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EQUALITY AND WOMEN'S ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A Guide to Implementation and
Monitoring Under the
International Covenant on Economic,
Social and Cultural Rights



INTERNATIONAL WOMEN'S
RIGHTS ACTION WATCH

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Funding for this publication was provided by the Swiss Agency for Development and Cooperation and by the Catharine A. Cram International Women's Human Rights Fund at the University of Minnesota.

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2004

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This manual is the product of a process that began several years ago with an invitation to work with the Committee on Economic, Social and Cultural Rights on development of its General Comment on Article 3 of the International Covenant on Economic, Social and Cultural Rights, relating to equality between women and men in enjoyment of the rights in the Covenant.

The International Women's Rights Action Watch (IWRAP) has participated in Committee sessions and provided shadow reports on women's human rights in certain countries under review by the Committee since 1994. We are grateful to the Committee's first Chairperson, Philip Alston, for his early encouragement of attention to women's human rights issues in the Committee and for his welcome to IWRAP.

The IWRAP Initiative on Economic, Social and Cultural Rights was established in 2000 as a series of related projects designed to help develop NGO expertise and provide tools for using the Covenant to promote and protect women's human rights in view of the Committee's intention to adopt a General Comment on equality. The Initiative involved nongovernmental activists from all over the globe, scholars, and expert members of the Committee on Elimination of Discrimination against Women. It started with production of a background paper for the Committee's consideration in drafting the General Comment and presentation of that background paper as the keynote for the Committee's Day of General Discussion on the subject in May 2002. Members of the Committee on Economic, Social and Cultural Rights generously engaged in informal consultations on the background paper in addition to their work on the General Comment in the formal Committee sessions.

We are especially indebted to Committee Chairperson Virginia Bonoan Dandan, who has been enormously supportive of women's human rights during her tenure on the Committee and who has given a great deal of time and thought to the development of the General Comment on Article 3. This General Comment has been several years in the drafting process and, as this manual goes to press, is designated General Comment No. 16 and is on the agenda for adoption at the Thirty-Fourth (April/May 2005) session of the Committee.

This manual is the culminating project of the Initiative on Gender and Economic, Social and Cultural Rights. It is designed as a guide to using the Covenant as an essential instrument for promoting and protecting women's human rights and as a companion to the General Comment on Article 3.

We are enormously grateful to those who contributed in various capacities to the production of this manual:

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December 2004

INTRODUCTION

This manual provides a framework for reporting and monitoring implementation of women's human rights under the International Covenant on Economic, Social and Cultural Rights (the Covenant). It is designed primarily for use by nongovernmental organizations (NGOs) in applying Covenant provisions, using it to advocate for women's human rights, and preparing information for use by the United Nations Committee on Economic, Social and Cultural Rights (the Committee) in country-specific reviews of Covenant implementation.

The contents of this manual may also provide guidance to government officials on fulfilling obligations with respect to equality (Article 3) and nondiscrimination (Article 2.2) under the Covenant and other human rights treaties.

THE COVENANT AND THE HUMAN RIGHTS OF WOMEN

Economic, social and cultural rights are critical to survival as well as to the development of full human potential. These rights include adequate food, shelter, health care, education, fair employment, social security, and the right to participate in and benefit from one's culture. They are enshrined in the Universal Declaration of Human Rights, the globally accepted statement of universal rights and freedoms adopted by the United Nations in 1948. The Covenant, which states these rights in treaty form, was adopted in 1966 by the General Assembly and came into force in 1976 when 146 countries ratified. As of 2004, 151 countries had ratified.

The companion International Covenant on Civil and Political Rights was also adopted in 1966 and came into force in 1976. It includes the civil and political rights articulated in the Universal Declaration. The two Covenants, together with the Universal Declaration, comprise the International Bill of Human Rights, the framework for all international human rights obligations.

The Covenant, reiterating language of the Universal Declaration of Human Rights, clearly states that all human rights are to be enjoyed without discrimination on the basis of sex (Article 2.2) and on a basis of equality between women and men (Article 3). The Committee on Economic, Social and Cultural Rights, the monitoring body for the Covenant, takes these articles seriously. References to equality and statements about discrimination in law and in practice appear in many of its reviews of State Parties' reports and in the General Comments adopted by the Committee to describe in depth States Parties' obligations as to particular issues covered by the Covenant.

As this manual goes to press (December 2004), the Committee has under consideration the adoption of a General Comment on Article 3, providing an outline of obligations relating to equality between women and men in the enjoyment of economic, social and

cultural rights. The current draft of this General Comment includes an overview of the nature of the equality issue, including the significance of *de facto* or substantive equality and the role of gender-based assumptions as a basis of discrimination. As of this printing this General Comment, No. 16, will be on the agenda for adoption at the Committee's thirty-fourth session in April-May 2005. Upon adoption it will be available on the Web sites of the Office of the High Commissioner for Human Rights, the University of Minnesota Human Rights Library, and the International Women's Rights Action Watch.

RELATIONSHIP OF THE COVENANT TO OTHER HUMAN RIGHTS TREATIES

In addition to the Covenants, five other international human rights treaties elaborate upon particular human rights principles stated in the Universal Declaration. All of these treaties bear upon the human rights of women, as all are equally applicable to all persons. The Convention on the Rights of the Child includes a specific prohibition of discrimination on the basis of sex (Article 2) with respect to children's rights. The Committee on the Elimination of Racial Discrimination has adopted a General Comment on discrimination against women [get cite and content]. The Convention on the Elimination of All Forms of Discrimination against Women, which was adopted in 1979 and came into force in 1981, articulates States Parties' obligations specifically as to eliminating discrimination and removing obstacles to women's enjoyment of their rights in law and in practice. The CEDAW Committee has adopted twenty-five General Recommendations explicating these obligations and the particular sites of discrimination that must be addressed. The CEDAW Convention and the General Recommendations may be helpful in understanding specific forms and sites of discrimination.

Until recently, economic, social and cultural rights have been characterized as "second generation"—or even secondary—and seen as more difficult than civil and political rights to implement. Economic, social and cultural rights are different, but not more difficult. Many of the Covenant's provisions impose positive obligations on governments, requiring resources to deliver programs and services.¹ In recognition of the resource and infrastructure issues, the Covenant allows for "progressive realization" of certain rights: States parties do not have to deliver everything immediately, but they must make a good faith effort and take care not to regress.² Certain provisions are not subject to progressive realization but are mandatory and immediate—including Article 2.2, prohibiting discrimination, and Article 3, indicating the equal right of women and men to enjoyment of economic, social and cultural rights.³

¹Implementation of civil and political rights also requires resources. Properly trained and supported judicial systems, adequate prisons, well-trained police, voter education and registration and fair elections are far from free.

² CESCR Article 2(1); General Recommendation No. 2.

³ Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, adopted 8 Jan 1987, U.N. ESCOR, Commission on Human Rights, 43d Session, Agenda Item 8, U.N. Doc. E/CN.4/1987/17/Annex. Reprinted in 9 Human Rights Quarterly 122 (1987) (Limburg Principles), No. 35.

THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The Committee on Economic, Social and Cultural Rights monitors States Parties' compliance with their obligations under the Covenant. Unlike the other human rights treaty monitoring bodies, which are established by the terms of their treaties, the Committee on Economic, Social and Cultural Rights was established by the Economic and Social Council and derives its formal authority from that body. The Committee was established in 1985 and met for the first time in 1987.

The Committee consists of 18 independent experts who are elected by ECOSOC for four-year terms from a list of nominees proposed by States Parties. Members of the Committee are eligible for re-election if renominated. The membership represents a geographical distribution as well as an attempt to include experts from different political and legal systems. Because Committee members (like all treaty body members) are "independent," they serve in their individual capacity and do not take formal instructions from their government in performing their duties on the Committee. This allows for considerable flexibility in working procedures and in working with NGOs.

The Committee elects its chairperson, three vice-chairpersons, and rapporteur. Since its inception it has had only two chairpersons.

WORKING WITH THE COVENANT: PROCEDURES

The Reporting Obligation and Concluding Observations

States that have ratified the ICESCR are required to submit an initial report to the Committee within two years of ratification. They are required to submit further reports (periodic reports) every five years after the initial report. The periodic reports should indicate the legislative, judicial, policy and other measures taken to ensure the enjoyment of the rights contained in the Covenant. The government report is supposed to be a public document. The review takes place at public meetings at which representatives of the government introduce the report and answer questions by Committee members. The Committee and the government representatives essentially hold a dialogue about the government's implementation efforts. For periodic reports, the government responds to a list of issues prepared at an earlier session of the Committee (the pre-sessional, described below).

On the final day of the session, the Committee releases to the public Concluding Observations summarizing its main concerns, and making suggestions and recommendations for government action to improve implementation. These Concluding Observations are the crucial product for both the government and NGO action, as it is a public statement given to the government that specifies further action required to live up to its obligations under the Covenant.

For details concerning this process, see Appendix III.

Committee Sessions

The Committee meets twice a year in sessions of three weeks each (April/May and November/December), in Geneva, Switzerland. Occasionally, an extraordinary third session is held to deal with the backlog. Reports are considered roughly in the order in which they were submitted, with some variations to provide geographical balance and a balance of initial and periodic reports in each session. Countries are invited to be reviewed according to a list drawn up by the Committee at each session for future sessions. Governments that have been scheduled for review at a particular session, but decide to withdraw presentation of the report, may not be granted a deferment. In certain circumstances the Committee sometimes goes forward with the consideration of the report without a State party representative.

Countries that have ratified the Covenant but have failed to submit a report (“non-reporting countries”) will be reviewed in light of all available information relevant to economic, social and cultural rights including NGO information. The Committee makes an effort to review one non-reporting country at each session.

At each of the two annual CESCR sessions, approximately five reports are reviewed. For periodic reports, questions are prepared in advance of the session by a pre-sessional working group and conveyed to the country’s United Nations mission for written answer prior to its appearance before the Committee. In the review session, the country representative introduces the report, presenting comments and information pertaining to the preliminary list of issues posed by the pre-sessional working group. The Committee members ask follow-up questions and engage the State party representatives in a dialogue.

Each report is assigned a country rapporteur, who is responsible for reading all the background material provided by the United Nations and NGOs on a given country and presenting his or her analysis of that information to the Committee during its deliberations. The country rapporteur usually is assigned to write the Concluding Observations on that country. A Committee member from a country under review, according to the Committee’s rules, is not permitted to participate in the review of his or her country.

Pre-sessional working group (Second and subsequent country reports)

After each session, a working group of 5 committee members remains in Geneva for a week to prepare for the next Committee session. This “pre-sessional” working group discusses five government periodic reports scheduled for review at future sessions (as far as a year or a year and half in advance) with each group member serving as a country rapporteur for one of the reports. The country rapporteur is responsible for preparing a list of issues concerning the particular report. The list of issues is then sent to the state, which is required to provide written replies in advance of the session at which its report is

scheduled for review.

The Role of NGOs

The Committee invites direct input from NGOs in the form of independent or shadow written reports and oral presentations. In order to submit information to the Committee, NGOs need not have any particular status with the United Nations. Written reports may be submitted directly to the Secretariat, preferably several weeks prior to the session. The Committee also schedules NGO oral presentations on the first day of each session. However, written submissions are essential as the oral presentations are extremely time-limited.

Governments' assessments of their efforts to comply with the Covenant frequently are incomplete and tend to minimize problems and maximize accomplishments. Recognizing this, the Committee asks governments whether they have involved NGOs in preparing the government report. Even NGOs that have worked with the government to prepare the official report may find that the government report as submitted may not include their concerns. Therefore, it is important for NGOs to submit their own materials to complete the record.

NGOs input is particularly important in the review of non-reporting countries. In such cases, when no materials have been submitted by the State Party, information provided by NGOs becomes particularly valuable to the Committee and can have a strong impact.

NGO contributions during the pre-sessionals provide an excellent opportunity to ensure that issues of concern to NGOs find their way into the list of issues. To participate at this stage, NGOs should submit written information directly to the country rapporteur and/or to the CESCR Secretariat in advance of the pre-sessional group meetings. NGO representatives also may make oral statements in person during the first morning of the pre-sessional working group meeting. [check this]

Details on preparation of NGO reports, submission to the Secretariat, and working with the Committee are included in Appendix III.

SPECIAL ISSUES RELATING TO COVENANT OBLIGATIONS

Reservations

When a State ratifies the Covenant, it may enter reservations to limit its obligations under specific provisions. The Vienna Convention on the Law of Treaties provides an internationally accepted definition of reservations as well as a standard of when

reservations may be permitted.⁴ The most frequent issue that arises concerning reservations is whether they are incompatible with the object and purpose of the treaty.

The Vienna Convention is silent on who makes the determination of incompatibility. A considerable debate exists as to whether the States parties, human rights bodies, or the United Nations Depository (where treaty ratifications and reservations are registered) should have the authority to make the legal determination that a reservation is compatible or incompatible with the object and purpose of a treaty.

States parties monitor reservations with the help of the office of the Secretary General. A State party may object to a reservation within 12 months of its entry. If an objection is not entered within that time, a reservation is deemed to be accepted by the States parties. If an objection is entered, the State party entering it may indicate that (1) it considers the reserving State a party; or (2) that it does not consider the reserving State a party to the treaty. However, objections in themselves are not a conclusion that the reservation is incompatible with the object and purpose of the treaty, and reserving states remain parties regardless of objections. This system creates significant ambiguity.

The treaty monitoring bodies take the position that States should enter reservations with caution and that they should work toward changing law and policy to comply with all treaty provisions, ultimately withdrawing reservations. A State party may withdraw a reservation at any time.

States parties are not required to report on implementation of provisions to which they have entered reservations. However the treaty monitoring bodies frequently draw attention to reservations and inquire about efforts to change laws and policies so reservations may be withdrawn.

Nongovernmental organizations may have a role in working with their governments to narrow reservations and ultimately to encourage their withdrawal. They may refer in their shadow reports to reservations and to attempts to advocate for policies that would allow reservations to be withdrawn.

General Comments

General Comments are explanatory statements on Covenant provisions, designed to assist governments in fulfilling their reporting obligations and to provide clarity concerning the Covenant's meaning and content.

⁴ The Vienna Convention on the Law of Treaties defines a reservation: "a unilateral statement . . . made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State." Article 2(1)(d). Reservations are permissible unless the treaty specifically prohibits the reservations, the treaty states the permissible types of reservations, and a particular reservation does not fall within the stated limits, or the reservation is incompatible with the object and purpose of the treaty.

The content of a General Comment is based on the Committee's experience in reviewing country reports and the Committee's dialogues with State parties. The content of the dialogues may indicate over a period of time the need for clarification of particular provisions or of Covenant application in light of global developments that relate to economic, social and cultural rights.

General Comments are adopted by consensus after considerable discussion. As of 2004, the Committee had adopted sixteen General Comments. They may be found on the Web through links from the Covenant text.⁵ Several are reprinted in the appendix to this manual.

State parties are responsible for implementation of Covenant norms as explicated in the General Comments. Nongovernmental organizations should be aware of this and may find the General Comments helpful in developing their issue analysis and their evaluation of their governments' performance.

Reporting and Data Issues

It is imperative that both governments and nongovernmental organizations use data disaggregated by sex to provide clarity on the issues of equality and discrimination. Because discrimination against women is often compounded by class, ethnic group, age, disability, citizenship or refugee status, or residence in rural and deprived areas, these issues should be illuminated wherever applicable

⁵ For Web addresses see information at the end of Appendix III.

ARTICLE 1

Right to Self-Determination

1. *All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*
2. *All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit and international law. In no case may a people be deprived of its own means of subsistence.*
3. *The States Parties to the Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.*

Comment:

The right of self-determination is frequently described as a necessary precondition and means to the realization of other human rights.⁶ Its importance is highlighted by its prominent position in the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Charter of the United Nations: all three documents list self-determination as the first right deserving protection. The right to self-determination under ICESCR has several textual components: the right to political freedom; the right to economic and cultural development; the right to deal with natural resources related to the “people’s” identity and location; and the right to not be deprived of the means of sustenance.

Article 1 secures the right of all “peoples” to self-determination. Peoples were first defined in the context of decolonization, and Article 1 rights were limited to groups seeking freedom from colonial domination. Subsequent treaties extended the right by defining it as the right of all peoples. In 1993, the Vienna Declaration (World Conference on Human Rights) reinforced the right to self-determination.

Recent attention has focused on self-determination as a vehicle for protecting the rights of minorities within State political systems.⁷ The right of self-determination currently is seen as applying to all peoples subject to oppression by subjugation, domination, or

⁶ ICCPR General Comment 12 at para. 1.

⁷ See Nsongurua J. Udombana, *Articulating the Right to Democratic Governance in Africa*, 24 Mich J. Intl. L. 1209, 1249 n.211.

exploitation by others.⁸ For purposes of Article 1, a “people” might be comprised of an ethnic group or national minority, including (but not limited to) racial, linguistic, and religious minorities within national borders, as well as those that have or may form an independent nation state.⁹

The State is responsible for respecting and protecting both people’s rights to self-determination and women’s and men’s equal rights to economic, social and cultural rights. States Parties must be aware that certain acts or protections of self-determination—relating, for example, to cultural development or use of natural resources—may violate the principle of equal enjoyment of Covenant rights. States parties should facilitate negotiation of these potential conflicts rather than deny individual rights in the name of protecting group rights.

Questions to ask:

1. *Is the right of self-determination protected by the State’s constitutional and political processes?*
2. *Does the State Party acknowledge in constitution, law or policy the possibility that the principle of women’s and men’s equal enjoyment of rights may not be honored within specific religious, ethnic, racial, linguistic or other identifiable groups?*
3. *What policies has the State adopted that address such inequalities?*

⁸ Robert McCorquodale, *Self-Determination: A Human Rights Approach*, 43 Int’l & Comp. L.Q. 857, 863 (1994).

⁹The nature of self-determination has been analyzed by a number of authorities, but no single authoritative definition exists. See, e.g., CERD General Recommendation XXI (Forty-eighth session, 1996): Right to Self-Determination, A/51/18 (1996) 125 at para. 9; Robert McCorquodale, *Self-Determination: A Human Rights Approach*, 43 Int’l & Comp. L.Q. 857, 864 (1994) (the exercise of external self-determination may include the assertion of territorial sovereignty, but independence, or secession from an independent state is not the only means of recognizing the right); Antonio Cassese, *The Self-Determination of Peoples*, in *The International Bill of Rights* 97 (L. Henkin, ed. 1981).

ARTICLE 2

Obligations to Take Appropriate Measures, Not to Discriminate; and the Economic Rights of Non-Nationals

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. *The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Comment:

Article 2(1)

Article 2(1) is the key provision outlining the nature of the obligations imposed by the Covenant on States.¹⁰ It provides for progressive realization of the Covenant's terms depending on the availability of resources in a particular country. It also imposes obligations with the same content for all States regardless of their level of development.¹¹ Each State party to the Covenant must take steps without delay to implement each of the substantive rights enumerated in Part III (see Articles 6 – 15). The Committee in General Comment No. 3 defined “taking steps” as deliberate, concrete and targeted action. This implies that each State must create a plan to implement its obligations under the Covenant, as well as strategies for monitoring and measuring State progress.¹²

As Article 2(1) makes clear, legislative measures are a highly desirable, even indispensable, component of State action.¹³ Reporting parties should report on legislation or lack thereof concerning women with respect to economic, social, and cultural rights. Legislative measures do not exhaust State obligations, however, and reporting parties should also consider to what extent economic, social and cultural rights are enforceable in

¹⁰ General Comment No. 3 para. 9.

¹¹ General Comment No. 13 para. 43.

¹² General Comment No. 11.

¹³ See also General Comment No. 3 para. 3.

court or other tribunals.¹⁴ The Committee has identified Articles 3, 7(a)(i), 8, 10(3), 13(2)(a), (3) and (4), as well as 15(3), as particularly capable of immediate application by judicial or other national organs.

Other core obligations applicable to all States, regardless of resources, include ensuring the availability of essential foodstuffs, basic shelter, housing and education.¹⁵ State parties' reports should include assessment of whether women and men have equal access to these basic life necessities.

The Committee uses various indicators to measure State compliance with the obligation to “devote maximum available resources” to the realization of Covenant rights. It may look at a comparative analysis of the financial resources spent by the State in Covenant-related versus non-related expenditures. Noncompliance might be demonstrated, for example, by significant expenditures for military defense as opposed to health or education. The expenditure analysis may also include comparison with other States in similar circumstances. In addition to allocated funds, the Committee will consider human and technological resources dedicated to achieving Covenant rights.

Gender-specific studies and sex-disaggregated data will help States Parties and the Committee determine whether States have taken appropriate steps to achieve economic, social and cultural rights for women as well as men. For example, statistics regarding funds spent on education in general may not give an accurate picture where the usual division of labor in the household requires girls and women to devote most of their time to household chores to the exclusion of their studies. The same would be true where girls are routinely taken out of school at an early age to work or to marry, or are not given the same opportunities as males to pursue higher education. Merely citing the resources allocated to areas such as education, health, employment support programs such as child care and housing allowances, disability support, or other social services, generally is not enough. State programs' accessibility to women and girls must also be considered.

Article 2(2)

The language of Article 2(2) derives from Article 2 of the Universal Declaration of Human Rights and parallels Article 2(2) of the International Covenant on Civil and Political Rights. The principle of nondiscrimination is fundamental in international human rights and arguably rises to customary international law. States are obligated to implement human rights on a nondiscriminatory basis and to make every effort to eliminate discrimination in all aspects of public and private life.

The relationship between Article 2(2) and Article 3 with respect to the principle of equality between men and women in enjoyment of rights can seem confusing. The drafting body indicated clearly that the two articles reinforce each other and are not to be seen as redundant or mutually exclusive. The record indicates that while Article 2(2) was understood as the essential statement of the nondiscrimination obligation, some States

¹⁴ General Comment No. 3 para. 5.

¹⁵ General Comment No. 3 para. 10.

believed that “the application of absolute equality of the economic rights of men and women might . . . encourage too many women to work outside their homes . . . in their capacity as wives and mothers women were needed in the home.”¹⁶ The drafters, apparently concluding that this attitude was precisely the problem, added Article 3 to indicate clearly that understanding and pursuit of equality was an obligation under the Covenant.

Elimination of discrimination is the core operational content of the equal enjoyment of rights. Full enjoyment of economic, social and cultural rights, and the enjoyment of each right enumerated in the Covenant, can be achieved only when discrimination in their implementation is eliminated.

The prohibition of discrimination on the basis of sex must be understood as a mandate to eliminate *de facto* as well as *de jure* discrimination. The definition of sex discrimination in the Convention on the Elimination of All Forms of Discrimination against Women underscores this principle:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹⁷

This definition reiterates the reference to equality between men and women in ICESCR Article 3, as do the substantive articles of the CEDAW Convention. The discrimination principle clearly must be read and implemented in tandem with the equality principle in Article 3.¹⁸

The prohibition of discrimination by means of formal or *de jure* measures such as constitutional provisions, laws, subsidiary regulations, and written policies issued by governments are absolutely required. In addition, the Committee has consistently

¹⁶ Draft International Covenants on Human Rights: Report of the Third Committee, A/5365,(17 December 1962).

¹⁷ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted 18 Dec. 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess. Supp. No. 46, U.N. Doc. A/34/36 (1980) (entered into force 3 Sept. 1981), Article 1.

¹⁸ See Maastricht Guidelines on Violations of Economic, Social, and Cultural Rights, 20 H.R.Q 691-705 (1998) (Maastricht Guidelines). Guideline 12 specifically states that discrimination against women with respect to the rights recognized in the Covenant is understood in light of the standard of equality for women under CEDAW. The standard requires the elimination of all forms of discrimination against women including sex discrimination arising out of social, cultural and other structural disadvantages. This expands upon Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights. adopted 8 Jan 1987, U.N. ESCOR, Commission on Human Rights, 43d Session, Agenda Item 8, U.N. Doc. E/CN.4/1987/17/Annex. Reprinted in 9 Human Rights Quarterly 122 (1987) (Limburg Principles) para. 45.

indicated that formal measures relating to economic, social and cultural rights are insufficient to meet States parties' obligations. States are responsible to address the structural issues that affect implementation and outcomes—the issues that result in *de facto* or substantive discrimination with respect to enjoyment of economic, social, and cultural rights.

De facto discrimination on the basis of sex may result from the differential treatment of women because of their biology, such as refusal to hire women because they could become pregnant, or from gender-based stereotypical assumptions, such as tracking women into low-level jobs on the assumption that they are less likely than men to have appropriate qualifications, dedication and skills.

Gender refers to cultural expectations and assumptions about the behavior, attitudes, personality traits, and physical and intellectual capacities of men and women, based solely on their identity as men or women. Gender-based assumptions and expectations generally result in discrimination and frequently place women at a disadvantage with respect to substantive enjoyment of rights.

Sex discrimination may be compounded by discrimination on the basis of other characteristics, such as age, race or ethnicity, religion, refugee or migrant status, disability, socio-economic class, marital status, or health status. The Committee on the Elimination of Racial Discrimination has drawn attention to the compounded disadvantages that discrimination on the basis of race and sex may have on women and girls in its General Recommendation on this issue.¹⁰

Implementation measures that may be examined include allocation of resources, establishment of properly resourced and trained administrative and delivery systems such as schools, courts, clinics, and state offices, monitoring content and quality of training and education, and provision of adequate transportation and physical access to institutions. In addition, discriminatory cultural practices must be identified and every effort made to abolish them.¹⁹

States parties may adopt temporary special measures to accelerate the elimination of *de facto* discrimination.²⁰ Such measures should not be considered discriminatory in themselves as they are grounded in the State's obligation to eliminate disadvantage caused by deeply seated past and current discriminatory attitudes and practices. States should consider that such measures should remain in place until the results of discrimination are eliminated, and that this period could be for a considerable length of time. While temporary special measures are not mandatory, they should be considered as a fundamental and powerful instrument to eliminate discrimination. General Recommendation No. 25 of the Committee on the Elimination of Discrimination against Women²¹ may be consulted in considering the issues relating to temporary special

¹⁰ Committee on the Elimination of Racial Discrimination, General Recommendation 25, *Gender Related Dimensions of Racial Discrimination* (2000).

¹⁹ CEDAW Art 5.

²⁰ Limburg Principles, par. 39.

²¹ CEDAW General Recommendation No. 25 (2004).

measures.

The elimination of discrimination with respect to promotion and protection of economic, social and cultural rights is mandatory, immediately applicable, and not subject to the principle of progressive realization that applies to other articles in the Covenant.¹³ The mandatory language expresses the fundamental recognition of the full human capacity to exercise and claim rights without limitations based on sex, gender roles, or other biological, belief, or identity factors.

Article 2(3)

In general, the economic, social and cultural rights embodied in the Covenant apply to both nationals and non-nationals, i.e., non-citizens, of States. Article 2(3) provides a very limited exception, applicable only to developing countries and only in relation to economic rights.²²

Questions to ask:

1. Has the State publicized its plans for full implementation of economic, social and cultural rights? Are the enumerated steps deliberate, concrete and targeted?
2. Does legislation aimed at realization of the rights recognized in the Covenant create any right of action by or on behalf of individuals or groups who feel that their rights are not being fully realized? Does the State provide adequate, accessible venues for claiming rights? Are women able to access those venues?
3. Does the Constitution include a guarantee of non-discrimination? If not, has effort been taken to amend the Constitution to include such a guarantee?
4. Has the State enacted legislative measures aimed at eliminating discrimination in enjoyment of economic, social and cultural rights? Do any existing laws create obstacles to the realization of women's economic, social and cultural rights?
5. Are there laws or policy statements that define discrimination against women? Do they include in their definition any act that causes, or results in, a difference of the treatment of women in comparison to men?
6. Does the legal definition of discrimination encompass discrimination against women by private institutions and individuals?
7. Do any policies or practices of government and other public institutions discriminate against women? Do any laws explicitly or implicitly discriminate against women?

¹³ CESCR, General Comment No. 3, *The Nature of States Parties Obligations* (art. 2(1) (1990)

²² Limburg Principle para. 44.

8. *Have any laws, regulations, or policies been promulgated that regulate the conduct of official institutions, public authorities, and public officials towards women? Do such laws extend to private persons, organizations, or enterprises?*
9. Do cultural, religious, or other social expectations and practices result in discrimination against women with respect to Covenant rights?
10. Do sex disaggregated data show that women are excluded or treated differently from men in relation to the rights recognized in the Covenant? This examination should include data on budget allocations and other prescriptive measures as well as indicators of results such as comparative figures on health, education, employment etc.
11. Has the State attempted to address through legislation or other programs the modification of customs or traditional practices that result in discrimination against women or perpetuate such discrimination, including violence against women? What measures have been taken to change social and cultural patterns that lead to stereotyping or reinforcing the idea of the inferiority of women? What are the impediments or obstacles to eliminating these customs, traditions, or beliefs?
12. Has the State adopted any temporary special measures aimed at accelerating the elimination of *de facto* discrimination? Is there any law or policy relating to the legality or appropriateness of the State or private enterprise adopting such measures?
13. Do programs exist to educate students and the general public about women's human rights? Do such programs exist to raise awareness about violence against women as a problem? If so, to what extent do the media contribute to such programs?

ARTICLE 3

Equality Between Men and Women

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Comment:

Article 3 provides for equality between men and women in the enjoyment of all the rights stated in the Covenant. This provision derives directly from the language of the Article 2 of the Universal Declaration of Human Rights, and is the same as that of Article 3 of the International Covenant on Civil and Political Rights.

The drafting body debated at length the inclusion of this specific reference to equality in view of the nondiscrimination provision of Article 2.2. Acknowledging the persistence of “prejudices preventing its full application,” the drafters noted that the prohibition of discrimination was not enough to guarantee equality in enjoyment of rights. They firmly stated that “suitable measures should be taken to ensure that women had the opportunity to exercise their rights” and saw the language of Article 3 as underscoring the unequivocal nature of the equality guarantee.²³

Article 3 is of immediate and mandatory application and is not subject to the principle of progressive realization. States parties may not suggest that equality is a matter that may be addressed after they have dealt generally with implementation of substantive rights. They must indicate the actions they have taken to provide for equality as to each of the rights stated in Covenant Articles 6-15, as integral to their efforts to implement those rights. While culture, tradition, and lack of resources might be cited as obstacles to equality, they are not an excuse, and States parties must indicate efforts to deal with them.

The term “enjoyment” of rights must be understood as contextual and substantive. While formal mandates relating to equality—constitutional provisions, laws, policy statements, and subsidiary regulations—are required, States parties must also attend to the structural and cultural issues that affect implementation and outcomes of formal policies. They also must attend to issues in exercising rights, such as freedom to express them in public and in private, the ability to claim them in an adequate and accessible forum, and provision of remedies for denial or violation.

Certain provisions of the CEDAW Convention may be helpful in analyzing these issues, particularly Articles 1 (definition of discrimination), Article 4 (temporary special measures to accelerate equality), Article 5 (relating to custom, tradition, and stereotyping

²³ Draft International Covenants on Human Rights: Report of the Third Committee, A/5365,(17 December 1962).

that constitute obstacles to the elimination of discrimination), and General Recommendation No. 25 (temporary special measures to accelerate the elimination of *de facto* discrimination). With respect to the substantive articles of the Covenant, Articles 6-16 of the CEDAW Convention and related General Recommendations also can be illuminating.

Women's enjoyment of human rights is deeply affected by the cultural construct of gender. Gender-based assumptions and expectations generally place women at a disadvantage with respect to substantive enjoyment of rights, such as freedom to act and to be recognized as autonomous, fully capable adults, to participate fully in economic, political and social development, and to make decisions concerning their circumstances and conditions. Gender-based assumptions about economic, social and cultural roles preclude the sharing of responsibility in all spheres that is necessary to equality. States parties must indicate their efforts to deal directly with the limitations on women's exercise of human rights as a result of gendered roles and expectations. They must address gendered social and cultural assumptions, provide for equality in the allocation of resources, and promote sharing of responsibilities in the family, the community, and in public life.

Violence against women prevents them from enjoying economic, social and cultural rights on an equal basis with men. While violence in the home or family setting is generally thought to be the most common, women and girls experience various forms of violence in public, in the workplace, and in educational institutions. States parties must address all these forms of violence to meet their obligations under the various articles of the Covenant.

Questions to ask:

1. Does the constitution include a guarantee of equality between women and men in the protection and enjoyment of human rights?
2. Do the existing laws, regulations, and administrative policies ensure equal opportunity and access to women to each of the rights stated in Articles 6-15? Do women have the same access as men, in law and in fact, to the political process, social services, social security, health and medical care, education, literacy programs, employment, and property ownership?? What are the practical obstacles that prevent women from the full exercise of the human rights contained in the Covenant on a basis equal to that exercised by men?
3. Have any laws been enacted, or policy measures taken, that affect the status of women with regard to participation in social, economic, and cultural life? Have women effectively participated in the formulation of such laws or policies? Are these laws and policies being implemented?
4. Is there an official policy aimed at advancing the *de facto* equality of women? If so, what steps have been taken to implement this policy? Have any laws been enacted to implement such a policy? How effective has the implementation been? How is the public informed of the policy and its implementation?

5. What entity is responsible for promoting and monitoring implementation of women's economic, social and cultural rights? If a state machinery (such as a ministry, department, ombud) is responsible, what is its role? Its level of power in relation to other elements of the government? Its funding level? Its long-term sustainability?
6. Do women have the freedom to express or exercise their rights in public and in private? Identify any obstacles to women's ability to exercise the rights enumerated in the Covenant. What efforts has the State taken to ensure women freedom to exercise their economic, social and cultural rights? How effective have those efforts been?
7. What limitations exist, whether by law, regulation, custom, traditional beliefs or social norms, that prevent or inhibit women from exercising fully the rights contained in the Covenant? What measures has the State taken to deal with the limitations on women's exercise of these rights as a result of law, gendered roles or assumptions? How effective have those measures been?
8. To what extent are women or women's organizations actively involved in policymaking? Do mechanisms exist to encourage or ensure such involvement? What measures have been taken to ensure that women participate in the design, planning, and implementation of development planning at all levels?
9. Do women have the right and the opportunity to represent the State on an international level in matters relating to economic, social and cultural rights and to participate in the work of international organizations on equal terms with men?
10. Has the State enacted laws, regulations or policy to address violence against women? Describe their effectiveness.

ARTICLE 4

Limitations on the Enjoyment of Rights

The States Parties to the Present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Comment:

Article 4 governs the ability of States to impose restrictions on the rights protected under the Covenant. It is applicable to all substantive rights contained in Part III of the Covenant, which means that every restriction on the enjoyment of rights protected by Articles 6 through 15 must meet Article 4 requirements. Article 4 requires that any State-imposed restriction meet four conditions: the restriction must be determined by law; it must be compatible with the nature of the Covenant's rights; it must be strictly necessary for promoting the general welfare; and in a democratic society.

According to the Limburg Principles, the "determined by law" clause requires that any limitation on the exercise of economic, social or cultural rights be pursuant to a national law of general application.²⁴ The law must be consistent with the Covenant and, according to General Comment 14, in accordance with international human rights standards in general.²⁵ Laws imposing restrictions should not be arbitrary, unreasonable or discriminatory.²⁶ They should be clear and accessible to everyone,²⁷ and in force at the time any restriction on Covenant rights is applied.²⁸ Before such a restriction is applied or even provided for by law, States must have adequate legal safeguards and effective remedies in place to prevent an illegal or abusive imposition of limitations on economic, social and cultural rights.

The restriction "compatible with the nature of these rights" requires that a limitation shall not be interpreted or applied so as to jeopardize the essence of a particular right.²⁹ In some cases, the Committee has established minimum or core obligations associated with individual rights. For example, General Comment 14 provides a list of core obligations under Article 12, which ensures the right to health. Where the Committee has not outlined minimum or core obligations, reporting parties might look for *de facto* limitation of economic, social and cultural rights. For example, if individuals must meet excessive

²⁴ Limburg Principle para. 48.

²⁵ General Comment 14, para. 28.

²⁶ Limburg Principle para. 49.

²⁷ Limburg Principle para. 50.

²⁸ Limburg Principle para. 48.

²⁹ Limburg Principle para. 56.

requirements to obtain access to education, health services, or basic social services, a *de facto* limitation may have occurred – resulting in a restriction incompatible with the nature of the Covenant’s rights.

The third requirement, that any restriction be for the purpose of “promoting the general welfare,” should be construed to mean that restrictions must further the well-being of the people as a whole.³⁰

Fourth, States Parties have the burden of proving that any restrictions on economic, social, and cultural rights do not impair the democratic functioning of society.³¹ While there is no single model of a democratic society, the Committee would look for recognition and respect for human rights as set forth in the UN Charter and Universal Declaration of Human Rights.³²

Applying Article 4 to women’s human rights specifically, restrictions on women’s ability to work, attend school, access health care, participate in the national economy, or exercise any of the other rights protected by Articles 6 through 15 are in violation of Article 4 unless State parties can show that the four conditions are met. Such limitations must be justified by evidence that they are legally established, compatible with the nature of the Covenant’s rights, proportional, and designed to further the general welfare.

Questions to ask:

1. Does the State in any way restrict women’s ability to exercise the economic, social, and cultural rights protected under Articles 6 through 15? If so, has the State met its affirmative obligation to justify such limitation? Has the State met the four conditions prescribed by Article 4?
2. Are limitations on women’s economic, social, and cultural rights pursuant to a national law of general application? Is such law of general application in accordance with international human rights standards in general? Is the law arbitrary, discriminatory, or unreasonable in any way? Is the law written in clear language, accessible to everyone? Was the law in force at the time the limitation was applied?
3. Are there effective legal safeguards and remedies in place to prevent abuse of the limitation?
4. Does the limitation jeopardize the essence of a particular right? For example, if the State imposes a limit on women’s access to health care, can the State still meet the core obligations outlined in General Comment 14?
5. Does the limitation further the well being of the people as a whole? For example,

³⁰ Limburg Principle [para. 52.

³¹ Limburg Principle para. 54.

³² Limburg Principle para. 55.

blanket justifications citing national security or preservation of public order are insufficient unless truly benefiting the general welfare of members of society.

6. Is the limitation, in application and practice, proportional to the aim sought?
7. Does the limitation comply with the anti-discrimination principle embodied by Article 2(2) and Article 3?

ARTICLE 5

Prohibition to Destroy Rights or Freedoms

1. *Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.*
2. *No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.*

Comment:

Article 5 is comprised of two rules: 5(1) prohibits the abuse of rights protected by the Covenant, and 5(2) provides a “savings clause” to guide States’ application of the Covenant in conjunction with other bilateral or multilateral treaties, as well as domestic law. Overall, Article 5 emphasizes the protective character of the Covenant and limits States’ ability to impose limitations on the exercise of the Covenant’s rights – much like Article 4.³³

Article 5(1) prohibits States, individuals or groups from engaging in activities or performing acts aimed at destroying any of the rights or freedoms protected by the Covenant, or, imposing limitations beyond those specifically provided for by law.³⁴ It works in tandem with Article 4 to ensure that limitations to Covenant rights are allowed only to the extent specifically provided??? by law. Limitations are properly provided by law if they meet each Article 4 requirement, or if explicitly allowed by the Covenant. For example, Article 8(2) provides for a narrow restriction on the exercise of union rights. The Limburg Principles make clear, however, that there is “no general, implied or residual right for a state to impose limitations....”³⁵ Any limitation must be specifically (not implicitly) envisaged by the Covenant.

Article 5(2) indicates that when States are parties to more than one instrument concerning economic, social, and cultural rights, the rights most favorable to the individual should prevail. According to the Limburg Principles, “[t]he purpose of article 5(2) is to ensure that no provision of the Covenant shall be interpreted to prejudice the provisions of domestic law or any bilateral or multilateral treaties, conventions or agreements which are already in force, or may come into force, under which more favorable treatment would be accorded to the persons protected.”³⁶ The principle that the higher (and

³³ Magdalena Sepulveda, *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* 303 (2003).

³⁴ Limburg Principle para. 57

³⁵ Limburg Principle para. 57

³⁶ Limburg Principle para. 58.

broader) standard of protection must apply is also recognized in Article 5(2) of the International Covenant of Civil and Political Rights

Questions to ask:

1. Is a State party, or any person or group acting or engaging in an activity with the *aim* of limiting economic, social or cultural rights? If so, is such limitation licensed by Article 4 or any other provision of the Covenant?
2. Has the State party passed or ratified other laws or treaties that also address economic, social and cultural rights? If so, the State is obligated to apply the highest and broadest standard of protection in every case. Is there evidence that the State has violated Article 5(2) by failing to apply the higher standard?

ARTICLE 6

The Right to Work

- 1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*
- 2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programs, 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.*

Comment:

Article 6 guarantees the right of everyone to work. It requires the State to take appropriate steps to safeguard that right. Article 6(1) emphasizes the right to enter into freely chosen employment and the right not to be unjustly deprived of work. It also implies the right to be free from forced labor. Article 6(2) requires the government to take specific steps to ensure realization of the right to work, including implementation of necessary policies and introduction of educational and vocational programs. Article 6 often is applied with reference to other relevant United Nations treaties and with standards identified in the International Labor Organization conventions.

Article 6 implicitly acknowledges that work is essential to physical survival and its profound significance to individual identity.

Article 6 must be read together with Article 2(2) prohibiting discrimination on the basis of sex and with Article 3's guarantee of equality. This requires the State to abolish laws, regulations, and cultural or religious practices or attitudes that restrict the types of work in which women may engage, women's freedom of movement, and any gender-based workplace discrimination, harassment, or violence that preclude women from exercising their right to work on a basis equal to that of men. It also requires the State to adopt and implement legislation to ensure that women and men have equal access to jobs and occupations and to vocational training and guidance in both the public and private sectors. Monitoring and reporting under Article 6 thus should include sex-disaggregated data relating to unemployment levels among women and men, discrimination in employment recruitment and dismissal, equality of opportunity for vocational training and education, and employment security.⁴

Many factors specific to women have a direct impact on women's enjoyment of Article 6 rights. For example, unemployment and under-employment increase opportunities for

⁴ General Comment No. 1 (1989).

trafficking in women for prostitution, sex tourism, and exploitive domestic labor. Trafficking in women violates women's fundamental human rights, including the requirement of Article 6(1) that women be accorded the right to freely choose their employment. Traditional attitudes by which women are regarded as subordinate to men or as having stereotypical roles perpetuate widespread practices involving violence, discrimination, and sexual harassment in the workplace. Women's right to work is often further limited by customary restrictions on their freedom of movement outside the home or by practical issues such as fear of violence in public spaces, including public transportation.

The Committee has recognized that disabled, retired, and rural women, and women who are racial and ethnic minorities or immigrants, are particularly vulnerable to violations of the right to work.⁶ Their working status must be carefully monitored and any artificial barriers to work opportunities must be removed. Women also predominate in the informal sector in many countries, in occupations such as agricultural work, street-vending, domestic work, and food preparation. These jobs often are characterized by limited and insecure employment opportunities and poor work conditions and must be monitored closely. The Committee also has emphasized that particular attention must be paid to monitoring the right to work where a government privatizes basic services and opens the economy to market forces and non-governmental actors.⁷

The Committee has recognized that women in many countries face both legal and customary obstacles that affect their right to work. The Committee has noted with concern State constitutions that fail to address labor rights⁸; States in which women are disproportionately affected by unemployment and where the State has failed to take concrete action to discourage discriminatory dismissal or hiring on the basis of sex or to provide meaningful remedies to the victims of such discrimination⁹; the under-representation of women employed in the formal sector¹⁰ and in public service, including Parliament and other governmental decision-making bodies¹¹; lower mandatory retirement ages for women, which the Committee has noted results in lower pensions for women¹²; and, the failure of States to eradicate discriminatory practices, including restrictions on access to land, property and credit, that hinder women's efforts to enter

⁶ See, for example, General Comment No. 5, paras. 20 – 22, Eleventh Session (1994) (right to work of persons with disabilities); General Comment No. 6, para. 22, Thirteenth Session (1995) (right to work of older persons).

⁷ *Fact Sheet No. 16 (rev.1)*, The Committee on Economic, Social and Cultural Rights, available at www.unhcr.ch/html/menu6/2fs16.htm

⁸ Concluding Observations of the CESCR: Peru. 16/05/1997. E/C.12/1/Add.14.

⁹ Concluding Observations of the CESCR: Russia. 20/05/1997. E/C.12/1/Add.13; Georgia. 17/05/2000. E/C.12/1/Add.12; Senegal.24/09/2001. E/C.12/1/Add.62; Solomon Islands. 19/12/2002. E/C.12/1/Add.84; Luxembourg.23/05/2003. E/C.12/1/Add.86; Moldova. 12/12/2003. E/C.12/1/Add.91; Russian Federation. 12/12/2003. E/C.12/1/Add.94.

¹⁰ Concluding Observations of the CESCR: Congo. 23/05/2000. E/C.12/1/Add.45.

¹¹ Concluding Observations of the CESCR: Georgia. 17/05/2000. E/C.12/1/Add.12; Solomon Islands. 19/12/2002. E/C.12/1/Add.84; Yemen. 12/12/2003. E/C.12/1/Add.92; Guatemala.12/12/2003. E/C.12/1/Add.93; Spain. 07/06/04. E/C.12/1/Add.99.

¹² Concluding Observations of the CESCR: Poland. 19/12/2002. E/C.12/1/Add.82.

into business.¹³ In addition, the Committee has recommended that States create and/or implement national plans of action to eliminate inequalities faced by women in the economic sphere and to undertake national job creation programs and vocational training programs for women.

Questions to ask:

1. Do distinctions exist between women and men in recruitment and employment practices? If so, what are they?
2. What laws or other measures exist to prohibit discrimination against women in employment, employment recruitment, and employment termination? Are these provisions enforced? How?
3. What laws or other measures exist to prohibit discrimination against the disabled, racial or ethnic minorities, immigrants or older workers in employment, employment recruitment, or employment termination? Are these provisions enforced? How? Can women use them in conjunction with claims based on sex discrimination?
4. What percentage of women with disabilities work in the waged labor force?
5. What percentage of women who are racial or ethnic minorities or immigrants work in the waged labor force? Do they work predominantly in particular employment sectors? How do pay scales compare with other sectors?
6. What percentage of women of retirement age work? What are the main reasons for their continued employment?
7. What legislative or other measures have been taken to promote equal employment opportunities for women and men? Are these provisions effective?
8. What percentage of the total waged labor force are women? Of the total waged workforce between the ages of 15-24? Ages 25-44? Ages 45 and older?
9. Of the women in the waged labor force, what percentage are part-time workers? What percentage are full-time workers? What percentage of part-time and full-time workers overall are women?
10. Are there professions or employment sectors that, by law or custom, tend to be filled predominantly by women? What are they? Are there professions or employment sectors that, by law or custom, tend to be filled predominantly by men? What are they? Are female-dominated professions or employment sectors less lucrative than male-dominated sectors?
11. Does the government ensure that opportunities exist for women in occupations that are not traditionally pursued by or open to women?
12. Are women encouraged to take up apprenticeships or training in fields not usually pursued by women?
13. Do women predominantly fill jobs in the informal economy?

¹³ Concluding Observations of the CESCR: Senegal. 24/09/2001. E/C.12/1/Add.62.

14. Are women prohibited or restricted by law or by custom from engaging in particular forms of work, such as night work, sweatshop work, factory work, underground and mine work or work in particular industries? If so, on what basis are women restricted from participating? What effect do such restrictions have on women's economic opportunities?
15. Identify the nature and extent of the attitudes, customs, practices and/or laws that perpetuate prejudices or practices that subordinate women to men or that stereotype roles for men and women in the workplace. Identify the measures undertaken by the government to change these attitudes and practices.
16. Has the government introduced education and public information programs to help eliminate prejudices that hinder women's right to freely choose an occupation? How effective have those programs been?
17. Identify *laws* that inhibit women's freedom of movement within society and describe how they inhibit their choices of occupation and place of employment.
18. Identify *practices* that inhibit women's freedom of movement within society. Describe measures taken to change the practices and ensure women's freedom of movement. Describe specific measures taken to overcome limitations on women's freedom of movement.
19. Do women have economic and legal access to the input needed to start up or engage in business? For example, can women obtain credit, own land, or equipment, obtain transportation, or travel freely? Describe any legal or cultural obstacles.

ARTICLE 7

The Right to Just and Favorable Conditions of Work

The States Parties to the present Covenant recognize the right to the enjoyment of just and favorable conditions of work which ensure in particular:

(a) Remuneration, which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Comment:

Article 7 requires States to guarantee just and favorable working conditions, including minimum pay for work that is sufficient to guarantee a decent living. It requires a State to adopt national policies and laws to achieve these ends. In particular, a State must establish a minimum standard for working conditions for all workers and develop appropriate enforcement measures.³⁸ Article 7 relates closely to a number of International Labor Organization (ILO) treaties, including the Minimum Wage Fixing Convention (No. 131, 1970) and the Equal Remuneration Convention (No. 100, 1951).

Article 7(a) establishes the right to a fair and equitable minimum wage for employment, sufficient to provide a decent living for the worker and his or her family. It explicitly guarantees to women two specific rights: working conditions that are not inferior to those enjoyed by men, including equal pay for equal work and equal pay for work of equal value, also known as pay equity. Pay equity requires valuation of the skills and tasks required to perform particular jobs and comparing the skill levels and required tasks for female-dominated jobs with those that are male-dominated, with a view toward equalizing pay based on comparable required competences and performance requirements.

Article 7(b) requires that working conditions meet minimum standards of occupational health and safety. States must adopt laws and policies that establish basic labor standards to protect health and safety and that prohibit sexual harassment and violence against

³⁸ CESCR, Fact Sheet No. 16.

women in the workplace. In addition, safe working conditions for pregnant women, nursing mothers, older women, and women with disabilities should be encouraged.³

Article 7(c) establishes the right to equal opportunity for promotion with no consideration other than those of seniority and competence. States must guarantee women the same employment promotion opportunities as men both by dismantling discriminatory employment laws and practices and by ensuring women are provided with the *same de facto* opportunities as men. They must require equal opportunity to education and re-education, training and re-training, mentoring, and gender-neutral job evaluation systems. In addition, discrimination in promotion based upon marital status, pregnancy, or maternity must be prohibited.

Article 7(d) establishes the right to rest and holidays. Attention must be given to the number of hours worked per day, the number of days worked per week and per year, vacation time, and time off for health or family reasons. States must establish minimum standards and develop enforcement measures guaranteeing the enjoyment of these rights. Monitoring the implementation of these rights is particularly important in sectors where women may predominate, such as domestic work, factory work, and agricultural work. Women working in the informal economy present a particularly difficult issues as to holidays and working conditions, as they may be excluded from regulation, monitoring and enforcement efforts.

Gender relations within the household have a significant impact on women's status in the workplace. Unequal distribution of resources and labor in the household perpetuates marginalization in unwaged or low-waged occupations. Traditional gender roles may preclude women from seeking work outside the home, either through explicit prohibition or by requiring them to devote all their labor to maintaining the household and failing to support male sharing of household responsibilities.

The Committee has addressed a number of issues relating to conditions of work for women. The Committee has noted that the absence of laws requiring employers to pay equal remuneration for work of equal value disproportionately impacts women.⁶ Moreover, despite laws endorsing the principle of equal pay for equal work, women face discriminatory promotion patterns and wage gaps relative to men.⁷ The Committee is concerned about the gap in wages between men and women even if they perform the same work under the same conditions and has recommended that the States take action to remedy wage differences.⁸

The Committee has expressed concern about situations where women workers do not earn the minimum wage fixed by law, especially where the minimum wage fixed by law

³ General Comment No. 5, para. 25, Eleventh Session (1994); General Comment No. 6, paras. 23, 24, Thirteenth Session (1995).

⁶ Concluding Observations of the CESCR: Canada.10/10/98. E/C.12/1/Add.31.

⁷ Concluding Observations of the CESCR: Congo. 23/05/2000. E/C.12/1/Add.45; Poland. 19/12/2002. E/C.12/1/Add.82; Germany. 24/09/2001. E/C.12/1/Add.68; Yemen.12/12/03. E/C.12/1/Add.92.

⁸ Concluding Observations of the CESCR: Luxembourg. 23/05/2003. E/C.12/1/Add.86; Sweden. 30/11/2001. E/C.12/1/Add.70.

is lower than the cost of a basic shopping basket of food;⁹ where women working in rural areas are especially disadvantaged by unequal education, employment conditions and unequal wages;¹⁰ where States provide no specific regulations against sexual harassment in the workplace, including the failure to take effective measures to combat it;¹¹ where the State has failed to take action to improve working conditions for women, including abolishing laws that limit women's freedom of movement;¹² where the State has failed to take appropriate measures to protect the rights of domestic workers, most of whom are women and girls, especially with respect to unfavorable working conditions and wages;¹³ where the State has failed to address the shortage of child day care facilities, which is seen as an impediment to women's engagement in the workplace;¹⁴ and where the State has failed to ratify most of the main ILO Conventions relating to worker rights and working conditions.¹⁵

Questions to ask:

1. Are women entitled by law to receive equal pay for equal work or work of the same value as that performed by men? Has the State identified and eliminated the underlying causes of pay differentials (such as gender-biased job evaluation or the perception that men are more productive than women)? What is the ratio of women's wages to men's? What means are available to challenge discrimination in pay?
2. Has the State enacted the requisite legal framework to ensure application of the principle of equal pay for work of equal value (pay equity)? How are jobs and work evaluated for purposes of pay equity? Are the results of pay equity studies made available to the public? Are they included in labor negotiations?
3. Has the State enacted a legal framework prohibiting discrimination in effect (indirect discrimination)—resulting from practices that appear nondiscriminatory but in context have a discriminatory effect?
4. Are there laws that mandate nondiscrimination in employment recruiting, hiring, and promotions? Are these laws enforced? How effective are they?
5. Do labor agreements require that organizations provide for equal advancement for women and men? Do agreements provide for equal pay and benefits? Do agreements contain protections for the health of pregnant women? Do agreements provide the same rights to men and women?

⁹ Concluding Observations of the CESCR: Peru. 16/05/1997. E/C.12/1/Add.14; Gambia. 31/05/94. E/C.12/1/Add.9.

¹⁰ Concluding Observations of the CESCR: Congo. 23/05/2000. E/C.12/1/Add.45.

¹¹ Concluding Observations of the CESCR: Poland. 19/12/2002. E/C.12/1/Add.82; Guatemala.12/12/2003. E/C.12/1/Add.93; Russian Federation. 12/12/2003. E/C.12/1/Add.94.

¹² Concluding Observations of the CESCR: Russian Federation. 12/12/2003. E/C.12/1/Add.94; Sudan. 01/09/2000. E/C.12/1/Add.48.

¹³ Concluding Observations of the CESCR: Senegal. 24/09/2001. E/C.12/1/Add.62.

¹⁴ Concluding Observations of the CESCR: Germany.24/09/2001. E/C.12/1/Add.68.

¹⁵ Concluding Observations of the CESCR: Solomon Islands.19/12/2002. E/C.12/1/Add.84.

6. What work-related benefits are available to workers generally? Do women receive work related benefits such as holiday pay, sick leave, job training or retraining, disability, and old age or pension benefits on a basis equal to that provided to men?
7. Has the State established requirements for the maximum hours of work (hours per day, days per week or per year)? Do these requirements apply equally to women and men? Do these requirements apply in sectors where women predominate, including, domestic work, factory work, agricultural work, and the informal economy? What enforcement mechanisms exist to ensure these requirements are met by public and private employers? Are they effective?
8. Is work done by women in the home assigned a monetary value and included in national statistics (calculation of GDP/GNP)? Is unpaid agricultural work counted as part of the country's gross national product? Does unpaid work in the home and agriculture count towards eligibility for retirement and other work-related benefits?
9. Are there industries in which women perform piecework or outwork in their homes? What is the proportion of women employed in this work? Are there regulations that affect such work? Are such workers entitled to benefits, for example, sick leave, and holiday pay?
10. What is the mandatory retirement age for men and for women? What is the voluntary retirement age for men and for women? Do men and women have equal work-related pension and social security benefits?
11. Is employment security affected by pregnancy or marital status? If so, how? Does legislation ensure that women who are married, pregnant, or on maternity leave are not subject to dismissal? How frequently do such dismissals occur? Does the State deal with them effectively?
12. What provision is made for parental leave? Is it equal for women and men? What are the provisions for pay during leave? If the provisions are equal, do men take such leave and how do the State and employers encourage men to take parental leave?
13. Describe workplace health and safety laws and regulations. Do they cover men and women equally? Are women provided by law with special protection during pregnancy in types of work proven to be harmful to them? What sort of work is regarded as being particularly harmful?
14. Are adequate facilities for child care provided or supported by the State? Do parents have to pay in whole or in part for child care?
15. Are nursing breaks for breastfeeding mothers required by law? In practice, are they provided? In practice, do women take advantage of them?
16. Do safe and healthy working conditions exist in industries where women predominate? Do special measures exist to protect older people or people with disabilities? Do those measures apply equally to women and men?

17. To what extent does sexual harassment in the workplace occur? What measures have been taken to address sexual harassment and violence against women in the workplace, including laws, regulations, enforcement mechanisms, training programs, employment opportunities, and the monitoring of employment conditions.

ARTICLE 8

The Right to Form and Join Trade Unions

1. *The States Parties to the present Covenant undertake to ensure:*

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. *This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.*

3. *Nothing in this article shall authorize States Parties to the International Labor Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.*

Comment:

Article 8 obligates States to implement the fundamental human right of workers to form and join trade unions. At the same time, it provides a person with the right not to join a particular trade union. The right to collective bargaining, the right to protection from dissolution or suspension, and the right to strike also are protected. These rights relate closely to the right to freedom of association, a principle recognized throughout international human rights law.

States are allowed some measure of discretion concerning national security and the rights of freedom of others. However, any limitation on the right to form and join a trade union must, in fact, be necessary (it responds to a pressing social need, pursues a legitimate aim, and is proportional to that aim), and, be established by a law that is not arbitrary,

unreasonable, or discriminatory.³⁹ States may not invoke national security or a low level of economic development to prevent trade unionism.

States must closely monitor economic sectors where women predominate to ensure the implementation of the rights provided for in Article 8. These sectors include domestic workers, agricultural work, home-based work, female-dominated industries, and the informal sector. For example, domestic work, which is largely done by women, is often characterized by biases based on nationality, race, and class. It is notorious for preventing collective bargaining and the formation of trade unions. Domestic workers often are prevented from leaving their place of work unless authorized by the employer. This can prevent the establishment of relationships outside the household, including the formation or joining of trade unions.

States should ensure women the right to participation in public life. The extent to which women are allowed to participate in public life determines their ability to form and join trade unions.

The Committee has expressed concern over constitutional prohibitions of union membership by workers employed in women-dominated sectors, such as public servants, teachers, and nurses, and over permission for arrest of striking workers.⁴ It also has expressed concern where existing labor legislation is ineffective in protecting unionization and the rights of unionized workers, including the right to strike.⁵

Questions to ask:

1. What percentage of the work force is unionized? Are trade unions more prevalent in certain sectors? Are persons with disabilities and older workers unionized? Identify those sectors where trade unions are not prevalent. Are any of these sectors women-dominated?
2. Do laws or regulations exist that prohibit workers in certain sectors from joining unions? Do those laws apply equally to male- and female-dominated work sectors?
3. Are workers in women-dominated economic sectors afforded the same rights to organize as those in male-dominated sectors?
4. What percentage of women in the workforce is unionized? What legal or cultural barriers exist that prevent or hinder women from forming or joining trade unions and/or engaging in collective bargaining? Has the State taken measures to address these barriers? How effective have those measures been?

³⁹ Limburg Principles, paras. 48 – 51, 59 – 60, 9 Human Rights Quarterly 122 (1987).

⁴ Concluding Observations of the CESCR: Zimbabwe.20/05/1997. E/C.12/1/Add.12.

⁵ Concluding Observations of the CESCR: Peru. 16/05/1997. E/C.12/1/Add.14.

5. Are women in leadership positions in unions? Are women involved in bargaining and organizing?
- 6.. If a national labor council exists, are women represented on it?
7. Are workers in women-dominated economic sectors afforded the same rights to organize as those in male-dominated sectors?

ARTICLE 9

The Right to Social Security

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

Article 9 guarantees social security and social insurance to both men and women. The Committee has defined “social security” in General Comment No. 6 to cover “all the risks involved in the loss of means of subsistence beyond a person’s control.”⁴⁰ Article 9 requires States to offer security schemes in areas such as old-age insurance and benefits, disability benefits, survivors’ and orphans’ benefits, employment injury and occupational disease benefits, medical care and maternity benefits, unemployment benefits, and family benefits.

The Committee requires a State to take deliberate, concrete, and targeted steps toward the goal of achieving minimum essential levels of the right to social security and social insurance. This must be done to the maximum of the State’s available resources.² Thus, for example, a State is in violation of its Article 9 obligation if a significant number of women are deprived of essential food, shelter, and medical care that social security and social insurance could provide. Resource scarcity does not relieve a State from progressive realization of these minimum core obligations in implementing Article 9 rights.³

The Committee has addressed social security rights of persons with disabilities and older persons. In General Comment No. 5, the Committee stated that States must ensure provision of adequate income support to persons with disabilities, and it extended that requirement to cover persons (“who are overwhelmingly women”) who care for such persons.⁴ In General Comment No. 6, the Committee held that States must enact national laws to establish general regimes of compulsory old-age insurance, with a retirement age that is flexible, depending upon the occupation, working ability of elderly persons, and other demographic, economic, and social factors.⁵ Article 3 further requires that the compulsory retirement age for men and women be equalized and that women and men have equal access to all rights protected by Article 9.

The Committee monitors the level of social insurance coverage in the State’s population. The Committee has expressed concern that many States, especially developing countries, do not provide adequate social security and social insurance, or that they do not provide the same rights to social security and pension benefits for women as for men.⁷ This is of

⁴⁰ General Comment No. 6, para. 26, Thirteenth Session (1995).

² General Comment No. 3, paras. 2, 10, Fifth Session (1990).

³ General Comment No. 3, paras. 2, 10, Fifth Session (1990); Limburg Principles paras. 25-28; Maastricht Guidelines, paras. 9, 10 (1998); General Comment No. 6, para. 30, Thirteenth Session (1995).

⁴ General Comment No. 5, para. 28, Eleventh Session (1994).

⁵ General Comment No. 6, paras. 28-29, Thirteenth Session (1995).

⁷ Concluding Observations of the CESCR: Togo.09/05/2001. E/C.12/1/Add.61.

particular concern in situations where the State is transferring responsibility for these matters to the private sector.⁸ In addition, the Committee has urged States to take steps to reduce the high number of persons working in informal sectors with no social security benefits or to provide such workers with these benefits and ensure that the existing social security system includes all employees.⁹

Questions to ask:

1. Are women entitled to social security or social insurance on an equal basis with men? Are workers in the informal, temporary, part-time, or seasonal work force entitled to social security or social insurance? What impact do these policies have on women?
2. Has the State adopted a general regime of compulsory old-age insurance? Does the State provide non-contributory old-age benefits and other assistance for all persons, regardless of their sex, on attaining the retirement age specified in national legislation? Is the retirement age the same for women as for men? What is the policy concerning payments to women and men in view of their different life expectancies?
3. Do benefits based on the length of employment take into account time taken for pregnancy, childbirth, and/or child rearing? Are the benefits need-based? If so, how is need determined?
4. Are people not in the paid work force able to receive benefits based on a spouse's employment record? Does the law provide for survivors benefits?
5. Does the law provide for paid parental leave, family/medical leave? Does it provide for a paid leave for parenting or care of a sick relative? Does it provide equal leave for men and women?

⁸ Concluding Observations of the CESCR: Republic of Moldova. 12/12/2003. E/C. 12/1/Add.91.

⁹ Concluding Observations of the CESCR: Benin. 05/06/2002. E/C.12/1/Add.78.

ARTICLE 10

Protection of the Family and of Mothers and Children

The States Parties to the present Covenant recognize that:

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

Comment

Article 10 recognizes the family as the basic unit of society. Although it does not refer to any specific rights, it obligates States to provide special protection to families, women, and children. It seeks to ensure protection for women within marriage and before and after childbirth, as well as protecting children from exploitation in the workplace.

Protection of the family, however, may not be promoted at the expense of the human rights of individual family members.⁴¹ Article 10 also states the unequivocal right to be free from coerced marriage, a serious issue for some women.

Articles 10(1) and 10(3) require States to take action in the form of legal protection to ensure equality and equal access opportunity. They also require immediate

⁴¹ In all discussions of the family and women's roles and rights, it is important to bear in mind that the human rights articulated in all treaties must be seen as complementary, consistently derived from the language of the Universal Declaration of Human Rights. *See e.g.*, CEDAW Convention, Articles 5, 9, 15, 16; CEDAW General Recommendation 21 (nationality, legal capacity, marriage, and family law); International Covenant on Civil and Political Rights, Article 23; International Covenant on Civil and Political Rights, General Comment No. 28.

implementation and application.⁴² Article 10(2) mandates paid leave for women prior to and following childbirth. Although it may be subject to progressive implementation, the Committee has interpreted it to require States to provide adequate maternity benefits and to take steps make it easier for women to reconcile work and family life (e.g., providing adequate child care).⁴³

The Committee, in General Comment 5, stated that Article 10 applies equally to people with disabilities. Persons with disabilities must be permitted, if they wish, to live with their families, to marry, and to have their own families. Women with disabilities cannot be denied the opportunity to experience their sexuality, have sexual relationships, and experience parenthood. Sterilization or abortion cannot be performed on them as a result of their disability and without their prior consent.⁴⁴

The private sphere of marriage and family is an area where inequality between men and women is deeply entrenched. This inequality often results from traditional and customary attitudes that restrict women to particular roles. These attitudes and stereotypes are reinforced in many countries by discriminatory laws and/or the State's failure to address them effectively. The Committee has on numerous occasions raised issues under Article 10 concerning laws that discriminate against women, including the legal treatment of adultery,⁴⁵ divorce,⁴⁶ inheritance,⁴⁷ legal status,¹⁰ and nationality.¹¹

The Committee has addressed a number of other issues under this Article including polygamy, arranged or coerced marriages without the full and free consent of both parties, women's right to decide about the number and spacing of children, women's right to choice of profession or occupation, equal rights to management of marital property, equal rights to make decisions concerning the welfare of the children, and the

⁴² General Comment No. 3, para. 5, Fifth Session (1990); Mathew C. R. Craven, *The International Covenant on Economic, Social, and Cultural Rights: A Perspective on its Development* (Oxford: Clarendon Press, 1995), 158.

⁴³ Concluding Observations of the CESCR: Spain.07/06/2004.E/C.12/1/Add.99; Switzerland.07/12/1998.E/C.12/1/Add.30. Mathew C. R. Craven, *The International Covenant on Economic, Social, and Cultural Rights: A Perspective on its Development* (Oxford: Clarendon Press, 1995), 135.

⁴⁴ General Comment No. 5, paras. 30-32, Eleventh Session (1994).

⁴⁵ Concluding Observations of the CESCR: Congo.23/05/2000.E/C.12/1/Add.45.

⁴⁶ Concluding Observations of the CESCR: Egypt.23/05/2000.E/C.12/1/Add.44; Algeria.08/12/1995.E/C.12/1/Add.9; Philippines.07/06/1995.E/C.12/1/Add.7.

⁴⁷ Concluding Observations of the CESCR: Morocco.01/12/2000.E/C.12/1/Add.55; Iraq.12/12/1997.E/C.12/1/Add.17; Cameroon.08/12/1999.E/C.12/1/Add.40; Tunisia.14/05/1999.E/C.12/1/Add.36; Togo.09/05/2001.E/C.12/1/Add.61; Sri Lanka.16/06/1998.E/C.12/1/Add.24.

¹⁰ Concluding Observations of the CESCR: Benin.05/06/2002.E/C.12/1/Add.78; Sudan.01/09/2000.E/C.12/1/Add.48; Isreal.25/05/2003.E/C.12/1/Add.90 (court interpretation of personal status that discriminated against women).

¹¹ Concluding Observations of the CESCR: Cyprus.04/12/1998.E/C.12/1/Add.28; Egypt.23/05/2000.E/C.12/1/Add.44; Jordan.01/09/2000.E/C.12/1/Add.46; Poland.16/06/1998.E/C.12/1/Add.26; The Republic of Korea, 11/05/2001.E/C.12/1/Add.59.

right to travel without the husband's consent,¹²

The obligation to protect the family extends to protection of individuals within the family from violence perpetrated by other family or household members. Violence within the family tears the integrity of the family itself as well as violating the rights of the individual family members. States are obligated to ensure that all members of a family enjoy the fundamental human rights to security of person and bodily integrity in their home.

Specifically, a State is obligated to provide legal and infrastructure protections against violence within the family as well as to prosecute violators effectively. It must protect individuals from violence within the home—by persons whom they know—to the same extent to which they are required to protect from violence in the street—by strangers.¹³ According to the Declaration on the Elimination of Violence against Women,¹⁴ States are prohibited from invoking “any custom, tradition, or religious consideration to avoid their obligations” to eliminate violence against women. While the Declaration does not hold the legal status of a treaty and States parties to the Covenant are not bound directly by it, its language reflects an international consensus on these issues.

Questions to ask:

1. Is there a legislated minimum age of marriage? Of betrothal? Is it the same for men and women? Are there exceptions to the minimum age? If so, what are the exceptions? What percentage of girls are married below the age of 18? What percentage of boys?
2. Does law or custom allow third persons to enter into marriage on behalf of a woman or girl? On behalf of a man or boy? Do either or both of the parties have the right to reject the agreement? Can courts intervene? Do courts intervene? Do laws exist that ensure equality in the terms under which marriage is contracted?
3. Are marriages that are entered into by coercion or duress void or voidable by law or custom? How are these provisions enforced?
4. Do women and men have equal rights to ownership or management of marital property? Do married women retain rights to manage non-marital property?
5. Under what circumstances may a divorce take place? May a woman obtain a

¹² Concluding Observations of the CESCR: Zimbabwe. 20/5/1997.E/C.12/12/1/Add.12 (expressing concern about arranged marriages of children and forced marriage of widows to deceased's brother); Algeria. 30/11/2001.E/C.12/1/Add.71 (polygamy); Germany. 24/9/2001.E/C.12/1/Add.68 (sexual trafficking); Senegal. 24/09/2001.E/C.12/1/Add.62 (female genital mutilation); Gambia.31/05/1994.E/C.12/1/Add.9.

¹³ Concluding Observations of the CESCR: Ecuador.07/06/2004.E/C.12/1/Add.100 (noting State's failure to make domestic violence a criminal offense); Radhika Coomaraswamy, “Combating Domestic Violence and Boligatoin of the State,” 10, in *Domestic Violence against Women and Girls*, 6 *Innocenti Digest* (2000).

¹⁴ GA Res. 48/104 (1993).

divorce without her husband's consent? May a man obtain a divorce without a wife's consent? What are the economic and social consequences of divorce for women and for men?

6. Upon divorce, do women have the same rights as men to legal and physical custody of the minor children? What is the standard for determining custody upon divorce?
7. Is polygamy legal? What percentage of marriages are polygamous? Is a current wife's consent necessary for a husband to marry another wife? Are there provisions for equal maintenance among wives?
8. Where polygamy is not legal, or where individuals are required by law or custom to choose between monogamous and polygamous forms of marriage, do men none the less take on additional informally designated "wives"? What are the economic and practical consequences for the legally recognized wife, the informal wife or wives, and for each family group?
9. Do laws or customs exist that discriminate against women with respect to adultery?
10. Are women entitled to inherit property on an equal basis with men? Do widows have the same rights to family property and custody of minor children as widowers?
11. Are women required to obtain consent of a husband or other male relative to take employment outside the home? Do women retain control of their income, by law or by custom?
12. Can women by law pass their nationality to their children? Identify any laws or customs that prohibit or prevent women from passing nationality to their children. Has the State made any effort to change the law or custom? Describe how effective those efforts have been.
13. Has the State addressed gendered social and cultural assumptions by promoting the sharing of responsibilities within the family? Describe those efforts and how effective they have been.
14. Are women required to obtain consent of a husband or other male relative to travel or to obtain a passport? May they travel with their minor children without indication of the father's consent? May minor children travel on the mother's passport?
15. Does legislation exist to protect women against all forms of violence within the family or home? Identify the existing laws. Is this legislation effective? Does the State prosecute adequately crimes of domestic violence? Describe the State's

efforts.

16. Does the State provide access to courts or other tribunals for women to directly obtain protection against violence perpetrated by family or household members? Are judicial officers trained to understand and deal effectively with domestic violence? Does the law provide for criminal penalties against the perpetrator, for civil orders of protection, for excluding the perpetrator from the home, and for prohibiting stalking or harassment outside the home? How effective is this system? What are the consequences for violators of orders for protection?
17. Do law enforcement officers and public officials receive training to understand the unique and complicated issues involved in domestic assault or violence within the family? Describe training or education efforts.
18. Is the law enforcement system responsive to the needs of women who are the victims of domestic violence? Describe. Are women provided adequate protection from repeated acts of domestic violence? Describe the relevant measures.
19. Does the State compile information and report on the forms and extent of domestic violence in the home and the effects of such violence on women who are the victims of it?
20. Are there State-supported domestic abuse or family violence programs to assist women in filing complaints and using the legal system?
21. Are there policies or programs to provide housing, temporary shelter, or safe houses for female victims of domestic violence? If so, how effective are they? Does the State provide for or ensure access to permanent housing or housing assistance for victims of domestic violence? Describe.
22. Does the traditional or cultural system create obstacles to women who seek protection from domestic violence? What are those obstacles? What efforts has the State taken to provide education and public information aimed at changing cultural beliefs and attitudes toward roles of men and women within a family and improving the understanding of the problem of violence against women? How effective have those efforts been?

ARTICLE 11

Right to an Adequate Standard of Living

1. *The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*

2. *The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programs, which are needed:*

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Comment:

Article 11 addresses a fundamental concern about lives and livelihoods and matters essential to survival. Despite the phrase “adequate standard of living for himself and his family,” this Article is directly applicable to women and female-headed households.⁴⁸ The State must ensure that the rights embodied within this Article are upheld as to women without discrimination.

Article 11(1) defines “standard of living” to include the rights to adequate food, clothing, and housing. The right to food requires the State to ensure that women are not discriminated against in their access to and enjoyment of adequate food and are protected from hunger and malnutrition.⁴⁹ This includes the right to sufficient safe, accessible, and affordable water,⁵⁰ including decision-making concerning water resources.⁵¹ The Committee, in General Comment No. 12, has stated that a State must adopt a national strategy to ensure food and nutrition security for its entire population. The policy must address the State’s objectives for food, corresponding benchmarks, the formation of methods by which it will meet the goals, and the identity of resources available to achieve the goals.⁶ It also must address coordination between ministries and regional and local authorities, uphold principles of accountability (e.g., transparency, public participation, judicial independence), address all aspects of the food system, both public and private,

⁴⁸ General Comment No. 4, para. 6, Sixth Session (1991).

⁴⁹ General Comment No. 12, para. 18, Twentieth Session (1999).

⁵⁰ General Comment No. 6, para. 32 Thirteenth Session (1995); General Comment No. 15, para. 3, Twenty-ninth Session (2002).

⁵¹ General Comment No. 15, para. 16, Twenty-ninth Session (2002).

⁶ General Comment No. 12, para. 21, Twentieth Session (1999).

and guarantee women equal access to economic resources (e.g., inheritance, land ownership, credit, technology, etc.).⁷

Article 11 extends to women the right to participate on an equal basis in agrarian and land reform efforts, including access to or control over means of food production. The Committee has commended States' efforts to allow women to own land and to benefit from land distribution as part of agrarian reform.⁹ It also has noted with concern those States that have failed to meet their agrarian reform targets for women or that have adopted policies that prevent women in poverty from obtaining adequate food.¹⁰

The right to housing requires a State to ensure that women, irrespective of their income or access to economic resources, have the right to own, use, and otherwise control housing, land, and property, and to live in security and dignity on an equal basis with men.¹¹ The State must ensure that sufficient housing exists that is accessible or affordable to all income levels in the population. It also must ensure that housing of all forms of tenure exists, from permanent to emergency.¹² The Committee has held that to comply with the Article 11 housing requirement, a State should adopt a national housing policy that defines its objectives for development of shelter conditions, the resources available to meet these goals, and the time frame for implementation; it also must ensure that women are included in the negotiations for and development of the national housing policy.¹³ The Committee has expressed concern with States that have failed to ensure that a fair share of resources are allocated to make low cost housing available, that have failed to address low cost housing altogether, and that have permitted a persistent and growing level of poverty among women that resulted in inadequate housing.¹⁴

The right to housing applies to the issue of forced evictions and is directly applicable to women,¹⁵ a group that suffers disproportionately from statutory and other forms of discrimination that often apply to property rights and from violence and sexual abuse that can render them homeless.¹⁶ States must ensure that where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved. The rights under this Article are subject to progressive implementation and the State is required to ensure the continuous improvement of living conditions.¹⁷

The Committee has found that institutionalized legal or cultural protection of gender-

⁷ General Comment No. 12, paras. 22-27, Twentieth Session (1999).

⁹ Concluding Observation of the CESCR: Dominican Republic. 12/12/1997. E/C.12/1/Add.16; Tunisia. 14/05/1999. E/C.12/1/Add.25.

¹⁰ Concluding Observations of the CESCR: Philippines. 07/06/1995. E/C.12/1/Add.7; Canada. 10/10/1998. E/C.12/1/Add. 31.

¹¹ General Comment No. 4, para. 7, Sixteenth Session (1997).

¹² General Comment No. 4, para. 8, Sixteenth Session (1997).

¹³ General Comment No. 4, para. 12, Sixteenth Session (1997).

¹⁴ Concluding Observations of the CESCR: Philippines. 07/06/1995. E/C.12/1/Add.7; Ecuador. 07/06/2004. E/C.12/1/Add.100.

¹⁵ General Comment No. 7, Sixteenth Session (1997); see also, General Comment No.4, Sixth Session (1991).

¹⁶ General Comment No. 7, para. 10, Sixteenth Session (1997); Concluding Observations of the CESCR: Philippines. 07/06/1995.E/C.12/1/Add.7 (concern with use of criminal laws to evict female squatters).

¹⁷ *Fact Sheet No.16 (Rev.1)*, *The Committee on Economic, Social and Cultural Rights*, available at <http://www.unhcr.ch/html/menu6/2/fs16.htm>.

based discriminatory laws or practices that deny women equal access to adequate food, clothing or housing constitute a State's failure to fulfill its obligations under this Article.¹⁹

Article 11 is one of the most comprehensive and important provisions in the Covenant. The Committee has given attention to a variety of situations in which women have an inadequate standard of living, including women in rural areas, displaced women, women with disabilities, older women,²¹ and women prisoners and detainees especially in regard to their access to health care facilities, adequate food and safe drinking water.²²

Questions to ask:

1. What percentage of all people live in poverty? What percentage of women live in poverty? What percentage of women and of the general population live just above the poverty line? How is poverty measured?
2. What percentage of households live in poverty? What percentage of female-headed households live in poverty?
3. What percentage of the women and of the general population are homeless? What policies have been implemented to ensure women's right to housing on a basis equal to that of men? How effective are those policies?
4. Does the law grant women the right to own real property? Do women have the same rights as men to own property? To rent housing? What laws, policies, or other, enforceable mechanisms have been implemented to enforce these rights? Do legal protections exist from forced evictions, harassment, or other threats of eviction?
5. Does housing exist that is accessible or affordable to all income levels in the population? What policies or regulations exist to ensure housing is available to women on a basis equal to that to men? Does the State routinely monitor the availability of and access to housing that is affordable to all income levels?
6. Is there a national housing strategy that clearly defines objectives for development of affordable housing, the resources available to meet the goals, and the responsibilities and time frame for implementation?
7. Is there any discrimination, by law or in fact, against women in the allocation or accessibility of affordable housing? Describe.
8. What percentage of women and of the general population suffer from malnutrition? What percentage of women in prison suffer from malnutrition? What policies are being implemented to combat malnutrition? How effective

¹⁹ Concluding Observations of the CESCR: Canada.10/12/1998.E/C.12/1/Add.31.

²¹ General Comment No. 5, para. 33, Eleventh Session (1994); General Comment No. 6, paras. 32-33, Thirteenth Session (1995); Concluding Observations of the CESCR: Georgia. 19/12/2002. E/C.12/1/Add.83; Columbia. 30/11/2001. E/C.12/1/Add.74; Sudan. 01/09/2000.E/C.12/1/Add.48 (displaced people, most of whom are women ,lack adequate food and housing).

²² Concluding Observations of the CESCR: Yemen.12/12/2003.E/C.12/1/Add.92.

- have those policies been?
9. Do cultural eating practices or customs make it more difficult for women than for men to obtain adequate food? If so, how? What has been done to remedy the problem?
 10. Do women have physical and economic access to adequate food on a basis equal to that of men? If not, describe.
 11. Is there any discrimination, by law or in fact, against women in the allocation of or access to food or to means and entitlements for its procurement? If so, describe.
 12. Does the national strategy to ensure adequate food give particular attention to preventing discrimination against women in access to food or resources for food production, including full and equal access to economic resources, the right to inheritance, the right to own land or other property, the right to credit, the right to natural resources, and appropriate technology?
 13. Do nutrition guidelines and food benefit programs take into account the nutritional needs of women, particularly pregnant and breast-feeding women?
 14. Has the State identified indicators or benchmarks for adequate housing, nutrition, clothing, or water? If so, describe. Has the State made progress toward meeting these indicators for women and for the general population? Describe those efforts.
 15. Is there any discrimination, by law or in fact, against women in the allocation of or accessibility to safe or potable water? Describe?
 16. Describe the level of access or impediments to women's efforts to obtain energy for cooking, heating, lighting, and sanitation, including the distribution and management of such resources.
 17. Does the State provide educational programs or training on nutritional information health personnel throughout the country? Describe the program(s) and the extent of coverage across the country.
 18. Has the State enacted legislation to ensure adequate food, water, clothing and housing?
 19. Are judicial or other administrative mechanisms available to women to enforce the rights provided for in Article 11? What are the available remedies and/or

reparations?

20. Has the State cooperated with international donors or others who could ensure that the rights in Article 11 are upheld? (see Article 11(2)). Describe the effects of any assistance provided by non-state actors.

21. Do women living in rural areas have the right to participate on a basis equal to that of men in development planning, agrarian reforms, resettlement schemes, and living conditions (housing, water, sanitation, electricity, communication, transportation, etc)? Describe.

ARTICLE 12

Right to Physical and Mental Health

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

Comment:

Article 12 focuses on equal access to health care and guarantees of health care in case of physical or mental sickness.⁵²²³ The right to health is fundamental because it is indispensable for the exercise of all other human rights.²⁴ It is not the right *to be healthy*, but the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from torture, non-consensual medical treatment and experimentation.²⁵ Article 12 includes the right to a system of health protection and assures equality of opportunity in access to it.²⁶ It also encompasses access to health-related education and information, including that on sexual and reproductive health.²⁷

Article 12(1) defines the right to health and takes into account the individual's biological and socio-economic pre-conditions and the State's available resources. Article 12(2) provides a non-exhaustive list of the State's obligations. Article 12(2)(a) requires the State to take measures to improve maternal and child health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, emergency obstetric services, and information, and the resources necessary to act on that information.²⁸ It also obligates States to ensure that harmful social or traditional practices do not interfere with women's access to such services and to prevent third parties from coercing women to undergo traditional practices such as female genital mutilation.²⁹

²³ *Fact Sheet No.16 (Rev.1), The Committee on Economic, Social and Cultural Rights*, available at <http://www.unhchr.ch/html/menu6/2/fs16.htm>.

²⁴ General Comment No. 14, para. 1, Twenty-second Session (2000).

²⁵ General Comment No. 14, para. 7-8, Twenty-second Session (2000).

²⁶ General Comment No. 14, para. 8, Twenty-second Session (2000).

²⁷ General Comment No. 14, para. 11, Twenty-second Session (2000).

²⁸ General Comment No. 14, para. 14, Twenty-second Session (2000).

²⁹ General Comment No. 14, para. 35, Twenty-second Session (2000).

Article 12(2)(b)-(d) is intended to ensure safe and healthy places of work, a clean environment, including basic sanitation and the reduction of exposure to harmful substances, the right to prevention, treatment, and control of all forms of diseases, and women's equal physical and economic access to culturally acceptable and scientifically and medically appropriate health facilities, information, and services.³⁰ By virtue of Articles 2(2) and 3, a State must ensure equality of access of women and men to all health services and may not discriminate against women in access to health care and the underlying determinants of health.³¹

The Committee, in General Comment No. 14, has recognized that women's unequal social status may hamper their access to health care services. It explicitly recommends that States take a gender-based approach and recognize that biological and socio-cultural factors play a significant role in affecting the health of men and women. Consequently, a gender perspective must be integrated into a State's health-related policies, planning, programs, and research to promote better health for women.³² In addition, States must develop a comprehensive national strategy for promoting women's right to health with special attention to prevention and treatment of medical conditions and diseases affecting primarily women. The immediate goal is the removal of legal obstacles (such as consent requirements) to and an improvement of women's access to health services and education.³³

In addition, women with disabilities must be provided with a level of medical care equal to that of other members of the society to enable them to lead an independent life and to prevent further disabilities. The goal should be to integrate persons with disabilities into society and to allow them to participate fully.³⁴ The principle of non-discrimination in access to health care also applies to girls, including access to adequate nutrition, a safe environment, and physical and mental health services.³⁵

The State's goal for women's health must be to reduce health risks specific to women and girls, including lower maternal mortality rates and protection from domestic violence. This includes protecting women from traditional cultural practices that harm their health.³⁶ Violence against women and girls can include traditional practices and attitudes such as dietary restrictions for pregnant women, female genital mutilation, early marriage, male child preference, preferential feeding and care of male children, forced sterilization, and violent acts including battery, rape, incest, and other forms of sexual assault.³⁷ These forms of violence put the physical and mental health of women and girls at risk and impair their ability to participate fully in family and public life. Health policy

³⁰ General Comment No. 14, para. 15-17, Twenty-second Session (2000).

³¹ General Comment No. 14, paras. 18-19, Twenty-second Session (2000).

³² General Comment No. 14, para. 20-21, Twenty-second Session (2000).

³⁴ General Comment No. 14, para. 26, Twenty-second Session (2000); see also General Comment No. 5, para. 34, Eleventh Session (1994).

³⁵ General Comment No. 14, para. 22, Twenty-second Session (2000).

³⁶ General Comment No. 14, para. 21, Twenty-second Session (2000); Concluding Observations of the CESCR: Guatemala. 12/12/03. E/C.12/1/Add.93.

³⁷ General Comment No. 14, para. 22, Twenty-second Session (2000).

formulation, thus, must include a commitment to preventing violations of women's right to health by private persons, including health care policies, protocols, and procedures to address gender-based expressions of violence against women and girls.³⁸

The Committee has raised many issues relating to women's health rights. For example, it has expressed concern over preference for male children in some countries that resulted in sex-selective abortions, which restricts women's reproductive rights and has a negative impact on their physical and mental health.³⁹ The Committee has addressed the issue of female genital mutilation in many countries where the practice still persists.⁴⁰ It also has recognized that domestic violence against women remains a problem in most countries and routinely asks States about measures taken to reduce it.⁴¹ Finally, it has expressed concern regarding the lack of health services, including those relating to sexual and reproductive health and vaccination programs, for women living in rural areas.⁴²

Questions to ask:

1. What percentages of women and of the general population have access to health services? Are medical services provided on a sex-segregated basis? For example, are women permitted or required to obtain medical services in women-only medical facilities and/or from female doctors and nurses? If so, are such facilities and trained personnel available or accessible to all women in the country, and are they equal to the services and facilities provided for men?
2. Has the State formulated a comprehensive national strategy for women's health? Does this strategy embrace a gender-based approach to health? What effect has the strategy had?
3. What percentage of health care workers generally are women? What percentage of health care workers at higher levels of medical training are women?
4. Are women required to obtain a husband or relative's consent before receiving medical care?
5. What is the rate of maternal mortality? What reporting systems have been implemented to monitor maternal mortality?
6. What percentages of women receive prenatal and postnatal care? What percentage of women give birth in a hospital? What percentage of women give birth with a trained attendant?

³⁸ General Comment No. 14, para. 35, Twenty-second Session (2000).

³⁹ Concluding Observations of the CESCR: Republic of Korea. 11/05/2001. E/C.12/1/Add.59.

⁴⁰ Concluding Observations of the CESCR: Guinea. 28/05/1996. E/C.12/1/Add.5; Mali. 21/12/1994. E/C.12/1/Add.17; Egypt. 23/05/2000. E/C.12/1/Add. 44; Togo. 09/05/2001. E/C.12/1/Add.61; Cameroon. 08/12/1999. E/C.12/1/Add.40; Nigeria. 16/06/1998. E/C.12/1/Add.23; Senegal.24/09/2001. E/C.12/1/Add.62.

⁴¹ Concluding Observations of the CESCR: Mongolia. 01/09/2000. E/C.12/1/Add.47; United Kingdom of Great Britain and Northern Ireland. 04/12/1997. E/C.12/1/Add.19; and Israel. 04/12/1998. E/C.12/1/Add.27.

⁴² Concluding Observations of the CESCR: Yemen.12/12/2003.E/C.12/1/Add.92.

7. What percentage of women have access to contraception? What percentage of women use contraception?
8. To what extent are educational programs on family planning offered to women, men, and adolescents? To what extent are contraceptives made available and affordable to women and men?
9. Under what circumstances is abortion allowed? What is the rate of abortion?
10. What is the fertility rate? What is the desired fertility rate? Has the State undertaken any programs to either increase or decrease the fertility rate?
11. Is female genital mutilation practiced? If so, how prevalent is it? Has the State enacted any laws, policies, or regulations outlawing the practice? How effective are the State's efforts in preventing it? What are the major barriers or hindrances to preventing it?
12. What are the child and infant mortality rates for boys and for girls?
13. What is the average life expectancy for women and men?
14. What is the rate of sexually transmitted diseases, especially HIV/AIDS, among women and girls? Among men and boys? Do HIV/AIDS public awareness programs target behavior that has a negative impact on women and girls? Do these programs provide full information and support for women to protect themselves from HIV/AIDS and other STS transmission?
15. Does the State gather, collect and publish health-related statistics and information on a sex-desegregated basis?
16. Does the health care system and/or the national health care strategy include services to prevent, detect, and treat illnesses specific to women on a basis that is equal to that for men's illnesses? Does the system or strategy address both women's and men's health rights?
17. Does the State respect women's right to health care by supporting their health goals? Does the State allow women to make their own choices regarding health issues irrespective of authorization by husbands, partners, or parents? Is women's health care compromised by consent requirements?
18. What legal and practical barriers exist that prevent or hinder women in their efforts to obtain physical and mental health services? (examples: high fees for services, the requirement of consent by a spouse, parent or other, distance from health facilities, absence of convenient or affordable public transportation, etc.). What measures has the State taken to eliminate these barriers?
19. Has the State ensured that privatization within the health care industry does not disproportionately prevent or hinder access by women to quality health care services?
20. Does the State and/or health care system address or focus on cultural or traditional food taboos or other eating practices that harm women's health?
21. Does the health care system and/or national health care strategy address the health care needs of migrant women, refugee and internally displaced women, women in

- prostitution, indigenous women, older women, disabled women, and women living in rural areas?
22. Does the State protect women's right to health care by taking action to prevent violations of health rights by private persons? Has it enacted and is it enforcing effectively laws prohibiting violence within the family, female genital mutilation, marriage of girls, etc.?
 23. Have studies been undertaken to determine the extent of violence against women in the home? Do those studies indicate the impact such violence has on women's physical and mental health? What policies have been implemented to address such violence?
 24. Has the State enacted health care laws, policies, protocols, or hospital procedures to address violence against women, violence within the family, and abuse of girls? Are health care professionals trained to be sensitive to the particular concerns of victims of such violence? Does the State sponsor or promote programs to provide counseling or other mental health care for victims of such violence? Describe the health care services or programs.
 25. Has the State enacted health care laws, policies, or protocols, or sponsored services to address the physical and mental health consequences of sexual trafficking of women and girls? If so, how effective are those measures?
 26. Does State policy address the health issues related to the unequal distribution of power between men and women in sexual relations (the right/ability to refuse sex or to insist on safe sex), and by providing sexual health information, education, and services, including that related to HIV/AIDS and other sexually transmitted diseases?

ARTICLE 13
Right to Education

1. *The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.*
2. *The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:*
 - (a) *Primary education shall be compulsory and available free to all;*
 - (b) *Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;*
 - (c) *Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;*
 - (d) *Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;*
 - (e) *The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.*
3. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.*
4. *No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.*

ARTICLE 14

Plan of Action for Education

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

Comment:

Articles 13 and 14 together address the right to education. Article 13 guarantees the right to free and compulsory primary education and equal access to all levels of educational institutions. Article 14 requires States to establish a plan of action to implement this right.

These articles require equal treatment of men and women and non-discrimination in implementing access to education and use of education facilities; the freedom to choose education and to establish educational institutions; the protection of students against cruel and inhuman disciplinary measures; and academic freedom.⁴³ General Comment 11 emphasizes that the lack of educational opportunities for girls and women perpetuates their poverty and exploitation.⁴⁴ General Comment 13 acknowledges that education is an essential empowerment right that allows economically and socially marginalized adults and children to lift themselves out of poverty.⁴⁵ It also acknowledges that women have been disadvantaged in the enjoyment of the right to education and mandates that the principles of equality and non-discrimination apply to women's and girls' access to education.⁴⁶

Implementation of Articles 13 and 14 require taking all necessary measures to provide for equal rights and access to women and girls in the field of education.⁵³ These Articles require States to guarantee women and girls equal physical and economic access to education to make it possible for them to participate fully in society.⁴⁸ In particular, women and girls must have the same access as men and boys to career and vocational guidance, to all levels of educational institutions in both rural and urban areas, and to all types of vocational training. In addition, where girls drop out of school at a greater rate than boys, States must work to reduce the rates of girls leaving school prematurely.

⁴³ Fact Sheet No.16 (Rev.1), The Committee on Economic, Social and Cultural Rights, available at <http://www.unhchr.ch/html/menu6/2/fs16.htm>.

⁴⁴ General Comment No. 11, paras. 2-3, Twentieth Session (1999).

⁴⁵ General Comment No. 13, para. 1, Twenty-first Session (1999).

⁴⁶ General Comment No. 13, paras. 16(e), 32, Twenty-first Session (1999).

⁴⁷ For an indication of the specific issues and obstacles related to equality and nondiscrimination in education, see Convention on the Elimination of All Forms of Discrimination against Women, Article 10.

⁴⁸ General Comment No. 13, para. 6, Twenty-first Session (1999).

To ensure that women have equal access to education, it may be necessary for the government to institute temporary special measures to secure their advancement. Such measures are not considered discriminatory as long as they are temporary. They must be discontinued once the specific objectives are met.⁵⁰ General Comment 13 requires the government to take such measures to ensure access and the advancement of individuals or groups in the field of education.⁵¹

General Comment 13 obligates States to remove gender and other stereotyping that impedes access by girls to equal education opportunities and to take measures to address *de facto* discrimination in the education of girls.⁵² These measures may include reformulation of curricula and education materials to eliminate stereotyping and gender bias, allocation of equal resources to girls' education, special encouragement and incentives to girls and to their families to help them stay in school, and training of teachers to understand and eliminate gender bias in teaching, classroom interactions, and extracurricular activities connected to the schools.

The Committee has recognized that women face both legal and customary obstacles to education in many countries and receive fewer years of formal education than men.⁵³ In some countries they constitute as little as one-third of students in primary schools and one-fourth in high schools.⁵⁴ The Committee also has pointed to the disproportionate impact the absence of compulsory education has on women's literacy, particularly among women living in rural areas.⁵⁵

Questions to ask:

1. Is primary education compulsory and available at no cost? What is the enrollment rate of girls in primary education relative to that of boys?
2. If free compulsory education is not available, has the State undertaken a plan for the progressive implementation of free education, as required by Article 14? Does this plan take into account gender-based disparities?
3. Is secondary education available at no cost? If it is, what is the enrollment rate of girls in secondary education relative to that of boys? If it is not available, what policies have been implemented to achieve free secondary education?
4. What is the enrollment rate of girls in technical and vocational schools relative to that of boys? What concrete steps have been taken to ensure that girls face no

⁵⁰ Limburg Principle No. 39, 9 Human Rights Quarterly 122, 127 (1987).

⁵¹ General Comment No. 13, para. 32, Twenty-first Session (1999).

⁵² General Comment No. 13, paras. 55, 59, Twenty-first Session (1999).

⁵³ Concluding Observations of the CESCR: Benin. 05/06/2002.E/C.12/1/Add.78.

⁵⁴ Concluding Observations of the CESCR: Mali. 21/12/1994. E/C.12/1/Add.17(lack of equal access to education with result that women's illiteracy rate was two times that of men); Gambia. 31/05/1994. E/C.12/1/Add.9.

⁵⁵ Concluding Observations of the CESCR: Tunisia. 14/05/1999.E/C.12/1/Add.36; Gambia.

31/05/1994.E/C.12/1/Add. 9; Sudan.01/09/2000.E/C.12/1/Add.48;

Yemen.12/12/2003.E/C.12/1/Add.92 (high illiteracy rate for rural women attributed to inadequate teacher training and high female drop out rate).

- discrimination in attaining a technical or vocational education?
5. Is higher education available at no cost? If it is, what is the enrollment rate of women in higher education relative to that of men? If it is not available, what measures are being taken to achieve free higher education
 6. What is the dropout rate for girls? What is the dropout rate for boys? Why do girls drop out? Why do boys drop out? What policies have been implemented to encourage families to keep girls in school?
 7. Are there cultural or safety barriers to girls or women traveling to school? What has the State done to overcome these barriers? Where proximity is an issue, are schools available to girls within safe physical reach or, alternatively, available via a distance learning program? What percentage of rural girls and women are enrolled in school?
 8. Are schools co-educational? If not, are resources distributed equally between schools for girls and schools for boys? How do separate schools compare regarding enrollment and attendance, student-teacher ratios, teachers' academic credentials, quality of books and teaching materials, technology, and academic performance? Are there differences between the curricula at girls' schools and those at boys' schools? If so, how and why are they different?
 9. Do co-educational schools have equal and appropriate sanitation facilities for both sexes?
 10. What is the literacy rate among women? What is it among men? What programs has the State undertaken to fight adult illiteracy, generally, and illiteracy among women specifically?
 - 11..What percentage of teachers and professors are women? What percentage of administrators at all levels?
 12. What has the State done to reduce the costs families must pay for education, such as uniforms, fees, school supplies, and transportation?
 13. What education and/or programs has the State introduced to help eliminate gender prejudices and stereotyping that hinder women's or girls' obtaining education on a basis equal to that obtained by men or boys? Describe. How effective are those programs??
 14. Are certain courses of study in higher education traditionally associated with one sex? Are women directed or steered into areas of study that are thought of as particularly appropriate for women? Are women directed or steered away from areas of study that are deemed particularly appropriate for men? What has the State done to ensure that women and men can pursue their preferred course of study without facing discrimination?
 15. Identify measures taken by the State to address gender-based preferences and stereotyping of women and their roles in society and the family in curriculum, textbooks, other educational materials, and teacher training. How effective are those measures?

16. Has the State undertaken commitments to recruit skilled teachers and to train teachers to understand gender issues in the curriculum, the classroom, the school community, and the family? Describe. How are those commitments being implemented?
17. How free are students and faculty to express their opinions without fear of repression? Are students and faculty allowed to study and discuss human rights and women's issues?
18. Does the State provide education, training, or information aimed at preventing violence against women and girls? Describe. How effective are these efforts?
19. What measures has the State taken to address the practical and cultural issues that prevent women and girls from attending school, such as son preference, early marriage, pregnancy, or confining girls physically to the household, community or village? Does the State protect girls' right to education by ensuring that third parties, such as parents, do not stop girls from going to school?
20. How does the State provide for pregnant or married students to complete their education? Are male students who father children treated the same as female students who become pregnant?
21. Are students protected by law and policy from sexual exploitation and harassment by teachers and administrators? Are these laws and policies enforced?

ARTICLE 15

Right to Enjoy Culture, to Participate in Cultural Life and to Benefit from Technological and Scientific Progress

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

Comment:

Article 15 obligates States to ensure that women have equal rights to enjoy culture, to participate in cultural life, and to participate in and benefit from scientific and technological progress. Article 15(1)(a) recognizes the right of everyone to take part in the cultural life of society. The term “culture” must be interpreted broadly to include the right of women to participate fully in all aspects of life and society. The cultural rights of women include the rights to education, freedom of speech, information, privacy, and religion. They also include women’s rights to participate in sports, recreational and cultural activities, and to protection of their artistic and literary creations. States must take steps to remove legal or cultural obstacles that hinder women’s participation in cultural life. They also must ensure that the principle of equality, including equal access and equal treatment, underpins funding, facilities, and other forms of support for these activities.

Culture and specific cultural practices and beliefs often are invoked to hinder or reduce women’s enjoyment of cultural rights and to exclude women from participation in many activities and social sectors. Discriminatory practices, including violence against women, beliefs of inferiority of women, and sex role stereotyping, are defended as the underpinnings of society. Such practices and beliefs limit women’s ability to enjoy rights on a basis of equality with men. States have an obligation to ensure that cultural attitudes

and beliefs do not limit women's participation in culture and society.

Article 15(1)(b) addresses the right to benefit from scientific progress and its applications. It requires States to ensure that women have access and the opportunity to enjoy the full range of scientific advances and any developments or applications that enhance their enjoyment of the other rights contained in the Covenant.⁵⁴ It also requires States to ensure that funding and resources for scientific research and development are directed to the health and economic needs of women on an equal basis with those of men.

Article 15(1)(c) requires the protection of moral and material interests resulting from any scientific, literary, or artistic product of an author. Intellectual property laws cover proprietary rights for the fruits of creative activity. They can extend to inventions and processes protected by patents, literature, artistic works, computer software and computer generated works protected by copyrights, and matters covered by trade names, trade marks, and the like. Moral rights include the rights of an author to disclose or publish his or her work, to be acknowledged as a work's author or inventor, and to prevent unauthorized use of or changes to the work.

The Committee has indicated that States must strike a balance between these private rights and the public rights to take part in cultural life and to enjoy the benefits of scientific progress enumerated in Articles 15(1)(a) and 15(1)(b). It also has held that States must undertake the steps necessary for the conservation, development, and diffusion of science and culture contained in Article 15(2).⁵⁵ States also must guarantee that Article 15(1)(c) rights are exercised in accordance with Articles 2(2) and 3, without discrimination of any kind against women, and on the basis of equality between men and women.⁵⁶ This requires that women enjoy the same rights as men regarding tangible and intangible property. Women must be permitted to own and register patents, copyrights, trademarks, and trade names covering scientific inventions and literary and artistic works that they have authored, to have the capacity to enter into contracts that allow them to administer, enjoy, exploit, and dispose of their works, and to take the necessary legal measures to protect their works from theft or unauthorized use.

Any intellectual property regime adopted by a State must be consistent with the State's obligations to ensure progressive realization of the full enjoyment of all rights in the Covenant.⁵⁷ An intellectual property regime that makes it more difficult to comply with a State's obligations in relation specifically to health, food, and education constitutes a

⁵⁴ Fact Sheet No. 16 (Rev. 1), *The Committee on Economic, Social and Cultural Rights*, available at <http://www.unhchr.ch/html/menu6/2/fs16.htm>.

⁵⁵ Statement by the Committee on Economic, Social and Cultural Rights, "Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Human Rights and Intellectual Property," 14 December 2001.E/C.12/2001.15 at paras. 4, 17.

⁵⁶ *Id.* at para. 7.

⁵⁷ *Id.* para. 11. States must use their influence to ensure violations of the Covenant do not result from the programs and policies of international organizations of which they are members. The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, 20 H.R.Q. 691, 698 (1998)

violation of a State's obligations under the Covenant.⁵⁸

The Committee has addressed several issues relating to culture. It has expressed concern that women are prohibited from undertaking studies in certain fields that may affect their ability to benefit from science and well-paying jobs in many scientific fields.⁵⁹ It also has expressed concern about States' failures to protect or preserve indigenous languages and the rights of indigenous communities to hold property communally.⁶⁰ The Committee has encouraged States to continue and to strengthen efforts to support and subsidize cultural associations, including those of migrants.⁶¹ It also has expressed concern and requested more information on a State's legislation and policies protecting creative freedoms, on the negative implications on society of orders by religious authorities to kill authors, and the State's failure to protect its citizens.⁶²

Questions to ask:

1. What recreational activities are available to women on a basis equal to that of men?
2. Are girls and women allowed to play sports? Are women's sports provided with the same resources as men's?
3. What legal, social, economic, or cultural barriers exist that prevent or hinder women's participation in recreation, sports, arts, or any other aspect of cultural life? What measures has the State taken to abolish those barriers? How effective are those measures?
4. Are women able to protect their interests in their artistic, literary, and scientific works? For example, are female writers allowed to use their own names in their publications? Are female singers restricted in performing or releasing music? Are women permitted to apply for and obtain copyrights, trademarks, patents, or other, similar forms of protection for their artistic, literary, or scientific works? Are those rights enforceable in a court or other forum? Is a woman allowed to derive economic value from her ownership of such protected material (such as, royalties, licensing rights, etc.)?
5. Are women able to engage in traditional art and cultural practices? Specifically, are indigenous and minority women able to do so?
6. If the government supports research that benefits men, does it also support comparable research that would benefit women?

⁵⁸ *Id.* at para. 12.

⁵⁹ Concluding Observations of the CESCR: Iran. 09/06/1993. E/C.12/1/Add.1.

⁶⁰ Concluding Observations of the CESCR: Ecuador. 07/06/2004.E/C.12/1/Add.100; Benin. 05/06/2002.E/C.12/1/Add.78.

⁶¹ Concluding Observations of the CESCR: Luxembourg. 23/05/2003. E/C.12/1/Add.86.

⁶² Concluding Observations of the CESCR: Iran. 09/06/1993.E/C.12/1/Add.1.

7. Do women have access to current scientific research and the means needed to participate in its further development? Describe the obstacles women face, including cultural barriers, discriminatory practices or stereotypes, to accessing scientific research and participating in scientific developments.

8. Has the State taken measures for the protection of indigenous art forms, medicines, healing methods, or the like? Describe those measures. If property rights apply, do the measures taken permit women to be the owners or caretakers of the property protected? Do the measures taken permit women to derive moral or material interests in the protected property?

APPENDIX I

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force Jan. 3, 1976.*

PREAMBLE

The States Parties to the present Covenant, Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the

realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.
2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

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

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties

will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

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

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

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

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2.

(a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

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

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 26;

(b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

APPENDIX II

CESCR GENERAL COMMENT NO. 3 The Nature of States Parties Obligations (Art. 2, par.1) 14/12/90.(Fifth session, 1990) *

1. Article 2 is of particular importance to a full understanding of the Covenant and must be seen as having a dynamic relationship with all of the other provisions of the Covenant. It describes the nature of the general legal obligations undertaken by States parties to the Covenant. Those obligations include both what may be termed (following the work of the International Law Commission) obligations of conduct and obligations of result. While great emphasis has sometimes been placed on the difference between the formulations used in this provision and that contained in the equivalent article 2 of the International Covenant on Civil and Political Rights, it is not always recognized that there are also significant similarities. In particular, while the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes various obligations which are of immediate effect. Of these, two are of particular importance in understanding the precise nature of States parties obligations. One of these, which is dealt with in a separate general comment, and which is to be considered by the Committee at its sixth session, is the "undertaking to guarantee" that relevant rights "will be exercised without discrimination ...".

2. The other is the undertaking in article 2 (1) "to take steps", which in itself, is not qualified or limited by other considerations. The full meaning of the phrase can also be gauged by noting some of the different language versions. In English the undertaking is "to take steps", in French it is "to act" ("s'engage à agir") and in Spanish it is "to adopt measures" ("a adoptar medidas"). Thus while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.

3. The means which should be used in order to satisfy the obligation to take steps are stated in article 2 (1) to be "all appropriate means, including particularly the adoption of legislative measures". The Committee recognizes that in many instances legislation is highly desirable and in some cases may even be indispensable. For example, it may be difficult to combat discrimination effectively in the absence of a sound legislative foundation for the necessary measures. In fields such as health, the protection of children and mothers, and education, as well as in respect of the matters dealt with in articles 6 to 9, legislation may also be an indispensable element for many purposes.

4. The Committee notes that States parties have generally been conscientious in detailing at least some of the legislative measures that they have taken in this regard. It wishes to emphasize, however, that the adoption of legislative measures, as specifically foreseen by the Covenant, is by no means exhaustive of the obligations of States parties. Rather, the

phrase "by all appropriate means" must be given its full and natural meaning. While each State party must decide for itself which means are the most appropriate under the circumstances with respect to each of the rights, the "appropriateness" of the means chosen will not always be self-evident. It is therefore desirable that States parties' reports should indicate not only the measures that have been taken but also the basis on which they are considered to be the most "appropriate" under the circumstances. However, the ultimate determination as to whether all appropriate measures have been taken remains one for the Committee to make.

5. Among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable. The Committee notes, for example, that the enjoyment of the rights recognized, without discrimination, will often be appropriately promoted, in part, through the provision of judicial or other effective remedies. Indeed, those States parties which are also parties to the International Covenant on Civil and Political Rights are already obligated (by virtue of arts. 2 (paras. 1 and 3), 3 and 26) of that Covenant to ensure that any person whose rights or freedoms (including the right to equality and non-discrimination) recognized in that Covenant are violated, "shall have an effective remedy" (art. 2 (3) (a)). In addition, there are a number of other provisions in the International Covenant on Economic, Social and Cultural Rights, including articles 3, 7 (a) (i), 8, 10 (3), 13 (2) (a), (3) and (4) and 15 (3) which would seem to be capable of immediate application by judicial and other organs in many national legal systems. Any suggestion that the provisions indicated are inherently non-self-executing would seem to be difficult to sustain.

6. Where specific policies aimed directly at the realization of the rights recognized in the Covenant have been adopted in legislative form, the Committee would wish to be informed, *inter alia*, as to whether such laws create any right of action on behalf of individuals or groups who feel that their rights are not being fully realized. In cases where constitutional recognition has been accorded to specific economic, social and cultural rights, or where the provisions of the Covenant have been incorporated directly into national law, the Committee would wish to receive information as to the extent to which these rights are considered to be justiciable (i.e. able to be invoked before the courts). The Committee would also wish to receive specific information as to any instances in which existing constitutional provisions relating to economic, social and cultural rights have been weakened or significantly changed.

7. Other measures which may also be considered "appropriate" for the purposes of article 2 (1) include, but are not limited to, administrative, financial, educational and social measures.

8. The Committee notes that the undertaking "to take steps ... by all appropriate means including particularly the adoption of legislative measures" neither requires nor precludes any particular form of government or economic system being used as the vehicle for the steps in question, provided only that it is democratic and that all human rights are thereby respected. Thus, in terms of political and economic systems the Covenant is neutral and

its principles cannot accurately be described as being predicated exclusively upon the need for, or the desirability of a socialist or a capitalist system, or a mixed, centrally planned, or *laissez-faire* economy, or upon any other particular approach. In this regard, the Committee reaffirms that the rights recognized in the Covenant are susceptible of realization within the context of a wide variety of economic and political systems, provided only that the interdependence and indivisibility of the two sets of human rights, as affirmed *inter alia* in the preamble to the Covenant, is recognized and reflected in the system in question. The Committee also notes the relevance in this regard of other human rights and in particular the right to development.

9. The principal obligation of result reflected in article 2 (1) is to take steps "with a view to achieving progressively the full realization of the rights recognized" in the Covenant. The term "progressive realization" is often used to describe the intent of this phrase. 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. In this sense the obligation differs significantly from that contained in article 2 of the International Covenant on Civil and Political Rights which embodies an immediate obligation to respect and ensure all of the relevant rights. Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the *raison d'être*, of the Covenant which is to establish clear obligations for States parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.

10. On the basis of the extensive experience gained by the Committee, as well as by the body that preceded it, over a period of more than a decade of examining States parties' reports the Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'être*. By the same token, it must be noted that any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned. Article 2 (1) obligates each State party to take the necessary steps "to the maximum of its available resources". In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every

effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.

11. The Committee wishes to emphasize, however, that even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. Moreover, the obligations to monitor the extent of the realization, or more especially of the non-realization, of economic, social and cultural rights, and to devise strategies and programmes for their promotion, are not in any way eliminated as a result of resource constraints. The Committee has already dealt with these issues in its General Comment 1 (1989).

12. Similarly, the Committee underlines the fact that even in times of severe resources constraints whether caused by a process of adjustment, of economic recession, or by other factors the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes. In support of this approach the Committee takes note of the analysis prepared by UNICEF entitled "Adjustment with a human face: protecting the vulnerable and promoting growth, 1/ the analysis by UNDP in its Human Development Report 1990 2/ and the analysis by the World Bank in the World Development Report 1990 3/ .

13. A final element of article 2 (1), to which attention must be drawn, is that the undertaking given by all States parties is "to take steps, individually and through international assistance and cooperation, especially economic and technical ...". The Committee notes that the phrase "to the maximum of its available resources" was intended by the drafters of the Covenant to refer to both the resources existing within a State and those available from the international community through international cooperation and assistance. Moreover, the essential role of such cooperation in facilitating the full realization of the relevant rights is further underlined by the specific provisions contained in articles 11, 15, 22 and 23. With respect to article 22 the Committee has already drawn attention, in General Comment 2 (1990), to some of the opportunities and responsibilities that exist in relation to international cooperation. Article 23 also specifically identifies "the furnishing of technical assistance" as well as other activities, as being among the means of "international action for the achievement of the rights recognized ...".

14. The Committee wishes to emphasize that in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard. The Committee notes in particular the importance of the Declaration on the Right to Development adopted by the General Assembly in its resolution 41/128 of 4 December 1986 and the need for States parties to take full account of all of the principles recognized therein. It emphasizes that, in the absence of an active programme of international assistance and cooperation on the part of all those States that are in a

position to undertake one, the full realization of economic, social and cultural rights will remain an unfulfilled aspiration in many countries. In this respect, the Committee also recalls the terms of its General Comment 2 (1990).

Notes

* Contained in document E/1991/23.

1/ G.A. Cornia, R. Jolly and F. Stewart, eds., Oxford, Clarendon Press, 1987.

2/ Oxford, Oxford University Press, 1990.

3/ Oxford, Oxford University Press, 1990.

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**Office of the United Nations High Commissioner for Human Rights
Geneva, Switzerland**

APPENDIX III

SHADOW REPORTING **Revised 2004**

ORGANIZING THE SHADOW REPORT

The shadow report should be focused carefully and provide a framework for developing very specific points that the Committee can use in questioning the State party. While the report may ultimately be intended for a large audience, including government officials and the public, it should be planned for effectiveness with the Committee. NGOs should plan the report and its key points as a basis for lobbying. As an audience, the Committee has particular requirements:

- The Committee members will read the shadow report to obtain specific information to help them evaluate the government report.
- The Committee members will not be familiar with the political and economic background of every country. They may need contextual information to understand the issues.
- The Committee members have a limited amount of time and want to receive information about the most pressing issues in a concise format.
- The Committee members prefer to obtain reports prior to the session.

Obtaining the Government Report

The government report is the basis of the CESCR review. The Ministry of Justice usually prepares the report and the Ministry of Foreign Affairs submits it to the United Nations. The government's report is a public document and should be available from the Foreign Affairs Ministry once it is submitted to the United Nations.

Government reports also are available from the United Nations for public distribution after they are translated into the six official United Nations languages. However, the reports may not be available until fairly close to the beginning of the CESCR session. If the report cannot be obtained from the government, check the United Nations High Commissioner for Human Rights (UNHCHR) web site (see Useful Contacts below) where most reports are posted prior to the session. Alternatively, contact IWRAW or the CESCR Secretariat for information on the status of particular country reports.

If the report is available, the shadow report should be formatted to resemble the structure of the government report to facilitate comparative review of parallel information. If the report is not available, make note of the government's failure to distribute or disseminate it in the shadow report.

Coordinating the Contributors

An individual NGO can prepare a shadow report. A group of NGOs also may choose to collaborate in preparing a report. The Committee recommends, where possible, collaboration among NGOs to produce a single, consolidated report that represents a broad consensus on issues, without duplication and contradictions. Collaboration also can enhance the impact of the report on the government, as it can demonstrate a consensus voice and existence of broad constituencies in favor of positions taken in the report. If submitting a report in collaboration with other NGOs, it is important to budget time for coordination, identifying the strengths of each participating NGO, dividing the tasks to be undertaken, resource- and cost- sharing, and final editorial decision-making.

Organizing the Report for Maximum Impact

The Committee encourages NGO participation in its activities. It requires, however, that all information submitted to it be (1) specific to the Covenant articles; (2) relevant to the matters under consideration by the Committee or its pre-sessional working groups; (3) based on documentary sources and properly referenced; (4) concise and direct; and (5) reliable and not abusive. The NGO's goals in writing a shadow report should be (a) to prepare an honest report on the State party's compliance with its ICESCR obligations that assists with the constructive dialogue between the Committee and the reporting state; and (b) to provide reliable, detailed, and timely information about the state of women's human rights within the country.

The following key suggestions for organizing the report are based on 10 years of experience in submitting NGO information to United Nations human rights treaty bodies:

1. Organize the information according to articles of the Covenant, not by issue. If an issue concerns more than one article, choose the article that is most on point for a full discussion. Indicate briefly the other articles that may cover the issue.
2. Be as concise and direct as possible; limit the report to no more than 30 pages. Not all the Committee members will be equally interested in each country or issue. Bear in mind also that the language you use (English, Spanish, French preferred) may not be the reader's first language. *Regardless of length, provide a table of contents and executive summary.*
3. The executive summary is essential to draw attention to particular issues. It should include specific language that the Committee can use in asking questions of the government and in drafting concluding observations. An executive summary generally should be no more than three pages.
4. Identify the problems, discuss the evidence, and provide specific suggestions for

change. Indicate who in the government is in position to make the suggested change. Indicate the role of civil society, but do not eliminate government responsibility.

5. Prioritize issues. The Committee will not be able to focus adequate attention on more than a few issues. Identify and articulate clearly the most important issues.
6. Analyze any relevant State party reservations and describe NGO efforts to promote their withdrawal.
7. Provide relevant background information about the country or region, including prevailing trends relevant to economic, social and cultural rights in the country.

Organizing the Content

The shadow report should be organized according to the articles of the Covenant. Doing so indicates knowledge of the treaty and respect for the Committee's time. It also allows for parallel commentary on information provided in the government report.

1) *Identify issues and the applicable articles of the ICESCR.* This will be based on experience and knowledge.

2) *Gather facts and evidence to illustrate the issues.* Documentation is important to make the case for both the necessity for and the possibility of change. Documentation can include statistics, legal cases, testimony of individuals, news clips, video-tapes, academic research, and existing national and local laws and regulations. Statistics are most useful if disaggregated by gender, age, marital status, class, ethnicity, and circumstances such as migrant status. Case histories and testimony should be complete, including enough detail and contextual information to indicate the impact of particular actions or inaction by the government.

3) *Identify major obstacles and recommend approaches to removing them.* Consider the practical approaches to solving the problem. Identify which actors should be involved. Indicate who needs to be trained or made aware of the Covenant and national laws and regulations affecting economic, social, and cultural rights (e.g., judges, police, prosecutors, women's advocates, school administrators, teachers, etc). Keep in mind how people can be involved in monitoring the process.

Recommendations for action should be concrete, suggesting specific action. Language from the Committee's General Comments or prior Concluding Observations may be helpful. The shadow report should address questions that remain open from consideration of earlier government reports, as stated in the Committee's Concluding Observations. Specificity is important. For example, "the government should protect women from economic exploitation" is not precise. More helpful would be to propose:

The government should a) collect accurate data on the disparity in income and wages, incidences of forced labor, sexual harassment (on the national level, local level, etc.); b) increase the allocation of resources to enforce

anti-discrimination and anti-trafficking laws by 50%; c) train the police and other officials to insure that they offer women timely assistance and prevention measures.

4) *Dealing with Reservations.* Reservations to the Covenant are supposed to be made with a view to withdrawing them as the laws, economics, and culture evolve to allow for more readily meeting Covenant obligations. They should not reflect a total refusal to change. If your government has made reservations to the Covenant, it is important to suggest the changes that would allow for their withdrawal. This could include analyzing the reservations in light of the current law and state of society to suggest narrowing the reservations, or suggesting changes to law and/or policy that would lead to their withdrawal.

5) *Special attention to context and analysis.* If the government report provides general information on an issue, the Committee will want to relate that information specifically to women in the country. It may be up to the NGO to provide that information.

Context also is important for appropriate evaluation of a particular situation. For example, if an employment law includes remedies available only through an administrative system, such as the Ministry of Labor or a local authority, it is important to analyze the general attitude of that authority toward women. If the court system generally has not been receptive to claims by a particular constituency (for example, ethnic minority women), it is important to note how judges and court personnel are selected and trained and address the obstacles and opportunities for changing that system.

SUGGESTED FORMAT FOR SHADOW REPORTS

To provide essential information and guidance to the reader, the report should include:

1. Title page including title, author(s) and date of the report.
2. Executive summary (see below).
3. Table of contents.
4. Brief introduction to provide information about the production of the report.
5. The main discussion, organized by Covenant article, including recommended actions.
6. Concluding remarks.
7. Appendix (to include text of important laws, academic reports or publications, studies, media clips, or other statistical data).

Executive Summary

An executive summary is a very brief presentation of information that allows busy readers to *instantly* get a clear idea of the main points in the shadow report. A well-written executive summary saves the reader time by helping him or her determine which part of the report is of most interest. It is especially useful to Committee members whose first language is not the language in which the report is written.

An executive summary is usually no more than three pages long. Information must be concise, accurate, and carefully selected from the full report. It should include:

- the key points of the report;
- a brief statement of the evidence/data included to support those points;
- the recommendations for government action to address the key issues, in language the Committee can use in its Concluding Observations.

The executive summary usually is the most difficult part of the report to write. It should state clearly where in the report the reader can find more details about a particular point. Suggestions for drafting the executive summary include:

- Summarize the key information about each article of the Covenant in one paragraph. If you cannot do this, it probably means that the information in the discussion section does not have a clear focus and may need to be rewritten.
- Reduce every important paragraph to one concise sentence.
- Prioritize the issues and information; not every sentence or paragraph needs to be represented in the executive summary.

PRESENTATION OF REPORTS BEFORE THE COMMITTEE

Working and Communicating with the CESCR Committee

The Useful Contacts Section below provides contact information for the Secretary of the Committee. The Committee generally meets in Palais Wilson in Geneva. Sometimes the meetings are held at the Palais de Nations, Geneva. The OHCHR Web site should include this information, or contact the Office of the High Commissioner directly.

To attend meetings or sessions of the Committee, NGO representatives must obtain an identity photo-badge at the United Nations security office. To obtain the badge, an NGO must present a letter of accreditation and an identity document, such as passport, to the UNOG Security and Safety Services office noted below. Letters must name the person(s) individually. A letter without the individual's name may not be accepted. An NGO should request accreditation from the CESCR Secretariat at least one month in advance of the session.

NGO Participation at the CESCR Session

There are several stages at which NGOs may approach the Committee members. The process is relatively open, and at least some of the members are willing to work directly with NGOs.

- *At the Pre-Sessional.* Participation in the pre-sessional working group is important for NGOs. This is when a list of issues for the review of periodic reports is created and given to State parties. The pre-sessional working group meets at the end of the

Committee session one year prior to the session at which the State Party's report will be reviewed (for April/May session, for example, the pre-session will be held after the close of the April/May session the previous year). An NGO can submit relevant information and/or a report directly to the appointed country rapporteur or to the Secretariat for general distribution to the working group. An NGO also can make an oral presentation during the first morning of the working group meeting.

- *At the Committee Session.* Most Committee members want written shadow reports to enable them to ask useful questions. NGOs should deliver 25 copies of their report to the Secretariat at least one week prior to the session. Some Committee members and the Secretariat will accept submission by e-mail, but hard copies should be delivered as a backup. *In addition to shadow reports*, NGOs in consultative status with ECOSOC and NGOs without status (but sponsored by an organization in consultative status) may submit a very short, double-spaced, written statement (2000 and 1500 words, respectively), which will be translated into the working languages of the Committee and issued as a United Nations document. The written statement must be sent to the CESCR Secretariat at least three months in advance of the session for which it is intended.

The Committee reserves the first day of the Session for NGO oral presentations. NGOs that want to present information orally should inform the Committee in advance of the Session. This is the best opportunity to be heard by a number of the Committee members and other experts at one time. Each speaker will have between 5 and 15 minutes to make a presentation, depending upon the number of speakers. Simultaneous interpretation in English, Spanish, French, and Russian is provided. Given the limited amount of time for the presentation, the oral statement should (a) focus specifically on the provisions of the Covenant, (b) be of direct relevance to the matters under consideration by the Committee, (c) be reliable, and (d) not be abusive. In addition, the Committee invites NGOs to discuss the government's report, to indicate whether there was NGO consultation/cooperation in the government report preparation, to discuss the main critical points of the shadow report, and to propose solutions to problems encountered in the country in implementing the Covenant.

Many of the Committee members can be approached individually before and after the working sessions to talk informally about the issues that concern NGOs. Some may be willing to have a full-length meeting before a working session or at midday. Be prepared for these meetings by having your specific points of concern ready to be conveyed in a few words and/or on a single sheet of paper.

USEFUL CONTACTS AND RESOURCES

CESCR SECRETARIAT:

CESCR Secretary
Office of CESCR
Office 1-025, Palais Wilson
Palais des Nations
8-14 Avenue de la Paix
1211 Geneva 10, Switzerland
Tel. (41 22) 917 9321
Fax (41 22) 917 9046/9022

UNITED NATIONS OFFICE AT GENEVA (UNOG)

Security and Safety Services
Villa Les Feuillantines
13 Avenue de la Paix, Geneva
Open Monday – Friday, 8:00 am to 2:30 pm
(for passes for Palais de Nations)
Security office for Palais Wilson is at the entrance to Palais Wilson

CESCR COMMITTEE WEBSITE

www.unhchr.ch/html/menu2/6/cescr.htm

UNHCHR WEBSITE CONTAINING TREATY DATABASE

www.unhchr.ch (click on DOCUMENTS; click on TREATY BODIES DATABASE and follow search options)

UNIVERSITY OF MINNESOTA HUMAN RIGHTS LIBRARY

www.umn.edu/humanrts

INTERNATIONAL WOMEN'S RIGHTS ACTION WATCH

www.igc.org/iwraw

DOCUMENTS AND LIBRARY RESOURCES

M. Freeman, Equality and Rights (background paper on CESCR Article 3)

URL: [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.2002.5.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.2002.5.En?Opendocument)

OR access via IWRAW Web site (Links of Interest)

University of Toronto Women's Human Rights Library

URL: www.law-lib.utoronto.ca/diana/index.htm