. In 1942, it convened a group of jurists coming from the United States and 23 other countries, which elaborated a Declaration of Essential Human Rights. The work was completed in 1944, and the Declaration contained nearly the whole range of human rights – civil, political, economic, social and cultural – which later found their way into the Universal Declaration of Human Rights. When the Secretariat of the United Nations made its first draft for the Universal Declaration, this Declaration of Essential Human Rights was one of the main sources of inspiration.<sup>8</sup>

Throughout the evolutionary history of human rights, three aspects of human existence have sought to be safeguarded: human integrity, freedom and equality. Axiomatic is the respect for the dignity of every human being. The way in which these issues have been addressed has matured over time, from initial, idealistic assertions of vague principles to the adoption of the comprehensive, international normative system now in existence. That system contains a wide range of specific rights and, to some extent, also corresponding obligations of states. The latter need to be explored when seeking to link rights with concrete development concerns and approaches.

When the Universal Declaration on Human Rights was finally adopted in 1948, there was thus not much doubt that economic and social rights had to be included. The great contribution of this Declaration is, however, that it extended the human rights platform to embrace the whole field – civil, political, economic, social and cultural – and made the different rights interrelated and mutually reinforcing. The realization, particularly in the West, that the political upheavals and the emergence of totalitarian regimes in the period between the two world wars had been due to widespread unemployment and poverty had contributed to a genuine interest in securing economic and social rights, not only for their own sake but also for the preservation of individual freedom and democracy. This view was based on a conviction that, even in periods of recession, it is necessary to ensure that basic economic and social rights are enjoyed by all.<sup>9</sup>

These concerns are more relevant than ever at the present time, in the light of escalating unemployment, increasing poverty and growing disparities in income, not only in the Third World but also in Central and Eastern Europe and in the West. It is necessary, therefore, to increase the efficiency of international mechanisms in this field and possibly to develop new ones.

## Human Rights and Corresponding Obligations

### *Economic, Social and Cultural Rights as Part of the Human Rights Package*

Economic, social and cultural rights constitute three interrelated components of a more comprehensive package, with obvious links to civil and political rights. As human rights and fundamental freedoms are indivisible and interdependent, equal attention should be paid to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights.

At the core of social rights is the right to an adequate standard of living: Universal Declaration of Human Rights – Article 25; International Covenant on Economic, Social and Cultural Rights – Article 11; Convention on the Rights of the Child – Article 27. The enjoyment of these rights requires, at a minimum, that everyone shall enjoy the necessary subsistence rights: adequate food and nutrition, clothing, housing and the necessary conditions of care. Closely related to this right is the right of families to assistance (International Covenant on Economic, Social and Cultural Rights – Article 10; Convention on the Rights of the Child – Article 27). In order to enjoy these social rights, there is also a need to enjoy certain economic rights. These are the right to property (Universal Declaration of Human Rights – Article 17), the right to work (Universal Declaration of Human Rights – Article 23; International Covenant on Economic, Social and Cultural Rights – Article 6) and the right to social security (Universal Declaration of Human Rights – Articles 22 and 25; International Covenant on Economic, Social and Cultural Rights – Article 9; Convention on the Rights of the Child – Article 26).

Economic rights have a dual function, most clearly demonstrated in regard to the right to property. On the one hand, this right serves as a basis for entitlements which can ensure an adequate standard of living while, on the other hand, it is a basis of independence and therefore of freedom. The initial concern in early modern times with the right to individual property, articulated by John Locke in 1689,<sup>10</sup> was directed against the feudal order where control over land and other resources was based on a hierarchical system constituting profound inequality and dependencies. England was still a predominantly agricultural society; Locke's primary concern was that land should belong to the tiller, 'not to the fancy or covetous'. 'As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property,' Locke observed.<sup>11</sup>

The right to property became a crucial element in the early quest for freedom and equality, but the right to property in the traditional understanding of the term cannot be enjoyed on an equal basis by

all. The transformation from an agricultural to an urban and industrial society requires a more complex system of rights in order to ensure livelihood in dignity for all. The right to property therefore has been supplemented by at least two other rights: the right to work with a remuneration which ensures an adequate standard of living for all those who are willing to work and are able to find work, and the right to social security which is a substitute for work for those who either cannot find work or are unable to work, and a substitute for insufficient income derived from property or from work: insufficient, that is, in regard to the enjoyment of an adequate standard of living.

The right to work functions as a basis of independence, provided the work is freely chosen by the person concerned, that sufficient income is obtained from it, and provided the workers can protect their interests through free trade unions.<sup>12</sup>

The right to social security is essential, particularly when a person does not have the necessary property available, or is not able to secure an adequate standard of living through work, owing to unemployment, old age or disability.

*Regional human rights provisions* Largely based on the Universal Declaration, specific human rights instruments have been adopted by regional organizations: the Council of Europe, the Organization of American States and the Organization for African Unity. The main instruments of the Council of Europe are the European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in 1950, and the European Social Charter, adopted in 1961. The main instruments of the Organization of American States are the American Declaration of the Rights and Duties of Man of 1948, the Inter-American Convention on Human Rights of 1969, and the Additional Protocol of San Salvador, adopted in 1988, which deals with economic and social rights. The main African instrument is the African Charter on Human and Peoples' Rights, adopted in 1981, which includes civil, political, economic, social and cultural rights within the same text.

Regional instruments may sometimes be more effective than universal ones in terms of implementation, owing to the greater similarity among the member states of each of the regional organizations. This has led to more advanced mechanisms of supervision and handling of complaints in the Council of Europe and in the inter-American system, though mainly with regard to civil and political rights. The monitoring mechanism under the African Charter, being more recent in origin, is as yet less developed.

In the Asian region, it has not proved possible, in spite of various initiatives, to develop a comparable regional organization and consequently no regional instrument on human rights exists. The

explanation may partly be found in the greater diversity of cultural and political systems within the vast Asian region.

*Subjective rights aspects of human rights* A distinction must be made between those aspects of human rights which can be treated without difficulty as individual, subjective rights and those which cannot, unless further concretization has been made through legislation or practice.

Most human rights, including economic and social rights, contain some elements which can be dealt with at the national level as subjective rights. For these, individuals can have an effective remedy through competent national tribunals or courts in the case of violations.

Other aspects of the same rights are less amenable to direct transformation into subjective rights. They are, at least initially, elements of a right to a social order in which the particular rights can be realized. The process of realization forms part of state obligations under international law.

If, by subjective legal rights, we refer to rights which will be upheld by a court when an individual brings a claim alleging violations, and if we limit ourselves for the time being to domestic courts (within a given national legal system), several conditions would have to be fulfilled for international human rights to be a legal right in that particular setting: what is the position of international human rights law in domestic law? Is it directly applicable or does it have to be incorporated into national law in one way or another? If international human rights law is directly applicable, the next question is whether the particular right in question is self-executing or whether it has to be given a more specific form and content in domestic legislation in order to become applicable by domestic courts. If the position of international human rights law in domestic law depends on some form of incorporation, the question whether it is a legal right under domestic law depends on the nature and scope of that incorporation and also whether the particular international human right is self-executing.

There is no guarantee for any international human rights that they will be treated as legal rights in domestic law, but some are more easily accepted than others. This, however, also depends on the political and cultural system of the society concerned. The overall purpose of the International Bill of Human Rights is to promote their acceptance within all domestic systems and, as far as possible, also to make them into legal rights within domestic systems. However, not all international human rights lend themselves easily to being made justiciable in domestic systems, nor is it obvious that all aspects should be justiciable.

With regard specifically to economic and social rights, some elements can be made more easily justiciable than others. First, those aspects which deal with freedom from the state are, at least in Western societies, the elements which are most easily made into enforceable legal rights. The right to peaceful possession of property and the right to freedom from forced labour are among the most obvious examples. Of much greater significance is the application of the principle of non-discrimination. It may be uncertain how far a state is obliged to go in developing a system of social security. Where the right to social security is not immediately a subjective legal right, unless appropriate domestic legal legislation has been adopted, it becomes a legal right as soon as a state starts adopting such legislation, since it will then have to respect the principle of non-discrimination. Consequently, for every step a state wants to take, possibly based on purely pragmatic reasons relating to domestic needs, in developing social rights, it will have to apply these rights equally even if the domestic law itself is restrictive. On the basis of international human rights law, a justiciable legal right can emerge for the individual. This has tremendous significance, and is the most formidable platform on which the economic and social rights edifice can be gradually built up at the domestic level. Second, there are certain economic and social rights which can be seen as minimum rights that should be available to everyone and, on that basis, objective individual rights might emerge. The right to primary education free of charge is in the process of becoming such a basic right, and may already be considered a subjective right for every individual, whether this be based on customary international law or on treaty law.

However, beyond these rights, we are very often faced with situations where it is impossible to identify the subjective right of the individual which flows from a particular international human right. In these cases it is better to see international human rights as directive principles for the state concerned, in the sense of principles which should guide domestic legislation and other decision making. This does not make these rights devoid of legal significance. When directive principles are not applied in good faith by a State Party to a convention, such as when available resources are not appropriately used for the particular purpose of that right, the relevant international bodies can draw the conclusion that there has been non-compliance with international obligations. This can have consequences, even though the sanctions available for the international community are limited. It may affect bilateral relations; donor states may make their continued cooperation dependent on better compliance with international obligations. Negative international publicity can also affect the domestic political processes and make the internal

civil society more inclined to push for better application of the directive principles.

These directive principles also have another significant legal consequence within the domestic system: they affect the balancing between rights in a way which would not exist without these directive principles. If, to take one example, a state imposes rent control in order to make housing more easily accessible and thereby fulfil the right to housing under Article 11 of the International Covenant on Economic, Social and Cultural Rights, the owners of the house might claim that this is unacceptable interference with their right to property. In such a situation, the state would be entitled to claim that the measures were necessary in order to ensure another human right. This aspect of the legal significance of economic and social rights has not been given sufficient attention, even though particular cases can demonstrate the validity of this observation.

This brings us back to the point that the international human rights system is a package of interrelated rights, and the different rights have to be interpreted in light of each other. This includes the necessity of taking into account economic and social rights, including those aspects which are not in themselves amenable to becoming individual legal rights.

We therefore have to distinguish between minimum obligations of states flowing from international human rights, and the optimal realization of these rights, which go far beyond the minimum. 'Optimal realization' refers to the most suitable balancing between the different rights in order to obtain the best possible results for all individuals. In doing this, of course, no right can be limited to a greater extent than provided for in the specific right itself, and some rights are absolute and can never be limited. In regard to many other rights, however, the necessity of limitation due to other human rights is generally well recognized and has to be taken into account.

This point will be elaborated at greater length in regard to the specific rights discussed below. An illustration could be given here: the right to health includes both the right for individuals to have access to health services, which can easily be transformed at the national level into an individual subjective right, but it also includes the right to a public health order in which epidemic and endemic diseases are prevented or controlled. This aspect of the right to health is more difficult to translate into individual, subjective rights to be pursued by individuals before tribunals or courts, but it is nevertheless an essential part of the normative human rights system. It can be made use of both nationally and internationally by non-governmental organizations (NGOs) and concerned groups, calling upon monitoring bodies at the international level to request the state to adopt more effective measures, and at the national level to demand



changes in policies. The neglect of such obligations can have more serious consequences for individuals than the violation of rights which have been transformed into individual, justiciable rights.

### *State Obligations*

It is essential to explore the corresponding obligations in order to understand the substance of rights. The Universal Declaration of Human Rights envisaged that the rights contained therein shall be enjoyed by everyone throughout the world. The rights must be absorbed into the legal, administrative and political culture of nations, first by a recognition that they are achievable ideals and then by implementation in national law and administration through relevant political and social reforms. Global institutions had to be set up to monitor the implementation of human rights worldwide and to bring about cooperation in the fields of economic, social and cultural matters to establish conditions for their full enjoyment throughout the world.

The Universal Declaration was initially an expression of ideals to be achieved. The process of transforming these ideals into 'hard law' ('positivization' in legal language) at the international level started with the adoption of the two international covenants adopted in 1966 (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), followed by numerous specific conventions. While this created obligations for states under international law, the main task was to ensure that the rights were incorporated into national law and administrative practice. This transformation, whether into constitutions or into statutory law, can be fully achieved only when it goes hand-in-hand with the evolution of a human rights culture where individuals as well as politicians, administrators and security forces know and accept, not only their own rights, but also their duties flowing from the rights of the other members of the community on a basis of equality.

Under international law, obligations for human rights are primarily held by states. When states seek to implement these obligations in national law, they are also required to impose duties on persons subject to their jurisdiction. Such duties include the requirement to respect the rights of other persons, such as the duty to respect the property of others which is imposed through criminal law provisions on theft, and other measures. Duties have also to be imposed on all individuals to contribute to the common welfare, including taxation. The compliance with such duties makes it possible for the state to assist and to fulfil (provide) in ways which enable everyone to enjoy his or her economic, social and cultural rights.

The duties of individuals are in most cases not contained in international instruments; they are underlying necessities, but left to the

state for adoption through national legislation. Nor are the obligations of states spelled out in great detail in the main human rights instruments: they are gradually clarified through additional, more specific instruments, and through the practice of monitoring bodies. While these processes are still at an early stage at the international level, an inventory of the obligations contained in the many specific international instruments now adopted shows that a wide range of concrete obligations have already been undertaken, and that the treaty bodies are also contributing to the clarification of the obligations. At the national level, many states have comprehensive and detailed legislation concerning economic, social and cultural rights.

The Universal Declaration of Human Rights imposes above all a moral obligation on all states to realize social and economic rights.

### *The Main Provision on State Obligations: International Covenant on Economic, Social and Cultural Rights, Article 2*

Under Article 2 of the International Covenant on Economic, Social and Cultural Rights, States Parties have undertaken legally binding obligations to take steps, to the maximum of their available resources, to 'achieve progressively' the full realization of economic and social rights in that Covenant.

The meaning of these obligations has been examined by a group of experts who adopted the Limburg Principles.<sup>13</sup> These were adopted by a group of scholars and experts in Maastricht from 2 to 6 June 1986 to consider the nature and scope of the obligations of States Parties to the International Covenant on Economic, Social and Cultural Rights. They are not in themselves legally binding, but provide the best guidance to the understanding of the obligations flowing from the ratification of that Covenant by a State Party. Since the Covenant is an international treaty, it must, in accordance with the Vienna Convention on the Law of Treaties (1969), be interpreted in good faith, taking into account the object and purpose, the ordinary meaning, the preparatory work and relevant practice.

The words 'achieve progressively' have often been misinterpreted. The treaty body for this Covenant, the Committee on Economic, Social and Cultural Rights, points out that, while the concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time, the phrase must be seen in the light of the overall objective, which is to establish clear obligations for States Parties to move as expeditiously as possible towards the realization of these rights. All States Parties have an obligation to begin immediately to take steps towards full realization of the rights contained in the Covenant. States Parties shall use all

appropriate means, including legislative, administrative, judicial, economic, social and educational measures, consistent with the nature of the rights in order to fulfil their obligations under the Covenant but legislative measures alone are not sufficient to fulfil them.

The obligation of progressive achievement does not only refer to an increase in resources, but even more to an increasingly effective use of the resources available, which must be optimally prioritized to fulfil the rights listed in the International Covenant on Economic, Social and Cultural Rights, taking into account the need to ensure for everyone the satisfaction of subsistence requirements, as well as the provision of essential services. States Parties are obliged, regardless of the level of economic development, to ensure respect for minimum subsistence rights for all. It is essential to ensure equitable and effective use of and access to the available resources. Its 'available resources' include not only the resources found within a state, but also those available from the international community through international cooperation and assistance. An essential aspect of economic and social rights is the duty of international cooperation and assistance pursuant to the Charter of the United Nations (Articles 55 and 56). International assistance should give full priority to the realization of all human rights and fundamental freedoms, economic, social and cultural as well as civil and political.

In passing, it should be noted that the more recent Convention on the Rights of the Child (1989), which includes many economic and social rights and corresponding state obligations, does not contain the qualifying clause 'progressive realization'. Under this Convention, the obligations arise immediately, but their implementation is still qualified by the phrase 'within their means'.

#### *The Roles and Levels of State Involvement*

A widespread misunderstanding has been that all economic, social and cultural rights must be provided by the state, and that they are costly and lead to an overgrown state apparatus. This view is the result of a very narrow understanding of the nature of these rights and of the corresponding state obligations; consequently, and given their relevance to development policies, a few words about their nature are required. The availability of resources refers, not only to those which are controlled by or filtered through the state or other public bodies, but also to the social resources which can be mobilized by the widest possible participation in development, as necessary for the realization by everyone of the rights recognized in the Covenant.

A realistic understanding of state obligations must take into account, as laid down in Article 2 of the Declaration on the Right to Development, that the individual is the active subject of all economic

and social development.<sup>14</sup> Most human beings strive to take care of their own livelihood by their own efforts and resources, individually or in association with others. Use of his or her own resources, however, requires that the person has resources which can be used – typically, land or other capital, or labour. This could include the shared right to use communal land, and the land rights held by indigenous peoples.

State obligations must be seen in this light. States must, at the primary level, respect the resources owned by the individual, his or her freedom to find a job and the freedom to take the necessary actions and use the necessary resources – alone or in association with others – to satisfy his or her own needs. It is in regard to the latter that collective or group rights become important: the resources belonging to a collectivity of persons, such as indigenous populations, must be respected in order for them to be able to satisfy their needs. Consequently, as part of the obligation to respect these resources, the state should take steps to recognize and register the land rights of indigenous peoples and land tenure of smallholders whose title is uncertain. By doing so, the state will have assisted them in making use of their resources in greater safety in their efforts to maintain an adequate standard of living. Similarly, the rights of peoples to exercise permanent sovereignty over their natural resources may be essential for them to be able, through their own collective efforts, to satisfy the needs of the members of that group.

At a secondary level, state obligations mean to protect the freedom of action and the use of resources against other, more assertive or aggressive subjects – more powerful economic interests, such as protection against fraud, against unethical behaviour in trade and contractual relations, against the marketing and dumping of hazardous or dangerous products. This protective function of the state is the most important aspect of state obligations also with regard to economic, social and cultural rights, and it is similar to the role of the state as protector of civil and political rights. Significant components of the obligation to protect are spelled out in existing law inside most states. Such legislation is subject to judicial review, and therefore belies the argument that economic and social rights are inherently non-justiciable. Legislation of this kind must, of course, be contextual: that is, it must be based on the specific requirements of the country concerned. To take one example: legislation requiring that land can be owned only by the tiller of the land is essential where agriculture is the major basis of income, but may be much less relevant in highly industrialized, technological societies where only a small percentage of the population lives off the land. For groups of people whose culture requires a close link to the use of land, protection of that land is even more important as an obligation to realize

the right to food – again, the indigenous peoples serve as the clearest example. Protection against hazardous or undesirable elements in foodstuffs is an important obligation in ensuring a safe food supply as part of realizing the right to adequate food, and countries have established more or less effective surveillance and control mechanisms to ensure this.

At the tertiary level, the state has the obligation to facilitate opportunities by which the rights listed can be enjoyed. This takes many forms, some of which are spelled out in the relevant instruments. For example, with regard to the right to food, the state shall, under Article 11(2) of the International Covenant on Economic, Social and Cultural Rights, take steps to 'improve measures of production, conservation and distribution of food by making full use of technical and scientific knowledge and by developing or reforming agrarian systems'.

At the fourth and final level, the state has the obligation to fulfil the rights of everyone under economic, social and cultural rights. The obligation to fulfil could thus consist of the direct provisions of basic needs, such as food or resources which can be used for food (direct food aid, or social security) when no other possibility exists, for example (1) when unemployment sets in (recession); (2) for the disadvantaged and elderly; (3) during sudden situations of crisis or disaster (see below); and (4) for those who are marginalized (for example, owing to structural transformations in the economy and production).

## Analysing the Separate Rights

### *The Right to an Adequate Standard of Living*

**Sources** According to Article 25(1) of the Universal Declaration of Human Rights, 'everyone has the right to a standard of living adequate for the health and well-being of himself and of his family'. With the wording slightly changed, the term the 'right to an adequate standard of living' appears in Article 11 of the International Covenant on Economic, Social and Cultural Rights: 'the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family'. Under Article 27 of the Convention on the Rights of the Child, 'States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development'.

Reference to an 'adequate' or 'decent' living occur in many other provisions, as an element of the work-related rights or as a purpose underlying other rights. In the American Declaration of the Rights

and Duties of Man, both the right to education (in Article 12) and the right to fair remuneration for work (in Article 14) are intended to ensure or to raise the standard of living of the person concerned. Similarly, under Part 1, Principle (4) of the European Social Charter, workers have a right to a fair remuneration sufficient for a decent standard of living for themselves and their families. The same is reiterated in Article 4(1) of the International Covenant on Economic, Social and Cultural Rights. Other examples could be mentioned.

**Analysis** The right to an adequate standard of living will be given extensive treatment here, since it sums up a large part of the concerns underlying all economic and social rights, that is to integrate everyone into a humane society. It is intimately linked to the foundation of the whole human rights system, that everyone is born free and equal in dignity and rights and should act towards each other in a spirit of fraternity (Article 1 of the Universal Declaration of Human Rights).

The rights to property, to work and to social security which have been examined above are all sources of subsistence or income which ideally should make it possible for everyone to enjoy an adequate standard of living. When, nevertheless, a specific right to an adequate standard of living has been included in the international system of human rights, it is to cover the loopholes and to address the most basic needs to which every human being is entitled.

As to the loopholes, the provision serves to address the rights of the most vulnerable members of society. In the developed countries, a large majority already enjoys an adequate standard and sometimes much more than that. In the developing countries, the number of those who are vulnerable is much larger, though it differs substantially in different countries. But, in developing countries, there are also significant sections of the population which have a standard of living far above what is required under the international human rights instruments.

The Committee on Economic, Social and Cultural Rights has noted that the most vulnerable groups are 'landless peasants, marginalized peasants, rural workers, rural unemployed, urban unemployed, urban poor, migrant workers, indigenous peoples, children, elderly people and other especially affected groups'.<sup>15</sup> To this list could be added persons who are temporarily in very difficult positions, such as internally displaced persons, refugees and persons in detention or in psychiatric institutions.<sup>16</sup>

It is essential, therefore, that states identify the vulnerable groups and take measures to improve their conditions. The Committee on Economic, Social and Cultural Rights has drawn up guidelines for state reports under the International Covenant on Economic, Social

and Cultural Rights whereby states are required to supply information on the current standard of living of the population, in respect of both the aggregate and different socioeconomic, cultural and other groups within society. The Committee also requires information about the income per capita/GNP for the poorest 40 per cent of the population, and whether there is a 'poverty line' in existence in the country concerned, and its basis. The Committee also calls on the State Parties to indicate the country's position on the Physical Quality of Life Index, and whether there has been any change in the standard of living over time (for example, compared with ten years and five years ago) with regard to the different groups. This makes it possible to assess whether there has been an improvement in living conditions for the entire population or only for some groups; and whether those whose standard has been improved are those who were vulnerable before or those who were already well-off earlier.<sup>17</sup>

*A right to have the basic needs met* In Article 25 of the Universal Declaration of Human Rights, this term means 'adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services'; in Article 11 of the International Covenant on Economic, Social and Cultural Rights, it includes 'adequate food, clothing and housing',<sup>18</sup> whereas the right of the child is to 'a standard of living adequate for the child's physical, mental, spiritual, moral and social development'.

The right to an adequate standard of living requires therefore that the basic needs required to live a life in dignity are met, not by charity but by right. It includes, but goes beyond, the basic necessities of food, clothing and housing, under conditions which enable everyone to participate in the everyday life of society.

Everyone shall be able, without shame and without unreasonable obstacles, to be a full participant in ordinary, everyday interaction with other people. This means, *inter alia*, that they shall be able to enjoy their basic needs under conditions of dignity. No one shall have to live under conditions whereby the only way to satisfy their needs is by degrading or depriving themselves of their basic freedoms, such as through begging, prostitution or bonded labour, or to depend on the charity of others.

In purely material terms, 'adequate standard of living' can be understood to imply the maintenance of a level of living which is above the poverty line of the society concerned. The realization of human rights clearly requires the eradication of poverty worldwide, as envisaged in the 'Four Freedoms Address' by President Franklin D. Roosevelt in 1941, and which was among the inspirations underlying the whole edifice of international human rights.

The poverty line can, according to the World Bank, 'be thought of as comprising two elements: the expenditure necessary to buy a minimum standard of nutrition and other basic necessities and a further amount that varies from country to country, reflecting the cost of participating in the everyday life of society'.<sup>19</sup> It should be added, however, that the necessities produced for own consumption, including food and clothing, by the person or family concerned should also be taken into account: since they are often not bought, they escape calculation in monetary terms. The same applies to shelters constructed by self-help.

In the following sections, two of the main components of an adequate standard of living, the right to food and the right to housing, are examined.<sup>20</sup>

### *Adequate Food*

The 'minimum standard of nutrition and other basic necessities' must include, *inter alia*, adequate food.<sup>21</sup> States parties to the International Covenant on Economic, Social and Cultural Rights are required to provide information about the current situation, in particular as regards the vulnerable groups. They are called upon to provide a general overview of the extent to which the right to adequate food has been realized in the country. General statements do not satisfy; the state must present nutritional surveys and other monitoring arrangements. They are furthermore expected to provide detailed information (including statistical data broken down in terms of different geographical areas) on the extent to which hunger and/or malnutrition exists in the country, with particular attention to the situation of especially vulnerable or disadvantaged groups, including landless peasants, migrant workers, marginalized peasants, indigenous peoples, rural workers, children, rural unemployed, elderly people, urban unemployed and other urban poor, and other especially affected groups. Information should also indicate whether there are any significant differences in the situation of men and women within each of the above groups.

More importantly, on the basis of this detailed and disaggregated information, states are requested to give information about the changes that have taken place over the past five years with respect to the situation of each of the above groups, and whether changes have been made in national policies, laws and practices negatively affecting the access to adequate food by these groups or sectors or within the most deprived regions.

Finally, the government is required to indicate the measures it considers necessary to guarantee access to adequate food for each of the vulnerable or disadvantaged groups and for the most deprived



areas, and for the full implementation of the right to food for both men and women, with details of measures taken and time-related goals set.

Adequate food can be broken down into several elements. *Adequacy of the food supply* means that the types of foodstuffs commonly available (nationally, in local markets and eventually at the household level) should be *culturally acceptable* (fitting the prevailing food or dietary culture);<sup>22</sup> furthermore, the overall supply should cover overall *nutritional needs* in terms of quantity (energy) and quality (providing all essential nutrients, including micronutrients, such as vitamins and iodine) and, last but not least, be *safe* (free of toxic factors and contaminants) and of good food quality (for example, taste and texture).

*Stability of the supply and access to food* presupposes *environmental sustainability*, implying that there is a judicious public and community management of natural resources which have a bearing on the food supply, as well as *economic and social sustainability* in terms of conditions and mechanisms securing food access. Economic and social sustainability concern a just income distribution and effective markets, together with various public and informal support and safety nets. These supports could be public social security schemes, as well as numerous forms of community transactions, self-help and solidarity networks, the latter becoming particularly important when people need to cope with various crisis situations.<sup>23</sup>

It must be borne in mind that food is not the only need of concern; therefore any form of food procurement is only *viable* when the available resources are sufficient to also cover other basic human needs. This notion is consistent with that of a 'livelihood approach' to food security, rather than a 'food first' approach.<sup>24</sup>

### *Adequate Housing*

Essential to a life in dignity is adequate housing. The right to housing is recognized in Article 11(2) of the International Covenant on Economic, Social and Cultural Rights and in several other sources. The reality, however, is disturbing. The United Nations estimates that there are over 100 million homeless persons worldwide and over a billion who are inadequately housed.<sup>25</sup> There is no indication that this number is decreasing. The Committee on Economic, Social and Cultural Rights has observed:

the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in

security, peace and dignity. [ ... ] The right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. This 'inherent dignity of the human person' from which the rights in the Covenant are said to derive requires that the term 'housing' be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. [ ... ] The Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: 'Adequate shelter means [ ... ] adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost'.

Basing itself on its examination of a large number of state reports, the Committee on Economic, Social and Cultural Rights has identified the contents of the right to housing to include, *inter alia*:

- (a) Legal security of tenure, whether rental (public and private) accommodation, co-operative housing, lease, owner-occupation, emergency housing and informal settlements. All persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats, and States should take immediate measures to confer legal security of tenure upon those persons and households currently lacking such protection.
- (b) Availability of services, materials, facilities and infrastructure. An adequate house must contain certain facilities essential for health, security, comfort and nutrition: Sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.
- (c) Affordability. Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised.
- (d) Habitability. Inhabitants must have adequate space and protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease. The physical safety of occupants must be guaranteed as well.
- (e) Accessibility. Disadvantaged groups, including the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups, must be accorded full and sustainable access to adequate housing resources and should be ensured some degree of priority consideration in the housing sphere.
- (f) Location. Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities.

(g) Cultural adequacy. The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing.

The necessity to take the right to housing more seriously has received considerable attention internationally over the last few years. A comprehensive study has been conducted, on behalf of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, by R. Sachar (India),<sup>26</sup> who recommended that states should seek to fully integrate the contents of General Comment No 4 on the right to adequate housing (Article 11(1) of the International Covenant on Economic, Social and Cultural Rights) into the relevant national legislative and policy domains (para. 161): that they shall clarify and strengthen the human right to adequate housing by paying due attention to including housing rights provisions in constitutions and legislation (paras 162-3). States should, at a minimum, ensure that no violations of the right to adequate housing are allowed and, when they occur, they shall take all necessary measures to halt any further violations and bring to justice any person(s) responsible for such infringements.

Forced evictions will normally constitute gross violations of human rights, in particular the right to adequate housing. Sachar recommends in his study that states should scrupulously avoid sponsoring, tolerating or actively carrying out forced evictions of any type which are not in conformity with international human rights law (para. 166). The same applies to local and municipal governments. Development projects which lead to eviction should not be initiated until a full resettlement policy is in place. Complete rehabilitation, in accordance with international law, must be ensured, taking into account the needs of special groups: women, children and the aged. Rehabilitation policies must ensure, in keeping with the provisions of the right to housing, basic amenities, services and livelihood opportunities (para. 168).

In this connection, it is worth noting that the World Bank has over recent years developed a resettlement policy whose main elements are that involuntary displacement should be avoided or minimized whenever possible; that, when avoidance is impossible, the World Bank's objective is to improve or at least restore former living standards and earning capacity. Displaced persons should be compensated for their losses at replacement costs, be given the opportunity to share in project benefits and be assisted in the transfer and in the transition stage at the relocation site.<sup>27</sup>

### Adequate Care

It is often overlooked that an adequate standard of living also requires adequate care. Adequate care, necessary for all, is particularly important for children, the elderly and for those who have immediate responsibility for small children. The concept of adequate care encompasses a number of extremely critical factors in the development of nutritional well-being among individuals, especially the most vulnerable groups in society: young children, especially poor young children, and mothers-to-be. Adequate care is also pivotal for other groups and individuals, such as the elderly and the disabled, and normally healthy individuals who are temporarily exposed to health hazards or other crises in their lives which may affect their ability to procure food, their food intake and their nutritional status, and thus their health and productivity. Under international human rights law, these issues have found their clearest expression in Article 24(2) of the Convention on the Rights of the Child,<sup>28</sup> which in part reads:

States Parties shall [ ... ] take appropriate measures:

- (b) To ensure the provision of necessary medical assistance and health care to all children, with emphasis on the development of primary health care;
- (c) To combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
- (d) To ensure appropriate pre-natal and post-natal health care for mothers;
- (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;
- (f) To develop preventive health care, guidance for parents, and family planning education and services.

### Levels of Obligation

*The obligation to respect* The duties of states to ensure an adequate standard of life for everyone within their jurisdiction are obligations primarily of result, not so much of conduct; the measures mentioned in Article 11 of the International Covenant on Economic, Social and Cultural Rights are indicative and certainly do not cover the entire range of measures which can be taken. The essential issue is whether everyone is provided with a situation whereby he or she can enjoy

an adequate standard of living. The ensuring of such a situation is dependent on the specific circumstances in the country concerned, therefore precise obligations of conduct with general applicability cannot easily be drawn up. For example, in agricultural societies the approaches must differ considerably from typical industrialized countries, whereas these again differ from the post-industrial societies where the service sector predominates.

The (often unstated) prerequisite for the realization of an adequate standard of living is that the individual takes all measures within his or her capacity to achieve the conditions which ensure an adequate standard of living. The individual is expected to use his or her own property or working capacity, to the best of his or her judgment, for this purpose. This is not always explicitly stated in the relevant instruments, but is generally assumed to be so. In one case, however, it is explicit: under Article 27(2) of the Convention on the Rights of the Child, the parents responsible for the child 'have the primary responsibility to secure, within their abilities and financial capabilities, the conditions of living necessary for the child's development'.

The obligation for the state to respect the efforts and the achievements of the individuals themselves involves, *inter alia*, the obligation to respect the homes and the land from which the persons concerned make their living or find their shelter. Its most obvious implication is that no one shall be dispossessed, or forcibly removed from their homes and their land.

This is a matter of considerable magnitude. It has been addressed in international human rights law in particular with regard to the right to housing, which forms part of the right to an adequate standard of living. The first part of state obligations is to respect the space available to everyone who is able by their own means to produce their own food or to obtain it through exchange arrangements, normally by purchase on the market. Governments, particularly those which are non-representative, but in some cases even those which are democratically elected, sometimes neglect or violate the rights of the more marginal parts of their population and sometimes deprive that population of its existing resource base. The most obvious illustration of this is the dispossession of large parts of the black population's land in South Africa during the period of apartheid. These dispossessions effectively prevented most of the black population from taking care of their own needs by the use of their own assets. Land reform constitutes a major task in post-apartheid South African society.

While the South African case is extreme, dispossession of vulnerable groups with government participation, or at least acquiescence, has also occurred elsewhere. These actions have particularly affected indigenous peoples. Governments of territories settled by immigrants (the Americas, Australia, New Zealand) have rarely been representative

of, or accountable to, their indigenous populations. The lack of recognition of the collective land rights of indigenous peoples has been a major cause of their impoverishment in many parts of the world. Slowly, however, governments are becoming more representative of, or at least more accountable to, their indigenous populations. It is becoming increasingly recognized both at the national and the international level that land rights must be respected and protected.

Dispossession from land or other property has often followed racial or ethnic lines as was the case, for example, in South Africa. Ethnonationalism can lead to similar results. At present, 'ethnic cleansing' in parts of the former Yugoslavia and in some parts of the former Soviet Union constitutes extreme violations on many levels, including the denial of a right to an adequate standard of living by seizing property and deliberately forcing persons of unwanted ethnic or religious groups off their land.

Frequently, the state has contributed to the dispossession of weaker groups in order to promote what the dominant groups consider to be overarching national goals, for example by building huge dams which destroy the established livelihood for persons living in the region. These practices have been described by the former Vice-Rector of the United Nations University, Kinhide Mushakoji, as 'development racism',<sup>29</sup> since they serve the interests of urban elites and tend to harm indigenous and other weaker ethnic groups unable to influence the developmental policies in the national metropolis. The World Bank has started to address these violations by requiring that the removal of populations shall be avoided if at all possible and, where it cannot be avoided, that those affected shall be resettled in other places under equally good conditions: nobody shall be worse off as a consequence of the development project.

*The obligation to protect* Probably the most important aspect is the obligation to protect. The protection of the access to adequate, safe and nutritious food, or the protection of homes and shelter against dispossession, requires extensive national legislation and forms a normal part of the laws of many societies. The state is also obliged to protect the preservation of existing entitlements or resource bases against third parties. Prevention of encroachment on the land of indigenous peoples or vulnerable groups forms one aspect of this obligation. Another aspect of the protection is to prevent, wherever possible, persons from needing to sell their land in, for example, a situation of crisis where a drought or other difficulties temporarily inhibit their repayment of a debt. There is a need for states to establish a buffer which makes it possible for those on the borderline of poverty to overcome a crisis and to again become capable of ensuring an adequate standard of living through their own means.

The obligation to protect has additional dimensions. One is to ensure that foods on the market are safe and healthy, which requires strict food control within the framework of the *Codex Alimentarius*.<sup>30</sup> Protection can also consist of obligations to ensure food availability, regulation of food prices and subsidies, and rationing of essentials while ensuring that producers receive a fair price.

However, Article 27(3) of the Convention on the Rights of the Child introduces state obligations:

States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

State obligations are intended to supplement these personal efforts of achieving an adequate standard of living whenever necessary: for example, if the person concerned does not have the opportunities which are available to others, has a disability, faces special obstacles which makes the endeavour impossible, or if conditions in general are such that an adequate standard cannot be achieved without external assistance.

*The obligation to facilitate* States must be considered obliged to assess, without delay, the current situation in the country as a whole, and to repeat such assessments at brief intervals. Through such assessments, groups which do not enjoy an adequate standard of living should be identified and, on that basis, the necessary measures to remedy the situation should be taken urgently. Periodically, reassessments are required, both to find out whether the measures adopted have in reality improved the situation for the groups concerned and to determine whether other groups not previously identified have difficulties in enjoying an adequate standard of living.

The assessment requires the use of appropriate indicators. Specific indicators relating to the enjoyment of an adequate standard of living, including food, health conditions and care, include the following: indicators on nutritional outcomes, disaggregated by gender, race or ethnicity, urban/rural groups, by income groups and, in agricultural areas, by the situation of farmers, smallholders and the landless.

Nutritional assessments do not only consist of the mere counting of calories, since that alone does not determine the nutritional outcome. A gradual process towards the development of appropriate indicators of nutrition outcomes has taken place within the Sub-Committee on Nutrition of the United Nations Administrative Committee of Co-ordination.<sup>31</sup>

The purpose of developing adequate indicators is to adopt precise guided measures in order to ensure the enjoyment of an adequate standard of living. This does not necessarily mean that the state should provide direct material support, but it does mean that it should remove the obstacles which make it difficult for the vulnerable groups to enjoy their basic rights. Each particular circumstance determines what efforts a state should make to ensure an adequate standard of living. In the light of these efforts, it is essential that a proper assessment be made and that the most suitable measures be adopted to relieve the situation. This should be combined with a continuing evaluation both of the unfolding situation and of the effectiveness of the measures adopted. States parties to the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child are requested to indicate in their reports to the monitoring bodies these assessments, review their choice of indicators and outline the measures taken on the basis of their evaluation of the indicators to remedy the situations where the population is not enjoying an adequate standard of living.

The obligation to facilitate requires assistance, in particular to those who are close to the poverty line or below it, to make better use of their entitlements. This would include services to assist peasants in improving productivity under conditions which do not undermine their security of tenure, and credit arrangements which assist the vulnerable but which do not create dangerous indebtedness. The International Fund for Agricultural Development was created to assist Third World states in this task.<sup>32</sup> In recent years, several non-state credit institutions have emerged which aim to provide access to credit for the most marginal groups under conditions which do not create destructive indebtedness. The most well-known of these institutions is probably the Grameen Bank, in Bangladesh. Other areas of assistance aimed at ensuring full use of existing entitlements in production or exchange relations include the dissemination of nutritional knowledge, and respect for traditional food when it is sufficiently nutritious and cost-effective. Use of traditional food avoids dependence on imports and allows for improvement in the standard of living without changing basic cultural patterns.<sup>33</sup>

The obligation to further assist includes technical and vocational training programmes to improve the capacity of persons to earn their own living,<sup>34</sup> and special training and facilitating programmes for the disabled.<sup>35</sup> At a different level, assistance in securing access to an adequate standard of living can be achieved through price regulation and subsidies.<sup>36</sup>

The obligation to assist may also comprise providing equal opportunities when past developments have caused serious inequalities to arise, such as land hoarding in societies dependent on agriculture.



Agricultural reform is one of the measures provided for among state obligations under Article 11(2) of the International Covenant on Economic, Social and Cultural Rights, and in Article 14(2)(g) (which deals with the situation of rural women).

*Obligation to fulfil or to be the provider* Obviously, the state cannot ensure an adequate standard of living solely by respecting entitlements, by protecting entitlements against third parties, by assisting the vulnerable to make best possible use of them, and by carrying out the necessary reforms to ensure equal opportunities for everyone. Governments will probably face strong opposition to such wide-ranging reforms, and these, in turn, may be in conflict with the right to property.

In a market-oriented industrializing or industrialized society, where other forms of capital than land play a predominant role, the question of land reform becomes less relevant. While measures such as vocational and technical training, prevention of discrimination in access to employment and affirmative action can be of use to many, there is undoubtedly a need for some entitlements to be directly provided for by the state, which in a market-oriented society can be done through measures of redistribution combined with social security arrangements.<sup>37</sup>

The obligation of the state as provider can range from a minimum safety net along the lines envisaged by the Reagan administration in the United States, from 1981 onwards,<sup>38</sup> to a full comprehensive welfare model, as in the Nordic countries. That the state has obligations in this direction was already established by Article 25 of the Universal Declaration of Human Rights providing for 'the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control'.

Special measures must be taken by the state to ensure an adequate standard of living for children. Children can never be blamed for not doing their utmost to take care of their own needs, and they cannot be blamed for their choice of parents when they are insufficiently responsible. Consequently, there is an obvious need for society to assist.<sup>39</sup>

Individuals deprived of their freedom (detained persons in prisons and institutions) obviously cannot by their own means ensure their enjoyment of basic needs. Provisions must therefore be made by those who have detained or institutionalized the persons concerned. The Standard Minimum Rules for the Treatment of Prisoners, approved by the Economic and Social Council in 1957 and 1977, contain provisions requiring that the prisoners be provided with adequate nutritious food and drinking water. Similar provisions can be found in regard to other institutionalized persons.

Asylum seekers, refugees and displaced persons do not have the same opportunity as others to achieve an adequate standard of living on the basis of their own efforts. They therefore require, to a larger extent than the ordinary public, direct provisions until conditions are established in which they can obtain their own entitlements. While recognized refugees should have a right to work under certain conditions, this is limited in countries where wage labour is limited and unemployment is very high.

The obligations arising from the right to an adequate standard of living depend therefore on contexts and must be spelled out for greater precision in the different contexts. To some extent this can be done through international standard-setting, but the main burden falls on the state to adopt legislation for different situations and groups in their society, in line with existing conditions, and based on appropriate assessments and indicators. The general international norms contained in Article 11 of the International Covenant on Economic, Social and Cultural Rights and similar provisions in other instruments can only provide a general guideline. The monitoring bodies are responsible not only for developing the interpretation of the obligations in greater specificity but also for encouraging their adoption in national legislation, corresponding to the needs of the vulnerable groups in each society, through their dialogue with government.

## The Right to Work and Work-related Rights

### *Sources*

The right to work and related rights were first addressed in Article 23 of the Universal Declaration of Human Rights (right to work, equal pay for equal work, and just and favourable remuneration). Its Article 24 provides for the right for everyone to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. These rights were further developed in Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights. Article 6 deals with the right to work and, under Article 7, States Parties recognize the right of everyone to the enjoyment of just and favourable conditions of work.

Under Part I of the European Social Charter, states recognize that everyone shall have the opportunity to earn their living in an occupation freely entered upon, that all workers shall have the right to just conditions of work, that they shall have the right to safe and healthy working conditions and to a fair remuneration sufficient for a decent standard of living for themselves and their families. In Part

II, which contains the specific commitments of states, Article 1 expresses the commitments to be undertaken by states as follows:

1. 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;
2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;
3. to establish or maintain free employment services for all workers;
4. to provide or promote appropriate vocational guidance, training and rehabilitation.

Article 2 deals with the undertakings to limit the working hours and ensure as a minimum two weeks of holiday with pay. Article 3 deals with the right to safe and healthy working conditions, and Article 4 addresses the right to a fair remuneration.

In the Additional Protocol to the American Convention on Human Rights in the area of economic, social and cultural rights (American Convention on Human Rights, Protocol 1), the corresponding rights are found in Articles 6 and 7. Article 15 of the African Charter on Human and Peoples' Rights provides that every individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work.

Under Article 5(e)(i) of the International Convention on the Elimination of All Forms of Racial Discrimination, States Parties undertake to guarantee the right of everyone, without distinction as to race, colour or national or ethnic origin, to equality before the law in the enjoyment of the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work and to just and favourable remuneration. Under Article 11 of the Convention on the Elimination of All Forms of Discrimination against Women, States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular the right to work as an inalienable right of all human beings, the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training; the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.

### *General Analysis*

The 'right to work' refers to a cluster of provisions entailing many different components of rights and obligations. Drzewicki<sup>40</sup> has suggested the following subcategories:

- employment-related rights;
- employment-derivative rights;
- equality of treatment and non-discrimination rights;
- instrumental rights.

The 'right to work' is normally understood in regard to employment in the service of and paid by others, as distinct from self-employment. In passing, it should be noted that nowhere in the human rights system is there an express reference to a right to self-employment. It must be generally understood to exist, however, as part of the freedom of every individual and, more particularly, as a consequence of the freedom from forced labour.

Rights derived from employment include the right to just conditions of work (working hours, annual paid holiday and other rest periods), the right to safe and healthy working conditions, the right to a fair remuneration, the right to vocational guidance and training, the right of women and young persons to protection in work, and the right to social security. The principles of equality of treatment and non-discrimination relate to both of these and indeed the whole set of social rights.

Instrumental rights include the freedom of association and the right to organize, the right to collective bargaining, the right to strike and the freedom of migration of workers. Drzewicki makes the point that these are instrumental in the sense that they provide indispensable implements and set a favourable framework without which an unimpeded exercise of work-related rights might be seriously affected.

The right to work has at least two significant social functions: it is a source of livelihood and income, and a source of dignity and self-realization. For it to be a source of livelihood, everyone must have access to work, and it must provide a just and favourable remuneration ensuring for them and their family an existence worthy of human dignity (Universal Declaration of Human Rights, Article 25); to be a source dignity and self-realization, it must be work which a person freely chooses or accepts, and he or she must enjoy safe and healthy working conditions and equal opportunity to be promoted to appropriate higher levels, subject to no considerations other than those of seniority and competence (International Covenant on Economic, Social and Cultural Rights, Article 7).

'The right to work' is sometimes construed, both by its adherents and by its detractors, as a *guarantee* of work, that is a subjective right of every person in all circumstances to hold a job with adequate remuneration. No such right exists, however, nor would it be possible to implement such a right, unless other human rights were intolerably restricted. It would, at the extreme, imply forced labour. When states under Article 6 of the International Covenant on Economic, Social and Cultural Rights recognize the right to work, this includes 'the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts'. The steps states have to take 'to achieve the full realization of the right to work 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 6(2)).

#### *Levels of Obligation*

*The obligation to respect* The most basic obligation is that concerning freedom from slavery and from forced labour. This is also reflected in Article 8 of the International Covenant on Civil and Political Rights, which prohibits slavery, servitude and forced or compulsory labour. Reference in this connection should also be made to the International Labour Organisation (ILO) conventions on the elimination of forced labour.

Article 6 of the International Covenant on Economic, Social and Cultural Rights refers to the right of everyone to the opportunity to gain their living by work which they freely choose or accept. The American Convention on Human Rights, Protocol 1, Article 6, uses language which includes the opportunity to secure the means for living a dignified and decent existence by performing a freely elected or accepted lawful activity. Article 15 of the African Charter on Human and Peoples' Rights is much more succinct: 'every individual shall have the right to work under equitable and satisfactory conditions'.

One aspect of the obligation to respect is the requirement that the state shall not discriminate in access to public work. Some distinctions are accepted, however: access to public service can be restricted to citizens of the country (this follows implicitly from Article 25(c) of the International Covenant on Civil and Political Rights. Whether distinctions can be made between different citizens, apart from the mere question of merit, is more uncertain. The issue of the so-called *Berufverbot*, preventing access to certain sensitive jobs on the basis of the political orientation of the applicant, has been the subject of some controversy.

Distinction in public service cannot be made on the basis of race, colour, ethnic or national origin, or on the basis of gender.

*The obligation to protect* To a large extent, the right to work and even more the work-related rights imply an obligation for states to protect. First, protection is required against discrimination in access to work and in working conditions, as spelled out in the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and in several ILO conventions. Second, protection against arbitrary dismissals should be enforced, by ensuring legislation on 'job security'. Finally, there should be protection of just conditions of work (ensuring reasonable daily and weekly working hours, providing for public holidays with pay, and annual holidays also with pay; the right to safe and healthy working conditions promoted by the adoption of safety and health regulations and to provisions for the enforcement and supervision of such regulations, and the right to fair remuneration which will give workers and their families a decent standard of living, ensuring equal pay for work of equal value.

*The obligation to facilitate* Numerous provisions exist within international instruments requiring states to facilitate access to work. The right to vocational guidance is in evolution, including the provision of technical and vocational training, operating systems of apprenticeship and maintaining adequate and readily available training facilities, preferably with few or no fees or charges.

*The obligation to fulfil* While the relevant instruments do not require that the state guarantee a job to everyone, it does call on states to pursue 'policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms of the individual' (International Covenant on Economic, Social and Cultural Rights, Article 6(2)). A comparable provision is found in the American Convention on Human Rights, Protocol 1, Article 6(2): 'the States Parties undertake to adopt measures that will make the right to work fully effective, especially with regard to the achievement of full employment'. Under Article 1(1) of the European Social Charter, Contracting Parties undertake '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'. One element in this connection is also in the ILO Conventions Nos 2 and 122.

The expert committees within the ILO and under the European Social Charter assess whether states adopt policies for employment, whether they address groups of persons or regions particularly affected by unemployment, and whether they move towards a higher level of employment.

## Social Security

### *Sources*

Under Article 25 of the Universal Declaration of Human Rights, everyone shall, 'as a member of society', have the right to social security. Additionally, Article 25(1) refers to the right to security in the event of unemployment, sickness, disability, widowhood, old age or lack of livelihood in circumstances beyond one's control.

Article 9 of the International Covenant on Economic, Social and Cultural Rights provides for the right of everyone to 'social security, including social insurance'. Article 10, which deals with protection of the family, mentions social security benefits<sup>41</sup> during maternity leave.

The brief text of Article 9 of the International Covenant on Economic, Social and Cultural Rights must be seen against the background of the much more developed ILO standards. The principal ILO instrument in the field of social security is the Social Security (Minimum Standards) Convention of 1952 (No. 102).<sup>42</sup> This menu-type Convention is structured around nine specific branches of social security: (1) medical care (Part II), (2) sickness benefit (Part III), (3) unemployment benefit (Part IV), (4) old-age benefit (Part V), (5) employment injury benefit (Part VI), (6) family benefit (Part VII), (7) maternity benefit (Part VIII), (8) invalidity benefit (Part IX), and (9) survivors' benefit (Part X). In its interpretation of the vague and brief Article 9 of the International Covenant on Economic, Social and Cultural Rights, the Committee on Economic, Social and Cultural Rights relies on the branches of social security listed in the ILO convention in the guidelines drawn up for state reporting.<sup>43</sup> Under Article 5(e)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination, the right to social security and social assistance shall be guaranteed without discrimination on the grounds of race. The Convention on the Elimination of All Forms of Discrimination against Women lists several forms of social security which must be provided for women, taking gender-specific needs and obstacles into consideration.<sup>44</sup> Regarding children, primary responsibility for the material well-being of the child rests mainly with his or her parents but, in the Convention on the Rights of the Child, States Parties have undertaken obligations to provide

material assistance and support for the realization of such responsibilities.<sup>45</sup>

Article 27 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families<sup>46</sup> includes a provision on the right of all migrant workers to social security on the basis of receiving treatment equal to that of the nationals of the country of residence. In addition, migrant workers in a regular situation should enjoy certain complementary rights to social security benefits and services (Articles 45 and 54).

In the European Social Charter, the general provision is found in Article 12, which uses the term 'social security' in the same meaning as the ILO, and Article 12(2) refers to ILO Convention No. 102 as a minimum standard to be used under this Charter. Under Article 12(3), states undertake 'to raise progressively' the system of social security to a higher level. Social and medical assistance for those in need is provided for by Article 13. The European Social Charter guarantees family benefits (Article 16)<sup>47</sup> and services for mothers and children (Article 17).<sup>48</sup> Article 14 protects the right to social welfare services.<sup>49</sup> The 1988 Additional Protocol to the European Social Charter has, in its Article 4, a provision on the right of elderly persons to social protection.

Beyond the Convention on the Rights of the Child, specific instruments have also been adopted on social security by the Council of Europe. The most important is the 1964 European Code of Social Security,<sup>50</sup> revised in 1990. The American Declaration of the Rights and Duties of Man provides in Article 16 for the right to social security, specifying unemployment, old age and mental or physical disability as situations in which the right is actualized. The American Convention on Human Rights has a general clause on economic, social and cultural rights, calling for their progressive realization (Article 26), but the Additional Protocol in the Area of Economic, Social and Cultural Rights of 1988 contains more detailed provisions on the right to social security on the basis of Article 16 of the American Declaration, adding death of a beneficiary, work accidents, occupational diseases and childbirth, to unemployment, old age and mental or physical disabilities – situations in which the right applies (Article 9 of the Protocol).

The African Charter on Human and Peoples' Rights contains no provision on the right to social security, but Article 16 (the right to health), Article 18(4) (the right of the aged and the disabled to special measures of protection) and Article 29 (the individual's duties towards society) have significance for social security.



### General Analysis

Basically, international human rights recognize three bases to ensure an adequate standard of living: property, work and social security. The organization of social security can take different forms and scope. The minimum approach has evolved from the poor relief of previous centuries and extends therefore only to those who do not manage to obtain a living through the operation of the market. The second approach is to organize social security by way of insurance to be paid by workers and employers, but with more or less extensive obligations established by law to ensure that such insurance arrangements are in fact applied. It may also be more or less extensive in scope, concerning insurance against accidents in work and insurance against disability, or periods of unemployment. It may also extend to obligatory means for old-age pensions. Such arrangements can provide guarantees only for those who actually work. For the jobless and the more or less self-employed and, particularly, those employed in the so-called 'informal sector', such insurance cannot provide security. Consequently, it may have to be combined with the first type of 'poor relief', the so-called 'safety net', to cater for those who fall outside. The more advanced systems of social security extend to everyone, based partly on contributions made obligatory by workers and employers, but supplemented by state funding derived from taxation and other sources of income. Such comprehensive social security may sometimes extend to coverage of disability, unemployment, old age, child allowances and leave with pay during periods of pregnancy and childbirth.

### Levels of Obligation

*The obligation to respect* This level is not applicable with regard to the social security obligation.

*The obligation to protect* This is a significant part of the obligation arising from social security: the obligation to ensure that in contractual labour relationships, provisions are made for social insurance. It is also part of the protective function to ensure that these insurance arrangements are effective, and that guarantees are established so that, even in cases of bankruptcy, the necessary payments are available to beneficiaries.

*The obligation to facilitate* To the extent that 'social security' is based on social insurance, a state may undertake certain tasks in order to complement the contributions made by the worker and the employer, by way of establishing the institutions administering the insurance

and also by adding, through state funding, to the contributions made by the worker and the employer.

*The obligation to fulfil* The minimum obligation could consist of providing assistance to those who are not covered by social insurance arrangements. This also follows from Article 11 of the International Covenant on Economic, Social and Cultural Rights on the right to an adequate standard of living for everyone, to which we shall return. The optimal fulfilment of obligation would be achieved by organizing a comprehensive social security system which combines social insurance and social assistance into a comprehensive whole. This model, which corresponds to the welfare state model, was first introduced in the Beveridge Commission in the United Kingdom in 1941, and has become the paramount system, particularly in the Nordic countries.

### Conclusions

The right to social security covers three different options: social assistance which is provided only to the needy and which often tends to be of a very minimal scope; social insurance which is based primarily on the more or less obligatory contributions made in working relationships under national laws; and social security in its full sense, which combines social assistance and social insurance into a comprehensive and universalistic approach.

It is obvious that the latter approach is only possible for highly industrialized states, and is impossible to implement in developing countries, particularly those which are still based to a large extent on subsistence agriculture. In the latter case, social security will depend on the ownership of land and on various forms of self-employment, rather than on state assistance. This does not exclude some minimal arrangements being made practically everywhere in order to ensure that at least a threshold level can be made available to everyone. It will be affected, on the other hand, by the way in which primary resources are distributed: the more widely the land is distributed, the less there will be a need for social security operated by the state. On the other hand, should it be considered that it is more cost-effective to accept accumulation of capital and land in order to achieve a higher level of productivity, this should then be complemented by redistributing the part of the income derived from such production in order to ensure the social security of those who otherwise might have been marginalized as a consequence of the processes of accumulation.

## The Right to Health

### Sources

*Universal instruments* The right to health was included in the Universal Declaration of Human Rights as part of Article 25: 'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family.'

In the International Covenant on Economic, Social and Cultural Rights, Article 12, notes: '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.'

The steps to be taken by states include those listed in Article 12(2):

- (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.

In Article 24(1) of the Convention on the Rights of the Child, we read: 'States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services'. The relevant steps to be taken include those listed in Article 24(2):

- (a) to diminish infant and child mortality;
- (b) to ensure the provision of necessary medical assistance and health care to all children, with emphasis on the development of primary health care;
- (c) to combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
- (d) to ensure appropriate pre-natal and post-natal health care for mothers;
- (e) to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;

- (f) to develop preventive health care, guidance for parents and family planning education and services.

In the instruments concerning prevention of discrimination, the right to health is not normally dealt with as an independent right but as a right to ensure that persons are not discriminated against in their access to health services.

Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination states that: 'The States Parties undertake to [ ... ] guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights ... ', and Article 5(e) (iv) concerns the right to public health, medical care, social security and social services.

Article 12(1) of the Convention on the Elimination of All Forms of Discrimination against Women notes: 'States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning'. However, this Convention goes further than mere prevention of discrimination to deal with the issues of particular significance to women. Its Article 12(2) provides that, notwithstanding the provisions of paragraph 1 of this Article: 'States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation'. Additional requirements are found in Article 14 of the Convention on the Elimination of All Forms of Discrimination against Women which deals with the situation of rural women. According to its para. 2(b), states shall ensure that rural women have 'access to adequate health care facilities, including information, counselling and services in family planning'.

*Regional instruments* Article 11 of the American Declaration of the Rights and Duties of Man provides that 'every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources'.

In the American Convention on Human Rights, Protocol 1, Article 10, the text reads: 'Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.'

In the African Charter on Human and Peoples' Rights, the right to health is found in Article 16(1): 'Every individual shall have the right to enjoy the best attainable state of physical and mental health.'

### Article 11 of the European Social Charter states that:

With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in co-operation with public or private organizations, to take appropriate measures designed *inter alia*: (1) to remove as far as possible the causes of ill-health; (2) to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health; (3) to prevent as far as possible epidemic, endemic and other diseases.

### Analysis

The right to health has two major dimensions: first, it is a right to access to health services, spelled out with different degrees of concretization in the different instruments; second, it is a right to a social order which includes obligations of the state to take specific measures for the purpose of safeguarding public health. These measures shall be undertaken so that they provide equal protection to all. Public health measures shall protect as far as possible against epidemic, endemic, occupational and other diseases, and shall include measures of hygiene and sanitation, dissemination of information on health-related matters, shall reduce still-births and infant mortality, and combat malnutrition. The right to health is also closely associated with conditions of living in general, including the establishment and preservation of conditions which can ensure that care can be given to children, disabled persons and the elderly.

In this connection, it is important to remember the interdependence between the different sets of human rights. The enjoyment of an individual's civil rights can sometimes come into conflict with measures adopted to ensure the enjoyment of the right to health. An appropriate balance has to be struck between these concerns. Most civil rights can therefore be subject to some restrictions: a standard clause is the following, taken from Article 13 of the International Covenant on Civil and Political Rights which deals with the freedom of movement:

Article 13(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.

The conflict between these different human rights is sometimes unavoidable, but it can be mitigated by careful balancing between the different sets of concerns. Essential in this connection is the need to

ensure due process in order to determine with precision where the balance shall be drawn. The issue has received great attention as a consequence of the HIV/AIDS epidemics, where over-zealous public health officials or even decision makers with little understanding of the health issues involved sometimes adopt draconian measures which cause severe discrimination of persons infected or suffering – or suspected of being infected or suffering – from HIV/AIDS.

The treatment of persons suffering from mental illness is another important case in point. In particular, treatment and confinement of such persons without their informed consent has in the past caused considerable violation of human rights. The General Assembly therefore adopted, on 17 December 1991, resolution 46/119: 'Principles for the protection of persons with mental illness and the improvement of mental care.' The general rule is that treatment and admission to a mental health facility shall take place only when voluntary, based on the free and informed consent of the patient (Principles 11 and 15). Where this is not forthcoming and the illness is severe and when the judgment of the patient is impaired, or where there is an imminent likelihood of harm to third persons, confinement and treatment may take place within certain specified limitations provided the decision is made by an independent authority. Continued confinement and treatment shall be subject to review by a judicial or other independent body, and certain procedural guarantees have to be fulfilled (Principles 17 and 18).

The balance between individual civil rights and the rights of protection of health through public health measures has received particular attention as a consequence of the HIV/AIDS epidemic. Tomaševski (1995) has observed that:

Public health has been affected by the principle that law and not medicine should regulate restrictions of fundamental rights and freedoms. Consequently, international human rights law recognizes that *individual* rights may be limited to protect public health, but such limitations are legitimate only when required on public health grounds, and compatible with the general human rights principles. This has been reaffirmed most recently in the context of the AIDS pandemic. ... The mention of standard-setting relating to AIDS is an example of the progress made in law-making to protect persons whose health is impaired. This is a significant achievement, as discrimination against people with impaired health forms part of our historical heritage.<sup>51</sup>

### Levels of State Obligation

*The obligation to respect* As pointed out above, in ensuring the right to health, state authorities have to respect the other human rights of the persons concerned. This aspect will not be further examined



here, since it mainly falls within the scope of civil rights. Readers are referred to the article by Tomaševski referred to above. We shall only examine here the obligations arising from the realization of the right to health itself.

The requirements of public health may tend to make regulations somewhat more restrictive and sometimes more authoritarian than necessary. One issue of some significance has been the freedom of practitioners of so-called 'alternative medicine' which often meet with scepticism from modern, traditional medicine. Authorities have been inclined to be guided by the more professional schools of medicine. In recent years, however, some adaptation has been made. It remains a matter of some dispute to what extent the practice of 'alternative medicine' can be restricted or prohibited by the authorities.

*The obligation to protect* The major substance of the right to health is the right to enjoy a social order in which protective measures have been taken by or through the encouragement of the state to remove as far as possible the causes of ill-health, and to prevent as far as possible epidemic, endemic and other diseases.

*The obligation to facilitate* International instruments also require states to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health.

*The obligation to fulfil* Under Article 12(2)(d) of the International Covenant on Economic, Social and Cultural Rights, states are required to create 'conditions which would assure to all medical service and medical attention in the event of sickness'. The specific obligations of states in providing access to health care for their populations, however, still remain vague. Special attention has been paid to mother and child care, as reflected in several of the international instruments. The World Health Assembly has also urged states to introduce laws and regulations to provide access to free medical service for pregnant women and during the child's first year, when immunization is crucial for its survival.<sup>52</sup>

In 1978, the World Health Organization adopted its 'Health for All Strategy', proclaiming a global commitment to health for all. The Declaration of Alma-Ata proclaimed in its preamble 'the need for urgent action by the world community to protect and promote the health of all the people of the world'.<sup>53</sup>

If the international instruments containing the right to health are to be optimally implemented, primary health care should be extended to all and be effective, efficient, affordable and acceptable.

This is linked to the issue, examined under the right to social security, whether publicly funded health services should be organized in accordance with the principle of social assistance and therefore extended free of charge or subsidized only to particular groups who are not by themselves able to pay for them, or to everyone as part of a comprehensive social security system including health services. Generally, international instruments do not take a position on this. They are satisfactorily implemented even if based on a principle of social assistance only. As an illustration, Article 13 of the European Social Charter can be quoted which deals with the right to social and medical assistance:

With a view to ensuring the effective exercise of the right to social and medical assistance, the Contracting Parties undertake: (1) to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition; (2) to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights; (3) to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want.

### Conclusions

For most of the developed, industrialized countries it would be possible to organize an all-embracing system, which is funded partly by obligatory contributions by all who can pay them (through taxes and in other ways), but extended to all on a basis of near-equality, even to those who have been unable to contribute. There are, however, at least three different sets of practices within these countries, some of which still rely on the social assistance model.

Developing countries have fewer possibilities for direct assistance, though this varies greatly with their level of GNP/per capita and with several other factors such as the urbanization ratio. A focus on primary health care at relatively low cost would be possible, however, and should be encouraged, rather than the establishment of expensive health facilities in the urban centres, a priority which all too often has been pursued.



## Advancing the Implementation of Economic and Social Rights

### *Obstacles and Goals to be Pursued*

The preceding chapters have examined the comprehensive normative system of rights and corresponding obligations which states must take into account in developing their economic and social policies. A presentation has also been made of international institutions which monitor the compliance with these obligations and pursue a dialogue with governments on how to advance their implementation, a process in which non-governmental organizations are becoming increasingly involved. There are, however, formidable obstacles to the realization of these rights; they appear for some to be so great that the idea of a global realization of economic, social and cultural rights seems utopian.

The *UNDP Human Development Report 1994* informs us that 'a fifth of the developing world's population goes hungry every night, a quarter lacks access to even a basic necessity like safe drinking water, and a third lives in abject poverty – at such a margin of human existence that words simply fail to describe it'.<sup>54</sup> From other sources, it can be learned that more than a billion people in the world today live in poverty, and some 550 million go to bed hungry each night. More than 1.5 billion lack access to clean drinking water and sanitation, some 500 million children do not have access to even primary education, and approximately one billion adults remain illiterate.

### *Changes in Attitudes and in the International Setting*

There is an increasing reaction to the prevailing, dominant attitudes among governments which give uncritical pre-eminence to economic thinking. The World Social Summit of 1995 was convened against the background of the present crisis in social development. The deteriorating conditions of life among growing numbers of people in many parts of the world give rise to uncertainty concerning how or whether such problems can be resolved. Neoliberal experiments in worldwide market operations in recent years have not generally increased social well-being, deregulation has not limited rent-seeking activities or other market distortions and the curtailing of state activities has neither strengthened civil society nor improved the functioning of democracy.

The tendency in recent years to allow economic criteria alone to dominate the social policy agenda has distorted the way fundamental social questions are addressed.<sup>55</sup>

The *UNDP Human Development Report 1994*, commenting on the crisis pervading social policy in recent years, notes that only in the

twentieth century did social sciences become increasingly concerned with the economics of wealth rather than with people, giving the economy priority over the society, preoccupied with the 'national treasure' in surplus trade balances, GNP/per capita or with the accumulation of national wealth. 'It is this low road of regarding humanity as an instrument of production – rather than the high road of acknowledging the universality of life claims – that fits well with the reputation of economics as "the dismal science"'.<sup>56</sup>

During the last decade there has been a far-reaching change in attitudes towards trade and investment. While, until the late 1970s, there was widespread support for notions of self-reliance, including import substitution, trade regulations and strictly controlled foreign investment, the trend now is generally in favour of open trade relations, and foreign investment is eagerly sought. Trade policies affect fundamentally the lives of people everywhere, and their differential impact on the enjoyment of economic, social and cultural rights has not been paid much attention. The achievements made in the Uruguay Round are likely to give unequal benefits to different states – and to different groups within states. Some of the trade barriers against the products of developing countries in the field of agricultural products and labour-intensive manufactured goods still remain. Social policies require that more attention be given to the consequences of trade policies.

The rapid development of new technologies has irreversibly changed global relations. A worldwide information revolution has taken place during the last decade, with an impact almost as great as the Industrial Revolution of the nineteenth century. While new technologies can improve people's lives, the social consequences depend on access to knowledge and information. Deep-seated and historically produced unequal access to resources, technology and knowledge have intensified socioeconomic inequality within and among nations. For years to come, socioeconomic inequalities will exist; governments and the international community must devise means to ensure welfare and livelihood for those who are unable to have access to or make use of the new possibilities.

There is an accelerating process of globalization in many fields beyond those of technology and communication mentioned above.<sup>57</sup> An increasing proportion of economic activities and transactions are transnational in nature and composition; multinational corporations and international financial institutions have increasing power to make decisions with a global impact. These processes have vastly different consequences for different states and different groups in society. The dominant concern is a search for profit rather than for improvement of living conditions for those in most need.

Many observers have noted the current trends towards the disintegration of national societies and a drift towards anarchy.<sup>58</sup> The

number of internal conflicts has risen steeply; the conduct of warfare shows a staggering neglect of minimum humanitarian standards. It has been argued that this process is related to the extreme inequalities which exist in the world today, and to the profound insecurity of the future.

The role of the state is in decline, affected by the processes of globalization, on the one hand, and disintegration and trends towards anarchy on the other. Under the international human rights system, the state is seen to hold the primary responsibility for the realization of human rights; if it is increasingly weakened, it may be unable to perform this role. Controversies exist over the extent to which the institutions of a democratic state should intervene to redress inequalities caused by market forces. Ways can and must be found, however, for the state to ensure respect for and protection of economic, social and cultural rights and environmental protection, while preserving conditions of a relatively free market economy. Government action should promote social equity, overcome social inequalities, compensate imbalances created through the functioning of markets, and ensure a sustainable human development. The relation between government and the market should be complementary. A constructive interaction benefits both, whereas an entirely unregulated market eventually destroys itself through social unrest, soaring criminality and human insecurity.

### *The Population Problem*

Poverty and social inequality both contribute to and are affected by demographic changes, in particular population growth. When the Universal Declaration of Human Rights was adopted in 1948, there were about 2.5 billion people living on the Earth; the figure in the mid-1990s is estimated to be 5.8 billion, and by 2050 the world is likely to have 10 billion people. The accelerating process of urbanization, together with a push towards international migration, causes considerable difficulties in addressing the economic, social and cultural needs of the people; population pressures combined with environmental degradation also contribute to conflicts which, in turn, cause disintegration and anarchy.

The escalating involuntary movement of peoples, including internally displaced persons, asylum seekers and refugees, poses additional problems for the international agenda. These movements reflect the failure of societies to offer their citizens adequate personal security or acceptable standards of living where they can enjoy their human rights and fundamental freedoms. Throughout known history, people have migrated in order to improve their conditions. Those who seek to move are not the persons to blame. The international

community must set itself a double agenda in this field. On the one hand, it should cooperate in ensuring conditions of security and socioeconomic justice inside countries to remove the root causes of unwanted mass migration; on the other hand, it should treat with respect and provide protection to those who do migrate.

### *The Problem of Poverty*

The causes of poverty in different societies must be better understood. The *World Development Report 1990*<sup>59</sup> is devoted in its entirety to an examination of poverty worldwide. Poverty is more often than not combined with malnutrition, lack of education, low life expectation and substandard housing. These are factors which also impede efforts to move out of poverty: a malnourished child living in substandard housing has few prospects for success in school, even if one is available. The main cause of poverty, from the perspective of the affected individual, is the accident of being born into poverty. Chronic family poverty affects the child from birth, if not before: he or she experiences severe deficiencies in health, education, cultural skills and social relations. For the individual it is extremely difficult to break out of this vicious circle. Efforts to redress the situation must take into account different forms of poverty. The poverty which arises in situations of crisis, such as famine, requires measures to help individuals and families cope with the crisis and to come out of it with sufficient strength to manage their own needs during more normal conditions. Pockets of poverty in rich countries can be absorbed through appropriate, selective interventions, sometimes by affirmative action if the cause is social discrimination. Endemic mass poverty in poor countries requires entirely different measures.

We should, however, recognize that there have been positive developments in the last three or four decades, even if there has been a slowdown or reversal during the last few years. According to the *UNDP Human Development Report 1994*, nearly 70 per cent of humanity survived in abysmal human conditions in 1960 (below a human development index of 0.4), but only 32 per cent suffered such conditions in 1992. The share of the world population enjoying fairly satisfactory human development levels (above a human development index of 0.6) increased from 25 per cent to 60 per cent in 1992.<sup>60</sup>

While these are encouraging facts, they should not cause complacency, nor should they be taken as proof that the achievements are the result of the most recent trends in the market economy. This does show, however, that poverty can be eliminated: the task is far from hopeless. Efforts to secure for everyone the right to an adequate standard of living must be given top priority in the years to come. It is not only a moral but also a legal obligation under international

human rights law to ensure that all human beings enjoy the basic and adequate food, housing and social services necessary for health, dignity and social participation. To achieve this goal, national and international action is required. First, attitudes must be changed in order to make economic and social policies address the problems of those below the poverty line; second, specific policies aimed at the realization of economic, social and cultural rights must be the central concern of development policies.

There is, however, an unfortunate assumption that the realization of economic, social and cultural rights can only be achieved through what is loosely called 'welfare', which is understood by many as the transfer of resources through the state to the poor – and to everyone else. This is a tragic misunderstanding. Most people prefer to take care of most of their own needs, if they have the opportunity to do so, in ways which allow their dignity and self-esteem to be respected. There are areas of concern which are best resolved through common efforts, and situations of risk whereby collective state arrangements are the most rational solution. The basis must be the efforts of the individual human being to ensure for herself or himself an adequate standard of living, and the opportunities for doing so must be available to everyone. Unemployed or underemployed persons represent a productive potential. The structural causes and the immediate manifestations of poverty need to be examined and remedies must be found in all societies. The structures and processes influencing distribution and redistribution of income in a society, including availability of employment, differentials in wages and salaries, tax structures and use of other public revenue sources, must be taken into account, as must the distribution of land, legal structures and processes which determine the ownership and control of productive resources, market and price structures, macroeconomic policies and the availability of and access to public services and social benefits.

### *The Implementation of State Obligations*

As has been pointed out above, the first level of state obligations is, wherever possible, to respect the freedom and the resources of those at risk, so that they can find solutions to their own problems, if possible.<sup>61</sup> The situations of many indigenous and other peripheral groups in societies, which in the past have been displaced or marginalized as a result of development activities directed from the centre, illustrate this point. Efforts to ensure the enjoyment of economic and social rights for the vulnerable must respect their integrity and dignity, focusing on helping them to identify and implement their own solutions to their problems. Their potential energy and resourcefulness, in situations where they can enjoy the basic necessities

of adequate food, shelter and education, can be put to more productive use, rather than recourse to hand-outs, which add to their self-depreciation. Human beings who neither have access to land and other productive resources nor are able to find work which would enable them to earn their livelihood and participate in the life of society, become prey to despair and alienation. Work is essential to self-respect. Long experience of underemployment and unemployment can destroy the mental balance of the individual, ravage the family structure and cause decay in social relations.

Of even greater importance is the second level of state obligations: to protect the space for the vulnerable to find their own solutions from those who in one way or another seek to block them from doing so. There are a multitude of ways in which they are barred by the activities of others, for example usury, bonded labour relations, discrimination based on class, colour, race or gender, encroachment on their unprotected land by treasure hunters and gold diggers, and exploitation of labour due to the weakness or non-existence of trade unions. The agenda for protection is vast and constitutes the most important area in the realization of social, economic and cultural rights.

The above is not to deny that the state and the international community also have to take positive measures and to adopt arrangements to supplement the efforts made by all members of society. Arrangements to secure an adequate livelihood for those who, for reasons beyond their control, are unable to attain it themselves, through some kind of collective, obligatory nationwide insurance arrangements, are not only required under international human rights law, but are also a rational way to secure social harmony.

### *Means for Achieving these Goals*

When formulating social, economic and financial policies, the central goal should be to create conditions of self-employment and jobs, and thereby to reduce, and ultimately to prevent, poverty. Investment, credit, taxation, the financing of systems of social protection, and land distribution and planning must all be geared to this goal. It is on these bases that all the other elements – education, health services, social security, family protection, health protection and cultural rights – can be built.

Nation building has in the past all too often been pursued through a process of homogenization, with little tolerance of cultural diversity and cultural innovations. It is increasingly recognized that uniformity is not a desirable goal, nor does it lead to tolerance and solidarity. Cultural development must allow for free artistic creation and access by the greatest possible number to the works of the past



and present; it must also allow for the manifestation and evolution of different cultural traditions present on the same soil, the carriers of identity and self-respect for different groups.

The most urgent task is to raise awareness, at the international level, concerning the significance of these issues. Fortunately, a global process of recognition is already taking place. The World Summit for Social Development met in Copenhagen in March 1995 to examine many of these issues.<sup>62</sup> It follows other important events: (1) the World Conference on Education for All in 1990; (2) the Second United Nations Conference on the Least Developed Countries in 1990; (3) the World Summit for Children in 1990; (4) the United Nations Conference on Environment and Development in 1992; (5) the World Conference on Human Rights in 1993; (6) the International Conference on Population and Development in 1994 and (7) the Fourth World Conference on Women in 1995. The United Nations General Assembly has also called for a series of awareness-raising efforts for related concerns: the International Year for the World's Indigenous People, 1993; the International Year of the Family, 1994; the United Nations Year for Tolerance, 1995; and the International Year for the Eradication of Poverty, 1996.

Several requirements have to be fulfilled in order to make constructive headway. One of them is a proper basis for assessing the current situation and measuring progress; for this, we need a system of indicators. This was a major concern in the comprehensive study prepared for the Sub-Commission on Prevention of Discrimination and Protection of Minorities, entitled 'The Realization of Economic, Social and Cultural Rights'.<sup>63</sup> Another concern is to ensure that development agencies, including intergovernmental financial institutions, take the matters examined here into consideration. Finally, since the overall task is to ensure that economic, social and cultural policies are based on the comprehensive system of human rights, it is essential that advisory services and technical assistance in this field be expanded.

### Monitoring and Prospects for Complaint Procedures<sup>64</sup>

An essential component of modern international human rights law is the practice of international monitoring and review of state compliance with universal norms of human rights. At present the monitoring takes three forms: investigative reports, prepared for the Commission on Human Rights by special rapporteurs or working groups; individual complaint procedures by which nationals and other residents of a state can complain to international bodies for alleged violations of their human rights; and reports prepared by states which

have ratified international human rights conventions and which therefore, in legal language, are parties to the convention concerned. Such reports are submitted periodically to international expert bodies (treaty bodies) set up in conformity with the convention concerned.

Periodic reporting by states to international bodies about their domestic implementation of human rights, and the examination of these reports in the presence of representatives from the state concerned, are now a routine matter and generally seen to constitute a constructive dialogue. This is the main mechanism available for monitoring the implementation of economic, social and cultural rights.

### *Reporting Obligations and Procedures*

The obligation to report has been built into the respective conventions adopted by the United Nations, including the two International Covenants on Human Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. Reporting obligations are found in the provisions of the conventions, which have also provided for the establishment of independent expert committees to examine the reports.

The principal instrument for the protection of economic, social and cultural rights within the United Nations human rights system is the International Covenant on Economic, Social and Cultural Rights. The international monitoring of this Covenant rests completely on a reporting procedure established by its Article 16. Since 1987, the consideration of the reports has been entrusted to the Committee on Economic, Social and Cultural Rights, established by the United Nations Economic and Social Council. States Parties are required to present comprehensive periodic reports every five years.

In practice, then, the reporting procedure under the International Covenant on Economic, Social and Cultural Rights is based on a dialogue between the State Party and the Committee on Economic, Social and Cultural Rights. This is achieved through a list of questions prepared by Committee members, on the basis of written reports and public hearings, for discussion between the Committee and a government delegation. Following an oral hearing, the Committee adopts its concluding observations in relation to a specific state report, expressing its positive appreciation where improvements have been made, and its issues of concern where implementation is proceeding too slowly or where there have been regressive lapses. In addition to country-specific observations, the Committee also uses 'general comments' and 'general discussions' for reaching a better understanding of the contents of the treaty obligations.



The Convention on the Elimination of All Forms of Discrimination against Women adopted in 1979 integrates civil, political, economic, social and cultural rights, and is of particular interest in relation to nutrition rights. The reporting obligations are laid down in its Article 18, according to which, after the initial report, periodic reports are to be submitted 'at least' every four years and whenever the Committee on the Elimination of Discrimination against Women requests them. On the basis of its consideration of reports, this Committee adopts suggestions and general recommendations regarding certain articles or specific subjects of the Convention dealing with matters which give rise to particular concerns of the Committee. The Convention on the Rights of the Child, similarly to the Convention on the Elimination of All Forms of Discrimination against Women, covers the traditional categories of human rights and enables an integrated approach to all human rights.

Under Article 44 of the Convention on the Rights of the Child, the States Parties undertake to submit an initial report within two years of the entry into force of the Convention and thereafter periodic reports every five years. It should be noted that the Committee on the Rights of the Child has shown considerable procedural innovation and openness to non-governmental organizations.

Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination includes an all-encompassing list of human rights and establishes the obligation of States Parties to prohibit and eliminate racial discrimination and to guarantee equal treatment in the enjoyment of these rights. Economic, social and cultural rights are covered extensively by this provision, particularly in Article 5(e), including six sub-paragraphs, each naming one of six specific rights. In its general guidelines for reporting, the Committee on the Elimination of Racial Discrimination has also asked governments to report on 'legislative, judicial, administrative and other measures' which give effect to Article 5(e).

Under the International Convention on the Elimination of All Forms of Racial Discrimination, States Parties are to submit an initial report within one year of the entry into force of the Convention, and periodic reports at two-year intervals. From 1989, the Committee on the Elimination of Racial Discrimination began to nominate one of its members as a country rapporteur for each report. On the basis of its examination of a report, the Committee may ask for further information or an additional report. The Committee also formulates suggestions and general recommendations as part of the reporting process.

The practice of the UN treaty bodies varies in relation to the use of comments or other material submitted by national or international NGOs. So far, only a few among the hundreds of human rights

NGOs have developed a competence in the field of economic, social and cultural rights sufficient to make a strong impact on the process. Labour organizations are an exception to this, as they play a major role in the ILO process.

### *The Functions Served by Reporting*

In the *Manual on Human Rights Reporting under Six Major International Human Rights Instruments*,<sup>65</sup> prepared by the UN Centre for Human Rights in collaboration with the UN Centre for Training and Research in Geneva, Philip Alston, then Chairman of the Committee on Economic, Social and Cultural Rights, discussed the purposes and functions of the state reporting system. This section draws on his analysis. The primary aim of this activity, Alston emphasizes, is to assist governments in improving their performance, even though this is coupled with a critical assessment of the efforts made. The state reports and their review by the treaty bodies make possible a continuing process to promote and enhance respect for human rights, by which each government confirms its commitment to respecting the human rights of those living within its territory and who are subject to its jurisdiction. In preparing the reports, government agencies take stock of their achievements to date and initiate measures to remedy any shortcomings identified.

Admittedly, the reporting process is taken more or less seriously. A conscientious preparation of state reports takes time and requires human resources, but advances the awareness of shortcomings and the need for domestic policy making. When a state becomes a party to an international treaty, it is expected to review its domestic law and practice to ensure that it is in compliance with the obligations contained in the treaty. Before submitting its initial report to the relevant treaty body, the state party is expected to undertake a comprehensive review of national legislation, administrative rules and procedures and practices in order to ensure the fullest possible conformity with the provisions of the treaty.

Reports shall provide not only the legislative and administrative measures adopted and the situation as it exists in practice; a precondition for effective reporting is an adequate system for monitoring regularly the situation with respect to each of the rights.

### *Supervision*

Monitoring of the relevant information by an independent, international body of experts is a first step towards identifying and subsequently remedying any human rights problems. Statistical information is expected to accompany the narrative description, serving

to disaggregate the available information in order to investigate the situation, not only in the country as a whole, but also in the different regions and groups within the country. The Committee on Economic, Social and Cultural Rights has requested that 'specific attention be given to any worse-off regions or areas and to any specific groups or subgroups which appear to be particularly vulnerable or disadvantaged'.

Many human rights problems can be resolved merely by amending the relevant legislation, by changing administrative practices or by issuing appropriate instructions to the authority concerned. Others, however, are not susceptible of such rapid resolution and require the formulation of a long-term set of policies designed to ensure full and lasting compliance with treaty obligations. For example, efforts to eliminate some aspects of discrimination on the grounds of race or sex might require changes in cultural traditions which cannot be achieved overnight. In such instances the reporting process can act as a catalyst to the formulation of carefully tailored policies designed to respond to the problems identified. The supervisory committees will not expect the impossible to be achieved overnight, but they do expect to see evidence of policies likely to achieve the necessary remedial action within a reasonable period of time.

International supervisory procedures and control mechanisms can never be considered as substitutes for national mechanisms and national measures. The periodic report on the implementation of a treaty should be seen as an important document destined for a domestic as well as an international audience. Human rights treaties seek to promote and enhance not only a government's international accountability but also its accountability to its own citizens. The preparation of the report thus provides an important occasion for consultation of the appropriate social, economic, cultural and other sectors of society.

In this regard a variety of states from different regions of the world have begun to experiment with different forms of consultation. Some have sought inputs from non-governmental groups on particular issues, others have requested such groups to submit comments on the draft reports, and still others have entrusted the preparation of the reports to a group which includes representatives of the non-governmental sector.

The obligation to prepare successive periodic reports at specified intervals provides an ideal opportunity for evaluating progress achieved over time. The supervisory committees themselves tend to stress this element by making comparisons between the problems identified at the time of the examination of an earlier report and those observed when considering a subsequent report. Similarly, states which set themselves targets or benchmarks against which to assess

their own progress can use the periodic reporting process as an occasion for measuring progress (or a lack thereof) and re-evaluating the suitability of the relevant benchmarks.

The principal human rights treaties generally request States Parties to report not only on the progress that they have made, but also on any 'factors and difficulties' which have affected the realization of the rights in question. It is sometimes suggested that states cannot realistically be expected to acknowledge that they are having problems in any areas and that reports will therefore inevitably only deal with 'good news', but this approach is clearly misplaced, and the supervisory committees tend to remain unconvinced by reports suggesting that all is well in the world. It must be accepted that no state can expect to have a perfect record in achieving respect for human rights. Even where the situation is generally very positive, there is always room for improvement. The frank acknowledgment of problems, even if they are reckoned to be almost intractable (or at least not readily capable of resolution), helps to establish the good faith of the government in the eyes both of the supervisory committee and of its own citizens. The reality is that a problem must first be diagnosed before a remedy can be found. In that respect, human rights problems can be compared to drug addiction: unless the existence of a problem is acknowledged, it will almost certainly not be solved.

The information on common experiences (both good and bad) makes it possible for states to learn from one another, and has made it possible for the supervisory committees to formulate 'general comments' based on their awareness of the types of issues governments typically encounter when translating the abstract obligations contained in the treaties into practical reality. Alston observes that the committees can then distil the wisdom of that collective experience into advice which is made available to all interested parties.

### *Transparency and Public Scrutiny*

Some states have ensured the widespread dissemination of their reports so that the public at large may comment and thus contribute to a continuing national policy debate. This public scrutiny can be further enhanced by ensuring easy access for the public at large to the United Nations Summary Records which document the examination of the state's report by the appropriate treaty body.

### *Concluding Remarks*

The normative guidance to international relations and global policies must be sought in the Charter of the United Nations, which is binding

on all its member states. The purposes set out for the organized international community are found in Article 1 of the Charter, whereas sub-paragraph 3 is of particular relevance:

to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

The implementation of United Nations purposes and principles is regulated in other parts of the Charter. Under Article 56, member states pledge to take joint and separate action in cooperation with the United Nations for the achievement of the more detailed purposes set forth in Article 55, intended to 'create conditions of stability and well-being necessary for peaceful and friendly relations among nations based on the respect for the principle of equal rights and self-determination of peoples'. For this purpose, the United Nations and its member states, individually and collectively, shall promote:

- higher standards of living, full employment, and conditions of economic and social progress and development;
- solution of international economic, social, health and related problems, and international cultural and educational cooperation;
- universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

These commitments then constitute the foundation on which human rights and development activities should both be pursued, whether collectively through the United Nations and other organizations or separately by states. However, while human rights have given rise to precise standard-setting and the evolution of implementation procedures, this has not been the case in the field of development.

While the language of the UN Charter gives strong support for a combination of development activities and the promotion of human rights, these have been treated separately in the practice both of the United Nations and of most states. Separate institutions and different procedures have been established for the two concerns. Different professional expertise has come to dominate each of the two, with economists playing a major role in operationalizing 'development', while legal minds tended to prevail in the elaboration of the human rights system.

As a result of 50 years of standard-setting in the field of human rights by the United Nations, it is possible to explain with relative

precision not only the concept of human rights but also which human rights exist, in the sense of being universally recognized. In contrast, there has been until recently little or no consensus on what constitutes 'development'. It is a value-loaded concept, referring to something which is 'better' than that which preceded it. 'Development' qualifies primarily processes of social or economic change: if the change is considered positive, it can be described as 'development', otherwise not. Whether it is positive, or better than what preceded it, requires a value judgment. Better in what respect, and better for whom?

'Growth', understood as an increase in GNP, has long since been discarded, since it could in itself give no clue as to whether it was better or worse for different sections of society or even for the average standard of living measured by indicators of quality of life. It has long since been recognized that, as an indicator of development, the measurement of 'growth' should be combined with measurement of distribution of the benefits of growth: equitable income distribution was defined as positive and gross inequalities were seen as negative.

Building on this achievement, the next step was to see poverty eradication as a primary goal of development, and to ensure that women benefited equally from the economic changes taking place. When concerns with the environmental impacts of economic activities reached maturity in the late 1980s, the composite notion of sustainable development was introduced, giving space also for concern with intergenerational justice.

The understanding that the human being had to be treated as the subject, rather than the mere object, of development led, in the early 1990s, to the introduction by the United Nations Development Programme (UNDP) of the notion of human development. Finally, by 1994, the various concerns were merged, again by UNDP, through the concept of sustainable human development.

The international community has only very recently started to link operationally the promotion of human rights and the advancement of development. The concept of development itself has come to be reinterpreted in light of the human rights system. A major event in this process was the adoption, by the United Nations General Assembly in December 1986, of the Declaration on the Right to Development, the embryo of which is found in Article 28 of the Universal Declaration of Human Rights which proclaims that 'everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized'.

With regard to social order, the Declaration on the Right to Development provides, in Article 8(1) that:

States shall undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, *inter alia*,

equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income.

As to the requirement for an international order in which human rights for all can be realized, the Declaration on the Right to Development provides, in Article 3(3), that 'States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development', while, under Article 4, 'States have a duty to take steps, individually and collectively, to formulate international development policies with a view to the full realization of the right to development'.

### Relinking Human Rights and Development

The right to development is, according to Article 1 of the Declaration:

an inalienable human right by virtue of which 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.

The final document from the World Conference on Human Rights, held in Vienna in 1993 and attended by more than 170 states, declared that democracy, development and human rights are

interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. [...] The international community should support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world.

The operationalization of the link between human rights and development confronts formidable obstacles, however, including dominant trends in international economic policies and the gradual weakening of the role of the state in ensuring the satisfaction of human needs. A re-examination of the origins and evolution of human rights in economic and social thought and policies might provide a basis for new directions.

### Notes

1 UN Doc. E/1993/22, p.83, para. 5.

- 2 Marshall (1950, pp.10-74).
- 3 Esping-Andersen (1990, p.24).
- 4 *Social Insurance and Allied Services*, London, HMSO, 1942.
- 5 Galbraith (1994, p.93).
- 6 Sampson (1983, pp.87-94).
- 7 Vignes and Schlenszka, 'World Health Organization', *Encyclopedia of International Law*, vol. 5, Amsterdam, Elsevier Science Publishers B.V., 1983, pp.242-5.
- 8 Humphrey (1984, p.32).
- 9 A review of US positions on economic and social rights, including the policies during the Second World War, is found in Alston (1990, pp.365-93).
- 10 J. Locke, *Second Treatise on Government*, Chapter V.
- 11 *Ibid.*, para. 32.
- 12 See Article 8 of the International Covenant on Economic, Social and Cultural Rights and several ILO conventions.
- 13 See UN document E/CN.4/1987/17.
- 14 General Assembly Resolution 41/128 of 4 December 1986. Article 2 reads, in part: '1. The human being is the central subject of development and should be the active participant and beneficiary of the right to development. 2. All human beings have a responsibility for development, individually and collectively.'
- 15 These are the groups referred to in the guidelines for states when reporting to the UN Committee on Economic, Social and Cultural Rights. See Revised Guidelines Regarding the Form and Contents of Reports to be Submitted by States Parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights (UN doc. E/1991/23). See, also, Alston (1991, pp.39-77).
- 16 Maxwell and Frankenberg (1992).
- 17 See ECOSOC, Official Records, 1992, Supplement No. 3 (E/1992/23)].
- 18 Note that, in the International Covenant on Economic, Social and Cultural Rights, the right to health is contained in Article 12 and the right to social security in Article 9.
- 19 *World Development Report 1990*, p.26.
- 20 On the right to housing, see also Leckie (1995).
- 21 This section draws heavily on Eide *et al.* (1991). See also Oshaug *et al.* (1994).
- 22 Cultural acceptability of food does, of course, change over time, but this must be a voluntary process, not forced.
- 23 This may apply also in wealthy countries when a combination of recession and weak public policies generates increasing hunger and poverty, as has been the case in the United States during the 1980s and into the 1990s. See *Hunger 1994: Transforming the Politics of Hunger*.
- 24 The difference between a 'food first' approach to food security and a 'food security within a sustainable livelihood' approach was elaborated by Maxwell and Frankenberg (1992).
- 25 The Global Strategy for Shelter to the Year 2000 adopted by the General Assembly in its resolution 42/191 of 11 December 1987, *Official Records of the General Assembly, Forty-third Session, Supplement No. 8*, addendum (A/43/8/Add.1).
- 26 The final report of the study on the right to adequate housing by Rajindar Sachar is found in UN doc. E/CN.4/Sub.2/1995/12.
- 27 *World Bank: Resettlement and Development*, The World Bank Environment Department, Washington, April 1994.
- 28 See also Hammarberg (1995).
- 29 See Mushakoji (1991).
- 30 The *Codex Alimentarius* is a code of food quality operated by FAO and WHO.
- 31 United Nations Administrative Committee of Co-ordination, Sub-Committee on Nutrition, *Second Report on the World Nutrition Situation*, vol. 1 (Global and



- Regional Results) and vol. 2 (Country Trends, and Methods and Statistics), Geneva, 1993.
- 32 For details, see Eide *et al.* (1991).
- 33 Of particular interest as the first of its kind is the establishment of the Center for Nutrition and the Environment of Indigenous Peoples (CINE) at McGill University, Macdonald Campus, Ste-Anne-de-Bellevue, Quebec, Canada. This is a research, training and information centre on food and nutrition based on the cultural and environmental traditions of indigenous peoples themselves, and directed by a board consisting of indigenous representatives.
- 34 This is provided for in Article 6(2) of the International Covenant on Economic, Social and Cultural Rights.
- 35 Special provisions on the right to technical and vocational training can be found both in the Protocol of San Salvador (Article 6(2)) and in the European Social Charter (Article 15).
- 36 A much wider range of ways in which the obligations can be affected are spelled out in Oshaug *et al.* (1994).
- 37 See, further, Scheinin (1995).
- 38 Which hardly can be held to constitute compliance with the obligations arising from economic, social and cultural rights. The US had not then, and has still not, ratified the International Covenant on Economic, Social and Cultural Rights, but is at least morally obliged under Articles 22-7 of the Universal Declaration of Human Rights.
- 39 Article 27 of the Convention on the Rights of the Child obliges states, 'in case of need, to provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing'.
- 40 In Eide *et al.* (1995).
- 41 The reporting guidelines indicate that this clause relates not only to benefits in cash but also to 'medical and other' benefits. See Revised Guidelines Regarding the Form and Contents of Reports to be Submitted by States Parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights (UN doc. E/1991/23).
- 42 The sources of the right to social security are examined by Bård-Anders Andreassen in Eide *et al.* (1991, p.347). See also Scheinin (1995). The present section on sources draws extensively on the two authors mentioned, and in particular on Scheinin. A list of other relevant ILO conventions and recommendations is found in Andreassen (1991, footnote 77, pp.347-8).
- 43 The guidelines are contained in Alston (1991).
- 44 See Articles 11(1)(e), 11(2)(b) and 13(a) of the Convention on the Elimination of All Forms of Discrimination against Women.
- 45 See Article 27 of the Convention on the Rights of the Child.
- 46 Adopted by the UN General Assembly in 1990 and not yet in force.
- 47 For a list of some arrangements covered by the clause on family benefits, see Alston (1990, p.132). For example, public kindergarten services are covered by the provision. On the relationship between Articles 12 and 16, see *supra*, note 17, p.130.
- 48 On the various dimensions of the provision, see Alston (1990, p.134).
- 49 On the relationship between Articles 13(3) and 14 of the European Social Charter, see Alston (1990, p.116).
- 50 Mention can also be made of the European Convention on Social and Medical Assistance (1953), which provides for equal treatment for the nationals of the Contracting Parties in the application of legislation providing for social and medical assistance.
- 51 Tomaševski (1995).

- 52 WHO Long-Term Programme for Maternal and Child Health, World Health Assembly resolution WHA32.42 of 25 May 1979, para.2
- 53 *Primary Health Care. Report of the International Conference on Primary Health Care, Alma-Ata, USSR, 6-12 September 1978*, Geneva, WHO, 1978, p.2.
- 54 *Human Development Report 1994*, p.2
- 55 *The Crisis of Social Development in the 1990s: Preparing for the World Social Summit*, Geneva, UNRISD, 1994.
- 56 *Human Development Report 1994*, p. 14.
- 57 For a comprehensive discussion, see Robertson (1992).
- 58 See, for example Kaplan (1994, pp.45-76).
- 59 *World Development Report 1990*.
- 60 *Human Development Report 1994*, p.1.
- 61 For a general discussion on state obligations, see *Human Development Report 1994*, Part I, Section IV.3.
- 62 Several of the issues discussed in this section are dealt with in the Declaration and Programme of Action for the World Summit.
- 63 D. Türk, 'The Realization of Economic, Social and Cultural Rights', preliminary report, UN doc. E/CN.4/Sub.2/1989/19; first progress report, UN doc. E/CN.4/Sub.2/1990/19; second progress report, UN doc. E/CN.4/Sub.2/1991/17; and the final report, UN doc. E/CN.4/Sub.2/1992/16. The discussion of indicators can be found, in particular, in the 1991 report.
- 64 The monitoring of states' implementation of economic, social and cultural rights under the various instruments is analysed in greater detail in Alston (1991) and Craven (1995). See Rosas and Scheinin (1995, which also covers the other instruments). The study by Craven is the first comprehensive analysis of the practice of the International Covenant on Economic, Social and Cultural Rights.
- 65 UN CHR/UNRISD, 1991.

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