

# **COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

## **REPORT ON THE FORTIETH AND FORTY-FIRST SESSIONS**

(28 April-16 May 2008, 3-21 November 2008)

ECONOMIC AND SOCIAL COUNCIL

OFFICIAL RECORDS, 2009

## **SUPPLEMENT No. 2**



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**Note**

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## **CHAPTER I**

### **Organizational and other matters**

#### **A. States parties to the Covenant**

1. As of 21 November 2008, the closing date of the forty-first session of the Committee on Economic, Social and Cultural Rights, with the ratification of Papua New Guinea, 159 States were parties to the International Covenant on Economic, Social and Cultural Rights. The Covenant was adopted by the General Assembly in resolution 2200 A (XXI) of 16 December 1966 and opened for signature and ratification in New York on 19 December 1966. It entered into force on 3 January 1976 in accordance with the provisions of its article 27.

#### **B. Sessions and agenda**

2. The Committee, at its twelfth session, requested the Economic and Social Council to authorize the holding of two annual sessions of the Committee, in May and November, each of three weeks' duration, in addition to a pre-sessional working group of five members to meet for five days immediately after each session to prepare the list of issues for consideration at the subsequent session. The Council, in its resolution 1995/39 of 25 July 1995, endorsed the recommendation of the Committee.

3. In 2008, the Committee held its fortieth session from 28 April to 16 May, and its forty-first session from 3 to 21 November. Both sessions were held at the United Nations Office at Geneva. The agenda for each session is shown in annex II to the present report.

4. An account of the Committee's deliberations at its fortieth and forty-first sessions is contained in the relevant summary records (E/C.12/2008/SR.1-26 and E/C.12/2008/SR.27-55, respectively).

#### **C. Membership and attendance**

5. All members of the Committee attended the fortieth session (see list of members, annex I to the present report). All members of the Committee attended the forty-first session.

6. The following specialized agencies and United Nations organs and departments were invited to be represented by observers at the fortieth and forty-first sessions: DAW, FAO, ILO, IMF, UNAIDS, UNCTAD, UNDP, UNEP, UNESCO, UNFPA, UN-HABITAT, UNHCR, UNICEF, UNIFEM, WHO, WIPO and the World Bank. In addition, the World Trade Organization (WTO) was invited to be represented by an observer at the fortieth and forty-first sessions, and the Islamic Cultural, Educational and Scientific Conference Organization (ISESCO) was represented at the fortieth session.

7. The following non-governmental organizations (NGOs) in consultative status with the Economic and Social Council were represented by observers:

At the fortieth session:

*General consultative status:* None

*Special consultative status:* ActionAid International, Arab Institute of Human Rights, Center for Economic and Social Rights (CESR), European Bureau for Lesser Used Languages, International Catholic Child Bureau, International Commission of Jurists (ICJ), International Organization for the Right to Education and Freedom of Education (OIDEF), Lutheran World Federation, Ni Putes Ni Soumises.

*Roster:* Center for International Environmental Law (CIEL), Foodfirst Information and Action Network (FIAN), Friedrich Ebert Foundation (FES), International Trade Union Confederation (ICTU).

At the forty-first session:

*General consultative status:* None

*Special consultative status:* Amnesty International (AI), Center for Reproductive Rights, Centre on Housing Rights and Evictions (COHRE), Dignity International, Federation of Women Lawyers in Kenya (FIDA Kenya), International Commission of Jurists (Kenya Section), International Federation of Human Rights Leagues (FIDH), International Harm Reduction Association, Philippine Human Rights Information Centre, World Organization Against Torture (OMCT).

*Roster:* Foodfirst Information and Action Network (FIAN), Friedrich Ebert Foundation (FES).

8. The following other national and international non-governmental organizations and coalitions of national non-governmental organizations were represented by observers at either or both of the fortieth and forty-first sessions: Association des Inventeurs de Paris, Bretagne Réunie (France), Center for Equal Opportunity, Centre for Minority Rights Development (Kenya), Centro Nicaragüense de Derechos Humanos (CENIDH), Community Organization of Philippines Enterprise Foundation, Conference of International Non-Governmental Organisations of the Council of Europe, ESCR-Asia, Hakijamii Trust (Economic and Social Rights Centre, Kenya), INGES (Instituto de Investigación y Gestión Social), International Women's Human Rights Clinic, Janhit Foundation (India), Karapatan (Alliance for the Advancement of People's Rights), Kenya Human Rights Commission, Médecins Sans Frontières, Nairobi People's Settlement Network, Navdanya (India), Observatory of Linguistic Rights (France), People's Collective for Economic, Social and Cultural Rights (India), Philippine Alliance of Human Rights Advocates, Plataforma Interamericana de derechos humanos,

democracia y desarrollo, Plateforme française pour les droits économiques, sociaux et culturels, Programme on Women's Economic, Social and Cultural Rights (India), South Center (Switzerland), Swedish Disability Federation, Swedish Drug Users Union, Tamazgha (France), UNIJA (Federation of IDPs Associations), 3D Trade Human Rights Equitable Economy (Switzerland).

#### **D. Pre-sessional working group**

9. The Economic and Social Council, in its resolution 1988/4 of 24 May 1988, authorized the establishment of a pre-sessional working group composed of five members to be appointed by the Chairperson to meet for up to one week prior to each session. By decision 1990/252 of 25 May 1990, the Council authorized the meetings of the working group to be held one to three months prior to a session of the Committee.

10. The Chairperson of the Committee, in consultation with the members of the Bureau, designated the following individuals as members of the pre-sessional working group to meet:

*Prior to the forty-first session:*

Mr. Chandrashekhhar DASGUPTA

Mr. Jaime MARCHAN ROMERO

Mr. Ariranga Govindasamy PILLAY

Mr. Eibe RIEDEL

Mr. Andrzej RZEPLINSKI

*Prior to the forty-second session:*

Mr. Clément ATANGANA

Ms. Rocío BARAHONA RIERA

Ms. Virginia BONOAN-DANDAN

Ms. Maria Virginia BRAS GOMES

Mr. Waleed M. SADI

11. The pre-sessional working group held its meetings at the United Nations Office at Geneva from 19 to 23 May and from 24 to 28 November 2008. All designated members of the working group attended the meetings. The working group identified issues that might most usefully be discussed with the representatives of the reporting States and lists of such questions were transmitted to the permanent missions of the States concerned. The pre-sessional working group to precede the forty-third session will hold its meetings on 25 to 29 May 2009, and for the forty-fourth session on 23 to 27 November 2009.

## E. Organization of work

### *Fortieth session*

12. The Committee considered its organization of work at its first meeting on 28 April 2008. In connection with this item, the Committee had before it the following documents:

(a) Provisional agenda and draft programme of work for the fortieth session, prepared by the Secretary-General in consultation with the Chairperson of the Committee (E/C.12/40/1);

(b) Reports of the Committee on the work of its previous sessions:\* first (E/1987/28-E/C.12/1987/5), second (E/1988/14-E/C.12/1988/4), third (E/1989/22-E/C.12/1989/5), fourth (E/1990/23-E/C.12/1990/3 and Corr.1), fifth (E/1991/23-E/C.12/1990/8 and Corr.1), sixth (E/1992/23-E/C.12/1991/4 and Add.1), seventh (E/1993/22-E/C.12/1992/2), eighth and ninth (E/1994/23-E/C.12/1993/19), tenth and eleventh (E/1995/22-E/C.12/1994/20 and Corr.1), twelfth and thirteenth (E/1996/22-E/C.12/1995/18), fourteenth and fifteenth (E/1997/22-E/C.12/1996/6), sixteenth and seventeenth (E/1998/22-E/C.12/1997/10), eighteenth and nineteenth (E/1999/22-E/C.12/1998/26), twentieth and twenty-first (E/2000/22-E/C.12/1999/11 and Corr.1), twenty-second, twenty-third and twenty-fourth (E/2001/22-E/C.12/2000/21), twenty-fifth, twenty-sixth and twenty-seventh (E/2002/22-E/C.12/2001/17), twenty-eighth and twenty-ninth (E/2003/22-E/C.12/2002/13), thirtieth and thirty-first (E/2004/22-E/C.12/2003/14), thirty-second and thirty-third (E/2005/22-E/C.12/2004/9), thirty-fourth and thirty-fifth (E/2006/22-E/C.12/2005/5), thirty-sixth and thirty-seventh (E/2007/22-E/C.12/2006/11), and thirty-eighth and thirty-ninth (E/2008/22-E/C.12/2007/3).

13. In accordance with rule 8 of its rules of procedure, the Committee, at the same meeting, considered the provisional agenda and draft programme of work for its fortieth session and approved them, as amended during consideration.

### *Forty-first session*

14. The Committee considered its organization of work at its 27th meeting on 3 November 2008. In connection with this item, the Committee had before it the following documents:

(a) Provisional agenda and draft programme of work for the forty-first session, prepared by the Secretary-General in consultation with the Chairperson of the Committee (E/C.12/41/1);

(b) Reports of the Committee on the work of its previous sessions (see paragraph 12 (b) above).

15. In accordance with rule 8 of its rules of procedure, the Committee, at the same meeting, considered the provisional agenda and draft programme of work for its forty-first session and approved them, as amended during consideration.

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\* Published as *Official Records of the Economic and Social Council*.

## F. Next sessions

16. In accordance with the established schedule, the forty-second and forty-third sessions will take place at the United Nations Office at Geneva from 4 to 22 May 2009 and from 2 to 20 November 2009, respectively.

## G. States parties' reports scheduled for consideration by the Committee at its upcoming sessions

17. In accordance with rule 61, paragraph 2, of the Committee's rules of procedure, the reports submitted by States parties under article 16 of the Covenant are scheduled for consideration in the order in which they have been received by the Secretary-General. The Committee received as at 21 November 2008, closing date of the forty-first session, the following reports, which it decided to consider at its forty-second and forty-third sessions in 2009:

### *Forty-second session (4-22 May 2009)*

Australia	Fourth	E/C.12/AUS/4
Brazil	Second	E/C.12/BRA/2
Cambodia	Initial	E/C.12/KHM/1
Cyprus	Fourth-fifth	E/C.12/CYP/5
United Kingdom	Fourth-fifth	E/C.12/GBR/5

### *Forty-third session (2 to 20 November 2009)*

Chad	Initial-third	E/C.12/TCD/3
Democratic Republic of the Congo	Second-fifth	E/C.12/DRC/5
Madagascar	Second	E/C.12/MDG/2
Poland	Fifth	E/C.12/POL/5
Republic of Korea	Third	E/C.12/KOR/3

## CHAPTER II

### Overview of the present working methods of the Committee

18. This chapter of the Committee's report aims at providing a concise and up-to-date overview and explanation of the ways in which the Committee carries out its various functions, including information about recent developments in its working methods. It is designed to make the Committee's current practice more transparent and readily accessible so as to assist States parties and others interested in the implementation of the Covenant.

19. Since its first session, in 1987, the Committee has made a concerted effort to devise appropriate working methods that adequately reflect the nature of the tasks with which it has been entrusted. In the course of its 41 sessions it has sought to modify and develop these methods in the light of its experience. These methods will continue to evolve.

#### A. General reporting guidelines

20. The Committee attaches major importance to the need to structure the reporting process and the dialogue with each State party's representatives in such a way as to ensure that the issues of principal concern to it are dealt with in a methodical and informative manner. For this purpose, the Committee has adopted reporting guidelines on treaty-specific documents to be submitted by States parties under articles 16 and 17 of the Covenant,<sup>1</sup> with a view to assisting States in the reporting process and improving the effectiveness of the monitoring system as a whole.

#### B. Examination of States parties' reports

##### 1. Work of the pre-sessional working group

21. A pre-sessional working group meets for five days prior to each of the Committee's sessions. It is composed of five members of the Committee nominated by the Chairperson, taking account of the desirability of a balanced geographical distribution and other relevant factors.

22. The principal purpose of the working group is to identify in advance the questions that will constitute the principal focus of the dialogue with the representatives of the reporting States. The aim is to improve the efficiency of the system and to ease the task of States' representatives by facilitating more focused preparations for the discussion.<sup>2</sup>

23. It is generally accepted that the complex nature and diverse range of many of the issues raised in connection with the implementation of the Covenant constitute a strong argument in

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<sup>1</sup> E/C.12/2008/2, annex. See also annex VIII to the present report.

<sup>2</sup> *Official Records of the Economic and Social Council, 1998, Supplement No. 4 (E/1988/14-E/C.12/1988/4)*, chap. IV, para. 361.



favour of providing States parties with the possibility of preparing in advance to answer some of the principal questions arising out of their reports. Such an arrangement also enhances the likelihood that the State party will be able to provide precise and detailed information.

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

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

26. The lists of issues drawn up by the working group are given directly to a representative of the State concerned, along with a copy of the Committee's most recent report and with a note stating the following:

The list is not intended to be exhaustive and it should not be interpreted as limiting or in any other way prejudging the type and range of questions which members of the Committee might wish to ask. However, the Committee believes that the constructive dialogue which it wishes to have with the representatives of the State party is greatly facilitated by making the list available in advance of the Committee's session. In order to improve the dialogue that the Committee seeks, it strongly urges each State party to provide in writing its replies to the list of issues and to do so sufficiently in advance of the session at which its report will be considered to enable the replies to be translated and made available to all members of the Committee.

27. In addition to the task of formulating the lists of issues, the pre-sessional working group is also entrusted with a variety of other tasks designed to facilitate the work of the Committee as a whole. These have included: discussing the most appropriate allocation of time for the consideration of each State report; considering the issue of how best to respond to supplementary reports containing additional information; examining draft general comments; considering how best to structure the day of general discussion; and other relevant matters.

## **2. Consideration of the reports**

28. In accordance with the established practice of each of the United Nations human rights treaty monitoring bodies, representatives of the reporting States should be present at the meetings of the Committee when their reports are examined in order to ensure a constructive dialogue with the Committee. The following procedure is generally observed: the representative of the State party is invited to introduce the report by making brief introductory comments and

introducing any written replies to the list of issues drawn up by the pre-sessional working group. The Committee then considers the report by clusters of articles (usually articles 1-5, 6-9, 10-12 and 13-15), taking particular account of the replies furnished in response to the list of issues. The Chairperson will normally invite questions or comments from Committee members in relation to each issue and then invite the State party representatives to reply immediately to questions that do not require further reflection or research. Any remaining questions are taken up at a subsequent meeting or, if necessary, may be the subject of additional information provided to the Committee in writing. Members of the Committee are free to pursue specific issues in the light of the replies thus provided, although the Committee has urged them not to (a) raise issues outside the scope of the Covenant; (b) repeat questions already posed or answered; (c) add unduly to an already long list on a particular issue; or (d) speak for more than five minutes in any one intervention. Representatives of relevant specialized agencies and other international bodies may also be invited to contribute at any stage of the dialogue.

29. The final phase of the Committee's examination of the report consists of the drafting and adoption of its concluding observations. For this purpose, the Committee usually sets aside a brief period in closed session immediately after the conclusion of the dialogue to enable its members to express their preliminary views. The country rapporteur then prepares, with the assistance of the secretariat, a draft set of concluding observations for consideration by the Committee. The agreed structure of the concluding observations is as follows: introduction, positive aspects, factors and difficulties impeding the implementation of the Covenant, principal subjects of concern and suggestions and recommendations. At a later stage, the Committee then discusses the draft, again in private session, with a view to adopting it by consensus.

30. The concluding observations, once formally adopted, are generally made public on the final day of the session. They are forwarded as soon as possible to the State party concerned and included in the Committee's report. If it so wishes, the State party may address any of the Committee's concluding observations in the context of any additional information that it provides to the Committee.

31. In general, the Committee normally devotes three meetings (of three hours each) to its public examination of States parties' reports. In addition, it generally devotes between two and three hours towards the end of the session, in private, to its discussion of each set of concluding observations.

### **3. Comments by States parties on concluding observations**

32. Once the Committee has adopted its concluding observations on the report of a State party, and if the latter submits any comments thereon to the Committee, these are made public, as submitted, as Committee documents and mentioned in the annual report. Comments from States parties are published for information purposes only.

33. During the reporting period, the Committee received comments from India (E/C.12/IND/CO/5/Add.1) on the concluding observations that the Committee adopted at its fortieth session in relation to the second to fifth periodic reports submitted by India (E/C.12/IND/CO/5; see paragraphs 218-306 below).

#### 4. Postponement of the consideration of reports

34. Last-minute requests by States to postpone the consideration of a report that has been scheduled for examination at a particular session are extremely disruptive for all concerned and have in the past caused major problems for the Committee. Accordingly, the Committee's long-standing policy is not to grant such requests and to proceed with its consideration of all scheduled reports, even in the absence of a representative of the State party concerned.

##### C. Follow-up procedure in relation to the consideration of reports

35. At its twenty-first session,<sup>3</sup> the Committee decided that:

(a) In all concluding observations, the Committee would request the State party to inform the Committee, in its next periodic report, about steps taken to implement the recommendations in the concluding observations;

(b) Where appropriate, the Committee may, in its concluding observations, make a specific request to a State party to provide more information or statistical data at a time prior to the date that the next periodic report is due to be submitted;

(c) Where appropriate, the Committee may, in its concluding observations, ask the State party to respond to any pressing specific issue identified in the concluding observations prior to the date that the next report is due to be submitted;

(d) Any information provided in accordance with (b) and (c) above would be considered by the next meeting of the Committee's pre-sessional working group;

(e) In general, the working group could recommend that the Committee take one of the following measures:

(i) That the Committee take note of such information;

(ii) That the Committee adopt specific additional concluding observations in response to that information;

(iii) That the matter be pursued through a request for further information; or

(iv) That the Chairperson of the Committee be authorized to inform the State party, in advance of the next session, that the Committee would take up the issue at its next session and that, for that purpose, the participation of a representative of the State party in the work of the Committee would be welcome;

(f) If the information requested in accordance with (b) and (c) above is not provided by the specified date, or is patently unsatisfactory, the Chairperson, in consultation with the members of the Bureau, could be authorized to follow up the matter with the State party.

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<sup>3</sup> On 1 December 1999 (53rd meeting).

36. In situations in which the Committee considers that it is unable to obtain the information it requires on the basis of the above-mentioned procedures, it may decide to adopt a different approach. In particular, the Committee may request that the State party concerned accept a visit from one or two members of the Committee. The purposes of such an on-site visit would be: (a) to collect the information necessary for the Committee to continue its constructive dialogue with the State party and to enable it to carry out its functions in relation to the Covenant; and (b) to provide a more comprehensive basis upon which the Committee might exercise its functions in relation to articles 22 and 23 of the Covenant concerning technical assistance and advisory services. The Committee would state specifically the issue(s) with respect to which its representative(s) would seek to gather information from all available sources. The representative(s) would also have the task of considering whether the programme of advisory services administered by the Office of the United Nations High Commissioner for Human Rights could be of assistance in connection with the specific issue at hand.

37. At the conclusion of the visit, the representative(s) would report to the Committee. In the light of the report presented by its representative(s), the Committee would then formulate its own conclusions. Those conclusions would relate to the full range of functions carried out by the Committee, including those relating to technical assistance and advisory services, to be provided by the Office of the High Commissioner.

38. This procedure has already been applied in relation to two States parties and the Committee considers the experience to have been a very positive one in both instances. In a case where the State party concerned does not accept the proposed mission, the Committee will consider making whatever recommendations might be appropriate to the Economic and Social Council.

#### **D. Procedure in response to non-submitted and considerably overdue reports**

39. The Committee believes that a situation of persistent non-reporting by States parties undermines one of the foundations of the Covenant.

40. Accordingly, the Committee resolved at its sixth session to begin in due course to consider the situation concerning the implementation of the Covenant in respect of each State party whose reports are very significantly overdue. At its seventh session it resolved to begin scheduling consideration of such reports at its future sessions and to notify the States parties concerned. At its thirty-sixth session, the Committee adopted the following procedure:

- (a) To review three lists of States parties whose reports are overdue:
  - (i) States parties with reports that were due within the past 8 years;
  - (ii) States parties with reports that were due from 8 to 12 years ago;
  - (iii) States parties with reports that were due more than 12 years ago;
- (b) To send reminders to States parties as follows:
  - (i) The first letter will be sent to all States parties about the dates on which their reports are due; those with overdue reports will be reminded of and requested to submit those reports as soon as possible;

- (ii) A second letter will be sent to States parties with the most outstanding and overdue reports that do not respond to the reminder, informing them that the Committee plans to consider the overdue report(s) at a specific session in the future, and requesting that those reports be submitted in sufficient time to allow a constructive dialogue to take place;
- (iii) A third letter will be sent if no response is received to the second letter, confirming that the Committee will proceed to review the implementation of the Covenant in the State party at the session communicated in the earlier letter in light of all available information;

(c) In situations where the State party concerned indicates that a report will be provided to the Committee and upon a request from the State party, the Chairperson may decide to defer its consideration of the implementation of the Covenant in the State party for one session.

#### **E. Consolidation of reports**

41. At its 55th meeting, held on 22 November 2006 (thirty-seventh session), the Committee reviewed the situation of overdue reports, including recent submissions of several long overdue reports, and decided as follows:

(a) The Committee will accept from States parties that have never submitted a report under the Covenant, a one-time submission of up to three reports consolidated in a single document, in order to bring them up to date with their reporting obligations;

(b) A consolidated report should contain a general overview of important developments in relation to the implementation of the Covenant over the entire period covered by the reports submitted and present detailed information on the present situation.

#### **F. Action by the Committee with regard to information on economic, social and cultural rights received from sources other than the States parties**

##### **1. Information provided in connection with the consideration by the Committee of a State party report**

42. The Committee also takes into account the information provided to it by sources other than the State party in connection with its consideration of a State party's report. That information, being an integral part of the Committee's constructive dialogue with a State party, is made available by the secretariat to the State party concerned in advance of the Committee's consideration of the report of that State party.

##### **2. Information received following consideration by the Committee of a State party report and adoption of concluding observations**

43. On various occasions in the past, the Committee has received information, mainly from non-governmental organizations, after consideration of the State party's report and adoption of concluding observations thereon. In fact this was follow-up information on the Committee's conclusions and recommendations. Not being in a position to consider and act upon such

information without reopening its dialogue with a State party (except in cases specifically addressed in concluding observations), the Committee will consider and act upon the information received from sources other than a State party only in cases where such information has been specifically requested in its concluding observations.

44. The Committee considers that, following its consideration of the State party report and adoption of concluding observations, the primary responsibility for their implementation lies with the national Government, which is bound to report on measures taken in this respect to the Committee in its next periodic report. Therefore, the Committee recommends that information referred to in the preceding paragraph be submitted by authors directly to national competent authorities with a view to assisting them in implementing the Committee's concluding observations.

### **3. Information provided with respect to non-reporting States parties**

45. The Committee has also been receiving information from international and national non-governmental organizations on the status of the implementation of economic, social and cultural rights by:

(a) States parties that have not submitted any report at all since ratification of the International Covenant on Economic, Social and Cultural Rights and its entry into force;

(b) States parties with long overdue periodic reports.

46. In both cases the States parties' failure to comply with their obligations under the Covenant, and in particular with their reporting obligations, had made it impossible for the Committee to monitor effectively the implementation by those States of the economic, social and cultural rights set forth in the Covenant in accordance with the mandate conferred on the Committee by the Economic and Social Council.

47. At its thirtieth session in 2003, the Committee, in a spirit of open and constructive dialogue with States parties, decided that in both cases referred to above, it may take the following action on a case-by-case basis:

(a) The Committee may informally bring to the attention of the State party concerned the information received and urge the State party to submit its overdue report without further delay;

(b) The Committee may formally - through a letter from the Chairperson - bring to the attention of the State party concerned the information received and urge the State party to submit its overdue report without further delay. The Committee may formally request the State party to provide it with information addressing issues raised in the submissions of non-governmental organizations and to submit its overdue report without further delay. That letter will also be made available to the non-governmental organizations concerned upon request.

### **G. Day of general discussion**

48. At each session, the Committee devotes one day, usually the Monday of the third week, to a general discussion of a particular right or of a particular aspect of the Covenant. The purpose is threefold: such a general discussion assists the Committee in developing in greater depth its understanding of the relevant issues; it enables the Committee to encourage inputs into its work

from all interested parties; and helps the Committee to lay the basis for a future general comment. The issues that have been the focus of discussions held to date by the Committee may be found in annex V to the present report.

## **H. Other consultations**

49. The Committee has sought to coordinate its work with that of other bodies to the greatest extent possible and to draw as widely as it can on available expertise in the fields of its competence. The Committee has also sought to draw on the expertise of the relevant specialized agencies and United Nations bodies, both in its work as a whole and, more particularly, in the context of its general discussions. It has also consistently invited individuals such as special rapporteurs of the Human Rights Council and the former Commission on Human Rights and Sub-Commission on the Promotion and Protection of Human Rights, chairpersons of Council and Commission working groups and others to address it and engage in discussions.

50. In addition, the Committee has invited a variety of experts who have a particular interest in, and knowledge of, some of the issues under review to contribute to its discussions. These contributions have added to its understanding of some aspects of the questions arising under the Covenant.

## **I. Participation of non-governmental organizations in the work of the Committee**

51. In order to ensure that the Committee is as well informed as possible, it provides opportunities for non-governmental organizations to submit relevant information to it.<sup>4</sup> They may do so in writing at any time prior to the consideration of a given State party's report. The Committee's pre-sessional working group is also open to the submission of information in person or in writing from any non-governmental organization, provided that it relates to matters on the agenda of the working group. In addition, the Committee sets aside part of the first afternoon at each of its sessions to enable representatives of non-governmental organizations to provide oral information. Such information should: (a) focus specifically on the provisions of the International Covenant on Economic, Social and Cultural Rights; (b) be of direct relevance to matters under consideration by the Committee; (c) be credible; (d) not be abusive. The relevant meeting is open and provided with interpretation and press services, but is not covered by summary records.

52. The Committee has requested the secretariat to ensure that written information formally submitted to it by non-governmental organizations in relation to the consideration of a specific State party report is made available as soon as possible to the representatives of the State party concerned. Prior to a session, this is normally done through posting on the website of the Office of the High Commissioner for Human Rights, and direct delivery to the representatives of the concerned State party during the dialogue. The Committee therefore assumes that if any of this information is referred to during the dialogue with the State party, the latter will already be aware of the information.

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<sup>4</sup> *Official Records of the Economic and Social Council, 2001, Supplement No. 2 (E/2001/22-E/C.12/2000/21)*, annex V: "Non-governmental organization participation in the activities of the Committee on Economic, Social and Cultural Rights".

53. In an effort to secure the most effective and widest possible participation of non-governmental organizations in its activities, the Committee adopted, at its twenty-fourth session in 2000, a document that explains the modalities of their participation in the Committee's work and provides detailed guidelines for non-governmental organizations with a view to facilitating their cooperation with the Committee.<sup>5</sup>

## **J. General comments**

54. In response to an invitation addressed to it by the Economic and Social Council, the Committee decided to begin, as from its third session, the preparation of general comments based on the various articles and provisions of the Covenant, in particular with a view to assisting the States parties in fulfilling their obligations under the Covenant. As of 21 November 2008, the Committee had adopted 19 general comments (see annex III to the present report).

55. By the end of its forty-first session (21 November 2008), the Committee and the governmental expert sessional working group, which existed prior to the creation of the Committee, had examined partial reports concerning rights covered by articles 6 to 9, 10 to 12 or 13 to 15 of the Covenant, and comprehensive reports covering all the substantive articles, submitted by 118 of the 155 States parties to the Covenant which had reports due by then.<sup>6</sup> The total number of States parties to the Covenant reached 159 by the end of the forty-first session. They represented all regions of the world, with different political, legal, socio-economic and cultural systems. The reports submitted to date have illustrated many of the problems that might arise in implementing the Covenant.

56. Through its general comments, the Committee endeavours to make the experience gained through the examination of States' reports available for the benefit of all States parties in order to assist and promote their further implementation of the Covenant; to draw the attention of the States parties to insufficiencies disclosed by a large number of reports; to suggest improvements in the reporting procedures; and to stimulate the activities of the States parties, international organizations and the specialized agencies concerned in achieving progressively and effectively the full realization of the rights recognized in the Covenant. Whenever necessary, the Committee may, in the light of the experience of States parties and of the conclusions drawn therefrom, revise and update its general comments.

57. At its twenty-first session, the Committee adopted the outline for drafting general comments on specific rights enshrined in the Covenant.<sup>7</sup> The Committee agreed that the subject matter of a particular general comment would influence the overall structure of that comment and observed that the outline was not intended to be strictly adhered to. However, the outline provided useful signposts, a checklist of issues to be considered in the process of drafting a

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<sup>5</sup> Ibid.

<sup>6</sup> The 155 States parties do not include the Lao People's Democratic Republic, Bahrain, Pakistan and Papua New Guinea, which having ratified the Covenant in 2007 or 2008, were not obliged to submit their reports prior to 21 November 2008.

<sup>7</sup> *Official Records of the Economic and Social Council, Supplement No. 2 (E/2000/22-E/C.12/1999/11 and Corr.1), annex IX.*



general comment. In this respect, the outline would assist in ensuring consistency in the content, format and ambit of general comments to be adopted by the Committee. The Committee emphasized the importance of ensuring that general comments are reader-friendly, of reasonable length and readily understandable to a broad range of readers, primarily States parties to the Covenant. The outline will assist in ensuring consistency and clarity in the structure of the general comments, thus promoting their accessibility, and strengthening the authoritative interpretation of the Covenant provided by the Committee through its general comments.

#### **K. Statements adopted by the Committee**

58. With a view to assisting States parties to the Covenant, the Committee adopts statements to clarify and confirm its position with respect to major international developments and issues bearing upon the implementation of the Covenant. As of 21 November 2008, the Committee had adopted 17 statements (see annex IV to the present report).

## CHAPTER III

### Submission of reports by States parties under articles 16 and 17 of the Covenant

59. In accordance with rule 58 of its rules of procedure, the Committee, at its 27th meeting on 3 November 2008, considered the status of submission of reports under articles 16 and 17 of the Covenant.

60. In that connection, the Committee had before it the following documents:

(a) Note by the Secretary-General on the revised general guidelines regarding the form and contents of reports to be submitted by States parties (E/C.12/1991/1);

(b) Note of the Secretary-General on the States parties to the Covenant and the status of submission of reports as at 5 September 2008 (E/C.12/41/2).

61. The Secretary-General informed the Committee that, in addition to the reports scheduled for consideration by the Committee at its fortieth and forty-first sessions (see paragraphs 63 and 64 below), he had received, from 23 November 2007 to 21 November 2008, the following reports submitted under articles 16 and 17 of the Covenant by States parties:

The initial reports of Cambodia (E/C.12/KHM/1) and Turkey (E/C.12/TUR/1); the combined initial and second and third periodic reports of Angola (E/C.12/AGO/3); the second periodic reports of the Republic of Moldova (E/C.12/MOL/2) and Yemen (E/C.12/YEM/2); the third periodic reports of Algeria (E/C.12/ALG/3) and the Dominican Republic (E/C.12/DOM/3); the combined second and third periodic reports of Switzerland (E/C.12/SWI/3); the combined second, third and fourth periodic reports of Mauritius (E/C.12/MUS/4) and Sri Lanka (E/C.12/LKA/4); the combined third and fourth periodic reports of Uruguay (E/C.12/URU/4); the fifth periodic reports of Colombia (E/C.12/COL/5), Germany (E/C.12/DEU/5) and the Russian Federation (E/C.12/RUS/5); and the combined fourth and fifth periodic reports of the Netherlands (E/C.12/NLD/5).

62. At its fortieth session, the Committee decided to schedule for consideration in 2010 the status of implementation of the Covenant by Mali and the United Republic of Tanzania, two non-reporting States parties. The Covenant entered into force for Mali and the United Republic of Tanzania on 3 January 1976 and 11 September 1976, respectively. Their consolidated initial reports were both due on 30 June 1990. By note verbale dated 19 October 2007, the two States parties were requested to submit their initial reports to the Committee.

## CHAPTER IV

### **Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant and of a document submitted by the United Nations Interim Administration Mission in Kosovo (UNMIK)**

63. At its fortieth session, the Committee examined the following reports submitted by four States parties under articles 16 and 17 of the Covenant:

#### *Second periodic reports*

Benin	E/C.12/BEN/2
Bolivia	E/C.12/BOL/2
India	E/C.12/IND/5 (Combined second, third, fourth and fifth periodic reports)

#### *Third periodic reports*

France	E/C.12/FRA/3
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64. At its forty-first session, the Committee considered the following reports submitted by five States parties under articles 16 and 17 of the Covenant, as well as the document submitted by the United Nations Interim Administration Mission in Kosovo (UNMIK):

#### *Initial reports*

Angola	E/C.12/AGO/3 (Combined initial and second and third periodic reports)
Kenya	E/C.12/KEN/1
United Nations Interim Administration Mission in Kosovo (UNMIK)	E/C.12/UNK/1

#### *Second periodic reports*

Nicaragua	E/C.12/NIC/3 (Combined second, third and fourth periodic report)
Philippines	E/C.12/PHL/4 (Combined second, third and fourth periodic report)

#### *Fifth periodic reports*

Sweden	E/C.12/SWE/5
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65. In accordance with rule 62 of the Committee's rules of procedure, representatives of all States submitting a report, as well as of UNMIK in connection with the consideration of the document submitted by UNMIK, were invited to participate in Committee meetings at which

their reports were considered. All States parties whose reports were considered by the Committee, as well as UNMIK, sent representatives to participate in the consideration of their respective reports. In accordance with a decision adopted by the Committee at its second session, the names and positions of the members of each State party's delegation are listed in annex IX to the present report.

66. At its eighth session, the Committee had decided to discontinue its practice of including in its annual report summaries of the consideration of country reports. Reference is made, in this regard, to the relevant summary records of the meetings of the Committee at which the reports were considered. In accordance with modified rule 57 of the Committee's rules of procedure, the annual report should include the Committee's concluding observations relating to each State party's report. Accordingly, the following paragraphs, arranged on a country-by-country basis according to the sequence followed by the Committee in its consideration of the reports, contain the concluding observations adopted by the Committee with respect to the States parties' reports considered at its fortieth and forty-first sessions, as well as with respect to the document submitted by UNMIK. In accordance with established Committee practice, members do not take part in either the drawing up or the adoption of the concluding observations relating to their own country's report.

#### *Fortieth session*

### **BENIN**

67. The Committee on Economic, Social and Cultural Rights considered the second periodic report of Benin on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/BEN/2) at its 10th and 11th meetings, held on 5 May 2008 (E/C.12/2008/SR.10 and 11), and adopted, at its 25th meeting, held on 16 May 2008, the following concluding observations.

#### **A. Introduction**

68. The Committee notes the timely submission of the second periodic report of Benin, which gives a straightforward account of the problems encountered by the State party in implementing the Covenant. Nevertheless, it finds that most of the written replies to the list of issues (E/C.12/Q/BEN/2 and Add.1) were not sufficiently detailed.

69. The Committee notes with regret that the late arrival of the State party's delegation prevented a truly constructive dialogue with the delegation owing to the lack of time to deal with all the issues that the Committee would have liked to raise.

#### **B. Positive aspects**

70. The Committee welcomes the legislative measures adopted by the State party to promote equality between men and women and to suppress exploitation of and sexual violence against women and children; in particular it welcomes:

(a) The adoption of Act No. 2002-07 on the Personal and Family Code of 24 August 2004, which prohibits polygamy, sets the marriageable age at 18 for men and women and provides, in article 1030, that “custom ceases to have the force of law in all matters covered by the present Code”;

(b) The adoption of Act No. 2003-03 of 3 March 2003 criminalizing the practice of female genital mutilation and Act No. 2003-04 of 3 March 2003 on sexual and reproductive health, article 9 of which prohibits all forms of violence against and sexual abuse of the human person;

(c) The adoption of Act No. 2006-04 of 5 April 2006 on conditions for the displacement of minors and suppression of child trafficking and the drafting of a national plan of action to combat trafficking in children for labour exploitation.

71. The Committee welcomes the adoption of Act No. 2005-31 of 10 April 2006 on the prevention, care and control of HIV/AIDS and of several framework documents which provide for the care of children and orphans at risk. It also welcomes the improvement in the HIV/AIDS prevalence rate, which fell from 4.1 per cent in 2001 to 2 per cent in 2005, and the provision of free antiretroviral drugs to persons affected by HIV/AIDS.

72. The Committee welcomes the fact that preschool and primary education is now free of charge in the State party’s public education institutions.

### **C. Factors and difficulties impeding the implementation of the Covenant**

73. The Committee is of the view that there are no significant factors or difficulties impeding implementation of the Covenant in the State party.

### **D. Principal subjects of concern**

74. The Committee notes with concern that the Benin Human Rights Commission has the status of a non-governmental organization and that its independence and funding are not adequately ensured.

75. The Committee regrets the lack of information on the direct or indirect applicability of the Covenant and on the court decisions of the State party which refer to the provisions of the Covenant.

76. The Committee notes with regret that the lack of disaggregated and updated statistical data on the extent to which the rights set forth in the Covenant are enjoyed prevents it from accurately assessing the State party’s implementation of the provisions of the Covenant.

77. The Committee is concerned that children born out of wedlock have the same rights and obligations as “legitimate children” only if they are recognized by their father and under certain conditions relating to inheritance rights (see E/C.12/BEN/2, para. 38).

78. The Committee is concerned by information that 25 per cent of Beninese children have not been registered at birth, which reportedly hinders their access to health services and education.

79. The Committee notes with concern that there is no specific law prohibiting discrimination against persons with disabilities and introducing legal obligations which guarantee access to buildings for such persons.

80. The Committee is concerned at the persistence of stereotyped traditions and attitudes that have an adverse effect on women's equal enjoyment of economic, social and cultural rights, despite the adoption of the laws referred to in paragraph 4 above.

81. The Committee notes with concern the very high unemployment rate in the formal labour market. The Committee is also concerned that the informal sector accounts for 95 per cent of the working population, more than half of whom are women.

82. The Committee is concerned that the number of workers covered by the social security system established under Act No. 98-019 of 21 March 2003 on the Social Security Code is limited, that the law to provide for the organization and operation of the special scheme for self-employed farmers and workers in the informal economy has not yet been adopted and that benefits under and membership in the Mutual Social Security Association for the Informal Sector are inadequate.

83. The Committee is extremely concerned at the persistence of domestic violence, including marital rape, particularly in the context of forced marriages, and at the lack of any provision which specifically makes domestic violence a criminal offence. It is also greatly concerned about the reluctance of victims to file complaints and of judges, prosecutors and police officers to intervene under the existing provisions of criminal law.

84. The Committee is concerned at the high number of persons trafficked from and within the State party, particularly persons in transit through its territory, for purposes of sexual exploitation and forced labour. It is concerned that there are no specific provisions of criminal law prohibiting trafficking in adults.

85. The Committee is deeply concerned at reports of killings of so-called "witch children", including infants with disabilities or whose mothers die following childbirth, which are motivated by traditional beliefs that persist among some groups in northern Benin.

86. The Committee is deeply concerned about the prevalence of child labour, including economic exploitation and frequent abuse of children working as domestic servants or "vidomegons".

87. The Committee reiterates its concern that a significant percentage of the population is living below the national poverty line and that 73 per cent of Benin's people live on less than two dollars a day.

88. The Committee notes with concern that 43 per cent of the population are suffering from chronic malnutrition.

89. The Committee is deeply concerned about reports of deplorable prison conditions, including overcrowding, and that persons deprived of their liberty receive only one meal of substandard quantity and quality per day.

90. The Committee notes with concern that public housing for disadvantaged and marginalized individuals and families remains inadequate, as most such housing is reserved for public sector employees.

91. The Committee is very concerned about the high maternal and infant mortality rate, especially in regions where health infrastructure is inadequate, and about the fact that women and girls have limited access to reproductive health services and antenatal assistance in rural areas.

92. The Committee continues to be concerned that, despite the State party's efforts to combat the practice of female genital mutilation (excision), this practice, which violates the rights and physical integrity of women, persists in certain regions of Benin and that the law criminalizing female genital mutilation and the law on sexual and reproductive health have not been enforced.

93. The Committee is concerned about reports of low secondary school attendance and low primary school attendance in rural areas, particularly with respect to girls.

94. The Committee notes with regret the lack of adequate information on steps taken by the State party to protect its linguistic and cultural heritage, in particular the various languages and dialects.

#### **E. Suggestions and recommendations**

95. The Committee recommends that the State party strengthen the legal status and ensure the independence and adequate funding of the Benin Human Rights Commission, in accordance with the Paris Principles (General Assembly resolution 48/134).

96. The Committee recommends that the State party ensure that the Covenant rights are directly applicable in domestic courts, that legal and judicial training take account of the justiciability of these rights, that the use of the Covenant as a source of domestic law is promoted and that case law on the application of the Covenant by domestic courts is systematically collected. It invites the State party to include in its next periodic report information on judicial decisions which give effect to the Covenant rights.

97. The Committee recommends that the State party include in its next periodic report updated statistical data on the enjoyment of Covenant rights, broken down by age, gender, urban and rural area and ethnic group. Particular attention should be given to disadvantaged and marginalized groups.

98. The Committee invites the State party to consider amending the Personal and Family Code with a view to guaranteeing full equality between children born in and out of wedlock and remove the phrase "legitimate children" from legal language.

99. The Committee recommends that the State party strengthen measures to ensure that all children are registered at birth by requiring public authorities and health and education services to register them, issuing birth certificates to unregistered children and abolishing registration fees.

100. The Committee invites the State party to consider adopting a specific law guaranteeing the rights of persons with disabilities and prohibiting all forms of discrimination against them, and to consider ratifying the Convention on the Rights of Persons with Disabilities of 13 December 2006 and the Optional Protocol thereto.

101. The Committee invites the State party to take steps to overcome stereotyped traditions and attitudes with respect to women and their role in society and to include in its next periodic report additional information on measures taken and their effectiveness.

102. The Committee invites the State party to include in its next periodic report updated data on the unemployment rate, broken down by gender, age, urban and rural area and ethnic group. The State party is also requested to provide information on the results of measures taken to increase employment opportunities in the formal sector and take measures to shrink the informal sector.

103. The Committee recommends that the State party ensure that all persons, regardless of the sector in which they are employed, are insured under social security systems that provide minimum adequate coverage against major life risks. In this context, the State party is invited to consider ratifying International Labour Organization (ILO) Convention No. 102 (1952) concerning Minimum Standards of Social Security.

104. The Committee urges the State party to adopt criminal law provisions that refer explicitly to domestic violence and marital rape as offences and provide for protection orders, to ensure that judges, prosecutors and police officers undergo training in the strict application of the relevant criminal law provisions and to establish victim assistance programmes. The Committee also recommends that the State party step up efforts to heighten public awareness in order to dispel the traditional belief that this phenomenon is a private family matter. It also requests the State party to provide in its next periodic report updated data on the number and nature of reported cases of domestic violence and of convictions and criminal sanctions against the perpetrators.

105. The Committee recommends that the State party continue and step up its efforts to combat human trafficking by ensuring adequate access to victim assistance and witness protection programmes and by providing training for police officers, prosecutors and judges in the strict enforcement of the relevant criminal law provisions. The Committee also recommends that the State party consider adopting a law against trafficking in adults, allocate sufficient funds for implementation of the national plan of action to combat child trafficking and for local child protection committees and increase cooperation with neighbouring States.

106. The Committee recommends that the State party step up its efforts to prevent and halt killings of so-called “witch children” by including provisions in criminal law to suppress this practice and organizing campaigns to heighten awareness of its criminal nature among local authorities, doctors, midwives and the population at large. The State party is requested to include in its next periodic report updated statistical data on the number of cases of infanticide reported to the police, the number of perpetrators brought to justice and the penalties imposed.

107. The Committee urges the State party to indicate in its next periodic report the measures taken to combat child labour and end the practice of “vidomegon”, and the outcome of such measures, and provide information on assistance given to the victims of these practices and their families.



108. The Committee recommends that the State party allocate sufficient funding for the implementation of its poverty reduction strategy, include in its next periodic report information on the results of steps taken under the strategy, ensure that economic, social and cultural rights are fully integrated into the strategy and specifically address the needs of disadvantaged and marginalized individuals and groups. In this regard, the State party is referred to the Committee's statement on "Poverty and the International Covenant on Economic, Social and Cultural Rights" (E/C.12/2001/10).

109. The Committee recommends that the State party step up its efforts to offset the negative impact of rising food prices on family budgets, especially in the case of disadvantaged and marginalized individuals and families, in order to combat malnutrition and hunger.

110. The Committee recommends that the State party step up its efforts to combat prison overcrowding, in particular by focusing on alternatives to custodial measures, and ensure that all persons deprived of their liberty receive minimum nutrition, by increasing the prison food budget as well as the number of food quality checks in prisons and remand centres.

111. The Committee recommends that the State party include in its next periodic report information on the results of the implementation of its land security policy aimed at providing adequate housing for everyone, particularly disadvantaged and marginalized individuals and families, as well as updated, disaggregated data on access to public housing, homelessness and forced evictions.

112. The Committee recommends that the State party step up its efforts to ensure that pregnant women and girls receive proper medical care during pregnancy and during and after childbirth and have access to reproductive health services and antenatal assistance, including in rural areas, and that they are made aware of the importance of sexual and reproductive health. The Committee also recommends that the health of infants be monitored regularly.

113. The Committee recommends that the State party provide training for judges, prosecutors and police officers in the strict enforcement of the law prohibiting female genital mutilation and the law on sexual and reproductive health; conduct awareness-raising campaigns to combat and eradicate this traditional practice, which violates the rights and physical integrity of women; and strengthen programmes providing assistance to victims and reorientation and financial support to practitioners of excision who halt their activities. The Committee requests the State party to provide it with information in its next periodic report on the measures taken, together with updated, disaggregated data on the number of reported cases of excision, convictions and penalties imposed on the persons responsible.

114. The Committee recommends that the State party take effective measures to increase the primary and secondary school enrolment rate, particularly in rural areas and with respect to girls, by increasing the number of classrooms and teachers, funding the provision of school textbooks and lunches and conducting public campaigns to promote awareness of the importance of education, including for girls.

115. The Committee requests the State party to include in its next periodic report information on measures taken to protect its linguistic and cultural heritage further to the recommendation contained in paragraph 47 of the Committee's concluding observations on the initial report of the State party (E/C.12/1/Add.78).

116. The Committee recommends that the State party include in its next periodic report updated information on the public and private health system, including with respect to basic health-care coverage for the entire population.

117. The Committee invites the State party to consider ratifying ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

118. The Committee invites the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

119. The Committee requests the State party to disseminate these concluding observations widely at all levels of society, particularly among government officials and judicial authorities, to translate and publicize them as far as possible in the languages and dialects of Benin and to inform the Committee in its next periodic report about the steps taken to implement them. It also encourages the State party to invite non-governmental organizations and other members of civil society to participate in the process of discussion at the national level prior to the submission of its next periodic report.

120. The Committee invites the State party to update its core document in accordance with the harmonized guidelines for the preparation of a common core document (HRI/GEN/2/Rev.4, chap. I, paras. 32 to 59).

121. Lastly, the Committee requests the State party to submit its third periodic report no later than 30 June 2010.

## **BOLIVIA**

122. The Committee on Economic, Social and Cultural Rights considered the second periodic report of Bolivia on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/BOL/2) at its 11th, 12th and 13th meetings, held on 6 and 7 May 2008 (E/C.12/2008/SR.11-13), and adopted, at its 25th meeting, held on 16 May 2008, the following concluding observations.

### **A. Introduction**

123. The Committee welcomes with satisfaction the second periodic report of the State party and the written replies to its list of issues. The Committee notes with satisfaction the format of the report, which reflects previous concluding observations of the Committee. It also commends the quality of the sincere and constructive dialogue which it maintained with the high-level delegation from the State party and the oral replies given to its many questions.

### **B. Positive aspects**

124. The Committee notes with satisfaction the political will demonstrated by the State party since 2006 to undertake changes aimed at ensuring that the rights enshrined in the Covenant are enjoyed by all inhabitants of Bolivia without discrimination.

125. The Committee notes with satisfaction that the draft new Political Constitution of Bolivia incorporates all the rights recognized in the Covenant.

126. The Committee takes note with satisfaction of the National Development Plan, promulgated under the slogan “A Decent Sovereign, Productive and Democratic Bolivia in order to Live Well”, which seeks to streamline economic, social and cultural rights in all activities and policies of the State and whose main objectives are the eradication of poverty, social inequality and exclusion.

127. The Committee welcomes the fact that maternal mortality in Bolivia has been significantly reduced. It welcomes the adoption of Act No. 2426 of 21 November 2002, which established the Universal Maternal and Infant Insurance scheme (SUMI), and Act No. 3250 of 6 December 2005, concerning sexual and reproductive health and uterine cervical cancer.

128. The Committee welcomes the universal old age pension (or “dignity” pension), established by Act No. 3791 of 28 November 2007, and the Juancito Pinto grant to encourage school attendance, which was established by Supreme Decree No. 28899 of 26 October 2006.

129. The Committee welcomes the fact that Bolivia has elevated the United Nations Declaration on the Rights of Indigenous Peoples to the status of law by means of Act No. 3760 of 5 November 2007.

130. The Committee notes with satisfaction the efforts made by the State party to protect the environment and the fact that the State party has more certified forests than any country in the region.

131. The Committee notes with satisfaction that in 2005 the State party ratified the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the Protocol of San Salvador).

### **C. Factors and difficulties impeding implementation of the Covenant**

132. The Committee notes the absence of any significant factors or difficulties preventing the effective implementation of the Covenant in Bolivia.

### **D. Principal areas of concern**

133. The Committee is concerned that the population’s enjoyment of the rights recognized in the Covenant is contingent on the adoption of the new Constitution and that although this process is under way, adequate and necessary measures to ensure the population’s enjoyment of such rights have not been taken.

134. The Committee notes with concern the absence of updated statistics that would allow it to assess the progressive realization in Bolivia of the rights recognized in the Covenant.

135. The Committee is concerned that the majority of its recommendations from 2001 in connection with Bolivia’s initial report were not followed up and that the State party has not addressed more effectively the following areas of concern, which remain valid:

(a) The high percentage of the population living in extreme poverty and the persistence of marked disparities in the exercise of economic, social and cultural rights in Bolivian society. The Committee once again regrets the extremely unequal distribution of wealth in the State party;

(b) While it notes with satisfaction that the enactment of Supreme Decree No. 29473 of 5 March 2008 has resulted in a 10 per cent increase in the minimum wage, the Committee is concerned by the fact that the minimum wage continues to be insufficient to provide workers and their families with a decent standard of living;

(c) The high incidence of children in the State party subjected to physical and mental abuse;

(d) The persistence of the exploitation of children in employment, especially indigenous children, particularly through the use of “*criaditos*”;

(e) The Committee is further concerned at the discrimination against and working conditions of workers in Bolivia, particularly in the areas of mining, chestnut production, flower production and poultry slaughtering. The Committee notes that these practices occur primarily in the Alto Parapeto region of the Bolivian Chaco, the provinces of Gran Chaco, Cordillera, Burnet O’Connor and Luis Calvo, and the departments of Tarija, Santa Cruz and Chuquisaca, and it regrets the problems the State party is experiencing in carrying out labour inspections in these areas. The Committee is also concerned at the discrimination against and abuse of female domestic workers;

(f) The high rate of abortions, particularly among 14- and 15-year-old girls, which persists in the State party. The Committee is concerned to learn that article 266 of the Criminal Code, which stipulates that rape may constitute legal grounds for abortion, may be subject to derogation;

(g) The limited access of vulnerable and marginalized groups, particularly indigenous peoples, to education and the high rate of illiteracy among the adult population. The Committee notes with concern that this situation mainly affects girls and women;

(h) The widespread housing shortage, the incidence of forced evictions of farmers and indigenous populations to make way for mining and timber concessions, especially in the Chaco region, and the lack of effective measures to provide social housing for low-income, vulnerable and marginalized groups.

136. While noting the efforts made by the State party since 2006, the Committee continues to be concerned at the marginalization of indigenous peoples in the country and the discrimination that they suffer, particularly with regard to the right to education, to adequate housing, to food and to health services.

137. The Committee continues to be concerned at the de facto inequality that exists between men and women in Bolivia, as reflected in women’s illiteracy, access to work and unequal pay for equal work, and difficulty in gaining access to housing and land ownership. The Committee also notes with concern that the State’s social, economic and cultural plans and programmes do not reflect a fundamental gender perspective.

138. The Committee is concerned at the persistent unemployment and underemployment and at the precariousness of the labour market as reflected in emergency employment, which is not adequately governed by labour regulations. The Committee notes with concern that the lack of employment opportunities has obliged much of the Bolivian population to emigrate.

139. The Committee notes with concern that the State party does not have a social security system with adequate mechanisms to ensure access for all workers, including those in the informal sector, to the benefits that a social security system should provide, especially in respect of retirement and maternity.

140. The Committee notes with concern the persistence of infant malnutrition and the fact that the right to food is not guaranteed to vulnerable groups in the State party. The Committee also notes with concern the large quantity of arable land devoted to the production of biofuels, a situation which affects the availability of food for human consumption and leads to price increases.

141. The Committee takes note of the Family and Domestic Violence Act (Act No. 1674); however, it is concerned at the fact that domestic violence has not been made a punishable criminal offence in the State party, despite the high incidence of such violence, and at the lack of protection available to the victims of this type of violence.

142. The Committee is concerned that despite the efforts made by the State party since 2006 in the area of health, such as the inclusion of traditional medicine in the National Health Plan, vulnerable and marginalized groups continue to have very limited access to health services.

143. The Committee notes that SUMI provides free medical care for children up to the age of 5 and their mothers; the Committee is nonetheless concerned at the lack of effective coverage given that not all children in this age group and their mothers benefit from the scheme.

144. The Committee expresses its concern that the right to land, in particular ancestral lands, is not duly guaranteed to indigenous peoples. It notes with concern that nearly 70 per cent of all land is owned by only 7 per cent of the population.

145. The Committee notes with concern that the collective rights of indigenous peoples, in particular the right to receive the profits derived from the products they create, including traditional medicine, are not duly protected in Bolivia.

#### **E. Suggestions and recommendations**

146. The Committee recommends that the State party should intensify its efforts to adopt a new Constitution and move forward in the process of institution-building with a view to the adoption of the necessary laws, policies and strategies to ensure that the Bolivian population fully and effectively enjoys the rights recognized in the Covenant. It likewise recommends that while it is involved in this process it should take the necessary concrete and effective measures to ensure that the rights recognized in the Covenant are enjoyed without discrimination.

147. The Committee recommends that the State party should adopt rights-based indicators and benchmarks to monitor the progressive realization of the rights recognized in the Covenant and that to this end it should establish a database that is updated and disaggregated, especially by region and by vulnerable group.

148. The Committee urges the State party to address the specific areas of concern that it identified in connection with its initial report (E/C.12/1/Add.60) and reiterates that the State party should implement the suggestions and recommendations made by the Committee at that time, in particular:

(a) The Committee urges the State party to take all necessary steps to reduce extreme poverty and to implement effectively its social development strategies, including evaluation measures to assess the impact of such plans and identify their weaknesses. The Committee encourages the State party to implement fiscal measures with a view to improving the distribution of wealth among the population in both rural and urban areas. In this connection, the Committee invites the State party to take into consideration its statement on Poverty and the International Covenant on Economic, Social and Cultural Rights (E/2002/22-E.12/2001/17, annex VII). The Committee requests that the State party include in its next report disaggregated and comparative data as well as indicators on the number of persons living in extreme poverty, and on the progress made in its efforts to combat poverty;

(b) The Committee requests the State party to continue its efforts to guarantee a sufficient minimum wage while ensuring that it allows families to enjoy an adequate standard of living;

(c) The Committee recommends that the State party should conduct a study to determine the number and situation of children in Bolivia who are subjected to physical and mental ill-treatment, and that, based on the findings of this study, it should take the necessary legislative and practical child protection measures;

(d) The Committee encourages the State party to redouble its efforts to eliminate child labour, especially in domestic service, taking all appropriate legislative and practical measures to compensate families that stop receiving income from child labour. The Committee also calls upon the State party to carry out inspections in workplaces and to take the necessary steps to prevent the exploitation of child workers and punish those responsible;

(e) The Committee encourages the State party to step up its efforts to protect the rights of workers in Bolivia, in particular for those working in such areas as the mining industry, chestnut production, flower production and poultry slaughtering, as well as of female domestic workers. It requests the State party to find solutions that will enable it to carry out labour inspections in places where it is believed that workers are being exploited and contemporary forms of slavery are being practised, and, if this is found to be true, that it take the necessary measures to prevent worker exploitation and abuse, and punish those responsible. The State party should take adequate measures to ensure that the Unpaid Domestic Worker Protection Act enters into force as soon as possible;

(f) The Committee encourages the State party to take the necessary measures, including legislative measures, to confront the problem of female mortality caused by illegal abortions. It recommends that school curricula should openly address the subjects of sex education and family planning in order to help prevent early pregnancies and the spread of sexually-transmitted diseases. The State party should also continue its efforts to reduce maternal mortality. To this end, the Committee recommends that the State party should consider enacting Framework Law No. 810 on sexual and reproductive rights in the near future and making article 266 of the Criminal Code non-derogable;

(g) The Committee recommends that the State party should continue its efforts to eradicate illiteracy, including by expanding the coverage of the “Yo, sí puedo” (Yes I can) programme, and that it should adopt the draft New Bolivian Education Act as soon as possible;

(h) The Committee urges the State party to take the necessary measures, including legislative measures, to: (i) prevent the forced eviction of rural families who are occupying land peacefully; (ii) ensure that the judicial authorities take the provisions of the Covenant into account when handing down their decisions; (iii) investigate and punish those responsible for forced evictions and violations related to the rights recognized in the Covenant; and (iv) implement and expand the Social Housing and Solidarity Programme, allocating sufficient budgetary resources to ensure the implementation of comprehensive housing policies, especially for low-income groups and marginalized individuals and groups.

149. The Committee recommends that the State party should continue its efforts to guarantee respect for and the equality of all the rights recognized in the Covenant in respect of indigenous people, especially the right to education, to adequate housing, to food and to health services.

150. The Committee requests the State party to ensure the equality of men and women in all spheres of life, in particular by taking effective measures and providing funds to combat discrimination in the education of girls and young women, in access to employment and equal working conditions for men and women, including equal wages, and in access to housing and land ownership. The Committee recommends that the State party should incorporate a fundamental gender perspective in all its public policies.

151. The Committee recommends that the fruits of the State party’s current macroeconomic growth should be used also to create decent new jobs for men and women, as a means of confronting the precarious nature of the labour market in a firm and sustained manner, thereby ensuring that workers in the informal sector are able to exercise their labour rights and creating job opportunities so as to reduce the problem of emigration.

152. The Committee recommends that the State party should conduct an evaluation of the social security system with a view to establishing the mechanisms required to guarantee broad social security coverage that ensures adequate benefits, especially retirement and maternity benefits, for all workers, including those in the informal sector.

153. The Committee encourages the State party to continue to adopt measures that will enable it to guarantee the availability of foodstuffs needed by the population. It urges the State party, in addition to the Zero Malnutrition programme, to take steps to facilitate access to productive resources that will allow the population to be sustainably self-sufficient. It also urges the State party to provide greater education on nutrition-related topics.

154. The Committee calls upon the State party to intensify its efforts to combat domestic violence by enacting specific legislation criminalizing it and providing training for law enforcement personnel and judges regarding the serious and criminal nature of domestic violence. Moreover, the Committee urges the State party to ensure the availability and accessibility of “crisis centres” where victims of domestic violence can find safe lodging and counselling.

155. The Committee recommends that the State party should step up its efforts in the area of health and requests it to adopt a global health policy that includes prevention programmes which will ensure that the poorest sectors of the population have access to free, high-quality and universal primary health care, including dental care. The Committee requests the State party to provide detailed and updated information in its next report, including disaggregated statistical data and indicators, that will allow it to assess the level of progress achieved in that area.

156. The Committee recommends that the medical care provided free of charge under SUMI should be extended to cover all children up to the age of 5 and their mothers, in particular those from indigenous families.

157. The Committee encourages the State party to increase its efforts to speed up the demarcation of ancestral lands and territories and their return to the indigenous peoples. The Community Renewal Act, the National Plan for the Distribution of Government Lands and the National Human Settlements Plan should be made operational as soon as possible to ensure continued progress in the titling of indigenous lands.

158. The Committee recommends that the State party should develop a special intellectual property regime that protects the collective rights of the indigenous peoples, including their scientific products and traditional knowledge and traditional medicine. To this end the Committee recommends that a registry of intellectual property rights of indigenous peoples should be opened and that the State party should ensure that the profits derived therefrom benefit them directly.

159. The Committee invites the State party to update its core document in accordance with the compilation of guidelines on the form and content of reports to be submitted by States parties to the international human rights treaties (HRI/GEN/2/Rev.4).

160. The Committee requests the State party to submit its third and fourth periodic reports as a single document by 30 June 2010.

## **FRANCE**

161. The Committee on Economic, Social and Cultural Rights considered the third periodic report of France on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/FRA/3) at its 3rd, 4th and 5th meetings, held on 29 and 30 April 2008 (E/C.12/2008/SR.3-5), and adopted, at its 26th meeting, held on 16 May 2008, the following concluding observations.

### **A. Introduction**

162. The Committee welcomes the submission of the third periodic report of France, and the written replies to its list of issues (E/C.12/FRA/Q/3/Add.1). The Committee also notes with appreciation the open and constructive dialogue with the delegation of the State party, which included representatives of various government departments with expertise on the subjects covered by the Covenant, and the delegation's answers to the questions posed by the Committee.



## **B. Positive aspects**

163. The Committee acknowledges the efforts undertaken by the State party since the adoption of the Framework Act on Measures to Combat Social Exclusion of July 1998 to combat social exclusion and guarantee equality of opportunities to persons belonging to vulnerable and disadvantaged groups in the field of employment, housing, health and access to cultural life.

164. The Committee welcomes the establishment under the Act No. 2004/1486 of 30 December 2004 of the independent High Authority against Discrimination and in Favour of Equality (HALDE, or Haute autorité de lutte contre les discriminations et pour l'égalité).

165. The Committee welcomes the creation, under Act No. 2006/457 of 21 April 2006, of the social-integration contract (CIVIS, or *contrat d'insertion dans la vie sociale*), aimed at facilitating access to employment opportunities for young persons without professional qualification and those living in "sensitive urban zones" (ZUS, or *zones urbaines sensibles*).

166. The Committee welcomes the adoption of Act No. 2006/399 of 4 April 2006, which strengthens the prevention and punishment of conjugal violence and violence against children and raises the legal minimum age for marriage for girls to 18 years.

167. The Committee notes with satisfaction the comprehensive legislative framework created by Act No. 2003/239 of 18 March 2003 to combat trafficking in persons and other forms of modern slavery.

168. The Committee welcomes the recognition - pursuant to Act No. 2007/290 of 5 March 2007 - of the right to adequate housing as being subject to immediate application by judicial and administrative organs.

169. The Committee welcomes the efforts made by the State party to prevent alcohol and tobacco abuse, including the adoption of the 2007/2011 Addiction Prevention Plan and the enactment of a ban on smoking in all public places as of 1 January 2008.

## **C. Factors and difficulties impeding the implementation of the Covenant**

170. The Committee notes the absence of any significant factors or difficulties preventing the effective implementation of the Covenant in the State party.

## **D. Principal subjects of concern**

171. The Committee regrets that in the report of the State party there is a lack of disaggregated statistical data on an annual comparative basis concerning the concrete results of the various legislative and policy measures adopted by the State party, which has not allowed it to fully assess the progress made and the difficulties encountered by the State party in the implementation of the Covenant.

172. The Committee regrets that in 2007 the State party devoted only 0.39 per cent of its gross domestic product (GDP) to official development assistance (ODA), whereas the United Nations target for ODA is 0.7 per cent of GDP for industrialized countries. The Committee further regrets that the achievement of the objective of devoting 0.7 per cent of its GDP to international cooperation has been postponed from 2012 to 2015.

173. The Committee notes with concern that women belonging to racial, ethnic and national minorities who live in ZUS areas, in particular single mothers, experience multiple forms of discrimination and encounter difficulties in access to employment, social security and social services, housing, health and education.

174. The Committee remains concerned about the high unemployment rates among women, especially those belonging to racial, ethnic and national minorities, the persistent wage differentials between men and women and the low percentage of women in managerial and high-ranking posts in many areas, both in the public and the private sector, in spite of the various legislative and policy measures adopted by the State party to promote equality between men and women, including the Act on Equal Pay for Men and Women of 23 March 2006.

175. The Committee remains concerned that despite the measures adopted by the State party to increase employment opportunities for young persons, the youth unemployment rate - which decreased in 2007 from 22 to 18 per cent - continues to be considerably higher than the average unemployment rate.

176. The Committee notes with concern that de facto discrimination against persons belonging to racial, ethnic and national minorities - especially those coming from the Maghreb, Turkey and black Africa - continues to be widespread, in spite of the measures adopted by the State party to combat discrimination in the field of employment, including the adoption of the Charter of Diversity in the Enterprise and the use of "discrimination testing" as admissible proof of discriminatory behaviour before courts.

177. The Committee notes with concern that as a result of the extensive use of fixed-term, temporary and part-time employment contracts, a large number of employed persons - especially young people, single parents and persons without professional qualification - do not have job security and are paid the statutory minimum wage (SMIC, or *salaire minimum interprofessionnel de croissance*), which is not sufficient to enable them and their families to enjoy an adequate standard of living. The Committee is particularly concerned about the over-representation of women in temporary, part-time and low-paid jobs.

178. The Committee notes with concern that legislation aimed at improving access to employment for persons with disabilities (Act No. 102/2005 of 11 February 2005) is not effectively implemented, and that the unemployment rate of persons with disabilities is still three times higher than the average unemployment rate.

179. The Committee notes that, although violence against the spouse or partner may constitute an aggravating circumstance for several crimes referred to in the Criminal Code, domestic violence is still not regarded as a specific offence under the criminal legislation of the State party. The Committee also notes that, despite the efforts made by the State party to raise awareness of this phenomenon, under-reporting of domestic violence perpetrated by the spouse or partner continues to be a problem.

180. The Committee remains concerned about the extent of poverty in the State party, as well as about the high number of persons living exclusively on social cash transfers.

181. The Committee is deeply concerned that persons belonging to racial, ethnic and national minorities, especially migrant workers and persons of immigrant origin, are disproportionately

concentrated in poor residential areas characterized by large, low-quality and poorly maintained housing complexes, limited employment opportunities, inadequate access to health care facilities and public transport, under-resourced schools and high exposure to crime and violence.

182. The Committee notes with concern that, despite the efforts made by the State party, there is still a large number of individuals and families living in sub-standard housing characterized by unsafe, unhealthy or unhygienic conditions.

183. The Committee remains concerned about the inadequate supply of social housing for low-income households and the continuing increase of rents in the private rental sector, in spite of the efforts made by the State party to increase the provision of social housing units.

184. The Committee notes with concern the persistent de facto discrimination that Gypsies and Travellers experience in the field of housing, due to the shortage of serviced parking areas for caravans and to the sub-standard living conditions existing in many of the stopping areas designated by local authorities, often situated far away from residential areas and in locations lacking basic infrastructures and inadequate environmentally.

185. The Committee remains deeply concerned about the extent of homelessness in the State party, in spite of the efforts made by the State party to increase the number of emergency shelters and improve mechanisms for assistance to homeless persons. The Committee notes in particular that the number of emergency shelters and accommodation centres is not sufficient to meet the growing demand, and that progress made in facilitating the social reintegration of homeless persons is still insufficient.

186. The Committee notes with concern that in spite of the introduction of universal health care coverage (CMU) in July 1999, persons belonging to disadvantaged and marginalized groups, such as asylum-seekers and undocumented migrant workers and members of their families, continue to encounter difficulties in gaining access to health care facilities, goods and services, due to lack of awareness concerning their rights, the complexity of administrative formalities, such as the requirement of continuous and legal residence in the territory of the State party, and language barriers.

187. The Committee remains deeply concerned about the high suicide rate existing in the State party, especially among persons aged between 15 and 44, despite the various plans and strategies adopted by the State party to combat this phenomenon.

188. The Committee notes with concern that significant disparities in terms of school performance and drop-out rates continue to exist between French pupils and pupils belonging to racial, ethnic or national minorities, in spite of the efforts made by the State party to address the social and economic inequalities existing in the field of education.

189. The Committee remains concerned about the lack of official recognition of minorities within the territory of the State party. With specific regard to cultural rights, the Committee further notes with concern that some of these rights are not respected - such as the right to use a minority language, which can only be exercised in community with other members of the minority group.

190. The Committee notes with concern that the State party has not made sufficient efforts in the field of preservation and promotion of regional and minority languages and cultural heritage. The Committee also notes that the absence of formal recognition of regional and minority languages has contributed to the constant decline in the number of speakers of such languages.

#### **E. Suggestions and recommendations**

191. The Committee requests the State party to provide in its next periodic report disaggregated statistical data on an annual comparative basis over the last five years, disaggregated by age, gender, national origin and - where applicable - urban/rural residence, concerning the practical results of the measures adopted by the State party to give effect to the Covenant at the domestic level.

192. The Committee recommends that the State party increase its official development assistance to 0.7 per cent of its GDP, as agreed by the Heads of State and Government at the International Conference on Financing for Development, held in Monterrey, Mexico, from 18 to 22 March 2002.

193. The Committee recommends that the State party take all appropriate measures - including temporary special measures, where needed - to combat all forms of discrimination against women belonging to racial, ethnic and national minorities who live in ZUS areas, in particular single mothers, so as to ensure their equal access to employment, social security and social services, housing, health and education.

194. The Committee recommends that the State party take all appropriate measures - including temporary special measures, where needed - to promote equality between men and women, improve the employment rate of women, reduce wage differentials vis-à-vis men and increase the percentage of women in high-ranking posts, in the public as well as in the private sector.

195. The Committee encourages the State party to strengthen its efforts to promote employment opportunities for young persons, especially those without professional qualification and those living in ZUS areas, through specifically targeted measures, including vocational training, career guidance and tax incentives for companies hiring young persons.

196. The Committee recommends that the State party continue to strengthen its legal and institutional mechanisms aimed at combating racial discrimination in the field of employment and facilitating equal access to employment opportunities for persons belonging to racial, ethnic and national minorities.

197. The Committee recommends that the State party take all necessary measures to combat structural unemployment and to limit, as far as possible, the use of temporary employment contracts as tools to encourage firms to hire persons belonging to vulnerable groups - such as young people, single parents and persons without professional qualification. The Committee also recommends that such contracts be concluded only in those cases provided for by the legislation in force, and that sufficient guarantees be provided to ensure that employees recruited under such contracts are not prevented from enjoying the right to an adequate standard of living, as well as the labour rights set out in articles 6 and 7 of the Covenant.

198. The Committee recommends, in line with its general comment No. 5 (1994) on persons with disabilities, that the State party adopt all appropriate measures to ensure that persons with disabilities have equal opportunities for productive and gainful employment, in sheltered facilities as well as in the open labour market. The Committee requests the State party to provide information in the next periodic report on progress made in the implementation of Act No. 102/2005 of 11 February 2005, which requires companies with more than 20 employees to recruit 6 per cent of their workforce among persons with disabilities.

199. The Committee recommends that the State party adopt specific legislation criminalizing acts of domestic violence. The Committee further recommends that the State party increase its efforts to raise awareness of the seriousness of this offence and the mechanisms available to victims of domestic violence, in particular by directing its awareness campaigns to the most vulnerable groups of women, including those coming from non-European countries and those with a low level of education.

200. The Committee recommends that the State party strengthen its efforts to combat poverty, including by extending the *revenu de solidarité active* (RSA), at present being tested in 34 departments with the objective of replacing some of the *minima sociaux*, namely the minimum-income allowance (RMI, or *revenu minimum d'insertion*), the single-parent benefit (API) and the employment bonus (PPE), to other departments. The Committee further recommends that the State party monitor the implementation of the measures adopted with a view to ensuring that the needs of the very poor are addressed effectively.

201. The Committee urges the State party to take all appropriate measures, in close consultation with the population concerned, to reduce the phenomenon of residential segregation based on racial, ethnic and national origin, as well as its negative consequences on the living conditions of the affected individuals and groups. In particular, the Committee recommends that the State party take all appropriate measures, in order to:

(a) Improve housing and living conditions in residential areas that are currently racially segregated by facilitating the renovation of existing housing complexes and improving their infrastructures, access to services and employment opportunities;

(b) Support the development of new public housing complexes outside poor, racially segregated areas; and

(c) Ensure the effective implementation of existing legislation to combat discrimination in housing, including discriminatory practices carried out by private actors.

202. The Committee requests the State party to provide in its next periodic report detailed information on the implementation of the Framework Act for Town Planning and Urban Renewal of August 2003, which aims to intensify restructuring works in the most run-down neighbourhoods.

203. The Committee recommends that the State party strengthen the implementation of its legal and regulatory framework to combat the phenomenon of sub-standard housing characterized by unsafe, unhealthy or unhygienic conditions, with a view to improving the quality of accommodation of social housing complexes and facilitating the renovation of private housing complexes by landlords.

204. The Committee recommends that the State party - taking into account general comment No. 4 (1991) on the right to adequate housing - adopt all appropriate measures to ensure access to adequate housing for low-income households, inter alia by ensuring that adequate resources are allocated to increase the supply of social housing units and by providing appropriate forms of financial support, such as rental subsidies, to enable low-income households to have access to adequate housing in the private rental sector.

205. The Committee urges the State party to adopt all appropriate measures to ensure compliance with Act No. 2000/614 of 5 June 2000, requiring local authorities to designate halting areas for Gypsy/Traveller caravans provided with adequate infrastructures and situated in areas appropriate for urban residence. The Committee requests the State party to provide in its next periodic report detailed information, including disaggregated statistical data, on progress made in the implementation of Act No. 2000/614.

206. The Committee recommends that the State party carry out an updated national survey in order to evaluate the extent of homelessness in the State party. The Committee further recommends that the State party take all appropriate measure to improve both the quantity and quality of reception facilities (including emergency shelters, hostels, reception and social rehabilitation centres and boarding houses), and develop appropriate policies and programmes to facilitate the social reintegration of homeless persons.

207. The Committee urges the State party, in line with general comment No. 14 (2000) on the right to the highest attainable standard of health, to adopt all appropriate measures to ensure that persons belonging to disadvantaged and marginalized groups, such as asylum-seekers and undocumented migrant workers and members of their families, have access to adequate health care facilities, goods and services.

208. The Committee recommends that the State party strengthen its efforts to analyse the motives for committing suicide, with a view to developing effective measures aimed at the prevention of suicide among particularly vulnerable groups, including young people, homosexuals, persons addicted to drugs or alcohol, detainees and older persons. The Committee requests the State party to include in its next periodic report statistical data, disaggregated on the grounds of age and gender, on the number of persons that have committed or attempted suicide, as well as information on progress made in implementing the various plans and strategies put in place to prevent suicide.

209. The Committee recommends that the State party adopt all appropriate measures to reduce the significant disparities in terms of school performance between French pupils and pupils belonging to racial, ethnic or national minorities in the field of education, inter alia by intensifying the provision of French-language courses for those students who lack adequate French-language proficiency and avoiding the over-representation of minority students in classes for children with learning difficulties. The Committee further recommends that the State party undertake further studies on the correlation between school failure and social environment, with a view to elaborating effective strategies aimed at reducing the disproportionate drop-out rates affecting minority pupils.

210. The Committee, while taking note that the recognition of minority groups or collective rights is considered by the State party to be incompatible with its Constitution, wishes to reiterate that the principles of equality before the law and prohibition of discrimination are not always

adequate to ensure the equal and effective enjoyment of human rights, in particular economic, social and cultural rights, by persons belonging to minority groups. The Committee therefore recommends that the State party consider reviewing its position with regard to the recognition of minorities under the Constitution, and recognize officially the need to protect the cultural diversity of all minority groups under the jurisdiction of the State party, in accordance with the provisions of article 15. In this regard, the Committee reiterates the recommendation formulated in its previous concluding observations (E/C.12/1/Add.72, para. 25) that the State party (a) withdraw its reservation to article 27 of the International Covenant on Civil and Political Rights and to article 30 of the Convention on the Rights of the Child and (b) consider ratifying the Council of Europe Framework Convention for the Protection of National Minorities, as well as the European Charter for Regional or Minority Languages.

211. The Committee reiterates the recommendation formulated in its previous concluding observations (*ibid.*, para. 26) that the State party increase its efforts to preserve and promote regional and minority languages and cultural heritage, *inter alia* by ensuring that sufficient financial and human resources be allocated to the teaching of regional and minority languages and cultures in public schools and to TV and radio broadcasting in these languages. The Committee also recommends that the State party consider reviewing its position concerning the lack of formal recognition of regional and minority languages in the Constitution of the State party.

212. The Committee encourages the State party to consider ratifying the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

213. The Committee also encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

214. The Committee further encourages the State party to consider ratifying Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

215. The Committee invites the State party to submit a common core document in accordance with the 2006 harmonized guidelines on reporting to the international human rights treaty monitoring bodies (HRI/GEN/2/Rev.4, chap. I).

216. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, in particular, among State officials, the judiciary and civil society organizations in general, and to inform the Committee on all steps taken to implement them in its next periodic report. It also encourages the State party to continue engaging non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

217. The Committee requests the State party to submit its fourth periodic report by 30 June 2011

## INDIA

218. The Committee on Economic, Social and Cultural Rights considered the second to the fifth periodic report of India on the implementation of the International Covenant on Economic,

Social and Cultural Rights (E/C.12/IND/5) at its 14th, 15th and 16th meetings (E/C.12/2008/SR.14-16), held on 7 and 8 May 2008, and adopted, at its 25th meeting, held on 16 May 2008, the following concluding observations.

### **A. Introduction**

219. The Committee welcomes the submission of the combined second to fifth periodic report of the State party, despite the 15-year delay in its submission. The Committee notes that the report was generally prepared in conformity with the Committee's guidelines, but regrets that no information was provided on articles 1 to 5 of the Covenant. The Committee also regrets that some of its questions posed to the State party in its list of issues (E/C.12/Q/IND/5) have remained unanswered.

220. The Committee appreciates the opportunity afforded to hold a dialogue with representatives of the State party and the answers to the questions raised by the Committee. The Committee regrets however, that the information provided was in some cases not sufficiently detailed to advance the Committee's assessment of the level of enjoyment of the rights provided for in the Covenant in the State party.

### **B. Positive aspects**

221. The Committee notes with satisfaction the legislative and other measures adopted by the State party to promote the enjoyment of economic, social and cultural rights, in particular:

- The 2006 Prohibition of Child Marriage Act
- The 2005 National Rural Employment Guarantee Act recognizing employment as a matter of right
- The 2005 Protection of Women from Domestic Violence Act
- The "Sarva Shiksha Abhiyan" (Education for All) programme adopted in 2005
- The "National Rural Health Mission", launched in 2005, aimed to provide accessible, affordable and accountable quality health services
- The four-year time-bound plan, "Bharat Nirman" aimed to upgrade the rural infrastructures, launched in 2005
- The 2005 Right to Information Act, aimed to ensure accountability of the Government
- The 2004 amendments to the Indian Divorce Act and the Hindu Succession Act widening the scope for women to exercise their rights to divorce, ownership and inheritance
- The 2003 amendment to the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994



- The 2002 Constitution (86th Amendment) Act, making education free and compulsory for all children aged 6 to 14; and
- The 2000 Juvenile Justice (Care and Protection of Children) Act, as amended by the 2006 Juvenile Justice (Care and Protection of Children) Amendment Act

222. The Committee welcomes the ratification, by the State party, of:

- The Convention on the Rights of Persons with Disabilities, in 2007
- The Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, in 2005; and
- The ILO Convention No. 105 (1957) on Abolition of Forced Labour, in 2000

223. The Committee notes with appreciation the important contribution made by the Supreme Court of the State party to the development of international jurisprudence in favour of the justiciability of economic, social and cultural rights, through its proactive interpretations of the Constitution.

#### **C. Factors and difficulties impeding the implementation of the Covenant**

224. The Committee notes the absence of any factors and difficulties impeding the implementation of the Covenant by the State party.

#### **D. Principal subjects of concern**

225. The Committee notes with regret the position of the State party with regard to its legal obligations arising under the Covenant, specifically, that the realization of the rights it contains are entirely progressive in nature.

226. The Committee is concerned that, despite the significant role played by the Supreme Court of India in interpreting the Constitution with a view to achieving justiciability of economic, social and cultural rights, the Covenant is not given its full effect in the legal system of the State party due to the absence of relevant domestic legislation. The Committee is also concerned by the non-implementation of court decisions by state authorities.

227. The Committee is concerned about the absence of effective mechanisms to coordinate and ensure, at both the federal and state levels, administrative and policy measures relating to economic, social and cultural rights, which constitutes a major impediment to the equal and effective implementation of the Covenant in the State party.

228. The Committee notes with concern that the National Human Rights Commission (NHRC) and the State Human Rights Commissions are not supported by adequate financial and other resources. The Committee is also concerned that the establishment of Human Rights Courts at the district level as envisaged by the 1993 Human Rights Act has not been implemented in most parts of the country, and that the mandate of the Human Rights Courts does not cover violations of economic, social and cultural rights.

229. The Committee is deeply concerned about reports that human rights defenders, including those assisting individuals and communities in asserting their economic, social and cultural rights, are threatened, harassed and subjected to violence by state officials and law enforcement officers. In this connection, the Committee notes with concern the existence of national security legislation which grants impunity to state officials who violate human rights, including economic, social and cultural rights.

230. The Committee is deeply concerned that in spite of the Constitutional guarantee of non-discrimination as well as the criminal law provisions punishing acts of discrimination, widespread and often socially accepted discrimination, harassment and/or violence persist against members of certain disadvantaged and marginalized groups, including women, scheduled castes and scheduled tribes, indigenous peoples, the urban poor, informal sector workers, internally displaced persons, religious minorities such as the Muslim population, persons with disabilities and persons living with HIV/AIDS. The Committee is also concerned about the obstacles faced by the victims in accessing justice, including the high costs of litigation, the long delays in court proceedings and the non-implementation of court decisions by government authorities.

231. The Committee notes with concern the lack of progress achieved by the State party in combating the persistent de facto caste-based discrimination that continues to prevail in spite of the legal prohibitions in place, most notably the 1989 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The Committee is particularly concerned at the low rate of prosecution of crimes against persons belonging to scheduled castes and scheduled tribes, and that discriminatory attitudes and prejudices in the enforcement of the law, especially by the police, is a serious obstacle in the victims' access to justice.

232. The Committee notes with concern that the recommendations of the 2006 Rajinder Sachar Committee report on the Social, Economic and Educational Status of the Muslim Community of India have not been sufficiently followed-up, and regrets the lack of actions taken by the federal and state union governments in this regard.

233. The Committee is deeply concerned that, in spite of the commendable efforts by the State party in promoting equality between men and women, such as the adoption of the National Policy on Empowerment of Women (2001) and the adoption of the amendments to the Hindu Succession Act and the Indian Divorce Act in 2005 and 2001 respectively, widespread gender inequalities, cultural stereotypes and personal laws of minority groups continue to prevail, affecting negatively the equal enjoyment of economic, social and cultural rights by women. The Committee notes with concern that, in particular, all the statistical data available before the Committee indicate the disadvantages disproportionately suffered by women in their enjoyment of economic, social and cultural rights, in particular, those belonging to disadvantaged and marginalized groups.

234. The Committee is concerned about the weak enforcement of the Pre-conception and Prenatal Diagnostic Technique (Prohibition of Sex Selection) Act, as amended in 2003, which has resulted in the high rate of abortions of the girl foetus and a skewed sex ratio which continues to worsen.

235. The Committee notes with concern the disproportionate representation of women in the informal labour market and the significant gender disparities in wages. The Committee also notes with concern the low representation of women in decision-making.

236. The Committee notes with concern, despite the legal prohibitions in place, including the 1993 Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, the 1976 Bonded Labour System (Abolition) Act and the 1986 Child Labour (Prohibition and Regulation) Act, the prevalence of bonded labour, the worst forms of child labour and other exploitative labour conditions in the State party. The Committee is concerned about the insufficient enforcement of existing labour legislation at the federal and the state levels, as well as the lack of awareness among employers of the existing rules and standards.

237. The Committee notes with concern that the rapid and sustained economic growth in the State party has not been translated into employment growth that is sufficiently substantial to ensure compliance with the core obligations under article 6 of the Covenant, as highlighted in the Committee's general comment No. 18 (2005) on the right to work.

238. The Committee is concerned that, in spite of the enactment of the National and Rural Employment Guarantee Act in 2006, the high and increasing rate of unemployment and underemployment persists in the State party, particularly in the rural areas.

239. The Committee notes with concern the weak enforcement of the existing State minimum wages. The Committee is also concerned that the low levels of wages, particularly in the agricultural sector, are insufficient to provide a decent standard of living for workers and their families.

240. The Committee is concerned about the numerous requirements of the State party with respect to trade unions, particularly those in the informal sector, in obtaining collective bargaining licences such as the minimum membership requirement for a union of 100 workers or 10 per cent of the workforce under the 1926 Trade Unions Act, and a complete ban on strikes under the Essential Services Maintenance Act which does not prescribe an official list of the essential services that falls under its purview. The Committee also notes with concern that, pursuant to the 1964 Central Civil Services (Conduct) Rule, civil servants' right to join trade unions and to strike is severely restricted.

241. The Committee is concerned that, pending the adoption by the Parliament of the Unorganized Sector Worker's Social Security Bill, workers in the State party, a majority of whom are employed in the unorganized/informal sector, do not currently benefit from state-administered social security protection.

242. The Committee is deeply concerned about the lack of progress achieved by the State party in eliminating traditional practices and provisions of personal status laws that are harmful and discriminatory to women and girls, including *sati*, *devadasi*, witch-hunting, child marriages, dowry deaths and honour killings, in spite of the legal prohibitions such as the 2005 Domestic Violence Act, the 1961 Dowry Prohibition Act, the 1982 Prohibition of Dedication Act, the 1939 Child Marriage Restraint Act and the 2006 Prohibition of Child Marriage Act.

243. The Committee is concerned about the exceptionally high incidence of domestic violence against women and children in the State party, as well as the high proportion of children who are

subjected to sexual abuse at home, in spite of the enactment of the Protection of Women from Domestic Violence Act of 2005. In this regard, the Committee deeply regrets the lax enforcement of the existing legislation for the protection of victims of domestic violence and the low rate of prosecution for such crimes under Section 498-A of the Indian Penal Code.

244. The Committee notes with concern that trafficking in persons remains a serious problem faced by the State party. The Committee is particularly concerned that women and children belonging to scheduled castes and scheduled tribes make up a large proportion of victims of trafficking and sexual exploitation. The Committee is also concerned that victims of trafficking and sexual exploitation, rather than being afforded protection and rehabilitation, are prosecuted under the Immoral Trafficking Prevention Act (ITPA), and that there is no legislation that specifically criminalizes trafficking in persons.

245. The Committee is deeply concerned that, despite the rapid economic growth achieved under the Ninth Plan (1997-2002) and the Tenth Plan (2002-07), high levels of poverty as well as serious food insecurity and shortages persist in the country, disproportionately affecting the population living in the poorer states and in rural areas, and the disadvantaged and marginalized groups. The Committee is also concerned that the State party, in its pursuit of economic growth, and in its definition of the poverty threshold exclusively in terms of consumption, has overlooked its obligations to fully integrate human rights, particularly economic, social and cultural rights, in its poverty-reduction strategies. The Committee is also concerned about reports of corruption, inefficiency and discrimination in distribution that hamper access to food, particularly by the disadvantaged and marginalized groups of society who have been excluded from the benefits of the State party's economic growth.

246. The Committee is deeply concerned that the extreme hardship being experienced by farmers has led to an increasing incidence of suicides by farmers over the past decade. The Committee is particularly concerned that the extreme poverty among small-hold farmers caused by the lack of land, access to credit and adequate rural infrastructures, has been exacerbated by the introduction of genetically modified seeds by multinational corporations and the ensuing escalation of prices of seeds, fertilizers and pesticides, particularly in the cotton industry.

247. The Committee is concerned about the lack of a national housing policy which particularly addresses the needs of the disadvantaged and marginalized individuals and groups, including those living in slums who are reportedly growing in numbers, by providing them with low-cost housing units. The Committee also regrets that sufficient information was not provided by the State party on the extent and causes of homelessness in the State party. The Committee is also concerned that while housing is under the responsibility of the State Government, the oversight exercised by the Federal Government is insufficient to ensure effective implementation of the existing strategies and policies to ensure the right to housing for all.

248. The Committee, while noting that the draft resettlement and rehabilitation bill is currently before Parliament, remains deeply concerned about the reports of displacement and forced evictions in the context of land acquisition by private and state actors for the purposes of development projects, including constructions of dams and mining, and that the members of disadvantaged and marginalized groups, in particular, the scheduled castes and scheduled tribes, are adversely affected by such displacement from their homes, lands and their sources of livelihood. The Committee is also concerned that urban renewal projects, sporting events, infrastructure expansion, environmental projects and more recently, the designation of large

areas as tax-free special economic zones, have resulted in the displacement of millions of families, most of whom have not received adequate compensation and rehabilitation. Furthermore, the Committee is concerned about the lack of effective consultations and legal redress for persons affected by displacement and by forced evictions, and the inadequate measures to provide sufficient compensation or alternative housing to those who have been removed from their homes and/or their ancestral lands.

249. The Committee is concerned about the reported delays and inadequacies of the post-tsunami rehabilitation process in the affected districts of Tamil Nadu. The Committee notes with concern that, according to the Public Accounts Committee 2007-2008 report, large amounts of tsunami funds have been diverted from rehabilitation. The Committee regrets that the State party has not provided adequate information on the post-tsunami situation.

250. The Committee is concerned that, despite the economic growth achieved by the State party, health-care expenditures remain exceptionally low at around 1 per cent of GDP, and that a significant proportion of the population continues to have limited or no access to basic health services, resulting in alarmingly high rates of maternal and infant mortality, as well as high incidences of tuberculosis and other communicable diseases. The Committee is also concerned about the rising HIV/AIDS infections, and the lack of reliable information available regarding persons affected by mental health illnesses.

251. The Committee is concerned about the shortage of access to safe drinking water and the presence of heavy metals in groundwater.

252. The Committee is concerned about the overcrowding and sub-standard conditions in prisons which are operating at 200-300 per cent of their maximum capacity, which have given rise to a disproportionately high rate of tuberculosis and other health problems affecting the prisoners.

253. The Committee is concerned that survivors of the 1984 gas leak from the Union Carbide India Limited pesticide plant in Bhopal are continuing to suffer serious long-term health effects of the gas exposure, and that the State efforts to provide rehabilitation and monetary compensation have largely been inadequate.

254. The Committee is concerned that the prevailing widespread phenomenon of early marriages, the high rate of maternal mortality and the rapid spread of HIV/AIDS and other sexually transmitted diseases in the State party, can be attributed largely to the lack of sex and reproductive education that is still viewed to be taboo in the State party.

255. The Committee notes with concern that the universal health-care scheme in the State party falls short of providing for universal coverage, excluding a considerable portion of the population. The Committee is also concerned that the quality and the availability of the health services provided under the scheme have been adversely affected by the large-scale privatization of the health service in the State party, impacting in particular on the poorest sections of the population.

256. The Committee is concerned that trade in human organs, particularly in kidneys, is prevalent in the State party and that it is on the increase.

257. The Committee is concerned that, despite the efforts made by the State party to achieve universal primary education, including the adoption of the Constitution (86th Amendment) Act in 2002 which makes the right to primary education a fundamental right, and the “Sarva Shiksha Abhiyan” (Education for All) programme, aimed at achieving 100 per cent primary enrolment, the wide disparity in enrolment and dropout rates in primary schools continue to persist, negatively affecting, in particular, girls, Muslim children and children belonging to scheduled castes and scheduled tribes.

258. The Committee notes with concern the generally low quality of education in, and the underfunding of, public schools.

259. The Committee is concerned that adult illiteracy rates continue to remain high, especially among disadvantaged and marginalized groups, women and among those living in poverty.

260. The Committee notes with regret the absence of human rights education in the school curricula in the State party.

261. The Committee notes with concern that some of the development measures and projects that have been carried out have not sufficiently taken into account the way of life and specific forms of livelihood of numerous communities in India, in particular the scheduled tribes in the northeast, thus affecting their right of everyone to take part in cultural life.

#### **E. Suggestions and recommendations**

262. The Committee is of the view that the State party has within its power the ability to immediately implement the rights in Part II of the Covenant as required, and to meet, at the least, its core obligations for the progressive realization of the rights in Part III of the Covenant. The Committee therefore urges the State party to review its position regarding its legal obligations arising under the Covenant in light of the Committee’s statement on the evaluation of the obligation to take steps to the “maximum of its available resources” under an optional protocol to the Covenant (E/C.12/2007/1), and its general comments No. 13 (1999) and No. 14 (2000) in relation to core obligations. The Committee also encourages the State party to ensure that the provisions of the Covenant are taken into consideration in legislative and administrative policy and decision-making processes.

263. The Committee recommends that the State party review all aspects of its negotiations with trade agreements, including those with the EU and the EFTA, in light of its obligations under the Covenant to ensure that economic, social and cultural rights, particularly of the most disadvantaged and marginalized groups, are not undermined.

264. The Committee recommends that the State party take necessary legal measures to give full effect to the Covenant in domestic law, and to provide the Committee in its next periodic report, with further clarification regarding the direct applicability of the Covenant by domestic courts and citing relevant case law. In this respect, the Committee draws the attention of the State party to its general comment No. 9 (1998) on the domestic application of the Covenant. Furthermore, the Committee urges the State party to ensure that judicial training take full account of the justiciability of Covenant rights and that all court decisions are fully implemented by the relevant

authorities without delay. The Committee also recommends that the State party take effective measures to increase awareness of the rights enshrined in the International Covenant on Economic, Social and Cultural Rights among the public at large.

265. The Committee recommends that the State party ensure that the complexities arising from the federal structure of the Government and the delineation of responsibilities between federal and state levels do not result in the lack of effective implementation of the Covenant in the State party.

266. The Committee recommends that the State party increase its efforts to enhance the effectiveness of the National Human Rights Commission and the State Human Rights Commissions, in particular through adequate budget allocations. The Paris Principles as well as General Assembly Resolution 48/134 relating to the status of national institutions for the promotion and protection of human rights, should be taken into consideration in matters relating to the reform of the NHRC and the establishment of State Commissions. The Committee further recommends that the State party ensure that State and Union Territories establish their respective Human Rights Commissions and Human Rights Courts, and enable the latter to consider violations of economic, social and cultural rights.

267. The Committee urges the State party to take all necessary measures for the protection of human rights defenders against any violence, threats, retaliation, pressure or any arbitrary action as a consequence of their activities. The Committee recommends that the State party improve its human rights training for law enforcement officials especially police officers, and ensure that all allegations of human rights violations are promptly and thoroughly investigated by an independent body capable of prosecuting perpetrators. The Committee also recommends that the State party consider repealing the Armed Forces Special Powers Act.

268. The Committee requests the State party to submit, in its next periodic report, updated annually collected comparative data disaggregated by sex, age, caste, ethnicity, religion and by region, regarding all the provisions in the Covenant, paying particular attention to the disadvantaged and marginalized individuals and groups. The Committee also requests the State party to include, in its next periodic report, annual comparative data, disaggregated by sex, age, caste, ethnicity, religion and by region, the percentage of the gross domestic product allotted for education, health and housing programmes in the country.

269. The Committee recommends that the State party strengthen enforcement of existing legal prohibitions of discrimination and, in addition consider enacting comprehensive administrative, civil and/or criminal anti-discrimination legislation guaranteeing the right to equal treatment and protection against discrimination, specifically prohibiting discrimination in employment, social security, housing, healthcare and education on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, as stipulated in article 2(2) of the Covenant. The Committee also urges the State party to step up efforts to remove obstacles faced by victims of discrimination when seeking redress through the courts.

270. The Committee stresses the need for a determined enforcement of the criminal justice system, and recommends that the State party strengthen procedures for prompt and impartial investigations and effective prosecutions of all allegations of violations under the 1989 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The Committee also

recommends that the State party improve awareness-raising and training programmes regarding the treatment of caste-based and other crimes related to discriminatory attitudes and prejudices, for professionals engaged in the administration of justice including judges, public prosecutors, lawyers and law enforcement officials, in particular members of the police, and remove any other existing obstacles faced by victims in accessing justice. The Committee further encourages the State party to expand throughout the State, preventive programmes to curb violence against persons belonging to scheduled castes and scheduled tribes, especially women.

271. The Committee recommends that the State party ensure full implementation of the recommendations contained in the Sachar Committee report without further delay, with a view to ensuring the realization of the economic, social and cultural rights of Muslims in the State party, in particular, Muslim Other Backward Classes (OBCs) and Muslim women.

272. The Committee recommends that the State party further strengthen efforts to raise public awareness about gender equality, including by providing adequate support to the National Commission for Women and the State Commissions for Women.

273. The Committee recommends that the State party sensitize and train medical professionals on the criminal nature of sex selection with a view to ensuring stringent enforcement of the Pre-conception and Prenatal Diagnostic Technique (Prohibition of Sex Selection) Act.

274. The Committee recommends that the State party undertake and enforce effectively measures to ensure equal treatment between men and women in the labour market, and to consider enacting legislation on equal pay for work of equal value in both the public and the private sectors, and for such legislation to be adopted at the State level. The Committee also recommends that the State party continue to make use of affirmative action measures to promote active political participation of women.

275. The Committee requests the State party to include in its next periodic report, in addition to the requests already mentioned in previous paragraphs, a specific section on:

- (a) The results of the measures taken to combat discrimination of all forms;
- (b) The situation of women and the extent to which they enjoy the right to own land and property independent of their male relatives;
- (c) The impact of the microcredit programme for women, the progress achieved and the difficulties encountered;
- (d) Detailed information regarding street children; and
- (e) Annual data, disaggregated by age, sex, caste, ethnicity and religion, as well as specific benchmarks, to enable adequate monitoring and evaluation of the progress achieved.

276. The Committee recommends that the State party ensure the right to decent work and provide sufficient resources to the labour inspectorate to enable regular and independent inspections of health and safety conditions in all sectors. In this regard, the State party should take effective measures to ensure that violations concerning prohibited labour practices, such as bonded labour, manual scavenging and the worst forms of child labour are stringently prosecuted and employers duly sanctioned. The Committee recommends that the State party



launch a national campaign to abolish manual scavenging and other degrading forms of work and to provide information on the results achieved in its next periodic report. The Committee further recommends that measures to rehabilitate affected children, to monitor their work conditions and their living conditions following removal from such work, be strengthened and significantly expanded to cover all children engaged in the worst forms of child labour. The Committee also recommends that the State party consider ratifying the following ILO Conventions: No. 182 (1999) on the Worst Forms of Child Labour; No. 138 (1973) on Minimum Age; and No. 174 (1993) on Prevention of Major Industrial Accidents.

277. The Committee recommends that the State party provide, in its next periodic report, information on the measures taken within the framework of the Tenth and the Eleventh Plans to achieve an adequate rate of employment growth in order to ensure the fullest possible enjoyment of the rights under article 6 of the Covenant. The Committee further recommends that the State party provide the necessary conditions to encourage private sector employers to create additional jobs in the process of economic growth.

278. The Committee recommends that the State party reinforce its programmes designed to reduce unemployment and in this regard, to target on a priority basis the most affected groups and regions. In this connection, the Committee recommends that the State party consider ratifying the ILO Convention No. 2 (1919) on Unemployment. The Committee further recommends that the State party take necessary measures to ensure effectively the full implementation of the provisions foreseen under the National Rural Employment Guarantee Act.

279. The Committee encourages the State party to ensure that the state minimum wages are fully enforced throughout its territory, and in all sectors, with a view to enabling all workers and their families to enjoy an adequate standard of living. The Committee also encourages the State party to establish an effective system of indexation and regular adjustment of the minimum wage to the cost of living.

280. The Committee recommends that the State party remove, in law and practice, obstacles to trade unions' rights to conduct collective bargaining, and to pay particular attention to the workers' rights in Special Economic Zones (SEZs) and Export Processing Zones (EPZs). In particular, the Committee recommends that the State party consider amending the 1964 Central Civil Services (Conduct) Rule with a view to lifting the restrictions imposed on civil servants' right to join trade unions and on their right to strike, and to clearly define "essential services" as stipulated by the Essential Services Maintenance Act. The Committee recommends that the State party to consider ratifying the ILO Convention No. 98 (1949) on the Right to Organize and Collective Bargaining.

281. The Committee recommends that the State party adopt the Unorganized Sector Workers Social Security Bill without delay, and ensure, in line with the Committee's general recommendation No. 19 (2007) on the right to social security, that the very large sections of the population which are still not adequately covered by the social security system of the State party become entitled to social security benefits which provide for the minimum standards in respect of, inter alia, health, maternity benefit, old age benefit, labour accident insurance and dependants benefit. The Committee recommends that the State party consider ratifying the ILO Convention No. 102 (1952) on Social Security (Minimum Standards), and requests that it provide detailed information in its next periodic report on the extent of the coverage of its social security system for the unorganized/informal sector.

282. The Committee strongly recommends that the State party strictly enforce the law prohibiting harmful and discriminatory practices that violate the rights of women and girls, and to undertake effective public education measures, including awareness-raising programmes designed to eliminate gender-based prejudices, traditional practices and provisions of personal status laws that are harmful and discriminatory to women and girls. The Committee requests that the State party provide detailed information in its next periodic report on the extent of these practices and the measures being taken to strictly enforce its laws for the protection of women and girls from such harmful practices.

283. The Committee recommends that the State party enact a law that criminalizes trafficking in persons and commercial sexual exploitation of women and children. The Committee also recommends that the State party, while strengthening its efforts to bring perpetrators to justice, ensure that victims are not penalized and are systematically provided with rehabilitation and legal assistance. The Committee further recommends that the State party strengthen preventive measures, such as awareness-raising campaigns, that target economically-depressed areas as well as disadvantaged and marginalized groups.

284. The Committee recommends that the State party ensure that the Protection of Women from Domestic Violence Act and Section 498-A of the Indian Penal Code are enforced effectively in all of its states and union territories, and that law enforcement officials, judges, lawyers, social workers and medical professionals are duly trained on the serious and criminal nature of domestic violence. The Committee requests that the State party provide in its next periodic report, detailed information on the extent of domestic violence, and on the legislative and other measures taken to address this phenomenon, including facilities and remedies provided for victims.

285. The Committee recommends that the State party, in the context of the Eleventh Plan (2007-12), take urgent measures to address the issue of poverty and food insecurity. In this regard, the Committee recommends that the State party review its national poverty threshold, taking into account its Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights, adopted on 4 May 2001 (E/2002/22-E/C.12/2001/17, annex VII) and establish specific mechanisms to monitor the implementation of poverty-reduction strategies and evaluate the progress achieved. The Committee requests the State party to provide, in its next periodic report, detailed annual data on the incidence and depth of poverty, disaggregated by gender, caste, ethnicity and by region.

286. The Committee urges the State party, in addition to the full implementation of the planned farmer debt waiver programme, to take all necessary measures to address the extreme poverty among small-holding farmers and to increase agricultural productivity as a matter of priority, by, inter alia: developing the rural infrastructures including irrigation as part of the *Bharat Nirman* programme; providing financial and other forms of assistance to families of suicide victims; ensuring that the existing agricultural insurance schemes, including the Crop Insurance Scheme and the Calamity Relief Fund, are fully implemented and are accessible to all farmers; providing state subsidies to enable farmers to purchase generic seeds which they are able to reuse, with a view to eliminating their dependency on multinational corporations. The Committee also recommends that the State party review the Seed Bill (2004) in light of its obligations under the Covenant and draw the attention of the State party to paragraph. 19 of its general comment No. 12 (1999) on the right to adequate food.

287. The Committee urges the State party to address the acute shortage of affordable housing by adopting a national strategy and a plan of action on adequate housing and by building or providing low-cost rental housing units, especially for the disadvantaged and low income groups, including those living in slums. In this connection, the Committee reminds the State party of its obligations under article 11 of the Covenant and refers to its general comment No. 4 (1991) on the right to adequate housing to guide the Government's housing policies. The Committee also requests the State party to provide, in its next periodic report, detailed information on homelessness in the State party and the extent of inadequate housing, disaggregated by, inter alia, sex, caste, ethnicity and religion.

288. The Committee recommends that the State party take immediate measures to effectively enforce laws and regulations prohibiting displacement and forced evictions, and ensure that persons evicted from their homes and lands be provided with adequate compensation and/or offered alternative accommodation, in accordance with the guidelines adopted by the Committee in its general comment No. 7 (1997) on forced evictions. The Committee also recommends that, prior to implementing development and urban renewal projects, sporting events and other similar activities, the State party should undertake open, participatory and meaningful consultations with affected residents and communities. In this connection, the Committee draws the attention of the State party to its general comment No. 4 (1991) and further requests the State party to provide information in its next periodic report on progress achieved in this regard, including disaggregated statistics relating to forced evictions.

289. The Committee urges the State party to conduct the post-tsunami rehabilitation process in the affected areas of Tamil Nadu with transparency and in full consideration of its obligation to respect and protect the economic, social and cultural rights of the survivors. The Committee requests the State party to provide, in its next periodic report, detailed information regarding the rehabilitation process and the extent to which the affected groups were consulted throughout the different stages of the process.

290. The Committee recommends that the State party significantly increase its health-care expenditure, giving the highest priority to reducing maternal and infant mortality rates and to preventing and treating serious communicable diseases, including HIV/AIDS. The Committee further recommends that the State party take effective measures to fully implement the National Rural Health Mission (2005-2012) and ensure the quality, affordability and accessibility of health services without hidden costs, especially for disadvantaged and marginalized individuals and groups. In this respect, the Committee draws the attention of the State party to its general comment No. 14 (2000) on the right to the highest attainable standard of health and requests the State party to provide, in its next periodic report, detailed information, on a disaggregated and comparative basis, regarding the progress it has achieved in this regard. The Committee also recommends that State party undertake a systematic assessment of policy measures and the realities of mental illness with a view to improving the treatment of and care for persons with mental illnesses.

291. The Committee recommends that the State party take effective measures to ensure equitable access to safe drinking water by rigorously enforcing existing laws on water treatment and effectively monitoring compliance. The Committee requests the State party to report on these issues by providing comparative and disaggregated data in its next periodic report, bearing in mind the Committee's general comment No. 15 (2002) on the right to water.

292. The Committee recommends that the State party strengthen its measures to improve the sanitary and hygienic conditions in prisons and to ensure that the right to mental and physical health of all prisoners is respected, in accordance with article 12 of the Covenant.

293. The Committee recommends the State party to provide, without further delay, adequate compensation, and wherever possible, rehabilitative measures, to survivors of the Bhopal leak and their families. The Committee requests the State party to provide detailed information in this regard in its next periodic report.

294. The Committee recommends that the State party expand availability and accessibility of reproductive and sexual health information and services for everyone, and ensure that the educational programmes, including within the school curriculum, as well as services on sexual and reproductive health, are widely available.

295. The Committee recommends that the State party substantially increase funds allocated to public health and to provide additional incentives in order to prevent further loss of medical professionals from the public health services. The Committee also urges the State party to take all necessary measures to ensure universal access to affordable primary health care. The Committee also requests the State party to provide information on the measures to regulate the private health-care sector.

296. The Committee recommends that the State party give high priority to address the problem of trade in human organs and to provide information on the progress achieved in its next periodic report.

297. The Committee urges the State party to continue to make determined efforts to achieve universal primary education, compulsory and free of charge, by, inter alia, taking further initiatives to eliminate child marriages, child labour especially of school-aged children, and targeting disadvantaged and marginalized groups in particular.

298. The Committee recommends that the State party allocate increased funding to public schools, ensuring that teachers are fully trained and qualified.

299. The Committee recommends that the State party intensify its literacy programmes for adults, and to adopt awareness-raising campaigns and programmes on the value of literacy. Such strategies and awareness-raising campaigns and programmes should be designed and targeted especially for the disadvantaged and marginalized groups, in particular, women and those living in poverty.

300. The Committee encourages the State party to provide human rights education in schools at all levels and in universities, cultivating values of tolerance, social inclusion and participation. The Committee also encourages the State party to make increased efforts to raise awareness about human rights, in particular economic, social and cultural rights, among State officials, the judiciary and the public at large.

301. The Committee recommends that the State party consider going beyond the creation of museums and hosting of exhibitions as a way of preserving and promoting culture, and to ensure

that no development initiative is carried out without effective consultation with the local communities, and that any potential negative impact on their right of everyone to take part in cultural life be taken into serious consideration when conducting social audits.

302. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, particularly among Federal and State government officials as well as judicial authorities, and to inform the Committee on the steps that it has taken to implement them in its next periodic report.

303. The Committee also encourages the State party to engage non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

304. The Committee invites the State party to submit its core document in accordance with the 2006 harmonized guidelines on a common core document (HRI/GEN/2/Rev.4).

305. The Committee encourages the State party to consider ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without further delay. The Committee also encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

306. The Committee requests the State party to submit its sixth periodic report by 30 June 2011 and to include in that report, detailed information on the steps it has undertaken to implement the recommendations contained in the present concluding observations.

*Forty-first session*

## **ANGOLA**

307. The Committee on Economic, Social and Cultural Rights considered the initial to third periodic report of Angola on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/AGO/3) at its 42nd, 43rd and 44th meetings, held on 12 and 13 November 2008 (E/C.12/2008/SR. 42, 43 and 44), and adopted, at its 54th meeting held on 20 November 2008, the following concluding observations.

### **A. Introduction**

308. The Committee welcomes the submission of the combined initial to third periodic report of Angola and the opportunity thus offered to engage in a constructive dialogue with the State party. The Committee also welcomes the State party's written replies to its list of issues, as well as the answers provided by experts from the delegation of the State party to the Committee's oral questions. It regrets however that several of its questions have remained unanswered.

### **B. Positive aspects**

309. The Committee notes with appreciation the ratification by the State party of the United Nations Convention against Corruption and the African Union Convention on Preventing and Combating Corruption, in 2006.

310. The Committee welcomes the creation of the Ministry of the Family and Women in 1997.

311. The Committee notes with appreciation the progress made by the State party to reach Millennium Development Goal 2 related to achieving universal primary education, between 1999 and 2006.

312. The Committee takes note of the programmes carried out by the State party to reintegrate Internally Displaced Persons (IDPs) affected by the armed conflict, such as the programme for reintegrating displaced persons and the Angolan Refugee Repatriation Programme.

### **C. Factors and difficulties impeding the implementation of the Covenant**

313. The Committee notes that it is only since 2002 that the State party has enjoyed a period of peace. Twenty seven years of civil war, which followed a 13-year independence war had a serious negative impact on the implementation of economic, social and cultural rights in the State party.

### **D. Principal subjects of concern and suggestions and recommendations**

#### **General**

314. The Committee notes with concern that the last census in the State party was carried out in 1972 and that, despite the existence of the National Statistics Institute and the Survey on Core Welfare Indicators carried out, the State party did not provide updated disaggregated statistical data in the report, which would have contributed to the adoption of more relevant decisions in the field of domestic social, economic and cultural policies enabling the Committee to better assess the implementation of the Covenant.

**The Committee recommends that when carrying out its next census in 2009, the State party adopt rights-based indicators and benchmarks to monitor the progressive realization of the rights recognized in the Covenant and that to this end establish a data collection, and provide in its second periodic report updated statistical data on the enjoyment of economic, social and cultural rights, disaggregated by gender, age, rural/urban population and by refugee/IDPs, HIV/AIDS and disability status.**

315. While noting article 21 (2) of the Constitutional Law, the Committee is concerned that it did not receive either a clarification about whether the Covenant has been given full effect into the domestic law, or examples of cases in which provisions have been directly applied in the courts of the State party.

**The Committee recommends that the State party strengthen its efforts to give full effect to the Covenant in domestic law and to provide relevant case law in its next periodic report. In this respect, the Committee draws the attention of the State party to its general comment No. 9 (1998) on the domestic application of the Covenant. The State party should ensure that judicial training take full account of the justiciability of Covenant rights and take measures to increase awareness of the possibility of invoking its provisions before the courts.**

316. The Committee notes with concern that the State party has not yet adopted strong and efficient measures to combat corruption and impunity, despite the fact that the State party is a country with a high level of corruption. It regrets the lack of concrete information regarding the cases of politicians, civil servants, judges and other officials having been prosecuted and sanctioned on charges of corruption.

**The Committee recommends that the State party: (a) enact domestic legislation to incorporate the international conventions against corruption ratified by the State party in 2006; (b) train politicians, law makers, national and local civil servants and law enforcement officers on the economic and social costs of corruption (c) train judges, prosecutors, the police and other law enforcement officers on the strict application of anti-corruption laws; (d) review its sentencing policy for corruption-related offences; (e) ensure the transparency of the conduct of public authorities, in law and in practice; (f) elaborate, in cooperation with relevant organizations and institutions, guidelines and a code of ethics, as well as conduct awareness-raising campaigns.**

317. The Committee notes with concern that the mandate of the *Provedor de Justica in Angola* is very limited and that this institution appears not to be an independent national human rights institution established in accordance with the Paris Principles of 1991.

**The Committee recommends that the State party strengthen the mandate of the *Provedor de Justica in Angola*, increase its budget in order for this institution to have a wider presence at the provincial level, and seek its accreditation to the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights (ICC) to ensure it functions in accordance with the Paris Principles relating to the Status of National Institutions (General Assembly resolution 48/13 of 20 December 1993, annex).**

318. The Committee notes with concern that the Constitutional Law does not fully guarantee the independence of the judiciary, which is allegedly often subjected to executive influence, lacks adequate financial means and suffers from widespread corruption. It regrets that the majority of Angolans do not have access to a formal justice system and the lack of judicial officials at municipal levels.

**The Committee urges the State party to take the appropriate measures to ensure that the independence of the judiciary is guaranteed, and that this principle is fully implemented and promoted. The State party is invited to conduct training for judges and lawyers on economic, social and cultural rights.**

319. The Committee is concerned that NGOs involved in the realization of economic, social and cultural rights are allegedly still under strict oversight, subject to coordination, evaluation and inspections carried out by the Technical Unit for the Coordination of Humanitarian Assistance, and that human rights defenders are still subjected to many legal and de facto restrictions, which constitutes a serious obstacle to the promotion and protection of economic, social and cultural rights.

**The Committee urges the State party to establish legal guarantees to enable NGOs to carry out their activities for the promotion and protection of economic, social and**

**cultural rights without arbitrary interferences. The Committee further urges the State party to ensure that perpetrators of attacks to the human rights defenders are brought to justice.**

320. The Committee regrets the closure of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Angola, in May 2008, and is concerned about related potential negative impact for the promotion and protection of economic, social and cultural rights in the State party.

**The Committee urges the State party to strengthen its national capacities by cooperating with the Office of the High Commissioner for Human Rights, including on the follow-up to the implementation of these concluding observations. It invites the State party to facilitate the OHCHR's activities in the promotion and protection of human rights, including economic, social and cultural rights, and to explore the ways in which more concrete cooperation between OHCHR and the State party may take form.**

#### **Article 2, paragraph 2**

321. The Committee is concerned about the discrimination against women, migrants, IDPs, poor people, disabled people and persons affected with HIV/AIDS who suffer from inadequate access to basic education, adequate housing, and health services.

**The Committee urges the State party to take all appropriate and effective measures, including the adoption of a global policy, to combat and eliminate discrimination against women, migrants, IDPs, poor people, disabled people, persons affected with HIV/AIDS.**

322. While taking note of the adoption of the programme "Vem comigo", the Committee is concerned at the inadequacy of measures to ensure adequate standards of living for persons with disabilities, including the mentally ill.

**The Committee encourages the State party to continue its efforts towards the adoption of concrete measures to enable persons with disabilities to enjoy fully the rights guaranteed by the Covenant.**

#### **Article 3**

323. The Committee notes with concern that some public and private companies do not comply with the principle of equal wage for men and women.

**The Committee urges the State party to effectively implement measures recently adopted to ensure equal pay for work of equal value, as provided for in the Covenant, and to reduce the wage gap between men and women.**

324. The Committee is concerned at the low representation of women in Parliament, in senior Government positions and in the Judiciary.



**The Committee recommends that the State party adopt special affirmative measures, such as guaranteed seats in Parliament and statutory minimum quota for the appointment, recruitment and promotion of women in Government positions and in the judiciary, including at senior levels and in the highest courts.**

**Articles 6, 7 and 8**

325. The Committee regrets that, despite its macroeconomic growth in last years, the State party has not created sufficient jobs for men and women, in particular those living in slums, persons with disabilities and IDPs. The Committee regrets that supervision by the General Labour Inspectorate is inadequate.

**The Committee recommends that the benefits of the State party's macroeconomic growth be used to promote policies to create jobs specially for the most marginalized and disadvantaged individuals. It also recommends that the State party intensify its efforts, in both urban and rural areas to: (a) achieve higher level of employment, e.g. through vocational training and infrastructural measures; (b) ensure that labour inspectors act independently and effectively to combat violations of basic labour rights; and (c) establish a data collection system to monitor unemployment and informal sector employment.**

326. The Committee notes with concern that despite an increase in the rate of the economic growth in last three years, the vast majority of those employed in the State party work in the informal economy, have been deprived of the enjoyment of their rights under the Covenant, including labour rights and right to social security, and exposed to economic exploitation and to other forms of discrimination.

**The Committee recommends the State party to adopt legal, economic and educational measures to encourage employers and those working in family business or self-employed to join the formal sector, and requests the State party to provide the Committee with information in its next report to assess the level of progress achieved in this area.**

327. The Committee, while noticing that the minimum wage has been recently increased by the State party, regrets that it still does not provide an adequate standard of living for workers and their families.

**The Committee recommends that the State party increase the minimum wage to ensure it provides workers with an adequate standard of living for themselves and their families, in accordance with article 7 (a) (ii) of the Covenant.**

328. The Committee notes with concern the obstacles reported to the establishment of trade unions and the low participation and limited membership. It also concerned at excessive restrictions on the right to strike.

**The Committee recommends to the State party to take appropriated measures to ensure freedom to form and join trade unions, to prevent interference in the management and operation of trade unions, and to remove excessive restrictions on the right to strike in law and in practice.**

## Article 9

329. The Committee notes with concern that the social security system in place in the State party does not ensure access for all workers and that the amount of social security benefits do not enable workers and other families to enjoy an adequate standard of living.

**The Committee recommends that the State party take all necessary measures to ensure access to all workers to the social security system and progressively increase the amounts of social security benefits so as to enable workers and their families to enjoy an adequate standard of living. The Committee recommends that the State party take immediate steps to incorporate non-contributory benefits for those who are unable to pay social security contributions and are therefore still not covered by social security, including the unemployed, persons with disabilities, older persons and other disadvantaged and marginalized individuals and groups. It also recommends that the State party consider ratifying ILO Convention No. 102 concerning Minimum Standards of Social Security (1952).**

## Article 10

330. The Committee notes with concern the absence of statistical data on the incidence of domestic violence in the State party, as well as the lack of information on complaints filed by victims of domestic violence, including spousal rape, and the absence of criminal law provisions specifically criminalizing such violence.

**The Committee recommends that the State party: (a) strengthen its efforts to enact legislation specifically criminalizing domestic violence, including spousal rape, and customary practices that degrade and harm women; (b) train judges, prosecutors and the police on the strict application of such criminal law provisions; (c) raise public awareness, in particular at the community level, about the criminal nature of domestic violence and harmful customary practices; and (d) provide in its next periodic report updated data on the number and nature of reported cases of domestic and sexual violence, investigations and on the sanctions imposed on perpetrators.**

331. The Committee notes with concern that the phenomenon of children being accused of witchcraft is still common in the State party, particularly in remote provinces, and has a very negative impact in the enjoyment of their rights established in the Covenant, including the right to education and health.

**The Committee urges the State party to take efficient measures aimed to eradicate the phenomenon of children being accused of witchcraft and to protect the victims. The State party is invited to conduct awareness-raising campaigns about the negative impact of this phenomenon in the realization of the rights of children established in the Covenant.**

## Article 11

332. The Committee notes with concern that, in spite of the State party's significant economic growth and huge natural wealth, the resources allocated to social services and public infrastructure are far from adequate.

**The Committee recommends that the State party take all appropriate measures, including by allocating product of oil and diamond revenues, to accelerate the rehabilitation and reconstruction of public infrastructure and social services in both the urban and rural areas.**

333. While noting the facilities provided for the return of persons who were internally displaced by the armed conflicts (IDPs), the Committee notes with concern that the State party has not taken sufficient and efficient measures to assist those who have not returned yet, and that IDPs are among the poorest groups in the State party.

**The Committee recommends that the State party provide adequate assistance, including financial, for the resettlement of internally displaced persons and for their reintegration into society, and ensure that those IDPs who have not been resettled or returned to their homes have adequate access to housing and employment in places of new settlements.**

334. The Committee notes with concern that, despite the unprecedented economic growth, a high percentage of the population of the State party lives in poverty and extreme poverty, including persons living in rural and deprived urban areas, the landless persons, women, children, female-headed households, families affected by HIV/AIDS, persons with disabilities and IDPs. The Committee is concerned that its Poverty Reduction Strategy is apparently ineffective. The Committee in particular notes that the State party has not yet created an efficient coordination mechanism to combat poverty.

**The Committee urges the State party to take all necessary measures to implement a poverty reduction strategy which should integrate the economic, social and cultural rights, in line with statement on Poverty and the International Covenant on Economic, Social and Cultural Rights (E/2002/22-E.12/2001/17, annex VII). The Committee recommends that the State Party include evaluation measures to assess the impact of its strategy and identify its weaknesses. The Committee requests that the State party include in its next report comparative data disaggregated by gender, age, rural and urban populations, as well as indicators on the number of persons living in extreme poverty, and on the progress made in its efforts to combat poverty.**

335. The Committee is concerned about the high incidence of acute malnutrition and chronic malnutrition in all the provinces of the State party, particularly affecting children. The Committee notes with concern the reports of widespread hunger in Lunda provinces due to the expropriation of farmlands for the purpose of commercial diamond mining.

**The Committee recommends that the State party effectively implement and allocate sufficient resources to relevant programmes and funds to ensure physical and economic access for everyone, especially those from the most disadvantaged social groups, to the minimum essential food, which is sufficient, nutritionally adequate and**

**safe, to ensure freedom from hunger, in line with the Committee's general comment No. 12 (1999) on the right to adequate food as well as its Statement on the world food crisis (E/C.12/2008/1). The Committee also urges the State party to ensure that expropriations of farmlands do not have a negative impact on the right to food of those who have been expropriated.**

336. The Committee is concerned about the large proportion of the population living in slum conditions and about the lack of effective measures to provide social housing for low-income, vulnerable and marginalized individuals who are living in informal settlements and are frequently deprived of affordable access to adequate water and sanitation.

**The Committee recommends that the State party adopt a comprehensive housing plan and policies, and allocate sufficient budgetary resources to ensure its implementation, especially for low-income groups and marginalized individuals and groups. The Committee also recommends that the State party take immediate measures to ensure safe access to adequate water and sanitation in informal settlements in Luanda and other big cities in line with the Committee's general comment No. 15 (2002) on the right to water.**

337. The Committee is concerned about the forced evictions which have taken place in the Luanda neighbourhoods, informal settlements and agricultural areas, reportedly without prior notice and provision of adequate alternative housing or compensation, and sometimes with excessive use of force and abuse.

**The Committee recommends that the State party: (a) take appropriate measures to ensure that evictions are only used as a last resort, adopt legislation or guidelines strictly defining the circumstances and safeguards under which evictions must take place, in accordance with the Committee's general comment No. 7 (1997) on the right to adequate housing (art. 11.1): forced evictions; (b) investigate all allegations of excessive use of force by police and state officials involved in forced evictions and bring all those responsible to justice; (c) ensure that every victim of forced evictions is provided with adequate alternative housing or compensation and that he or she has access to an effective remedy; (d) ensure that any forced evictions carried out in the context of the African Cup of Nations, a sport event which will take place in 2010, meet the requirements and guidelines of the general comment No. 7 and (e) include in its next periodic report disaggregated data by gender, age, rural/urban population, concerning forced evictions.**

338. The Committee regrets that, despite the efforts initiated by the State party at the end of the war, it remains heavily landmined, with disastrous effects on the enjoyment of rights of individuals and groups, in particular the most disadvantaged and marginalized.

**The Committee urges the State party to accelerate its efforts to deactivate the anti-personnel mines, and other relics of war, to prevent landmine accidents and assist the victims, and to seek all bilateral and international cooperation in this regard.**

339. The Committee notes with concern that the State party has not sufficiently extended the coverage of the civil registration facilities, in particular with respect to birth registration, and that this fact deprives those not registered of the equal enjoyment of economic, social and cultural rights.

**The Committee recommends to the State party to take effective steps to ensure registration of all new children without any discrimination and to extend the coverage of civil status registration to all other persons not yet registered.**

340. The Committee is concerned about the poor physical conditions, poor access to adequate food and water, severe overcrowding, and lack of adequate medical treatment in the psychiatric hospitals and prisons in the State party.

**The Committee urges the State party to adopt a Plan of Action to guarantee human conditions of life and health care to all psychiatric hospital patients and to all prisons' inmates, according to the United Nations relevant standard minimum rules, and to provide the Committee with adequate information on progress achieved in those institutions in the next periodic report.**

## Article 12

341 The Committee is concerned about the very high maternal, infant and under-five mortality rates, as well as at the very high incidence of cholera and HIV/AIDS. The Committee notes with deep concern that life expectancy in the State party is only 41 years. The Committee is also concerned at the negative impact of the war on the right to health of a high percentage of the population, who suffer from war post-traumatic mental disorders, and serious war related health problems.

**The Committee recommends that the State party should step up its efforts in the area of health and requests it to adopt a global health policy that includes prevention programmes which will ensure that the poorest sectors of the population have access to free, high-quality and universal primary health care, including dental care, as well as policies targeted to individuals who suffer from war post-traumatic mental disorders. The Committee requests the State party to provide detailed and updated information in its next report, including disaggregated statistical data and indicators, that will allow it to assess the level of progress achieved in that area.**

342 The Committee is concerned about the limited access to sexual and reproductive health services and contraceptives, especially in rural and deprived urban areas.

**The Committee recommends that the State party ensure affordable access for everyone, including adolescents, to comprehensive family planning services and contraceptives, especially in rural and deprived urban areas, adequately funding the free distribution of contraceptives, raising public awareness and strengthening school education on sexual and reproductive health.**

### Article 13

343 The Committee notes with concern that: (a) indicators for education in the State party are very low; (b) the illiteracy rate among people over 15 years is very high; (c) children from poor families, girls, children with disabilities, victims of mine accidents and children living in both urban and remote rural areas have limited access to education, including education in their mother tongue, and often drop out of school.

344. The Committee regrets that the budget allocated to the education decreased between 2004 and 2006, despite the rapidly rising number of children in the school age. It is also concerned at the lack of schools and training of teachers, especially in remote areas and in slums settlements.

**The Committee recommends that the State party: (a) adopt a comprehensive plan of action concerning the educational system; (b) ensure the availability of teachers in remote rural areas, and that they are fully trained and qualified; and (c) increase public expenditure on education in general, and take deliberate and targeted measures towards the progressive realization of the right to education for the disadvantaged and marginalized groups throughout the country.**

### Article 15

345. The Committee notes with concern that, due to the massive migrations of communities and ethnic groups from the rural to urban areas, the preservation of their cultural heritage has been undermined.

**The Committee requests information from the State party in its next periodic report on the enjoyment of the right to participate in and benefit from cultural life, such as access to cultural activities and cultural property, especially by disadvantaged and marginalized groups in society, and on measures undertaken to implement the right of Angolan communities, including San people, to the preservation, protection and development of their cultural heritage.**

346. The Committee encourages the State party to deploy all its efforts to promote the realization of human rights, including economic, social and cultural rights, and to implement a rights-based strategy to combat poverty.

347. The Committee recommends that the State party provide education on economic, social and cultural rights to students at all levels of educations and extensive human rights training for members of all professions and sectors that have a direct role in the promotion and protection of human rights, including judges, lawyers, civil servants, teachers, law enforcement officers, migration officers, the police and the military.

348. The Committee recommends that the State party consider ratifying ILO Conventions No. 102 (1952) concerning Social Security; No. 103 (1952) concerning Maternity Protection; No. 111 (1958) concerning Discrimination in Employment and Occupation and No. 183 (2000) concerning the Revision of the Maternity Protection Convention.

349. The Committee recommends that the State party consider ratifying ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

350. The Committee recommends that the State party accelerate its efforts to ratify the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

351. The Committee recommends that the State party consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

352. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, particularly among State officials, the judiciary and civil society organizations, and to inform the Committee on the steps taken to implement them in its next periodic report. It also encourages the State party to continue engaging non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

353. The Committee requests the State party to submit its fourth and fifth periodic reports by 30 June 2013.

## **KENYA**

354. The Committee on Economic, Social and Cultural Rights considered the initial report of Kenya on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/KEN/1) at its 34th, 35th and 36th meetings, held on 6 and 7 November 2008 (E/C.12/2008/SR.34-36), and adopted, at its 51st meeting held on 19 November 2008, the following concluding observations.

### **A. Introduction**

355. The Committee welcomes the submission, albeit late, of the initial report of Kenya and the opportunity thus offered to engage in a constructive dialogue with the State party. The Committee also welcomes the State party's written replies to its list of issues, as well as the generally frank and detailed answers provided by the delegation of the State party to the Committee's oral questions.

356. It regrets the absence of disaggregated statistical data in the report, which would have enabled the Committee to better assess the implementation of the Covenant by the State party.

### **B. Positive aspects**

357. The Committee welcomes the establishment in 2002 of the Kenya National Commission on Human Rights in accordance with the Paris Principles relating to the Status of National Institutions (General Assembly resolution 48/13 of 20 December 1993, annex).

358. The Committee notes with appreciation that the State party adopted legislation to eliminate discrimination against disadvantaged and marginalized individuals and groups such as the Refugees Act (2006), which prohibits discrimination against refugees and asylum-seekers, and the Persons with Disabilities Act (2003), which establishes a National Development Fund for Persons with Disabilities.

359. The Committee welcomes the recent adoption by the State party of legislation designed to strengthen labour standards and trade union freedom, in particular:

(a) The Employment Act (2007) which strengthens minimum terms and conditions of employment, prohibits forced labour and child labour, sexual harassment and discrimination and provides for 21 days annual leave and three months maternity leave;

(b) The Labour Institutions Act (2007) which establishes and strengthens institutions dealing with administration and management of labour relations such as the National Labour Board and Court;

(c) The Labour Relations Act (2007) providing for freedom of association, recognition of trade unions, collective agreements and dispute resolution;

(d) The Work Injury Benefits Act (2007) extending insurance coverage to all categories of workers and ensuring adequate compensation for injury and work-related diseases irrespective of the employer's solvency; and

(e) The Occupational Health and Safety Act (2007) prohibiting the employment of children in workplaces where their health is at risk and encouraging entrepreneurs to set achievable safety targets for their enterprises.

360. The Committee notes with appreciation that the State party introduced free compulsory primary education in 2003 and free secondary education in 2008.

### **C. Factors and difficulties impeding the implementation of the Covenant**

361. The Committee notes the absence of any significant factors or difficulties preventing the effective implementation of the Covenant in the State party.

### **D. Principal subjects of concern and suggestions and recommendations**

362. The Committee notes with concern that the Covenant rights have not been incorporated into domestic law and therefore are not directly applicable in the courts of the State party.

**The Committee recommends that the State party include economic, social and cultural rights in its new Constitution, with a view to incorporating the Covenant rights into domestic law and ensuring their direct applicability in the courts.**

363. The Committee regrets that, despite the State party's "zero tolerance" policy, corruption and patronage still adversely affect the realization of economic, social and cultural rights, and that there have been few prosecutions for corruption in the State party.

**The Committee recommends that the State party intensify its efforts to prosecute cases of corruption and review its sentencing policy for corruption-related offences. It also recommends that the State party train the police and other law enforcement officers, prosecutors and judges on the strict application of anti-corruption laws, conduct awareness-raising campaigns, and ensure the transparency of the conduct of public authorities, in law and in practice.**



364 The Committee is concerned about the risk of possible adverse impacts that the Economic Partnership Agreement (EPA), which is currently being negotiated with the European Union, the Investment Agreement under the Common Market for Eastern and Southern Africa (COMESA) as well as of bilateral trade and investment agreements, may have on the State party's obligations under the Covenant and, in particular, on the livelihoods of small-scale farmers who depend on maize, wheat, rice and dairy, the employment of workers in the Kenyan food processing, textiles, paper and printing industries and on labour rights and the right to food (art. 11, para. 1).

**The Committee recommends that the State party undertake the measures necessary to assess the potential adverse impact of any commitments under the Economic Partnership Agreement with the European Union and the Investment Agreement for the COMESA Common Investment Area, which are currently being negotiated, as well as under bilateral trade and investment agreements, on the economic, social and cultural rights of Kenyans, and to ensure that Covenant rights are not adversely affected.**

365. The Committee is concerned that disparities in the enjoyment of economic, social and cultural rights, including access to land, have led to inter-ethnic tensions and post-election violence during which at least 1,500 persons were killed early in 2008. It is also concerned that perpetrators of such violence have still not been brought to justice (art. 2, para. 2).

**The Committee recommends that the State party address disparities in the enjoyment of economic, social and cultural rights, including in access to land, which particularly affect poor people in urban areas and minority and indigenous communities in rural areas, e.g. by adopting the Draft National Land Policy, establishing land inspectorates to monitor discriminatory allocation of land, and implementing the recommendations of the Ndung'u Commission of Inquiry into Illegal/Irregular Allocation of Public Land. It also recommends that the State party establish a tribunal on post-election violence to bring perpetrators to justice, as well as a Truth, Justice and Reconciliation Commission to address broader historical injustices, and that it foster dialogue and promote comprehensive reconciliation among its different ethnic groups.**

366. The Committee is concerned about reports that refugees are de facto excluded from employment in the formal sector and often receive wages below the minimum wage in the informal sector. It is also concerned that refugees and asylum-seekers are frequently confined for years to camps which are located in isolated, semi-arid regions, and charged higher fees than nationals in public hospitals (art. 2, para. 2).

**The Committee recommends that the State party issue work permits to all refugees, in accordance with the Refugees Act (2006) and monitor unfair labour practices and exploitation of refugees in the informal sector. It also recommends that the State party relax its reported policy of requiring refugees to live in camps for prolonged periods of time, and provide hospital services at the same rate to them as to nationals.**

367. The Committee notes with concern that article 82 (4) of the Constitution exempts matters of personal law such as marriage, divorce and devolution of property on death, as well as customary law applicable to certain tribes, from the constitutional prohibition of discrimination, with the effect that women are generally discriminated against in these areas of law (art. 3).

**The Committee recommends that the State party repeal article 82 (4) of the Constitution and ensure that the new Constitution guarantees equal rights of women to matrimonial property during marriage and at its dissolution. It also recommends that the State party raise public awareness of the need to abolish laws and customs which discriminate against women and adopt the Marriage, Matrimonial Property and Gender Equality and Affirmative Action Bills.**

368. The Committee is concerned about the still low representation of women in Parliament, in senior government positions and in posts of Court of Appeal or High Court judges (art. 3).

**The Committee recommends that the State party adopt positive measures, with a view to raising the representation of women in Parliament, the judiciary and senior civil service positions.**

369. The Committee is concerned that only 1.8 million workers are employed in the formal sector, despite the fact that 2.4 million new jobs were created between 2004 and 2007 in the State party. It is also concerned that 6.4 million workers in the informal economy are not sufficiently covered by labour regulations and social security schemes, including pension rights and maternity protection, and that many persons in the State party are still unemployed, in particular women, persons with disabilities, refugees and internally displaced persons (IDPs) (art. 6).

**The Committee recommends that the State party intensify its efforts, especially in rural and deprived urban areas, to (a) achieve higher levels of employment, e.g. through vocational training and infrastructural measures; (b) regularize the situation of informal sector workers by progressively improving their working conditions and including them in social security schemes; (c) take special measures to increase employment opportunities for women, persons with disabilities, refugees and internally displaced persons and other disadvantaged and marginalized groups; (d) ensure that labour inspectors act as an independent and effective instrument to combat violations of basic labour rights; and (e) establish a data collection system to monitor unemployment and informal sector employment.**

370. The Committee is concerned about the exemption of Export Processing Zones from the application of the Employment Act and the Occupational Health and Safety Act, which has given rise to poor working conditions such as low salaries, excessive and unpredictable working hours, lack of training and promotion opportunities, unstable contracts, sexual harassment, violations of the rights to join trade unions and to collective bargaining, as well as racial discrimination by some foreign managers against Kenyan workers (art. 7).

**The Committee recommends that the State party review its incentive regime for Export Processing Zones, remove their exemption from Kenyan labour legislation, including the Employment Act, the Occupational Health and Safety Act and minimum wage regulations, strictly enforce labour standards and further increase the number of labour inspections, promote training and promotion opportunities for workers, ensure trade union freedom and combat sexual harassment and racial discrimination in the Export Processing Zones.**

371. The Committee is concerned that that the statutory minimum wage is not sufficient to provide an adequate standard of living for workers and their families. It is also concerned that women typically work in low-paid and low-skilled jobs, especially in rural and deprived urban areas (art. 7).

**The Committee recommends that the State party increase, annually adjust and enforce minimum wages to ensure that such wages provide workers with an adequate standard of living for themselves and their families, in accordance with article 7, paragraph (a) (ii) of the Covenant. It also recommends that the State party adopt targeted measures to ensure that women, especially those living in rural and deprived urban areas, have equal access to the regular labour market as men and that the principle of equal remuneration for work of equal value is implemented in practice.**

372. The Committee is concerned about reported delays in the registration of trade unions, de-registration on vague grounds, interference by officials of the Office of the Registrar of Trade Unions and the Ministry of Labour in the management and operation of trade unions, and excessive restrictions on the right to strike, in particular in the Export Processing Zones (art. 8).

**The Committee recommends that the State party take urgent measures to ensure freedom to form and join trade unions, prevent interference in the management and operation of trade unions, and remove excessive restrictions on the right to strike in law and in practice, including in Export Processing Zones. While noting the importance attached to the principles of tripartism and social dialogue by the State party, the Committee recommends that the State party consider ratifying ILO Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organize.**

373. The Committee notes with concern that the National Hospital Insurance Fund (NHIF), which provides for the reimbursement of hospitalization costs other than medical expenses, only covers a small percentage of workers in the informal sector and that the National Social Health Insurance Bill (2004), which sought to introduce a compulsory health insurance scheme for all citizens, did not obtain presidential assent (art. 9).

**The Committee recommends that the State party progressively extend the scope of the National Hospital Insurance Fund so as to reimburse all hospitalization costs, in particular medical expenses, and to cover all workers, including informal, casual, domestic and part-time workers and the self-employed, as well as persons without employment. As a first step, it recommends that the State party consider removing any penalties imposed on persons who are unable to pay their contributions on time. It also recommends that the State party take immediate steps to introduce a comprehensive compulsory health insurance scheme for everyone, including the unemployed, children, older persons, persons with disabilities and other disadvantaged and marginalized individuals and groups.**

374. The Committee notes with concern that many pension schemes are under-funded and that the National Social Security Fund (NSSF), a compulsory contributory social security fund set up to pay pension benefits to employees after retirement, does not include any non-contributory schemes of social assistance (art. 9).

**The Committee recommends that the State party ensure the financial viability of existing pension schemes and extend the scope of the National Social Security Fund to include the main branches of social security, as well as non-contributory schemes of social assistance for those who are unable to pay pension or other social security contributions. It also recommends that the State party consider ratifying ILO Convention No. 102 (1952) concerning Minimum Standards of Social Security.**

375. The Committee notes with concern the incidence of domestic violence in the State party, the low number of complaints filed by victims of domestic violence, including spousal rape, the absence of criminal law provisions specifically criminalizing such violence, as well as the absence of statistical data on the number of reported cases of domestic violence. It is also concerned about harmful customary practices such as “wife inheritance” and ritual “cleansing” of widows by male relatives of the deceased husband (art. 10).

**The Committee recommends that the State party (a) enact the Domestic Violence (Family Protection) Bill (2000) and other legislation specifically criminalizing domestic violence, including spousal rape, and customary practices that degrade and harm women, including ritual “cleansing” and forced “inheritance” of widows; (b) train the police, prosecutors and judges on the strict application of such criminal law provisions; (c) relax the sanctions for false allegations in Section 38 of the Sexual Offences Act (2006) and preclude its application in cases where acquittals are not necessarily based on the falseness of the complainant’s allegations; (d) raise public awareness, in particular at the community level, about the criminal nature of domestic violence and harmful customary practices; and (e) provide in its second periodic report updated data on the number and nature of reported cases of domestic and sexual violence, convictions and on the sanctions imposed on perpetrators.**

376. The Committee notes with concern that female genital mutilation continues to be practised in the State party, in particular in rural areas such as the North Eastern Province, and that it is prohibited only if it involves children (art. 10).

**The Committee recommends that the State party adopt legislation criminalizing all female genital mutilation of adult women; train the police, prosecutors and judges on the strict application of laws prohibiting female genital mutilation; continue promoting alternative rite of passage ceremonies; educate parents, especially mothers, children and community leaders on the harmful effects of female genital mutilation; and combat traditional beliefs about the usefulness of female genital mutilation for the promotion of marriage prospects of girls.**

377. The Committee notes with concern the absence of statistical data on the reported number of persons, in particular women and children, trafficked to, from and within the State party for purposes of sexual exploitation and forced labour, as well as reports that provisions criminalizing trafficking of persons for the purpose of sexual exploitation and trafficking of children are rarely enforced and that, if they are enforced, sentences imposed on traffickers are frequently lenient (art. 10).

**The Committee recommends that the State party (a) enact the Anti-Trafficking Bill (2007); (b) train police officers, prosecutors judges and health and social workers, on the strict application of the provisions of the Sexual Offences Act (2006) and the**

**Children Act (2001) criminalizing trafficking of persons for the purpose of sexual exploitation and trafficking of children; (c) review its sentencing policy for trafficking-related offences; and (d) provide in its second periodic report updated data on the number and nature of reported cases of trafficking, convictions and on the sanctions imposed on traffickers.**

378. While noting the progress achieved by the State party in combating child labour, the Committee remains concerned about the still very high number of children engaged in child labour. It is also concerned about the high number of children who are forced to engage in prostitution (art. 10).

**The Committee urges the State party to (a) strengthen the enforcement of the Children Act and the Sexual Offences Act prohibiting child labour and sexual exploitation of children, e.g. through mandatory training for police officer, prosecutors and judges, teachers and health and social workers, more effective labour inspections and raids by social services, as well as heavier sentences for persons who make use of illegal child labour; (b) adopt and effectively implement the draft National Policy on Child Labour (2002); (c) conduct awareness-raising campaigns for children and parents on livelihood needs, including education; (d) provide assistance for children engaged in child labour and for their families; and (e) systematically collect data on the extent of child labour, including hidden forms, and of child prostitution in the State party.**

379. The Committee is concerned that children and orphans affected by HIV/AIDS are not adequately supported by the State party and that the care for these children and the task of monitoring their school attendance is frequently delegated to their extended families and to community and faith-based organizations, without adequate support and supervision from the State party (art. 10).

**The Committee recommends that the State party step up its efforts to monitor regular school attendance by children and orphans with HIV/AIDS or from HIV/AIDS affected households, combat discrimination by school officials and ensure that these children receive continuous material and psychological support for their education. It also recommends that the State party give priority to placing orphans in foster or other non-institutional alternative care and that it provide financial support to the extended families, as well as to community and faith-based organizations, taking care of children and orphans affected by HIV/AIDS.**

380. The Committee notes with concern that more than half of the population of the State party lives in extreme poverty, i.e. on less than US\$ 1 a day, in particular persons living in rural and deprived urban areas, landless persons, women, children, female-headed households, families affected by HIV/AIDS, persons with disabilities, refugees and internally displaced persons (art. 11).

**The Committee recommends that the State party allocate sufficient funds for the effective implementation of its National Poverty Eradication Plan and poverty reduction strategy, ensure the full integration of economic, social and cultural rights, and specifically address the needs of persons living in rural and deprived urban areas, the landless, women, children, female-headed households, families affected by**

**HIV/AIDS, persons with disabilities, refugees, internally displaced persons and other disadvantaged and marginalized groups in that plan and strategy. In this regard, the State party is referred to the Committee's Statement on "Poverty and the International Covenant on Economic, Social and Cultural Rights" (E/C.12/2001/10).**

381. The Committee is concerned about the high incidence of acute malnutrition in the North Eastern Province and of chronic malnutrition in all provinces of the State party, particularly affecting children (art. 11).

**The Committee recommends that the State party effectively implement and allocate sufficient resources to relevant programmes and funds, such as the Child Survival and Development Strategy and the Constituencies Development Fund, to ensure physical and economic access for everyone, including children in rural and deprived urban areas, to the minimum essential food, which is sufficient, nutritionally adequate and safe, to ensure freedom from hunger, in line with the Committee's general comment No. 12 (1999) on the right to adequate food) as well as its Statement on the world food crisis (E/C.12/2008/1).**

382. While noting that many of the hundreds of thousands persons who were internally displaced by the post election violence in early 2008 have been resettled or returned to their homes, the Committee is concerned that the financial assistance provided to internally displaced persons under the National Resettlement Fund is inadequate (art. 11).

**The Committee recommends that the State party provide adequate financial assistance for the resettlement of internally displaced persons and for their reintegration into society, and ensure that those IDPs who have not been resettled or returned to their homes following the post-election violence in 2008 have adequate access to housing and employment.**

383. The Committee notes with concern that persons living in informal settlements, as well as in arid and semi-arid rural areas, are frequently deprived of affordable access to adequate water and sanitation, and that new housing units constructed under slum upgrading projects such as the Kenyan Slum Upgrading Programme (KENSUP) for Kibera/Nairobi are unaffordable for disadvantaged and marginalized families and individuals (art. 11).

**The Committee recommends that the State party take immediate measures to ensure affordable access to adequate water and sanitation in informal settlements and arid or semi-arid rural areas, in line with the Committee's general comment No. 15 (2002) on the right to water, by, inter alia, reducing waiting times for collecting water, adequately controlling prices charged by private water services and water kiosks, and connecting Kibera to the Nairobi city sewage system. It also recommends that the State party ensure that slum upgrading projects give priority to the construction of social housing which is affordable for disadvantaged and marginalized individuals and families and that affected communities are effectively consulted and involved in the planning and implementation of such projects.**

384. The Committee is concerned about the demolition of dwellings and forced evictions of pastoralist communities in the Rift Valley, forest dwellers such as the Mau Forest Ogiek, and persons living in informal settlements and on road reserves, reportedly without prior notice and provision of adequate alternative housing or compensation (art. 11).

**The Committee recommends that the State party consider including a provision in its new draft Constitution to ensure that evictions are only used as a last resort, adopt legislation or guidelines strictly defining the circumstances and safeguards under which evictions must take place, in accordance with the Committee's general comment No. 7 (1997) on forced evictions, and ensure that each victim of forced evictions is provided with adequate alternative housing or compensation and that he or she has access to an effective remedy.**

385. The Committee is concerned about the high maternal, infant and under-five mortality rates, the lack of adequately equipped maternal health care facilities and skilled birth attendance, especially in the North Eastern and Coastal Provinces, and de facto discrimination against poor women, older women and women with HIV/AIDS in access to maternal health care (art. 12).

**The Committee recommends that the State party take immediate measures to ensure that (a) all pregnant women, including poor women, older women and women with HIV/AIDS, have affordable access to skilled care free from abuse during pregnancy, delivery, postpartum, postnatal periods, and to care of the newborn, including in remote rural areas; (b) the waiver of maternity fees in public hospitals and health facilities is effectively enforced without compromising the quality of services; (c) immunization campaigns for children are implemented in all provinces; (d) pregnant women with HIV/AIDS are not refused treatment, segregated in separate hospital wards, forced to undergo HIV/AIDS testing, and discriminated or abused by health workers, and that they are informed about and have free access to antiretroviral medication during pregnancy, labour and after birth, including for their children; and (e) a date is set for the entry into force of the HIV/AIDS Prevention and Control Act (2006) as soon as possible.**

386. The Committee is concerned about the limited access to sexual and reproductive health services and contraceptives, especially in rural and deprived urban areas, as well as about the high number of unsafe clandestine abortions in the State party (art. 12).

**The Committee recommends that the State party ensure affordable access for everyone, including adolescents, to comprehensive family planning services, contraceptives and safe abortion services, especially in rural and deprived urban areas, by eliminating formal and informal user fees for public and private family planning services, adequately funding the free distribution of contraceptives, raising public awareness and strengthening school education on sexual and reproductive health, and decriminalizing abortion in certain situations, including rape and incest.**

387. The Committee notes with concern that children from poor families, pregnant girls, children living in remote rural areas and in informal settlements, nomadic children, children with disabilities, refugee children and internally displaced children have limited access to education (art. 13).

**The Committee recommends that the State party (a) increase the funds allocated to bursaries and textbook subsidies for children from poor families, as well as to school transportation and mid-day meals in remote rural and deprived urban areas; (b) facilitate the readmission of girls who dropped out of school due to pregnancy by supporting them in finding adequate arrangements for the care of their babies; (c) ensure adequate access for nomadic children to mobile schools, including in the North Eastern Province; and (d) cater for the special needs of children with disabilities and integrate refugee children and internally displaced children in the regular school system.**

388. The Committee notes that the Nubians and the Ogiek are not recognized as distinct ethnic communities and that they are referred to as “others” by the State party (art. 15).

**The Committee recommends that the State party recognize the Nubians and the Ogiek as distinct ethnic communities, as well as their right to the preservation, protection and development of their cultural heritage and identity.**

389. The Committee recommends that the State party provide in its second periodic report updated statistical data on the enjoyment of each Covenant right, disaggregated by age, gender, ethnic origin, urban/rural population and other relevant status, on an annual comparative basis over the past five years.

390. The Committee recommends that the State party strengthen the capacity and funding of the Kenya National Commission on Human Rights, with a view to ensuring its financial independence and its presence in all provinces of the State party.

391. The Committee recommends that the State party indicate in its next periodic report the concrete results of the implementation of the Employment Act (2007), the Labour Institutions Act (2007), the Labour Relations Act (2007), the Work Injury Benefits Act (2007) and the Occupational Health and Safety Act (2007).

392. The Committee recommends that the State party withdraw its reservation to article 10, paragraph 2, of the Covenant, and that it consider ratifying ILO Conventions No. 103 (1952) concerning Maternity Protection) and No. 183 (2000) concerning the Revision of the Maternity Protection Convention.

393. The Committee recommends that the State party consider ratifying ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

394. The Committee recommends that the State party consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

395. The Committee invites the State party to submit a common core document in accordance with the 2006 harmonized guidelines on reporting to the international human rights treaty monitoring bodies (HRI/GEN/2/Rev.5).

396. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, particularly among State officials, the judiciary and civil



society organizations, to translate them into Swahili and to inform the Committee on the steps taken to implement them in its next periodic report. It also encourages the State party to continue engaging non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

397. The Committee requests the State party to submit its second to fifth periodic reports in a single document by 30 June 2013.

### **UNITED NATIONS INTERIM ADMINISTRATION MISSION IN KOSOVO (UNMIK)**

398. The Committee on Economic, Social and Cultural Rights considered the document submitted by the United Nations Interim Administration Mission in Kosovo on the implementation of the International Covenant on Economic, Social and Cultural Rights in Kosovo since 1999 (E/C.12/UNK/1) at its 37th and 38th meetings, held on 10 November 2008 (E/C.12/2008/SR.37 and 38), and adopted, at its 49th and 50th meetings held on 18 November 2008, the following concluding observations.

#### **A. Introduction**

399. The Committee welcomes the submission by the United Nations Interim Administration Mission in Kosovo (UNMIK) of a document containing information on the implementation of the Covenant in Kosovo since 1999, pursuant to a request based on the Committee's concluding observations on the initial report of Serbia and Montenegro (E/C.12/1/Add.108, para. 9), adopted in May 2005, and on the basis of the mandate of UNMIK under Security Council resolution 1244 (1999) to protect and promote human rights in Kosovo.

400. The Committee welcomes the detailed information contained in the document submitted by UNMIK and in the written replies to most of the questions raised in its list of issues, as well as the focused answers provided by the delegation of UNMIK to the Committee's oral questions.

401. The Committee regrets the lack of disaggregated statistical data in the document, which would have enabled the Committee to better assess the implementation of the Covenant in Kosovo. It also regrets that civil society and non-governmental organizations were not involved in the preparation of the document and that it was translated into Albanian and Serbian only in July 2008.

#### **B. Positive aspects**

402. The Committee welcomes the efforts to protect and promote economic, social and cultural rights undertaken by the Ombudsman Institution, which was established in 2000 by UNMIK Regulation 2000/38 as an independent institution reporting to the Special Representative of the Secretary-General, until its replacement by UNMIK Regulation 2006/6 providing for the appointment of a local Ombudsperson by the Assembly of Kosovo.

403. The Committee notes with appreciation legislation promulgated by UNMIK to eliminate discrimination against disadvantaged and marginalized individuals and groups, including the Anti-Discrimination Law (2004), which prohibits direct and indirect discrimination in the public

and private spheres and provides special protection for minority communities, and the Gender Equality Law (2004), which defines a 40 per cent quota for the representation of women at all levels in executive, legislative and judicial bodies.

404. The Committee notes with appreciation that UNMIK, in cooperation with the Kosovo authorities, increasingly focuses on the sustainability of returns of internally displaced persons and refugees.

### **C. Factors and difficulties impeding the implementation of the Covenant**

405. The Committee considers that the armed conflict in 1998/1999 and the uncertainty about the final status of Kosovo have adversely affected since 1999 the enjoyment in Kosovo of the rights recognized in the Covenant.

### **D. Principal subjects of concern and recommendations**

406. Notwithstanding that the Covenant is part of the applicable law in Kosovo by virtue of UNMIK Regulation 1999/24, the Committee is concerned that the Covenant has been omitted from the lists of directly applicable human rights treaties in Chapter 3.1 of the Constitutional Framework for Provisional Self-Government in Kosovo (UNMIK Regulation 2001/9) and in article 22 of the “Constitution” adopted by the Kosovo Assembly on 9 April 2008.

**The Committee recommends that UNMIK include the Covenant in the list of directly applicable human rights treaties in Chapter 3.1 of the Constitutional Framework for Provisional Self-Government in Kosovo and advise the Kosovo authorities to take appropriate measures to ensure that the Covenant is directly applicable.**

407. The Committee notes with concern that since the end of the mandate of the international Ombudsperson in 2005, the Ombudsperson Institution has been entrusted to an Acting Ombudsperson, in the absence of the appointment of an Ombudsperson by the Assembly of Kosovo under UNMIK Regulation 2006/12.

**The Committee recommends that UNMIK take adequate steps to prevent further delays in the appointment of an Ombudsperson by the Kosovo Assembly under UNMIK Regulation 2006/16 and to ensure that all authorities subject to oversight by the Ombudsperson Institution in Kosovo give effect to its recommendations.**

408. The Committee notes with concern that the Human Rights Advisory Panel established under UNMIK Regulation 2006/16 to examine complaints against UNMIK is physically located within the UNMIK Headquarters and that it has not adopted a single opinion on the merits of any of the cases pending before it, including cases relating to economic, social and cultural rights.

**The Committee recommends that UNMIK provide the Human Rights Advisory Panel with adequate office space outside its premises to fully guarantee its independence, as well as with sufficient financial and human resources to cope with its growing caseload.**

409. The Committee is concerned about the lack of enforcement in practice of the Anti-Discrimination Law (2004), the poor quality, especially of Serbian language versions, of administrative instructions for its implementation, and the lack of judgements based on the Law (art. 2, para. 2).

**The Committee recommends that UNMIK, in cooperation with the Kosovo authorities, provide systematic training on the application of the Anti-Discrimination Law to judges and civil servants, ensure that administrative instructions for the implementation of the Law are clearly and comprehensibly formulated and accurately translated into Serbian, and that victims of discrimination in the area of economic, social and cultural rights have adequate access to judicial remedies, and indigent complainants to legal aid, to invoke provisions of the Anti-Discrimination Law in the courts.**

410. The Committee notes with concern that 20 to 30 per cent of the Roma, Ashkali and Egyptian communities are not registered as habitual residents or lack personal documents such as birth and marriage certificates, in the absence of civil status registration, both of which are necessary to access employment, social security, housing, health care and education (art. 2, para. 2).

**The Committee recommends that UNMIK, in cooperation with the Kosovo authorities, further intensify efforts to (a) facilitate the registration of members of Roma, Ashkali and Egyptian communities as habitual residents, by promoting a flexible approach to fee exemptions and residence documentation in all municipalities; (b) simplify civil status registration procedures, especially with regard to “subsequent/late” registration and home births; (c) educate Roma families on the importance of registration for the enjoyment of economic, social and cultural rights; and (d) promote the adoption of the Integration Strategy for the Kosovo Roma, Ashkali and Egyptian communities.**

411. The Committee is concerned about the absence of a law on the rights of persons with disabilities in Kosovo (art. 2, para. 2).

**The Committee recommends that UNMIK advise the Kosovo Assembly on the urgent need to adopt a law on the rights of persons with disabilities and that it assist the Kosovo authorities in identifying sufficient resources for its implementation.**

412. The Committee is concerned about the low representation of members of Roma, Ashkali and Egyptian and other non-Albanian communities in the public service and in the judiciary, especially in senior positions (art. 2, para. 2).

**The Committee recommends that UNMIK, in cooperation with the Kosovo authorities, intensify efforts to promote adequate representation and effective participation of non-Albanian communities in the public service and in the judiciary, including in senior positions, e.g. by requiring municipalities to comply with the numerical targets defined in the Fair-Share Financing Policy, adopting equal opportunity policy statements and implementing strategies, appointing Equal**

**Opportunity Officers, and systematically collecting disaggregated data to ascertain whether non-Albanian communities are proportionately represented in the municipal civil service, including in senior positions.**

413. The Committee notes with concern that women, especially from non-Albanian communities, are underrepresented in management positions at the municipal level, as well as in high-level positions in legislative, judicial and central and local government bodies (art. 3).

**The Committee recommends that UNMIK, in cooperation with the Kosovo authorities, intensify efforts to increase the representation of women, especially from non-Albanian communities, in management positions at the municipal level, e.g. by requiring municipalities to establish Gender Equality Offices, as well as in high-level positions in legislative, judicial and central and local government bodies, in line with the 40 per cent quota in the Gender Equality Law.**

414. The Committee notes with concern that 30 to 40 per cent of Kosovans are unemployed, in particular women, young persons, non-Albanian communities, returnees and internally displaced persons, and that there are no specific measures to regularize the situation of persons working in the informal economy (art. 6).

**The Committee recommends that UNMIK, in cooperation with the Kosovo authorities, intensify efforts to promote employment opportunities, especially in the formal sector, including for women, young persons, non-Albanian communities, returnees and internally displaced persons, e.g. through job training, the adoption of the Active Labour Market Programme for youth employment and increased incentives and subsidies for private businesses. It also recommends that UNMIK, in cooperation with the Kosovo authorities, regularize the situation of workers in the informal economy by progressively including them in social security schemes and by adopting a plan of action for the informal economy.**

415. The Committee notes with concern reports that UNMIK has failed to provide adequate safeguards during the privatization of former Socially Owned Enterprises aimed at preserving the pre-armed conflict ethnic composition of the workforce, and that it has set discriminatory deadlines precluding many internally displaced persons and returnees from applying for inclusion in the list of former employees eligible to participate in the distribution of the proceeds from the sale of such enterprises, and from appealing to the Special Chamber of the Supreme Court in case of their non-inclusion (art. 6).

**The Committee recommends that UNMIK consider reviewing its Regulations 2005/48 and 2004/45 in order not to perpetuate the effects of forced migrations during and after the armed conflict in 1998/1999 on the ethnic composition of the workforce of former Socially Owned Enterprises and to provide internally displaced persons and refugees with adequate time and information to obtain the documents required for applying for inclusion in the list of eligible employees entitled to payments from the sales proceeds of former Socially Owned Enterprises, or otherwise to appeal to the Special Chamber of the Supreme Court.**

416. The Committee is concerned that the wage levels in Kosovo are insufficient to provide workers with an adequate standard of living for themselves and their families, especially for women who reportedly earn 20 per cent less than men on average, and that there is no legislation defining minimum wages (art. 7).

**The Committee recommends that UNMIK, in cooperation with the Kosovo authorities, take appropriate steps to ensure wage levels that provide all workers with an adequate standard of living for themselves and their families, in accordance with article 7, paragraph (a) (ii) of the Covenant, and to implement the principle of equal remuneration for work of equal value. It also recommends that UNMIK advise the Kosovo Assembly to adopt the draft Bill on Minimum Wages.**

417. The Committee is concerned that the right to form and join trade unions and the right to strike are not explicitly guaranteed by law in Kosovo (art. 8).

**The Committee recommends that UNMIK advise the Kosovo Assembly to adopt the draft Labour Law and the draft Laws on the Right to Freedom of Association and on the Right to Strike.**

418. The Committee is concerned that the minimum levels of basic and contribution-based old-age pension benefits, disability pension benefits, war invalidity and survivor benefits and social assistance payments are insufficient to ensure an adequate standard of living to recipients and their families. The Committee is also concerned that the exclusion from such benefits of, inter alia, persons who own more than 0.5 hectares of arable land may have a discriminatory effect on returnees who are unable to repossess their lands because of illegal occupation or security concerns (art. 9).

**The Committee recommends that UNMIK, in cooperation with the Kosovo authorities, ensure that the minimum levels of basic and contribution-based old-age pension benefits, disability benefits, war invalidity and survivor benefits and social assistance payments are sufficient to ensure an adequate standard of living to recipients and their families. It also recommends that it review any discriminatory eligibility requirement for such benefits based on, inter alia, land ownership.**

419. The Committee notes with concern reports about difficulties, such as the absence of application forms in Serbian prior to 2005 or the requirement that death certificates must be issued by UNMIK, which members of non-Albanian communities have been facing when applying for war invalidity and survivor benefits under UNMIK Regulation 2000/66 (art. 9).

**The Committee recommends that UNMIK, in cooperation with the Kosovo authorities, ensure that members of non-Albanian communities enjoy equal access to war invalidity and survivor benefits, in law and in practice.**

420. The Committee notes with concern the high incidence of domestic violence in Kosovo, the low number of complaints to the police and victim advocates, the absence of legislation specifically criminalizing spousal rape, the low prosecution and conviction rates, and the lack of adequate victim assistance and protection (art. 10).

**The Committee recommends that UNMIK, in cooperation with the Kosovo authorities, ensure (a) that spousal rape is specifically criminalized; (b) that judges, prosecutors and the police receive mandatory training on the strict application of UNMIK Regulation 2003/12 on Protection against Domestic Violence; (c) that health workers and the public are educated on the need to report cases of domestic violence; (d) that sentencing policies are reviewed and time limits for issuing protection orders enforced; (e) that the number and capacity of shelters are increased and victim assistance and protection strengthened, including through adequate financial support for NGOs; and (f) that the next report on the implementation of the Covenant in Kosovo includes updated data on the number and nature of reported cases of domestic and sexual violence, convictions and on the sanctions imposed on perpetrators.**

421. The Committee notes with concern that prosecutors and judges in Kosovo often resort to the minimal charges of, and conviction for, the facilitation of prostitution in cases of trafficking in persons, and that abused and exploited children without parental care or street children are often categorized as “anti-social” children by social service officers and deprived of the special protection available for children who are victims of trafficking (art. 10).

**The Committee recommends that UNMIK, in cooperation with the Kosovo authorities, ensure (a) that the police, prosecutors and judges receive mandatory training on the strict application of article 139 of UNMIK Regulation 2003/26 and other criminal law provisions against trafficking in persons; (b) that sentencing policies are reviewed; (c) that the concept of “anti-social” children is immediately repealed and special protection provided, without discrimination, to all children who are victims of trafficking; and (d) that the next report on the implementation of the Covenant in Kosovo includes updated data on the (estimated) number of persons trafficked to, from, within and through Kosovo, as well as on the number of prosecutions, convictions and on the sentences imposed on traffickers.**

422. The Committee is concerned about the lack of coordinated measures to prevent and reduce child labour, which is reportedly common in family businesses and in the informal economy (art. 10).

**The Committee recommends that UNMIK advise the relevant authorities, including the Labour Inspectorate, the Centres for Social Work and the recently established Committee for the Prevention of Child Labour, on the urgent need to adopt and effectively implement coordinated measures for the prevention and reduction of child labour, including through increased labour inspections and measures to support poor families, and to monitor the situation by including in the next report on the implementation of the Covenant in Kosovo updated data on the number of children still engaged in child labour.**

423. The Committee notes with concern that approximately 45 per cent of Kosovans live in poverty, i.e. on less than 1.42 Euro per day, and that around 15 per cent live in extreme poverty, i.e. on less than 0.93 Euro per day (art. 11).

**The Committee recommends that UNMIK identify funds and encourage the Kosovo authorities to effectively implement the Poverty Eradication Plan 2008-2011, as well**

**as to ensure the full integration of economic, social and cultural rights and specifically address the needs of unemployed persons, female headed households, Roma, Ashkali and Egyptian and other non-Serbian ethnic minority communities and internally displaced persons in the Plan. In this regard, reference is made to the Committee's statement on "Poverty and the International Covenant on Economic, Social and Cultural Rights" (E/C.12/2001/10).**

424. The Committee is concerned about the low number of internally displaced persons and refugees, in particular those belonging to minority communities, who have returned to their pre-armed conflict homes in recent years, despite the efforts undertaken to facilitate sustainable returns (art. 11).

**The Committee recommends that UNMIK, in cooperation with the Kosovo authorities, intensify efforts to ensure the repossession of property, physical safety and sustainable return of internally displaced persons and refugees, in particular those belonging to minority communities, to their pre-armed conflict places of residence, e.g. by increasing income generation assistance for returnees, ensuring that the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2) are fully taken into account during the revision of the Revised Manual for Sustainable Returns (2006), and directly involving affected IDPs at all stages of adoption and implementation of Municipal Return Strategies.**

425. The Committee notes with concern that the deadline for the submission of immovable property claims to the Kosovo Property Agency reportedly precluded many internally displaced persons with limited access to information about that deadline from filing their claims. It is also concerned about the backlog of some 18,000 civil claims for compensation of property damage allegedly caused by the lack of protection from KFOR, UNMIK, the Provisional Institutions of Self-Government or the municipalities during civil unrest, which have not been processed by the courts pursuant to an instruction by the UNMIK Department of Justice in August 2004 (art. 11).

**The Committee recommends that UNMIK review Section 8 of its Regulation 2007/8, with a view to making transitional arrangements for displaced claimants who were unable to comply with the December 2007 deadline for submitting immovable property claims to the Kosovo Property Agency due to limited access to information about such deadline. It also recommends that UNMIK, in cooperation with the Kosovo authorities, strengthen the human resources of and instruct courts to process all civil claims for compensation of property damage allegedly caused by KFOR, UNMIK, the Provisional Institutions of Self-Government or the municipalities during civil unrest and to prioritize cases involving discrimination.**

426. The Committee notes with concern that a number of Roma, Ashkali and Egyptian families, who were relocated to the IDP camp at Cesmin Lug/Çesmin Llug after the demolition in 1999 of the "Roma Mahalla" in Mitrovicë/Mitrovica, prefer to remain in Cesmin Lug/Çesmin Llug, despite high levels of lead contamination, due to their lack of trust in a durable housing solution and because they fear that the IDP camp at Osterode, to which most Roma, Ashkali and Egyptian families have been relocated from lead contaminated IDP camps, is itself located near a lead contaminated site. It is also concerned that, according to some sources, children at the Osterode camp show high blood-lead levels and that the medical treatment for lead poisoning was discontinued in 2007 (art. 11).

**The Committee recommends that UNMIK, in cooperation with the Kosovo authorities, ensure (a) that Roma, Ashkali and Egyptian families who prefer to stay at the IDP camp at Cesmin Lug/Çesmin Llug are adequately informed about the health risks involved and offered adequate alternative housing solutions which are culturally acceptable; (b) that the blood-lead levels of persons, especially children, living in the IDP camps at Cesmin Lug/Çesmin Llug, Osterode and Leposavić/Leposaviq are continuously monitored and that follow-up medical treatment is available in all three camps; (c) that phase 2 of the reconstruction of the “Roma Mahalla” is implemented and completed as soon as possible; and (d) that all Roma, Ashkali and Egyptian families who were relocated to IDP camps are progressively reintegrated into the “Roma Mahalla” and provided with adequate housing with legal security of tenure.**

427. The Committee is concerned about the high infant and maternal mortality rates in Kosovo, as well as about the estimated high number of clandestine abortions (art. 12).

**The Committee recommends that UNMIK identify funds and advise the relevant Kosovo authorities on the need to take immediate measures to ensure that all pregnant women have access to adequate maternal health services, including skilled birth attendance and monitoring of the health of the newborn, and that adolescents and adults have access to comprehensive sexual and reproductive health services and information, as well as to contraceptives and safe abortion services, including in rural areas.**

428. The Committee notes with concern the low enrolment of girls, especially from non-Serbian minority communities, in secondary schools, the low school attendance and high dropout rate among Roma, Ashkali and Egyptian children, especially girls, and the very limited opportunities for children from non-Serbian minority communities, in particular Roma, Ashkali and Egyptian children, to receive instruction in or of their mother tongue and on their history and culture (art. 13).

**The Committee recommends that UNMIK identify funds and advise the relevant Kosovo authorities on the urgent need to (a) sensitize parents on the importance of education for their children, including for their daughters; (b) increase the number of catch-up classes and Albanian language classes for, in particular, Roma, Ashkali and Egyptian children; and (c) ensure that children from non-Serbian minority communities, in particular Roma, Ashkali and Egyptian children, have adequate opportunities at all levels of education to receive instruction in or of their mother tongue and on their history and culture, that sufficient teaching staff and textbooks are available for that purpose, and that the cultures and traditions of minority communities are adequately reflected in the revised curriculum.**

429. The Committee is concerned that the population of Kosovo remains deeply divided along ethnic lines, as reflected by recurring incidents of inter-ethnic violence and a climate of intolerance among ethnic communities in Kosovo (art. 15).

**The Committee recommends that UNMIK encourage the relevant Kosovo authorities to foster intercultural dialogue and tolerance through school education, community level projects and Kosovo-wide campaigns.**



430. The Committee recommends that UNMIK ensure that the next report on the implementation of the Covenant in Kosovo includes updated statistical data on the enjoyment of each right in the Covenant, disaggregated by age, gender, ethnic origin, urban/rural population and other relevant status, on an annual comparative basis over the past five years.

431. The Committee requests UNMIK to disseminate the present concluding observations widely among all levels of society, particularly among public officials, the judiciary and civil society organizations, to translate them into Albanian and Serbian and, to the extent possible, into minority languages such as Romani, and to ensure that the Committee is informed about the steps taken to implement them in the next report on the implementation of the Covenant in Kosovo. It also encourages UNMIK, or any future administration in Kosovo, to engage non-governmental organizations and other members of civil society in Kosovo in the process of discussion prior to the submission of the next report.

## **NICARAGUA**

432. The Committee on Economic, Social and Cultural Rights considered the second, third and fourth periodic reports of Nicaragua on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/NIC/4) at its 29th, 30th and 31st meetings, held on 4 and 5 November 2008 (E/C.12/2008/SR.29-31), and adopted the following concluding observations at its 54th meeting held on 20 November 2008.

### **A. Introduction**

433. The Committee welcomes the submission of the periodic report by Nicaragua and the efforts made by the State party to comply with the guidelines for the preparation of reports. The Committee notes, however, that the report was submitted more than 10 years late. The State party is nevertheless to be commended on its submission of a common core document in conformity with the harmonized guidelines on reporting under the international human rights treaties (HRI/CORE/NIC/2008).

434. The Committee expresses its appreciation of the dialogue held with the delegation. It regrets, however, the late submission of the written replies to the list of issues, which meant that they could not be translated into the working languages of the Committee. The Committee also regrets that some of the questions put to the delegation were not answered.

### **B. Positive aspects**

435. The Committee notes with satisfaction the legislative and other measures adopted by the State party to promote the enjoyment of economic, social and cultural rights, in particular:

(a) The approval on 14 February 2008 of Act No. 648 on equal rights and opportunities, which lays the foundations for asserting the rights of women in many sectors, and for promoting equality and equity in the enjoyment of economic, social and cultural rights, inter alia;

(b) The approval in October 2003 of Act No. 475 on citizen participation, whose objective is to guarantee citizen participation on an equal basis in public affairs and State administration;

- (c) The approval in December 1996 of Act No. 238 on the promotion, protection and defence of human rights in the context of HIV/AIDS, which establishes the right to work of persons living with HIV/AIDS and the protection of that right;
- (d) The adoption in 1995 of Act No. 202 on prevention, rehabilitation and equal-opportunity measures for persons with disabilities;
- (e) The adoption on 28 May 2008 of the Act amending and supplementing Act No. 175 establishing a reserve fund for the payment of pensions for services rendered to the State;
- (f) The adoption on 2 June 2008 of the Act amending and supplementing title VII, chapter I, of the Labour Code, whose purpose is to guarantee the rights of persons engaged for domestic service, with emphasis on the rights of adolescent workers and the minimum age for admission to this type of employment for minors;
- (g) The approval on 13 December 1995 of Act No. 212, on the Office of the Human Rights Ombudsman and, in 1999, the appointment of the first Human Rights Ombudsman in Nicaragua. In 2006, the Office was granted status A accreditation by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights;
- (h) The establishment, under Act No. 212, of the Office of the Special Procurator for Women and the approval of Act No. 295 on the promotion, protection and maintenance of breastfeeding and on the regulation of the sale of breastmilk substitutes; and
- (i) The approval on 3 June 2008 of Act No. 655 on the protection of refugees.

436. The Committee takes note of the measures adopted to combat poverty as one of the basic pillars of national policy, as reflected in the Zero Hunger, Zero Usury, Food Sovereignty and Security for Life programmes; the Yes I Can - Free from Illiteracy programme; and the implementation of the Human Development Plan 2009-2012.

437. The Committee welcomes the establishment of an Office of Secretary for Indigenous and Afro-descendant Affairs, who has the rank of Deputy Minister and whose main function is to coordinate all matters relating to indigenous peoples.

438. The Committee welcomes the ratification by the State party in 2005 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted by General Assembly resolution 45/158 of 18 December 1990).

439. The Committee welcomes the ratification by the State party in December 2007 of the Convention on the Rights of Persons with Disabilities.

### **C. Factors and difficulties impeding the implementation of the Covenant**

440. The Committee takes note of the socio-economic problems that the State party has been experiencing as a result of natural disasters, which have had an adverse impact on the effective implementation of the provisions of the Covenant.

#### **D. Principal subjects of concern and recommendations**

441. The Committee notes with concern that 82 per cent of the population, i.e., more than 4.2 million people, are living below the poverty line and more than 2.1 million Nicaraguans are living in extreme poverty (art. 1, para. 2).

**The Committee urges the State party to review its overall strategy for the eradication of poverty and to step up its efforts to combat poverty.**

442. The Committee expresses its concern at the existence of racial prejudice against indigenous people, especially in the Atlantic Autonomous Regions and in particular against indigenous and Afro-descendant women. The Committee also regrets the many problems affecting indigenous peoples, including serious shortcomings in the health and education services; and the lack of an institutional presence in their territories; and the absence of a consultation process to seek communities' free, prior and informed consent to the exploitation of natural resources in their territories. In this regard, the Committee notes that, more than six years after the Inter-American Court's judgement in the *Awás Tingni* case, that community still does not have title to its property. Furthermore, the territory of Awás Tingni is still exposed to unlawful acts by settlers and loggers (art. 2, para. 2).

**The Committee recommends that the State party should:**

**(a) Effectively guarantee indigenous people's right to education and ensure that it is adapted to their specific needs;**

**(b) Guarantee access to adequate health services for all indigenous people, especially those living in the Atlantic Autonomous Regions;**

**(c) Conduct a process of consultations with indigenous peoples before granting concessions for the economic exploitation of the lands where they live, and guarantee that in no case does such exploitation violate the rights recognized in the Covenant;**

**(d) Continue and finalize the process of delimiting, demarcating and granting title to lands of the Awás Tingni community, prevent and halt unlawful activities by third parties in that territory, and investigate and punish those responsible for such acts.**

443. The Committee notes with concern the continuing wage difference between men and women in the State party and the fact that the income of female heads of household is 20 per cent lower than that of male heads of household (arts. 3 and 7 (a)).

**The Committee encourages the State party to adopt the necessary measures to ensure equal remuneration for work of equal value, for both men and women. In addition, the State party is requested to provide in its next periodic report updated information on the results of the measures adopted.**

444. The Committee expresses its concern at the continuing discrimination against women in political, social and economic spheres in Nicaraguan society, as reflected particularly in the limited involvement of women in the political and economic decision-making processes (art. 3).

**The State party should comply with the objectives set forth in the Act on equal opportunities and take effective measures to incorporate the gender perspective in legislation and in administrative policies and programmes, with a view to ensuring equality between men and women, particularly in political and economic decision-making processes.**

445. The Committee notes with concern the unemployment in the formal labour market and an increase in the number of people, mostly women, who work in the informal economy without basic labour standards (art. 6).

**The Committee urges the State party to step up its efforts to increase opportunities in the formal labour market and to take the necessary measures to ensure that workers in the informal economy enjoy basic labour standards. The Committee also recommends that the State party should increase funding for, and ensure, regularization of the unstructured labour market. The Committee further recommends that the State party should amend its labour legislation in order to combat contractual insecurity, including by reducing the use of temporary contracts and the subcontracting of workers formally employed full time and whose labour contract has ended.**

446. The Committee notes with concern the continuing violations of labour rights in the *maquila* industry, where barely 6 per cent of women workers belong to a trade union. It also notes with great concern the dismissals of workers, including pregnant women, following the closure of *maquiladora* plants in 2007 and the fact that many of them have still not received their wage settlements (arts. 7 and 8).

**The Committee encourages the State party to redouble its efforts to guarantee the rights of workers in the *maquila* industry and to take appropriate steps (a) to carry out labour inspections in places where labour rights are not being observed and (b) to effectively prevent the exploitation and abuse of workers, and to punish those responsible. The State party should also guarantee full exercise of the right to freedom of association.**

447. The Committee is concerned that the minimum wage is still insufficient to allow workers and their families to enjoy an adequate standard of living (arts. 7 (a) and 11).

**The Committee recommends that the State party should ensure that labour laws are effectively applied and that the minimum wage covers 100 per cent of the basic food basket.**

448. The Committee notes with concern that, despite being prohibited by law, sexual harassment in the workplace is still widespread (art. 7 (a) (ii)).

**The Committee urges the State party to take all necessary measures to implement the Act prohibiting sexual harassment in the workplace. The Committee requests the State party to provide information in its next periodic report on the number and type of complaints presented and the measures taken against those responsible.**

449. The Committee notes with concern that, despite the increase in social security coverage over the past three years, some 80 per cent of the economically active population have no access to any form of social security (art. 9).

**The Committee urges the State party to intensify its efforts to expand social security coverage for all workers. The Committee encourages the State party to ensure the application of minimum compulsory contributions to obtain social security benefits and to include unemployment insurance in the new social security scheme. It recommends that the State party should ratify the International Labour Organization (ILO) Social Security (Minimum Standards) Convention, 1952 (No. 102).**

450. The Committee notes with concern that the State party does not have a social security system that establishes accessible and appropriate mechanisms to guarantee access by all workers, including those in the informal sector, to the benefits a social security system should provide, especially with regard to retirement and maternity. The Committee further notes with concern that social coverage is 26.98 per cent in urban areas and as low as 7.4 per cent in rural areas (art. 9).

**The Committee recommends that the State party should undertake an evaluation of its social security system with a view to establishing the necessary mechanisms to guarantee broad social coverage that ensures appropriate benefits, especially retirement and maternity benefits, to all workers, including those in the informal sector.**

451. The Committee notes with concern the increase in the number of murders of women (femicides) in recent years (art. 10).

**The Committee urges the State party to take immediate and effective measures to put an end to murders of women and in particular to investigate and punish the perpetrators.**

452. The Committee notes with concern the problem of gender violence, and particularly domestic violence, although it takes note of article 195 of the new Criminal Code, which defines domestic violence as a criminal offence (art. 10).

**The Committee urges the State party to take immediate steps:**

- (a) To allow victims of gender violence effective access to justice;**
- (b) To provide police protection for victims and to create hostels providing decent accommodation;**

**(c) To maintain and promote forums for direct participation by women in decision-making at the local and national levels, particularly in respect of violence against women, and to ensure their participation and representation by civil society; and**

**(d) To take preventive and awareness-raising measures on gender violence, such as training on women's rights and gender violence for police officers, especially those in police units for women.**

**In this regard, the Committee would be grateful to receive, in the next periodic report, detailed information on the progress made in combating gender violence.**

453. The Committee notes with concern that only 13.85 per cent of the population are entitled to the universal old-age pension (art. 10).

**The Committee encourages the State party to adopt a welfare programme enabling elderly persons to live a decent life.**

454. With regard to food security, the Committee is concerned that people in the Pacific, central and autonomous regions face serious food shortages and are in a highly vulnerable situation. Furthermore, the Committee notes with concern the lack of effective implementation and sustainability of the Zero Hunger programme (art. 11).

**The Committee recommends that the State party should take the necessary measures to guarantee the effective implementation and sustainability of the Zero Hunger programme, particularly in the Pacific, central and autonomous regions, and comply with the provisions on non-discrimination in the Covenant and the Constitution. Furthermore, it should ensure that food vouchers are genuinely allocated to the poorest populations who have no resources of their own. The Committee also urges the State party to adopt the food sovereignty and security bill.**

455. The Committee is concerned at the major housing shortage and the fact that more than two thirds of Nicaraguans live in overcrowded housing, despite the existence of specific programmes such as the National Housing Plan 2005-2025 (art. 11).

**The Committee urges the State party to take all appropriate measures to solve the problem of homelessness, provide access to credit and housing subsidies for low-income families and marginalized and disadvantaged groups, and improve the supply of water and sanitation services to existing dwellings.**

456. The Committee notes with concern that 45 per cent of Managua's population live in unplanned settlements, with no legal security of tenure and thus at permanent risk of forced eviction. The Committee is also concerned at the major housing shortage and the fact that more than two thirds of Nicaraguans live in overcrowded housing, despite the existence of specific programmes such as the National Housing Plan 2005-2025 (art. 11).

**The Committee draws the State party's attention to its general comments Nos. 4 (1991), on the right to adequate housing (Covenant, art. 11, para. 1), and 7, on the right to adequate housing: forced evictions (Covenant, art. 11, para. 1), and asks the**

**State party to allocate sufficient resources to the implementation of programmes aimed at granting security of tenure and accessible dwellings, including access to credit and housing subsidies for low-income families and marginalized and disadvantaged groups. The Committee also asks the State party to improve the supply of water and sanitation services to existing dwellings.**

457. The Committee notes with concern the general prohibition on abortion in articles 143 to 145 of the Criminal Code, including in cases of rape, incest and presumed life-threatening pregnancy. Furthermore, it is concerned that the Act that authorized therapeutic abortion in such circumstances was repealed by parliament in 2006 and that, since the adoption of this prohibition, various cases have been documented in which the death of a pregnant woman was associated with lack of appropriate medical intervention intended to save her life, which would have been provided under the legislation in force before the law was changed (art. 10, para. 2).

**The Committee urges the State party to review its legislation on abortion and to study the possibility of providing for exceptions to the general prohibition on abortion in cases of therapeutic abortion or pregnancies resulting from rape or incest. Furthermore, the State party should adopt measures to assist women in avoiding unwanted pregnancies, so that they do not have to resort to potentially life-threatening illegal or unsafe abortions, or have abortions abroad. Furthermore, the State should avoid penalizing medical professionals in the exercise of their professional responsibilities.**

458. The Committee notes with concern the high levels of maternal and infant mortality and the fact that clandestine abortions cause the death of large numbers of women (arts. 10, para. 2 and 12, para. 2 (a)).

**The Committee strongly encourages the State party to continue its efforts to reduce maternal and infant mortality and to take the necessary legislative measures to solve the problem of female mortality caused by clandestine abortions, and recommends that the subjects of sex education and family planning methods be discussed openly in the school curriculum, in order to help prevent early pregnancies and the transmission of sexual diseases. It also recommends that the State party should adopt an Act on sexual and reproductive health compatible with the provisions of the Covenant.**

459. Although it takes note of the fact that trafficking in persons is defined as a criminal offence in the new Criminal Code, the Committee regrets the existence in the State party of trafficking in women and children for the purpose of sexual exploitation (art. 10, para. 3).

**The State party should strengthen measures to combat trafficking in women and children, in particular by:**

**(a) Ensuring that penalties commensurate with the seriousness of the case are imposed on persons exploiting women and children for such purposes;**

**(b) Continuing its efforts to raise public awareness of the fact that the sexual exploitation of women and children is a criminal offence;**

- (c) **Providing training courses for the competent authorities;**
- (d) **Protecting and assisting victims of sexual exploitation.**

460. The Committee is concerned that, despite the State party's efforts in the area of health, such as free access to public health services for vulnerable and marginalized groups, this is still very limited (art. 12, para. 2 (d)).

**The Committee recommends that the State party should step up its efforts in the area of health and requests it to adopt a global health policy, including prevention programmes that would allow guaranteed access to universal free primary health care for the poorest populations. The Committee requests the State party to present detailed up-to-date information in its next report, including disaggregated statistical data and indicators to allow progress in this area to be assessed.**

461. The Committee is concerned at the high illiteracy rate among indigenous peoples and communities of African descent in particular, and especially in the North Atlantic Autonomous Region, despite the launch of the Plan for an Autonomous Regional Education System for 2003-2013 in the framework of the new General Education Act (art. 13).

**The Committee encourages the State party to take short- and medium-term action to implement measures to reduce illiteracy, especially in the North Atlantic Autonomous Region.**

462. The Committee encourages the State party to perform a comprehensive evaluation of the impact of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), ratified in October 2005, on the realization of economic, social and cultural rights, especially for those persons and groups who are marginalized or disadvantaged. The Committee also encourages the State party to provide information in its next periodic report on the measures taken to mitigate the negative effects, if any, of the application of CAFTA-DR at the local level, together with disaggregated statistical data, in accordance with the prohibition of discrimination.

463. The Committee recommends that the State party should apply its National Plan and programmes, including the National Development Plan for 2008-2012, and incorporate an appropriate economic, social and cultural rights approach based on gender equality, non-discrimination and effective participation by affected groups. In this regard, it recommends that specific information should be provided in the next periodic report so that the Committee can evaluate the State party's compliance with these obligations.

464. The Committee encourages the State party to pursue its efforts, in coordination with the United Nations system, to design and execute programmes to help reduce poverty and inequality, especially in areas that require priority attention, such as the Caribbean coast.

465. The Committee recommends that the State party should adopt rights-based indicators and benchmarks to monitor the progressive realization of the rights recognized in the Covenant and to that end establish a disaggregated database - notably by region and vulnerable group - that is updated regularly.



466. The Committee recommends that the State party should speed up the process of acceding to the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169). It also encourages the State party to continue with its efforts to promote and implement the principles of the United Nations Declaration on the Rights of Indigenous Peoples.

467. The Committee recommends that the State party should ratify the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) and the ILO Equality of Treatment (Social Security) Convention, 1962 (No. 118).

468. The Committee requests the State party to submit its fifth periodic report by 30 June 2013.

## **PHILIPPINES**

469. The Committee on Economic, Social and Cultural Rights considered the combined second to fourth periodic reports of the Philippines on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/PHL/4) at its 39th, 40th and 41st meetings, held on 11 and 12 November 2008 (E/C.12/2008/SR.39-41), and adopted, at its 56th meeting held on 21 November 2008, the following concluding observations.

### **A. Introduction**

470. The Committee welcomes the submission of the combined second to fourth periodic reports of the Philippines, which was generally prepared in conformity with the Committee's guidelines, but regrets the 11-year delay in its submission. The Committee also welcomes the written replies to its list of issues (E/C.12/PHL/Q/4/Add.1), and the open and constructive dialogue with the delegation of the State party, which included representatives of various government departments with expertise on the subjects covered by the Covenant.

471. The Committee notes with appreciation the participation of the Commission on Human Rights of the Philippines (CHRP) in the dialogue with the State party, and welcomes the oral presentation made by its chairperson during the consideration of the report.

### **B. Positive aspects**

472. The Committee notes with satisfaction that the State party has ratified, or acceded to, all United Nations core human rights treaties.

473. The Committee notes with satisfaction the adoption of several measures to prohibit all forms of discrimination against women and promote equality between men and women, including:

- (a) The Philippine Plan for Gender-Responsive Development, 1995-2025;
- (b) The Anti-Sexual Harassment Act of 1995 (Republic Act No. 7877);
- (c) The Anti-Trafficking in Persons Act of 2003 (Republic Act No. 9208); and
- (d) The Anti-Violence against Women and Their Children Act of 2004 (Republic Act No. 9262).

474. The Committee also notes with satisfaction the various legislative, administrative and policy measures adopted by the State party to recognize, protect and promote the individual and collective rights of the indigenous peoples living in the territory of the State party, including:

(a) The Indigenous Peoples Rights Act of 1997 (Republic Act No. 8371);

(b) The Free and Prior Informed Consent Guidelines, adopted by the National Commission on Indigenous Peoples in 2002, which emphasise the right of indigenous peoples to participate in decisions affecting them; and

(c) Executive Order 270-A, which aims at safeguarding the ecological integrity of indigenous lands and resources from the negative impact of mining operations.

475. The Committee welcomes the efforts undertaken by the State party to protect and promote the rights of overseas Filipino workers (OFWs), inter alia, through the adoption of the Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act 8042), the conclusion of bilateral agreements with countries of destination and the promotion of voluntary social security schemes for OFWs.

476. The Committee notes with satisfaction the adoption of the Anti-Squatting Repeal Act of 1997 (Republic Act No. 8368), which decriminalises squatting as recommended by the Committee in its previous concluding observations (E/C.12/1995/7, para. 31).

477. The Committee notes with satisfaction the legislative framework and institutional mechanisms established by the State party for the protection of the environment and the improvement of environmental and industrial hygiene.

478. The Committee welcomes the recent ratification by the State party of the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflicts and on the sale of children, child prostitution and child pornography; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. It also notes with satisfaction the ratification of ILO Conventions No. 182 (1999) on the Worst Forms of Child Labour and No. 29 (1930) on Forced Labour.

### **C. Factors and difficulties impeding the implementation of the Covenant**

479. The Committee notes the absence of any significant factors or difficulties preventing the effective implementation of the Covenant in the State party.

### **D. Principal subjects of concern and recommendations**

480. The Committee remains concerned that Covenant provisions are seldom invoked before or directly enforced by national courts, tribunals or administrative authorities, in spite of the fact that, pursuant to article II, section 2, of the 1987 Constitution, the Covenant is regarded by the State party as “part of the law of the land”.

**The Committee draws the attention of the State party to its general comment No. 9 (1998) on the domestic application of the Covenant, and recommends that the State**

**party take all appropriate measures to ensure the direct applicability of the Covenant provisions in its domestic legal order, including the organization of training programmes for judges, lawyers and public officials. The Committee also requests the State party to include detailed information on decisions of national courts, tribunals or administrative authorities giving effect to Covenant rights in its next periodic report.**

481. The Committee is concerned that the protection and promotion of economic, social and cultural rights is not included in the mandate of the Commission on Human Rights of the Philippines (CHRP). It also notes with concern the lack of adequate financial resources available to the CHRP for the implementation of its investigative and monitoring functions.

**The Committee recommends that the State party increase its efforts to strengthen the effectiveness of the Commission on Human Rights of the Philippines (CHRP), inter alia, by including the protection and promotion of economic, social and cultural rights in its mandate and by allocating adequate financial resources for the implementation of the Commission's investigative and monitoring functions. In this regard, the Committee calls on the State party to move expeditiously towards the adoption of the CHRP Charter.**

482. The Committee notes with concern that, despite the efforts undertaken by the State party to curb corruption, including the establishment of a number of anti-corruption bodies such as the anti-corruption court, this phenomenon continues to be widespread.

**The Committee recommends that the State party intensify its efforts to prosecute cases of corruption and review its sentencing policy for corruption-related offences. It also recommends that the State party train the police and other law enforcement officers, prosecutors and judges on the strict application of anti-corruption laws, conduct awareness-raising campaigns, and ensure the transparency of the conduct of public authorities, in law and in practice. The Committee requests the State party to provide in its next periodic report detailed information about progress made, and obstacles encountered, in combating corruption and impunity.**

483. The Committee remains concerned about reports that forced disappearances and extra judicial killings of trade union activists, indigenous leaders, peasant activists advocating for the implementation of the agrarian reform and human rights defenders engaged in defending the economic, social and cultural rights of their communities continue to occur, despite the measures adopted by the State party - including the creation of the Task Force Against Political Violence - to tackle these phenomena. The Committee is particularly concerned about the limited progress made by the State party in investigating cases of forced disappearances and extra-judicial killings and in prosecuting the perpetrators of these crimes.

**The Committee urges the State party to take all necessary measures for the protection of trade union activists, indigenous leaders, peasant activists and human rights defenders engaged in defending the economic, social and cultural rights of their communities against any intimidation, threat and violence, whether perpetrated by State security forces and agents or non-State actors. It also calls on the State party to ensure that all alleged cases of forced disappearances and extra-judicial killings are promptly and thoroughly investigated, and that alleged perpetrators are prosecuted**

**and appropriately punished, if found guilty. The Committee requests the State party to provide, in its next periodic report, detailed information on the progress made in preventing and punishing forced disappearances and extra-judicial killings.**

484. The Committee notes with concern the adverse effects that economic activities connected with the exploitation of natural resources, especially mining operations, carried out in indigenous territories continue to have on the right of indigenous peoples to their ancestral domains, lands and natural resources, as recognized in the 1997 Indigenous Peoples Rights Act (IPRA). The Committee is concerned about the conflict of laws between the 1995 Mining Act and IPRA, and notes in particular that section 56 of the IPRA, which provides for the protection of property rights already existing within the ancestral domains, de facto risks to undermine the protection of the rights recognized to indigenous peoples under the Act (arts. 1, 11, 12 and 15).

**The Committee urges the State party to fully implement the 1997 Indigenous Peoples Rights Act (IPRA), in particular by ensuring the effective enjoyment by indigenous peoples of their rights to ancestral domains, lands and natural resources, and avoiding that economic activities, especially mining, carried out on indigenous territories adversely affect the protection of the rights recognized to indigenous peoples under the Act.**

485. The Committee notes with concern that, in spite of a high GDP growth rate, the national spending on social services such as housing, health and education remains low, and has in fact decreased over the years (art. 2, para. 1).

**The Committee draws the attention of the State party to its statement on “An evaluation of the obligation to take steps to the ‘maximum of its available resources’ under an Optional Protocol to the Covenant” (E/C.12/2007/1), and recommends that the State party increase its national spending on social services such as housing, health and education so as to achieve, in accordance with article 2, paragraph 1, the progressive realization of the economic, social and cultural rights provided for in the Covenant.**

486. The Committee notes with concern that the State party has not made sufficient progress in reviewing and repealing discriminatory provisions against women still existing in national legislation. The Committee regrets that the Marital Infidelity Bill, which seeks to remove the discriminatory provisions in the Revised Criminal Code pertaining to “concubinage” and “adultery”, has not yet been adopted. The Committee also regrets that the interpretation of the provisions of the Code of Muslim Personal Laws of the Philippines (Presidential Decree No. 1083) permits polygamy and the marriage of girls under the age of 18, and that forced marriages are still tolerated in certain parts of the State party (arts. 2, para. 2, 3 and 10, para. 1).

**The Committee urges the State party to undertake, as a matter of priority, a comprehensive review of its legislation with a view to ensuring de jure and de facto equality between men and women in all fields of life, as provided for in article 2, paragraph 2, and article 3 of the Covenant. In particular, it urges the State party to adopt the Marital Infidelity Bill, and to review the interpretation of the Code of Muslim Personal Laws of the Philippines. The Committee draws the attention of the State party to its general comment No. 16 (2005) on the equal right of men and**

**women to the enjoyment of all economic, social and cultural rights, and requests the State party to provide, in its next periodic report, detailed information on the progress made in the field of gender equality.**

487. The Committee is concerned about the persistent high unemployment and underemployment rates in the State party. The Committee notes in particular that the lack of employment opportunities has led much of the population of working age to emigrate (art. 6).

**The Committee urges the State party to increase its efforts to reduce unemployment and underemployment through specifically targeted measures, including programmes aimed at creating employment opportunities at the local level for young, unskilled and inexperienced workers living in urban areas and persons living in rural areas.**

488. The Committee, while welcoming the efforts undertaken by the State party to address the concerns of persons working in the informal economy and to facilitate their enrolment in the social security system and PhilHealth, continues to be concerned about the large number of persons working in the informal economy, an estimated 44.6 per cent of the total number of workers who continue to be excluded from the coverage of existing labour and social security legislation (arts. 6, 7, 8 and 9).

**The Committee recommends that the State party intensify its efforts to regularize the situation of persons working in the informal economy, by ensuring that adequate protection is provided by the existing labour and welfare legislation.**

489. The Committee notes with concern that, despite efforts undertaken by the State party, overseas Filipino workers (OFWs) continue to face discriminatory treatment and abuses in many countries of destination. It notes in particular that women migrant workers, especially those employed as domestic workers, nurses and care-givers, often become victims of psychological abuse, physical and sexual violence and slavery-like working conditions. The Committee is also concerned that OFWs, in particular those with an irregular status, encounter obstacles in obtaining legal protection and redress in cases of discriminatory treatment and abuse at the workplace (arts. 6, 7 and 10).

**The Committee recommends that the State party implement effective policies to protect the rights of overseas Filipino workers (OFWs), inter alia, by:**

**(a) Improving existing services, such as counselling and medical assistance, provided by the Office for the Legal Assistance for Migrant Workers Affairs and diplomatic missions in countries of destination;**

**(b) Concluding and invoking bilateral agreements with those countries of destination where discriminatory treatment and abuse are more frequent; and**

**(c) Providing legal and consular assistance to its nationals seeking justice in case of discriminatory treatment and abuse at the workplace, including rape and sexual violence against women migrant workers, and ensuring that reports are investigated by competent authorities of the countries of destination.**

490. The Committee is concerned that the low levels of minimum wages, particularly in the agricultural sector, are insufficient to provide an adequate standard of living for workers and their families. The Committee is also concerned that the minimum wage legislation does not apply in some important sectors, including government employment and export-oriented and labour-intensive manufacturing, and that its enforcement is made difficult especially by the shortage of labour inspectors (arts. 7 and 11).

**The Committee recommends that the State party take all appropriate measures to ensure that the minimum wages fixed by the Regional Tripartite Wages and Productivity Boards provide workers with an adequate standard of living for themselves and their families, in accordance with article 7, paragraph (a) (ii) of the Covenant. The Committee also recommends that the State party extend the applicability of the minimum wage legislation to those sectors where it does not apply, and intensify its efforts to enforce legal minimum wages through increased labour inspections and fines or other appropriate sanctions for employers who fail to comply with the minimum wage legislation.**

491. The Committee notes with concern that inspections of workplaces for promoting compliance with the occupational health and safety legislation are infrequent and ineffective. It also notes that the self-assessment mechanism introduced by the 2004 Labour Standards Enforcement Framework (Department Order No. 57-04) for establishments with more than 200 workers risks undermining the effective realization of the right to safe and healthy working conditions provided for in article 7, paragraph (b) of the Covenant (art. 7, para. (b)).

**The Committee recommends that the State party provide sufficient human and financial resources to the Department of Labour and Employment (DOLE) to enable regular and independent inspections aimed at ensuring compliance with the occupational health and safety legislation. It also recommends that the State party monitor closely the implementation of the 2004 Labour Standards Enforcement Framework so as to ensure that the application of the self-assessment mechanism does not undermine the effective realization of the right to safe and healthy working conditions in establishments with more than 200 workers.**

492. The Committee notes with concern the absence of legislation on divorce (art. 10).

**The Committee recommends that the State party adopt legislation recognizing the right of men and women to divorce, to obtain the legal severance of marital ties and to remarry after divorce.**

493. The Committee, while welcoming the fact that the Act Redefining Rape as a Crime against Persons of 1997 (Republic Act No. 8353) redefines and expands the crime of rape and recognizes marital rape, is concerned that the subsequent forgiveness of the wife, as the injured party, extinguishes the criminal liability of the husband (art. 10).

**The Committee recommends that the State party strengthen the protection afforded by the Act Redefining Rape as a Crime against Persons to women victims of marital rape by repealing the possibility that the criminal liability of the husband be extinguished by the subsequent forgiveness of the wife.**

494. The Committee notes with concern that, notwithstanding the various legislative, administrative and policy measures adopted by the State party to combat trafficking, a high number of women and children continue to be trafficked from, through and within the country for purposes of sexual exploitation and forced labour. The Committee is particularly concerned about the low number of prosecutions and convictions of traffickers (art. 10).

**The Committee recommends that the State party intensify its efforts to combat trafficking in human beings, especially women and children, for purposes of sexual exploitation and forced labour, inter alia, by supporting programmes and information campaigns to prevent trafficking, providing mandatory training for law enforcement officials, prosecutors and judges on the anti-trafficking legislation and increasing the provision of medical, psychological and legal support to victims.**

495. The Committee remains concerned that despite the State party's efforts to combat child labour, a large number of children between the age of 5 and 14 work in the informal economy. The Committee is particularly concerned that many of these children work in hazardous or dangerous conditions and are exposed to various forms of sexual and economic exploitation, including the worst forms of child labour (art. 10).

**The Committee urges the State party to intensify its efforts to combat child labour and protect children from all forms of sexual and economic exploitation, including the worst forms of child labour, inter alia, through:**

- (a) Strengthening its national legislation prohibiting child labour in accordance with international standards;**
- (b) Increasing the number of labour inspections in order to ensure the respect of its national legislation prohibiting child labour;**
- (c) Ensuring the imposition of fines and criminal sanctions to persons making use of illegal child labour;**
- (d) Organising mandatory training for law enforcement officials, prosecutors and judges; and**
- (e) Adopting all appropriate measures to facilitate recovery and access to educational opportunities for former child workers.**

**The Committee recommends that the State party undertake a national survey on the nature and extent of child labour, and include information on progress made in combating child labour in its next periodic report.**

496. The Committee is deeply concerned that, in spite of the high rate of economic growth achieved in recent years, the percentage of persons living below the official poverty line has actually increased to an estimated 36 per cent of the population in 2007. The Committee also notes with concern the wide regional disparities between the National Capital Region and the poorest regions of the country, in particular the Autonomous Region of Muslim Mindanao, and the significant inequalities in income distribution, especially between urban areas and poor rural areas (art. 11).

**The Committee recommends that the State party allocate sufficient funds for the implementation of its poverty eradication strategy, and ensure the full integration of economic, social and cultural rights in the strategy, as recommended by the Committee in its statement on “Poverty and the International Covenant on Economic, Social and Cultural Rights” (E/C.12/2001/10). The Committee requests the State party to include in its next periodic report detailed information on the results of the measures adopted under the strategy, including updated statistical data, on an annual basis, on the percentage of the population living in poverty, disaggregated by gender, age, number of children per household, number of single-parent households, rural/urban population, and ethnic group.**

497. The Committee notes with concern that an estimated 16.5 million, roughly 30 per cent, of the urban population continue to live in informal settlements and slums, sometimes built on riverbanks, railroad tracks and other high-risk areas, with no or limited basic infrastructures and services, without legal security of tenure and under constant threat of eviction. The Committee also notes with concern that the percentage of the national budget allocated to the realization of housing programmes aimed at providing security of tenure and affordable housing, such as the Presidential Land Proclamation, is not sufficient to increase the supply of social housing units for members of the most disadvantaged and marginalized groups (art. 11).

**The Committee requests the State party to allocate sufficient funds for the realization of programmes aimed at providing security of tenure and affordable housing, particularly to members of the most disadvantaged and marginalized groups, in line with its general comment No. 4 (1991) on the right to adequate housing.**

498. The Committee regrets that most of its previous recommendations relating to the prevention of illegal forced evictions (E/C.12/1995/7, paras. 31 and 32) have not been acted upon by the State party, and remains deeply concerned about the large-scale forced eviction of urban families carried out for the purpose of urban renewal and beautification, which has reportedly affected over 1.2 million people in the period between 1995 and 2008. It is also concerned about the lack of effective consultation of, and legal redress for, persons affected by forced evictions, and the inadequate measures to provide sufficient compensation or adequate relocation sites to families who have been forcibly removed from their properties (art. 11).

**In line with the recommendations contained in paragraphs 31 and 32 of its previous concluding observations, the Committee urges the State party, as a matter of priority, to:**

**(a) Ensure the effective implementation of the Urban Development and Housing Act (UDHA) of 1992 (Republic Act No. 7279) and other laws and regulations prohibiting illegal forced evictions and demolitions;**

**(b) Reinforce the mandate of the Presidential Commission for the Urban Poor “as the sole clearing house for the conduct of demolition and eviction”, in accordance with Executive Order No. 152 of 2002;**

**(c) Undertake open, participatory and meaningful consultations with affected residents and communities prior to implementing development and urban renewal projects;**



**(d) Ensure that persons forcibly evicted from their properties be provided with adequate compensation and/or offered relocation, in accordance with section 28 of the UDHA and the guidelines adopted by the Committee in its general comment No. 7 (1997) on forced evictions; and**

**(e) Guarantee that relocation sites are provided with basic services (including drinking water, electricity, washing and sanitation facilities) and adequate facilities (including schools, health care centres and transportation) at the time the resettlement takes place.**

499. The Committee notes with concern that, under the State party's legal system, abortion is illegal in all circumstances, even when the woman's life or health is in danger or pregnancy is the result of rape or incest, and that complications from unsafe, clandestine abortions are among the principal causes of maternal deaths. The Committee is also concerned about the inadequate reproductive health services and information, the low rates of contraceptive use and the difficulties in obtaining access to artificial methods of contraception, which contribute to the high rates of teenage pregnancies and maternal deaths existing in the State party (art. 12).

**The Committee draws the attention of the State party to its general comment No. 14 (2000) on the right to the highest attainable standard of health, and urges the State party to adopt all appropriate measures to protect the sexual and reproductive rights of women and girls, inter alia, through measures to reduce maternal and infant mortality and to facilitate access to sexual and reproductive health services, including access to family planning, and information. In particular, the Committee encourages the State party to address, as a matter of priority, the problem of maternal deaths as a result of clandestine abortions, and consider reviewing its legislation criminalizing abortion in all circumstances.**

500. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society and to inform the Committee on all steps taken to implement them in its next periodic report. It also encourages the State party to continue engaging non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

501. The Committee encourages the State party to consider ratifying ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

502. The Committee also encourages the State party to consider ratifying ILO Conventions No. 81 (1947) concerning Labour Inspection in Industry and Commerce, and No. 102 (1952) concerning Minimum Standards of Social Security.

503. The Committee invites the State party to submit a common core document in accordance with the 2006 harmonized guidelines on reporting to the international human rights treaty monitoring bodies (HRI/GEN/2/Rev.5).

504. The Committee requests the State party to submit its combined fifth and sixth periodic reports by 30 June 2013.

## SWEDEN

505. The Committee on Economic, Social and Cultural Rights considered the fifth periodic report of Sweden on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/SWE/5) at its thirty-second and thirty-third meetings on 5 and 6 November 2008 (E/C.12/2008/SR.32-33), and adopted, at its forty-seventh and forty-ninth meetings on 17 and 18 November 2008, the following concluding observations.

### A. Introduction

506. The Committee welcomes the timely submission of the fifth periodic report of Sweden and the written replies to its list of issues (E/C.12/SWE/Q/5/Add.1 and E/C.12/SWE/Q/5/Add.2). The Committee also notes with appreciation the open and constructive dialogue with the delegation of the State party, which included representatives of various government departments with expertise on the subjects covered by the Covenant, and the delegation's answers to the questions posed by the Committee.

### B. Positive aspects

507. The Committee notes with appreciation the State party's continuing efforts to comply with its obligations under the Covenant and the overall protection afforded to economic, social and cultural rights in the State party.

508. The Committee welcomes the adoption of a second human rights national action plan for the period of 2006-2009, which includes specific programmes on the realization of economic, social and cultural rights.

509. The Committee notes with satisfaction the adoption of comprehensive legislative framework, namely the Anti-Discrimination Act, which extends the current protection against discrimination in the State party and will enter into force in January 2009.

510. The Committee welcomes that the combined Ombudsman office complies with the Paris Principles and that its mandate includes the realization of economic, social and cultural rights.

511. The Committee notes the various initiatives, programmes and policies with regard to the realization of the right to work, aimed at groups whose access to employment is limited, such as young persons and older people, persons who have been on long-term social assistance and persons of foreign background.

512. The Committee notes with satisfaction that access to social security assistance is not based upon nationality but rather residency within the State party.

513. The Committee welcomes the steps taken to combat violence against women, in particular the adoption of an 'action plan to combat men's violence against women, violence and oppression in the name of honour and violence in same-sex relationships'.

514. The Committee notes with appreciation the efforts taken to continue ensuring the high standard of health in the State party and that health care is accessible to all, including undocumented persons.

515. The Committee reiterates the acknowledgment expressed in its previous concluding observations (E/C.12/1/Add.70, para. 7) that the State party continues to allocate 0.7 per cent or more of its gross domestic product to development cooperation. It also welcomes the State party's commitment to the Global Compact.

### **C. Factors and difficulties impeding the implementation of the Covenant**

516. The Committee notes the absence of any significant factors or difficulties preventing the effective implementation of the Covenant in the State party.

### **D. Principal subjects of concern and recommendations**

517. The Committee reiterates its concern expressed in its previous concluding observations (E/C.12/1/Add.70, para. 15) that the Covenant has still not been given full effect in the State party's domestic law and cannot be directly invoked before courts. It regrets the lack of information regarding court decisions which contain references to the provisions of the Covenant, and as to whether the State party considers economic, social and cultural rights justiciable.

**The Committee recommends once again (E/C.12/1/Add.70, para. 27) that the State party should take all appropriate steps to guarantee the full effect of the Covenant provisions in its domestic legal system, with a view to ensuring that the Covenant rights can be directly invoked before the courts. In this regard, the Committee draws the attention of the State party to its general comment No. 9 (1998) on the Domestic Application of the Covenant. The Committee also requests the State party to provide information on case-law concerning the rights recognized in the Covenant in its next periodic report.**

518. The Committee regrets that State party's report did not contain sufficient statistical data on an annual comparative basis, as well as detailed information concerning the practical results of the various legislative and policy measures adopted by the State party so that the Committee could not subsequently assess fully the progress made and the difficulties encountered by the State party in the implementation of the Covenant.

**The Committee requests the State party to provide in its next periodic report more detailed information, including statistical data on an annual comparative basis over the last five years, disaggregated by age, gender, national origin and - where applicable - urban/rural residence, concerning the practical results of the measures adopted by the State party to give effect to the Covenant at the domestic level.**

519. The Committee, while welcoming the initiative of a Nordic Sami Convention, reiterates its concern that the Sami land rights have not yet been resolved and that this fact negatively affects their right to maintain and develop their traditional culture and way of life, particularly reindeer herding. The Committee also reiterates its regret that the State party has not yet ratified ILO Convention No. 169 concerning Indigenous and Tribal People (arts. 1, 2.2, and 15).

**The Committee urges the State party to ensure the adoption of the Nordic Sami Convention and consider ratifying ILO Convention No. 169. It also recommends the expeditious resolution of the Sami land and resource rights issues by introducing appropriate legislation, in cooperation with the Sami communities.**

520. The Committee reiterates its concern about the persistent occurrence of discrimination on the basis of ethnicity, in particular against the Roma minority and 'persons of foreign origin', regarding access to employment and working life, education, access to public places, and in the criminal justice system, in spite of the measures taken by the State party to enhance its legal and institutional mechanisms aimed at combating discrimination (arts. 2.2, 6, 7, and 13).

**The Committee encourages the State party to strengthen its efforts and to take additional steps to prevent discrimination on the basis of ethnicity in all aspects of daily life, and requests the State party to include in its next periodic report detailed information on the programmes and policies adopted to combat and prevent ethnic discrimination and to enhance tolerance and respect and on their results, in particular with regard to initiatives taken under the new Anti-Discrimination Act. It also requests the State party to provide updated statistical data on the number of complaints, prosecutions and convictions for crimes based on ethnic origin.**

521. The Committee notes with concern that despite the extensive legislative and administrative measures adopted by the State party discrimination against persons with disabilities continues. It is also concerned that the lack of accessibility to public places is not covered as a ground of discrimination in the new Anti-Discrimination Act (art. 2.2).

**The Committee urges the State party to ensure the effective implementation of the initiatives and legal measures already taken to prevent discrimination against persons with disabilities and to take positive steps towards ensuring that all persons with disabilities enjoy the same economic, social, and cultural rights as the rest of the population, including accessibility to public places. It also encourages the State party to consider ratifying the Convention on the Rights of Persons with Disabilities and the Optional Protocol.**

522. The Committee, notes with concern that despite the State party's efforts with regard to gender equality, the wage gap between men and women persists. It is also concerned about the low percentage of women in high-ranking positions in many professional fields. The Committee also regrets that women are overrepresented in part-time work arrangements, even though they may prefer to work full time (arts. 3, 6, and 7).

**The Committee calls upon the State party to continue strengthening its efforts to enhance equality between men and women in the workplace, in particular those initiatives aimed at implementing the principle of equal pay for work of equal value, and at increasing the percentage of women in managerial positions. It also encourages the State party to continue strengthening the right to full-time work for women by developing further pro-active measures. It invites the State party to provide**

**information on the strategy aimed at increasing the number of women in high-ranking posts to be presented in spring 2009 and its effectiveness, as well as to include statistical data on the participation of women in the workforce, disaggregated by age, wage, and part-time/full-time work and national origin, in its next periodic report.**

523. The Committee notes with concern the unemployment rate of persons with disabilities is still higher than the average unemployment rate (arts. 6 and 2.2).

**The Committee, in line with its general comment No. 5 (1994) on persons with disabilities, urges the State party to evaluate and to review its measures to ensure that persons with disabilities have equal opportunities for productive and gainful employment, as well as their implementation. The Committee requests the State party to provide information in the next periodic report on progress made with regard to measures taken within the framework of the national action plan “From patient to citizen”.**

524. The Committee is concerned that, despite the various measures taken including the ‘step-in-jobs’ initiative of July 2007, the unemployment rate among foreign-born persons continues to be higher than for Swedish-born persons and that it has increased for foreign-born women in particular (arts. 6 and 2.2).

**The Committee encourages the State party to intensify its efforts to reduce unemployment rates, especially that of foreign-born women, including by awareness-rising campaigns about the programmes. It recommends the State party to evaluate the measures in place with a view to identifying what further efforts may be necessary to improve the access of persons of foreign background, especially women, to the labour market, and to include in its next periodic report detailed information, including disaggregated statistical data, on the results of the measures taken, in particular the comprehensive integration policy which was presented with the Budget Bill for 2009.**

525. The Committee notes that despite the steps taken by the State party to combat violence against women, including domestic violence, the majority of the reported cases are not prosecuted. The Committee notes with concern that although domestic violence against the spouse or partner can be prosecuted as a ‘gross violation of integrity’, the Penal Code does not contain a specific offence of domestic violence (art. 10).

**The Committee recommends that the State party enact specific legislation criminalizing acts of domestic violence. The Committee further recommends that the State party increase its efforts to prosecute diligently acts of domestic violence when a complaint is brought and to include information, in its next periodic report, on the number and the nature of reported cases of domestic violence, on the convictions and the types of sanctions imposed on perpetrators where sentenced, as well as on any assistance and rehabilitation measures provided to victims.**

526. The Committee is concerned about the increase in the number of children living in poverty in recent years. It is also concerned about the extent of homelessness in the State party, and regrets the lack of information concerning the individuals and groups most affected by poverty and homelessness (arts. 10 and 11).

**The Committee recommends that the State party carry out an updated national survey in order to evaluate the magnitude of child poverty and homelessness in the State party and their root causes. It also encourages the State party to continue strengthening its efforts to combat poverty and homelessness among the most affected individuals and groups, with a view to developing appropriate preventive strategies.**

527. The Committee is concerned about the increase of overweight and obese children, the spread of sexually transmitted diseases, the increased use of “snus” (tobacco chewing), and the increased suicide rate among young men (art. 12).

**The Committee recommends that the State party strengthen its efforts to analyse and combat:**

- (a) The reasons underlying overweight and obesity;**
- (b) The increased suicide rate;**
- (c) The spread of sexually transmitted diseases;**
- (d) The use of “snus”, with a view to developing effective strategies aimed at awareness-raising and prevention.**

528. The Committee notes the lack of information regarding the possibilities for review of decisions regarding involuntary placement in psychiatric care (art. 12).

**The Committee also requests the State party to include in its next periodic report information on the system of review of involuntary psychiatric placements.**

529. The Committee is concerned about discrimination against Roma children with regard to their access to education as well as within the educational system, including by harassment and bullying (arts. 13 and 2.2).

**The Committee recommends that the State party continue to adopt appropriate and effective measures to increase school attendance by Roma children, including, inter alia, through recruitment of additional school personnel from among the Roma community. It urges the State party to take immediate steps to prevent harassment and bullying of Roma children in schools and invites the State party to provide information on the results of the survey carried out by the National Agency for Education regarding ethnic discrimination, as well as the recommendations of the working group on education of the Roma Delegation, in its next periodic report.**

530. The Committee reiterates its recommendation that the State party ensure that all children entitled to mother tongue education receive it in practice, including by providing an adequate availability and accessibility of such teaching (E/C.12/1/Add.70, para. 38).

531. The Committee recommends the State party to take immediate steps to ensure the implementation of the laws which provide for access to education for 'hidden children' (children of families of refugees or asylum-seekers whose request to stay in the State party has been rejected).

532. The Committee recommends that the State party ensure the effective implementation of its legal provisions which authorize the use of certain minority languages before public authorities and courts.

533. The Committee recommends that the State party ensure that the principles of equality, non-discrimination, participation and accountability are integrated in the design and implementation of programmes and policies aimed at the realization of economic, social and cultural rights.

534. The Committee encourages the State party to continue supporting corporate social responsibility within its jurisdiction, in accordance with its ILO strategy for 2007-2009 so as to ensure the fulfilment of economic, social and cultural rights, especially for the most disadvantaged and marginalized persons and groups. It also recommends that the State party evaluate the effectiveness of human rights mainstreaming in its development cooperation activities, particularly with regard to economic, social, and cultural rights. The Committee requests the State party, in its next periodic report, to provide updated and detailed information on these issues, including the results of its assessment of the Base of the Pyramid initiative (BOP).

535. The Committee also reiterates its previous recommendation (E/C.12/1/Add.70, para. 33) that the State party consider ratifying the ILO Convention No. 131 on Minimum Wage-Fixing.

536. The Committee encourages the State party to consider ratifying the Council of Europe Convention on Action against Trafficking in Human Beings.

537. The Committee requests the State party to provide detailed information, including statistical data, in its next periodic report, on the assistance programmes for the voluntary return of refugees and asylum-seekers.

538. The Committee requests the State party to provide detailed information, in its next periodic report, on the results and follow-up initiatives of the reforms policies and programmes adopted to improve the quality of life of the elderly, such as the competency study focused on staff in elderly care. It also invites the State party to provide more detailed information on the "Free Choice Act".

539. It invites the State party to identify disaggregated health indicators and appropriate national benchmarks in relation to the right to health, in line with the Committee's general comment No. 14 (2000), and to include information on the process of identifying such indicators and benchmarks in its next report, as already indicated in its previous concluding observations (E/C.12/1/Add.70, para. 34).

540. The Committee encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

541. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, to translate and publicize them in the national languages of Sweden, and to inform the Committee on the steps taken to implement them in its next periodic report. It also encourages the State party to continue engaging non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

542. The Committee invites the State party to update its core document in accordance with the 2006 harmonised guidelines on reporting to the international human rights treaty monitoring bodies (HRI/GEN/2/Rev.5).

543. The Committee requests the State party to submit its sixth periodic report by 30 June 2013.



## CHAPTER V

### **Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights**

#### **A. Day of general discussion: The right to take part in cultural life (article 15, paragraph 1 (a) of the Covenant)**

544. At its thirty-seventh session (6-24 November 2006), the Committee on Economic, Social and Cultural Rights decided to elaborate a general comment on the right to take part in cultural life (article 15, paragraph 1 (a), of the Covenant). To this end, it decided to organize a day of general discussion at its fortieth session (28 April-16 May 2008) on this topic.

545. At the 17th and 18th meetings of its fortieth session, on 9 May 2008, the Committee on Economic, Social and Cultural Rights held its day of general discussion on the right to take part in cultural life (article 15, paragraph 1 (a), of the Covenant). The aim of the day of general discussion was to assist the Rapporteurs responsible for the drafting of a general comment on this provision, Ms. Virginia Bonoan-Dandan and Mr. Jaime Marchán Romero, and to enable them to draw on the comments and suggestions made by Committee members, experts in the field, and other participants in the day of general discussion.

546. The following experts were invited to participate in the thematic debate:

Ms. Alessandra Aula, Director, International Catholic Child Bureau;

Mr. Taieb Bacouche, Chairman of the Board, Arab Institute of Human Rights;

Mr. Emmanuel Decaux, Professor of Public International Law, University of Paris II;

Ms. Gabi Dolf-Bonekämper, Berlin curator, Member of the Fribourg Group;

Ms. Caroline Dommen, Director, 3D: Trade, Human Rights, Equitable Economy;

Ms. Yvonne Donders, Deputy Director, Amsterdam Centre for International Law, University of Amsterdam;

Mr. Patrice Meyer-Bisch, Coordinator, Interdisciplinary Institute for Ethics and Human Rights, University of Fribourg;

Ms. Annelise Oeschger, President of the Conference of International Non-Governmental Organisations of the Council of Europe;

Ms. Julie Ringelheim, Senior Fellow, National Fund for Scientific Research, Centre for Legal Philosophy at the University of Louvain;

Mr. Joost Smiers, Professor (emeritus) of Political Science of the Arts, Utrecht School of the Arts;

Mr. Abdulaye Sow, Coordinator, Interdisciplinary Centre on Cultural Rights, University of Nouakchott;

Ms. Elissavet Stamatopoulou, Chief, Secretariat of the Permanent Forum on Indigenous Issues, United Nations Department of Economic and Social Affairs;

Mr. Patrick Thornberry, Member of the Committee on the Elimination of Racial Discrimination.

547. United Nations bodies and specialized agencies and non-governmental organizations also attended the day of general discussion.

### **Morning session**

#### *Session 1: Definition of cultural life in the context of human rights*

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|-------------|--|
| 10.00-10.05 | Welcoming remarks, Philippe Texier, Chairperson of the Committee on Economic, Social and Cultural Rights   |
| 10.05-10.20 | Progress towards the elaboration of a draft general comment on article 15 (1) (a), Mr. Jaime Marchán Romero, member of the Committee on Economic, Social and Cultural Rights |
| 10.20-10.30 | Ms. Yvonne Donders, Deputy Director, Amsterdam Centre for International Law, University of Amsterdam   |
| 10.30-10.35 | Mr. Abdulaye Sow, Coordinator, Interdisciplinary Centre on Cultural Rights, University of Nouakchott   |
| 10.35-11.20 | Discussion   |

#### *Session 2: The right to have access to cultural life and to participate in cultural life*

- |             |   |
|-------------|---|
| 11.20-11.30 | Ms. Annelise Oeschger, President of the Conference of International Non-Governmental Organisations of the Council of Europe |
| 11.30-11.35 | Ms. Alessandra Aula, Director, International Catholic Child Bureau  |
| 11.35-12.05 | Discussion  |
| 12.05-12.15 | Ms. Gabi Dolf-Bonekämper, Berlin curator, Member of the Fribourg Group  |
| 12.15-12.25 | Mr. Joost Smiers, Professor (emeritus) of Political Science of the Arts, Utrecht School of the Arts                         |
| 12.25-13.00 | Discussion  |

~ **Lunch Break** ~

## **Afternoon session**

### *Session 3: Cultural rights and universality of human rights*

- 15.00-15.10 Mr. Patrick Thornberry, Member of the Committee on the Elimination of Racial Discrimination
- 15.10-15.15 Mr. Taieb Bacouche, Chairman of the Board, Arab Institute of Human Rights
- 15.15-15.45 Discussion
- 15.45-15.50 Mr. Patrice Meyer-Bisch, Coordinator, Interdisciplinary Institute for Ethics and Human Rights, University of Fribourg
- 15.50-15.55 Ms. Julie Ringelheim, Senior Fellow, National Fund for Scientific Research, Centre for Legal Philosophy at the University of Louvain
- 15.55-16.20 Discussion

### *Session 4: The individual and collective dimensions of the right to take part in cultural life*

- 16.20-16.30 Mr. Ephraim Nimni, Reader on Nationalism and Ethnic Conflict Resolution, School of Politics, International Studies and Philosophy, Queen's University Belfast
- 16.30-16.40 Ms. Elissavet Stamatopoulou, Chief, Secretariat of the Permanent Forum on Indigenous Issues, United Nations Department of Economic and Social Affairs
- 16.40-17.15 Discussion
- 17.15-17.20 Mr. Emmanuel Decaux, Professor of Public International Law, University of Paris II
- 17.20-17.25 Ms. Caroline Dommen, Director, 3D: Trade, Human Rights, Equitable Economy
- 17.25-17.50 Discussion
- 17.50-18.00 Closing remarks, Ms. Virginia Bonoan-Dandan, Member of the Committee on Economic, Social and Cultural Rights

548. At its 46th meeting, on 14 November 2008 (forty-first session), the Committee discussed its draft general comment on the right to take part in cultural life (article 15, paragraph 1 (a), of the Covenant) and decided to begin adopting the draft general comment at its forty-second session in May 2009.

**B. Half day of general discussion on draft general comment No. 20 on non-discrimination and economic, social and cultural rights (article 2, paragraph 2, of the Covenant)**

549. At its 48th meeting, on 17 November 2008 (forty-first session), the Committee held a half day of general discussion on draft general comment No. 20 on non-discrimination and economic, social and cultural rights (article 2, paragraph 2, of the Covenant). The aim of the day of general discussion was to assist the Rapporteurs responsible for the drafting of a general comment on this provision, Mr. Eibe Riedel and Ms. Barbara Wilson, and to enable them to draw on the comments and suggestions made by Committee members, experts in the field, and other participants in the half day of general discussion.

550. The following experts were invited to participate in the thematic debate:

Mr. Malcolm Langford, Norwegian Centre on Human Rights, University of Oslo

Mr. Bruce Porter, Executive Director, Social Rights Advocacy Centre

Ms. Magdalena Sepúlveda, United Nations independent expert on human rights and extreme poverty

Mr. Patrick Taran, Senior Migration Specialist, International Labour Organization

551. Representatives of States parties, United Nations bodies and specialized agencies and non-governmental organizations also attended the day of general discussion.

*Programme of work*

- |             |  |
|-------------|--|
| 15.00-15.10 | Welcoming remarks,<br>Mr. Philippe Texier, Chairperson of the Committee on Economic, Social and Cultural Rights  |
| 15.10-15.20 | Current challenges in the field of equality rights<br>Mr. Bruce Porter, Executive Director, Social Rights Advocacy Centre  |
| 15.20-15.30 | Overview of the draft general comment No. 20 on non-discrimination<br>Mr. Eibe Riedel, Member of the Committee on Economic, Social and Cultural Rights           |
| 15.30-15.40 | Characterizing the obligations of States parties to the Covenant<br>Mr. Malcolm Langford, Norwegian Centre on Human Rights, University of Oslo                   |
| 15.40-15.50 | Prohibited grounds of discrimination<br>Mr. Christian Curtis, Human Rights and Economic and Social Issues Unit, Office of the High Commissioner for Human Rights |

15.50-16.00	Indigenous peoples and minorities  Mr. Julian Burger, Indigenous Peoples and Minorities Unit, Office of the High Commissioner for Human Rights
16.00-16.10	Non-nationals  Mr. Patrick Taran, Senior Migration Specialist, International Labour Organization
16.10-16.20	National policy, law and remedies  Ms. Barbara Wilson, member of the Committee on Economic, Social and Cultural Rights
16.20-17.40	Discussion
17.40-18.00	Evaluation and way ahead  Mr. Eibe Riedel and Ms. Barbara Wilson, members of the Committee on Economic, Social and Cultural Rights

**C. Statement by the Committee on Economic, Social and Cultural Rights on the world food crisis**

552. At its 25th meeting, on 16 May 2008 (fortieth session), the Committee adopted a statement on the world food crisis. The full text of the statement is contained in annex VI to the present report.

**D. Cooperation with specialized agencies: Eighth and ninth meetings of the Joint Expert Group UNESCO (Committee on Conventions and Recommendations)/Economic and Social Council (Committee on Economic, Social and Cultural Rights) on the Monitoring of the Right to Education**

553. The UNESCO (Committee on Conventions and Recommendations)/ECOSOC (Committee on Economic, Social and Cultural Rights) Joint Expert Group on the Monitoring of the Right to Education held its eighth and ninth meetings in Geneva on 6 May 2008 and 25 November 2008, respectively. At both meetings, the Joint Expert Group discussed the inclusive dimensions of the right to education and made recommendations related to ensuring universal access to education without discrimination or exclusion. It presented its recommendations to the forty-eight session of the International Conference on Education, held on 26 November 2008 in Geneva, emphasizing the legal obligation of States to give effect to the inclusive dimensions of the right to education. The full report of the eighth and ninth meetings of the Joint Expert Group is contained in annex VII to the present report.

## CHAPTER VI

### **Additional decisions adopted and matters discussed by the Committee at its fortieth and forty-first sessions**

#### **A. Participation in intersessional meetings**

554. At its fortieth and forty-first sessions, the Committee decided that the following members would represent the Committee in the various intersessional meetings that would take place over the course of the year:

(a) Twentieth meeting of chairpersons (23-25 June 2008) and seventh and eighth inter-committee meetings (26-27 June and 1-3 December 2008): Mr. Philippe Texier (as Chairperson), Ms. Rocío Barahona Riera and Mr. Waleed Sadi;

(b) Forum on Minority Issues (15-16 December 2008): Mr. Jaime Marchán Romero.

#### **B. Future general comments**

555. At its 26th meeting, on 16 May 2008 (fortieth session), the Committee decided that following the completion of the two draft general comments currently under preparation on articles 2, paragraph 2, and 15, paragraph 1 (a), of the Covenant (on non-discrimination and on the right to take part in cultural life), it would embark on the elaboration of general comments on permissible restrictions on the economic rights of non-nationals in developing countries (article 2, paragraph 3, of the Covenant) and on reproductive health (articles 10 and 12 of the Covenant). The Committee designated Mr. Waleed Sadi as rapporteur for the draft general comment on article 2, paragraph 3, and Ms. Rocío Barahona Riera as rapporteur for the draft general comment on reproductive health.

#### **C. Future statements**

556. At its 55th meeting, on 21 November 2008 (forty-first session), the Committee began to discuss the impact of the international financial crisis on the enjoyment of economic, social and cultural rights and decided to adopt a statement on the international financial crisis at its forty-second session.

#### **D. Cooperation with specialized agencies**

557. At its forty-first session, on 27 November 2008, the Committee held an informal meeting with members of the ILO Committee of Experts on the Application of Conventions and Recommendations. This was the sixth meeting between the two monitoring bodies with the aim of strengthening cooperation between the two treaty monitoring bodies. The meeting, which was hosted by the Friedrich Ebert Foundation, helped to exchange views and experiences of both monitoring bodies in the area of non-discrimination and equality. Several experts made presentations and discussed a possible mutual reinforcement of their mechanisms, including through the exchange of best practices and an enhanced understanding of United Nations and ILO instruments. Members of the Committee also referred to their current work on drafting a general comment on the principle of non-discrimination (article 2, paragraph 2, of the Covenant).

### **E. Revision of reporting guidelines**

558. In light of the adoption of harmonized guidelines for the preparation of common core documents (HRI/GEN/2/Rev.5) by the chairpersons of the human rights treaty-monitoring bodies and the inter-committee meeting in June 2006<sup>8</sup> and the Committee's experience in considering State party reports since the last revision of its reporting guidelines at the Committee's fifth session (26 November-14 December 1990), the Committee decided to review its reporting guidelines at its thirty-seventh session (6-24 November 2006). A member, Ms. Maria Virginia Bras Gomes, was appointed as rapporteur for this task. At its 7th and 8th meetings, held on 2 May 2008 (fortieth session) and at its 49th meeting, held on 18 November 2008 (forty-first session), the Committee, under agenda item 7 (b), reviewed and adopted reporting guidelines on treaty-specific documents to be submitted by States parties under articles 16 and 17 of the Covenant (E/C.12/2008/2). The new guidelines replace the Committee's revised reporting guidelines (E/C.12/1991/1) and take into account the harmonized guidelines for common core documents, as well as the Committee's evolving practice in relation to the application of the Covenant, as reflected in its concluding observations and general comments. The new guidelines on treaty-specific documents can be found in annex VIII to the present report.

### **F. Working methods of the Committee**

559. At its 45th meeting, on 14 November 2008 (forty-first session), the Committee discussed its working methods, in particular possible ways and means to address its increasing workload. While noting with appreciation that the high workload of the Committee was, inter alia, a result of the improved reporting rate by States parties, the Committee expressed concern at the persisting backlog of reports awaiting consideration (an average of approximately 25 reports). In light of the fact that the Committee only meets twice a year, it felt severely constrained in its efforts to reduce the backlog and thus to consider the periodic reports of States parties in a timely manner and without undue delay. Accordingly, after having been advised of the related financial implications, the Committee decided to request the Economic and Social Council in 2009 to approve one additional session per year during the period 2010-2011.

560. Also at its 45th meeting, the Committee decided with immediate effect to change the structure of its concluding observations. In line with the practice of other treaty bodies, the Committee agreed to have its "recommendations" followed directly by related "issues of concern".

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<sup>8</sup> A/61/385, annex VII, para. 25.

## **CHAPTER VII**

### **Other activities of the Committee in 2008**

#### **A. Workshop on reporting under the Covenant, Phnom-Penh**

561. From 2 to 5 June 2008, a workshop was organized in Phnom-Penh by the Office of the High Commissioner for Human Rights in Cambodia, led by Ms. Virginia Bonoan-Dandan. The aim of the workshop, which was attended by representatives of various State institutions, was to strengthen national capacities for the preparation of the combined initial to third periodic reports of Cambodia under articles 16 and 17 of the Covenant.

#### **B. Informal consultations on trade and human rights**

562. On 1 May 2008, members of the Committee participated in an informal consultation on the impact of international trade agreements on the enjoyment of economic, social and cultural rights with Ambassadors to the World Trade Organization (WTO) in Geneva, representatives of non governmental organizations, as well as with staff members of the WTO and the Office of the High Commissioner for Human Rights, to further discuss potential areas of interaction between the trade and human rights reviews undertaken respectively by the WTO and United Nations bodies.

563. On 10 November 2008, members of the Committee participated in an informal consultation on trade and human rights to discuss the possibility of drafting a set of questions which might serve as a reference in the Committee's dialogue with States parties, with a view to assessing the extent to which trade and trade-related policies affect the enjoyment of economic, social and cultural rights.



## **CHAPTER VIII**

### **Adoption of the report**

564. At its 47th meeting, on 17 November 2008, the Committee considered its draft report to the Economic and Social Council on the work of its fortieth and forty-first sessions (E/2009/22/CRP.1-4). The Committee adopted the report as amended during the discussions.

## ANNEXES

### ANNEX I

#### Membership of the Committee on Economic, Social and Cultural Rights

<i>Name of member</i>	<i>Country of nationality</i>	<i>Term expires on 31 December</i>
Mr. Mohamed Ezzeldin ABDEL-MONEIM	Egypt	2008
Mr. Clément ATANGANA	Cameroon	2010
Ms. Rocío BARAHONA RIERA	Costa Rica	2008
Ms. Virginia BONOAN-DANDAN	Philippines	2010
Ms. Maria Virginia BRAS GOMES	Portugal	2010
Mr. Chandrashekar DASGUPTA	India	2010
Mr. Azzouz KERDOUN	Algeria	2010
Mr. Yuri KOLOSOV	Russian Federation	2010
Mr. Jaime MARCHAN ROMERO	Ecuador	2010
Mr. Sergei MARTYNOV	Belarus	2008
Mr. Ariranga Govindasamy PILLAY	Mauritius	2008
Mr. Eibe RIEDEL	Germany	2010
Mr. Andrzej RZEPLINSKI	Poland	2008
Mr. Waleed M. SADI	Jordan	2008
Mr. Philippe TEXIER	France	2008
Mr. Alvaro TIRADO MEJIA	Colombia	2010
Ms. Barbara WILSON	Switzerland	2008
Mr. Daode ZHAN	China	2008

## ANNEX II

### **Agendas of the fortieth and forty-first sessions of the Committee on Economic, Social and Cultural Rights**

#### **A. Agenda of the fortieth session of the Committee (28 April-16 May 2008)**

1. Adoption of the agenda.
2. Organization of work.
3. Substantive issues arising on the implementation of the International Covenant on Economic, Social and Cultural Rights.
4. Follow-up to the consideration of reports under articles 16 and 17 of the Covenant.
5. Relations with United Nations organs and other treaty bodies.
6. Consideration of reports:
  - (a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant;
  - (b) Reports submitted by specialized agencies in accordance with article 18 of the Covenant.
7. Submission of reports by States parties in accordance with articles 16 and 17 of the Covenant:
  - (a) Status of the submission of reports by States parties to the Covenant;
  - (b) Revision of the guidelines of the Committee for the preparation of reports by States parties.
8. Formulation of suggestions and recommendations of a general nature based on the consideration of reports submitted by States parties to the Covenant and by the specialized agencies.
9. Miscellaneous matters.

**B. Agenda of the forty-first session of the Committee  
(3-21 November 2008)**

1. Adoption of the agenda.
2. Organization of work.
3. Substantive issues arising on the implementation of the International Covenant on Economic, Social and Cultural Rights.
4. Follow-up to the consideration of reports under articles 16 and 17 of the Covenant.
5. Relations with United Nations organs and other treaty bodies.
6. Consideration of reports:
  - (a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant;
  - (b) Reports submitted by specialized agencies in accordance with article 18 of the Covenant.
7. Submission of reports by States parties in accordance with articles 16 and 17 of the Covenant:
  - (a) Status of the submission of reports by States parties to the Covenant;
  - (b) Revision of the guidelines of the Committee for the preparation of reports by States parties.
8. Formulation of suggestions and recommendations of a general nature based on the consideration of reports submitted by States parties to the Covenant and by the specialized agencies.
9. Adoption of the annual report.
10. Miscellaneous matters.

## ANNEX III

### List of general comments adopted by the Committee on Economic, Social and Cultural Rights

The general comments adopted to date by the Committee appear in the following relevant annual reports of the Committee:\*

- No. 1 (1989) on reporting by States parties (third session; E/1989/22-E/C.12/1989/5, annex III);
- No. 2 (1990) on international technical assistance measures (article 22 of the Covenant) (fourth session; E/1990/23-E/C.12/1990/3 and Corr.1, annex III);
- No. 3 (1990): on the nature of States parties' obligations (article 2, paragraph 1, of the Covenant) (fifth session; E/1991/23-E/C.12/1990/8 and Corr.1, annex III);
- No. 4 (1991) on the right to adequate housing (article 11, paragraph 1, of the Covenant) (sixth session; E/1992/23-E/C.12/1991/4, annex III);
- No. 5 (1994) on persons with disabilities (eleventh session; E/1995/22-E/C.12/1994/20 and Corr.1, annex IV);
- No. 6 (1995) on the economic, social and cultural rights of older persons (thirteenth session; E/1996/22-E/C.12/1995/18, annex IV);
- No. 7 (1997) on the right to adequate housing (article 11, paragraph 1, of the Covenant): forced evictions (sixteenth session; E/1998/22-E/C.12/1997/10, annex IV);
- No. 8 (1997) on the relationship between economic sanctions and respect for economic, social and cultural rights (seventeenth session; E/1998/22-E/C.12/1997/10, annex V);
- No. 9 (1998) on domestic application of the Covenant (eighteenth session; E/1999/22-E/C.12/1998/26, annex IV);
- No. 10 (1998) on the role of national human rights institutions in the protection of economic, social and cultural rights (nineteenth session; E/1999/22-E/C.12/1998/26, annex V);
- No. 11 (1999) on plans of action for primary education (article 14 of the Covenant) (twentieth session; E/2000/22-E/C.12/1999/11 and Corr.1, annex IV);
- No. 12 (1999) on the right to adequate food (article 11 of the Covenant) (twentieth session; E/2000/22-E/C.12/1999/11 and Corr.1, annex V);

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\* Published as *Official Records of the Economic and Social Council*.

- No. 13 (1999) on the right to education (article 13 of the Covenant) (twenty-first session; E/2000/22-E/C.12/1999/11 and Corr.1, annex VI);
- No. 14 (2000) on the right to the highest attainable standard of health (article 12 of the Covenant) (twenty-second session; E/2001/22-E/C.12/2000/22, annex IV);
- No. 15 (2002) on the right to water (articles 11 and 12 of the Covenant) (twenty-ninth session; E/2003/22-E/C.12/2002/13, annex IV);
- No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights (article 3 of the Covenant) (thirty-fourth session; E/2006/22-E/C.12/2005/5, annex VIII);
- No. 17 (2005) on the right of everyone 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 (article 15 (1) (c) of the Covenant) (thirty-fifth session; E/2006/22-E/C.12/2005/5, annex IX);
- No. 18 (2005) on the right to work (article 6 of the Covenant) (thirty-fifth session; E/2006/22-E/C.12/2005/5, annex X);
- No. 19 (2007) on the right to social security (article 9 of the Covenant) (thirty-ninth session; E/2008/22-E/C.12/2007, annex VII).

## ANNEX IV

### **List of statements adopted by the Committee on Economic, Social and Cultural Rights**

The statements and recommendations, adopted by the Committee to date, appear in its relevant annual reports:\*

1. Preparatory activities relating to the World Conference on Human Rights: recommendations to the Preparatory Committee for the World Conference (sixth session; E/1992/23-E/C.12/1991/4, chap. IX);
2. Statement to the World Conference on Human Rights on behalf of the Committee (seventh session; E/1993/22-E/C.12/1992/2, annex III);
3. The World Summit for Social Development and the International Covenant on Economic, Social and Cultural Rights: Statement of the Committee (tenth session; E/1995/22-E/C.12/1994/20 and Corr.1, annex V);
4. Economic, social and cultural rights in the context of the World Summit for Social Development: Statement of the Committee (eleventh session; E/1995/22-E/C.12/1994/20 and Corr.1, annex VI);
5. Fourth World Conference on Women: Action for Equality, Development and Peace - Statement by the Committee (twelfth session; E/1996/22-E/C.12/1995/18, annex VI);
6. United Nations Conference on Human Settlements (Habitat II): Statement of the Committee (thirteenth session; E/1996/22-E/C.12/1995/18, annex VIII);
7. Globalization and its impact on the enjoyment of economic, social and cultural rights (eighteenth session; E/1999/22-E/C.12/1998/26; chap. VI, sect. A, para. 515);
8. Statement of the Committee to the Third Ministerial Conference of the World Trade Organization (twenty-first session; E/2000/22-E/C.12/1999/11 and Corr.1, annex VII);
9. Statement of the Committee to the Convention to draft a Charter of Fundamental Rights of the European Union (twenty-second session; E/2001/22-E/C.12/2000/21, annex VIII);
10. Poverty and the International Covenant on Economic, Social and Cultural Rights: Statement of the Committee to the Third United Nations Conference on the Least Developed Countries (twenty-fifth session; E/2002/22-E/C.12/2001/17, annex VII);

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\* Published as *Official Records of the Economic and Social Council*.

11. Statement of the Committee to the special session of the General Assembly for an overall review and appraisal of the implementation of the decisions taken at the United Nations Conference on Human Settlements (Habitat II) (New York, 6-8 June 2001) (twenty-fifth session; E/2002/22-E/C.12/2001/17, annex XI);
12. Statement of the Committee to the International Consultative Conference on School Education in Relation to Freedom of Religion and Belief, Tolerance and Non-Discrimination (twenty-seventh session; E/2002/22-E/C.12/2001/17, annex XII);
13. Statement of the Committee on human rights and intellectual property (twenty-seventh session; E/2002/22-E/C.12/2001/17, annex XIII);
14. Statement of the Committee to the Commission on Sustainable Development acting as the Preparatory Committee for the World Summit for Sustainable Development (Bali, Indonesia, 27 May-7 June 2002) (twenty-eighth session; E/2003/22-E/C.12/2002/13, annex VI);
15. The Millennium Development Goals and economic, social and cultural rights: joint statement by the Committee and the Special Rapporteurs on economic, social and cultural rights of the Commission on Human Rights (twenty-ninth session; E/2003/22-E/C.12/2002/13, annex VII);
16. Statement by the Committee on an evaluation of the obligation to take steps to the “maximum of available resources” under an optional protocol to the Covenant (thirty-eighth session; E/2008/22-E/C.12/2007/1, annex VIII);
17. Statement of the Committee on the world food crisis (fortieth session; E/2009/22-E/C.12/2008/1, annex VI).



## ANNEX V

### **Days of general discussion held by the Committee on Economic, Social and Cultural Rights**

The following issues have been the focus of discussion:

1. The right to food (third session, 1989);
2. The right to housing (fourth session, 1990);
3. Economic and social indicators (sixth session, 1991);
4. The right to take part in cultural life (seventh session, 1992);
5. The rights of the ageing and elderly (eighth session, 1993);
6. The right to health (ninth session, 1993);
7. The role of social safety nets (tenth session, 1994);
8. Human rights education and public information activities (eleventh session, 1994);
9. The interpretation and practical application of the obligations incumbent on States parties (twelfth session, 1995);
10. A draft optional protocol to the Covenant (thirteenth session, 1995, and fourteenth and fifteenth sessions, 1996);
11. Revision of the general guidelines for reporting (sixteenth session, 1997);
12. The normative content of the right to food (seventeenth session, 1997);
13. Globalization and its impact on the enjoyment of economic, social and cultural rights (eighteenth session, 1998);
14. The right to education (nineteenth session, 1998);
15. The right of everyone 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 (twenty-fourth session, 2000);
16. International consultation on economic, social and cultural rights in development activities of international institutions, organized in cooperation with the High Council for International Cooperation (France) (twenty-fifth session, 2001);

17. Equal right of men and women to the enjoyment of economic, social and cultural rights (article 3 of the Covenant) (twenty-eighth session, 2002);
18. The right to work (article 6 of the Covenant) (thirty-first session, 2003);
19. The right to social security (article 9 of the Covenant) (thirty-sixth session, 2006);
20. The right to take part in cultural life (article 15, paragraph 1 (a), of the Covenant) (fortieth session, 2008);
21. Non-discrimination and economic, social and cultural rights (article 2, paragraph 2, of the Covenant) (forty-first session, 2008).

## ANNEX VI

### The world food crisis:

#### Statement by the Committee on Economic, Social and Cultural Rights<sup>9</sup>

1. The Committee on Economic, Social and Cultural Rights is alarmed at the rapid worldwide rise in food prices and the soaring energy prices that have precipitated a global food crisis and are adversely affecting the right to adequate food and freedom from hunger as well as other human rights of more than 100 million people.
2. The world has lived for too many years with a chronic crisis of 854 million people suffering from food insecurity and two billion people suffering from malnutrition and undernutrition.
3. Prices of basic staple foods (including rice, maize, wheat etc) have risen by up to 60 per cent around the world. The poorest people in the world are the most severely affected as they already spend up to 60 to 80 per cent of their income on food, compared with 20 per cent in the developed world.
4. The food crisis underscores the interdependence of all human rights, as the enjoyment of the human right to adequate food and freedom from hunger is of paramount importance for the enjoyment of all other rights, including the right to life.
5. The Committee calls upon all States to revisit their obligations under article 25 of the Universal Declaration of Human Rights and article 11 of the International Covenant on Economic, Social and Cultural Rights. Under article 11, paragraph 1 of the Covenant, States parties recognize “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions”.
6. In its general comment No. 12 (1999) on the right to adequate food, the Committee affirms in paragraph 4 that “the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights enshrined in the International Bill of Human Rights”.
7. All States parties are obliged to ensure for everyone within their jurisdiction physical and economic access to the minimum essential food, which is sufficient, nutritionally adequate and safe, to ensure freedom from hunger.
8. Under article 11 (2) of the Covenant, States parties recognize the “fundamental right of everyone to be free from hunger”. In its general comment No. 12, the Committee underlines the fact that “States have a core obligation to take the necessary action to mitigate and alleviate hunger as provided for in paragraph 2 of article 11, even in times of natural or other disasters” (para. 6), and that the core content or the minimum essential levels of the right to adequate food

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<sup>9</sup> Adopted on 16 May 2008.

and freedom from hunger implies “the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture, and the accessibility of food in ways that are sustainable and do not interfere with the enjoyment of other human rights” (para. 8).

9. The current food crisis represents a failure to meet the obligations to ensure an equitable distribution of world food supplies in relation to need. The food crisis also reflects failure of national and international policies to ensure physical and economic access to food for all.

10. The Committee calls upon all States to address the immediate causes of the food crisis, individually through national measures, as well as internationally through international cooperation and assistance to ensure the right to adequate food and freedom from hunger. The Committee notes that many of the measures taken to help States and persons affected by the crisis are of a humanitarian nature and supports their immediate implementation.

11. The Committee therefore urges States to take urgent action, including by:

- Taking immediate action, individually and through international assistance, to ensure freedom from hunger through, inter alia, the provision and distribution of emergency humanitarian aid without discrimination.<sup>10</sup> Humanitarian aid should be provided in cash resources wherever possible
- Where food aid is provided, care should be taken to ensure that food is purchased locally wherever possible and that it does not become a disincentive for local production. Donor countries should prioritize assistance to States most affected by the food crisis
- Limiting the rapid rise in food prices by, inter alia, encouraging production of local staple food products for local consumption instead of diverting prime arable land suitable for food crops for the production of agrofuels, as well as the use of food crops for the production of fuel, and introducing measures to combat speculation in food commodities
- Establishing an international mechanism of coordination to oversee and coordinate responses to the food crisis and to ensure the equitable distribution of food supplies according to need, and that the policy measures adopted will respect, protect and fulfil the realization of the right to adequate food and freedom from hunger

12. The Committee also calls upon States to pay attention to the longer-term structural causes of the crisis and to focus attention on the gravity of the underlying causes of food insecurity, malnutrition and undernutrition, that have persisted for so long.

13. The Committee urges States parties to address the structural causes at the national and international levels, including by:

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<sup>10</sup> See general comment No. 12, para. 18.

- Revising the global trade regime under the WTO to ensure that global agricultural trade rules promote, rather than undermine, the right to adequate food and freedom from hunger, especially in developing and net food-importing countries
- Implementing strategies to combat global climate change that do not negatively affect the right to adequate food and freedom from hunger, but rather promote sustainable agriculture, as required by article 2 of the United Nations Framework Convention on Climate Change
- Investing in small-scale agriculture, small-scale irrigation and other appropriate technologies to promote the right to adequate food and freedom from hunger for all, including implementing the recommendations of the International Assessment of Agricultural Science and Technology for Development (IAASTD) of 2008
- Introducing and applying human rights principles, especially those relating to the right to adequate food and freedom from hunger, by undertaking ex ante impact assessments of financial, trade and development policies at both the national and international levels, to ensure that their bilateral and multilateral financial, trade and development commitments do not conflict with their international human rights obligations, particularly under the Covenant
- Applying and reinforcing the FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, in the light of the present food crisis

14. In conclusion, the Committee emphasizes that the world food crisis severely affects the full realization of the human right to adequate food and to be free from hunger, and therefore calls upon all States to fulfil their basic human rights obligations under the Covenant.

## ANNEX VII

### **Report of the eighth and ninth meetings of the Joint Expert Group UNESCO (Committee on Conventions and Recommendations)/ ECOSOC (Committee on Economic, Social and Cultural Rights) on the Monitoring of the Right to Education**

1. The eighth and ninth meetings of the Joint Expert Group UNESCO (Committee on Conventions and Recommendations)/ECOSOC (Committee on Economic, Social and Cultural Rights) on the Monitoring of the Right to Education were held in Geneva on 6 May and on 25 November 2008, respectively. Following the ninth meeting, the Joint Expert Group presented its recommendations at the 48th session of the International Conference on Education. Ms. Virginia Bonoan-Dandan and Mr. Eibe Riedel, members of the Committee on Economic, Social and Cultural Rights and of the Joint Expert Group, Mr. José Duarte Ramalho Ortigao (Ambassador and Permanent Delegate of Portugal to UNESCO and member of the Joint Expert Group) and Mr. Brian Figaji, member of the Committee on Conventions and Recommendations of UNESCO and of the Joint Expert Group, participated in the meetings.<sup>11</sup>
2. Mr. Philippe Texier, Chairperson of the Committee on Economic, Social and Cultural Rights, welcomed the members of the Joint Expert Group at the eighth meeting and underlined the significance of the work it accomplished for the realization of the right to education in the context of the ongoing collaboration between UNESCO and CESCR. The ninth meeting was opened by Mr. Ibrahim Salama, Chief of the Human Rights Treaties Branch, Office of the High Commissioner for Human Rights, who expressed his appreciation for the intense and fruitful reflection conducted by this joint institutional mechanism devoted to the right to education. The eighth and ninth meetings were chaired by Mr. Riedel and Mr. Figaji, respectively.
3. In both meetings, the Joint Expert Group addressed the theme “Inclusive Dimensions of the Right to Education”. The main objective of these meetings was to discuss questions related to universalizing the right to education for everyone without discrimination or exclusion. A concept paper prepared by the UNESCO and OHCHR secretariats in consultation with members of the Joint Expert Group provided the basis for the discussion.
4. The members of the Joint Expert Group analysed the right to education as protected in the international instruments - a right that is universal which does not permit any exclusion - and proceeded to an examination of the inclusive dimensions of this right, as enshrined in relevant

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<sup>11</sup> Other participants were Ms. Mónica Moutinho (First Secretary, Permanent Delegation of Portugal to UNESCO) (eighth meeting), Mr. Kishore Singh (Senior Programme Specialist, UNESCO Division for the Promotion of Basic Education, and Secretary of the Joint Expert Group), Mr. Paulo David (Senior Human Rights Officer, Office of the High Commissioner for Human Rights) (ninth meeting), Ms. Carolin Schleker (Associate Human Rights Officer, Office of the High Commissioner for Human Rights), Ms. Costanza Farina (International Bureau of Education (IBE)/UNESCO) (eighth meeting), Mr. Alfred Fernandez (Director General, Organisation internationale pour le développement de la liberté d'enseignement (OIDE)) (eighth meeting), Ms. Rolla Moumne (Assistant Programme Specialist, UNESCO Division for the Promotion of Basic Education).

UNESCO conventions and recommendations<sup>12</sup> as well as in United Nations human rights treaties.<sup>13</sup> Reference was also made to general comment No. 13 on article 13 of the International Covenant on Economic, Social and Cultural Rights, which provides that “education must be accessible to all, especially the most vulnerable groups, *in law and fact*, without discrimination on any of the prohibited grounds” (para. 6 (b)).

5. The Joint Expert Group underlined the significance of these obligations with respect to the inclusive dimensions of the right to education, in particular relating to:

- (i) Universal access to quality primary education free of charge for all,<sup>14</sup> recalling its earlier recommendation in which it had stressed the importance of full compliance by States with their core obligations to make primary education universally available free of charge for all without discrimination or exclusion;
- (ii) Literacy, continuing education and lifelong learning without exclusion;<sup>15</sup>
- (iii) Equal access to quality secondary and technical and vocational education;<sup>16</sup>
- (iv) Merit-based access to higher education without exclusion.<sup>17</sup>

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<sup>12</sup> Conventions and Recommendations adopted by UNESCO in the field of education provide normative bases of universal access to education and lay down international obligations for the right to education for all: for national, ethnic, religious and linguistic minorities, for indigenous people, for the socially and economically marginalized, for vulnerable groups, for immigrants, for disabled, for refugees, for the rural and urban poor and for millions of those deprived of education on account of poverty. Moreover, they provide normative bases for education in its diverse forms such as adult education, community education, special education, etc. These instruments embody certain key concepts such as inclusive approaches to education as well as continuing education and lifelong learning.

<sup>13</sup> Convention on the Rights of the Child (arts. 8-30); Convention on the Elimination of All Forms of Discrimination against Women (art. 10); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (arts. 12, 30 and 45); and Convention on the Rights of Persons with Disabilities (art. 24). Moreover, certain United Nations declarations such as the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (art. 4 (4)), and the Declaration on the Rights of Indigenous Peoples (art. 14) cover the right to education of minorities and of indigenous peoples.

<sup>14</sup> This obligation is laid down in the Convention against Discrimination in Education (art. 4 (a)); the International Covenant on Economic, Social and Cultural Rights (art. 13, para. 2 (a)); the Convention on the Rights of the Child (art. 28 para. 1 (a)); the Dakar Framework for Action (second objective); and Millennium Development Goal 2.

<sup>15</sup> UNESCO Recommendation on the Development of Adult Education (1976); the Convention against Discrimination in Education (art. 4 (c)); the International Covenant on Economic, Social and Cultural Rights (art. 13, para. 2 (d)); the Dakar Framework for Action (fourth objective).

<sup>16</sup> The Convention against Discrimination in Education (art. 4 (a)); the International Covenant on Economic, Social and Cultural Rights (art. 13, para. 2 (b)); the Convention on the Rights of the Child (art. 28, para. 1 (a)).

<sup>17</sup> The World Declaration on Higher Education for the Twenty-first Century (1998); the Convention against Discrimination in Education (art. 4 (a)); the International Covenant on Economic, Social and Cultural Rights (art. 13, para. 2 (c)); and the Convention on the Rights of the Child (art. 28, para. 1 (a)).

6. The members of the Joint Expert Group emphasized that the right to education should be implemented more vigorously, that the level of awareness about its inclusive dimensions should be enhanced; and that States are obliged to promote the right to education universally.

***Recommendation 1: The Joint Expert Group underlines the crucial importance of the inclusive dimensions of the right to education, which constitute the very foundation of universalizing access to education without discrimination or exclusion, for advancing the Education for All agenda.***

7. The members of the Joint Expert Group examined questions relating to the effective application of international norms at the national level concerning the inclusive dimensions of the right to education. They underlined the need to provide effective measures, in line with the Communiqué issued at the Ministerial Round Table on Education and Economic Development (October 2007)<sup>18</sup> as well as the follow-up to the Communiqué issued at the Seventh Meeting of the High-Level Group on Education for All (December 2007).<sup>19</sup> Moreover, the following issues should be given due consideration: questions relating to maintaining minimum standards of quality education,<sup>20</sup> both in public and private schools; the equitable deployment of qualified teachers in rural and urban areas, etc.

***Recommendation 2: The Joint Expert Group strongly recommends to the International Conference of Education to promote the inclusive dimensions of the right to education, as reflected in human rights treaties adopted by the United Nations, and in the conventions and recommendations in the field of education adopted by UNESCO, and to appeal to Member States to reflect these dimensions in their legal systems, education policies and strategies.***

8. The Joint Expert Group stressed that the right to education is of paramount importance and must be protected everywhere, including in countries where the realization of the right to education is difficult, such as in conflict and post-conflict situations, as well as during or after natural disasters.

9. Action at the national level is crucial for overcoming inequalities in education.<sup>21</sup> Moreover, it is essential to eliminate existing disparities in the quality of education. Concerning inequalities

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<sup>18</sup> At this Ministerial Round Table, organized during the 34th session of the UNESCO General Conference, the Ministers stressed that “access to education is addressed, and this right urgently realized, especially for the poorest and most marginalized, including more than 72 million children not in school and 774 million adults without literacy skills”.

<sup>19</sup> At the Seventh Meeting of the High-Level Group on Education for All, which took place in Dakar in December 2007, the Ministers of Education examined equity and inclusion, and stressed the need to “identify steps to strengthen and harmonize, where necessary, the legislative framework within which the right to education is guaranteed”.

<sup>20</sup> UNESCO Recommendation on the Status of Teachers (1966), and the Convention against Discrimination in Education (art. 4 (b)).

<sup>21</sup> See resolution 13 adopted by the UNESCO General Conference at its 34th session in October 2007. This Resolution requests UNESCO Director-General “to intensify his efforts to encourage Member States to adopt effective domestic measures intended to secure education for all without discrimination or exclusion as part of the EFA process”.



in education, the Education for All Global Monitoring Reports (GMR 2008 and 2009) indicate in which areas action is required.<sup>22</sup> States should be urged to undertake and step up promotional measures, including affirmative action, incentive and compensatory measures, grants and financial aid, etc. All actors in the field of education should be encouraged to pay primary attention to equality, inclusion and social cohesion in their undertakings, and to promote the right to education for all vulnerable groups and for those who are socially, economically or culturally marginalized, especially for children from poor households, to ensure that no one is excluded.

***Recommendation 3: The Joint Expert Group emphasizes the legal obligations and political responsibility of Member States to give effect to the inclusive dimensions of the right to education, by promoting inclusive education for all at the national level, and suggests that the International Conference on Education encourage Member States to increase necessary assistance to those countries which are most in need, cognizant of the fact that Africa is among the top priorities of UNESCO.***

10. The members of the Joint Expert Group discussed the concepts of “equity” and “equality” in the context of “inclusive education” and considered it important to have a clear definition of these terms. They suggested that these concepts require further discussion and clarification (for example, the concept of “equity” from a human rights perspective in some respects differs when compared to the UNESCO context, as reflected in the Global Monitoring Reports).

11. Furthermore, the Joint Expert Group considered it important to examine how the inclusive dimensions of the right to education are reflected in constitutions and national legislation. Therefore, a review and in-depth analysis of the constitutional and legislative provisions and practice on the right to education for promoting national level action would be of great importance.

12. The Joint Expert Group suggested that both the Committee on Conventions and Recommendations and the Committee on Economic, Social and Cultural Rights should place greater emphasis on the inclusive dimensions of the right to education while monitoring its implementation. Measures taken by States to comply with their obligation to realize these inclusive dimensions should contribute to the follow-up on UNESCO conventions and recommendations in the field of education, as well as on the concluding observations adopted by the Committee on Economic, Social and Cultural Rights.

13. Emphasizing Education for All as a priority, the members of the Joint Expert Group discussed the global financial crisis as a factor of critical importance, which might be used as an excuse for diminishing resources required to achieve this objective. This could have a negative

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<sup>22</sup> The *EFA Global Monitoring Report 2008* (GMR, 2008) states that “Education expansion does not necessarily translate into reduced inequality.” (p. 23) and “Most countries, even those with relatively high primary enrolment ratios, need to address equity issues” (p. 6).

With respect to its theme of overcoming inequality; and lessons for national governance reforms, the *EFA Global Monitoring Report 2009* underlines the need to commit to the reduction of disparities, based on wealth, location, ethnicity, gender and other indicators for disadvantage: “Governments should develop well defined targets for reducing disparities and monitor progress towards their achievement” (p. 4).

impact on the right to quality education. In this context, the concerns expressed during the thematic debate of the International Conference on Education on 25 November 2008 were shared by the members of the Joint Expert Group.

***Recommendation 4: The Joint Expert Group expressed its deep concern about the adverse impact that the global financial crisis may have on the realization of the right to quality education for all. As mentioned in the introductory debate of the 48th session of the International Conference on Education, the financial crisis should not be an excuse for Member States failing to fulfil their obligations. On the contrary, Member States should provide the necessary resources to ensure the full implementation of the right to quality education for all.***

14. The Joint Expert Group decided to address the issues of mother tongue education, multilingualism, and the right to education at their tenth meeting, to be held in Paris in May 2009 in the context of the thematic debate held during the 180th session of the Executive Board.

## ANNEX VIII

### **Guidelines on treaty-specific documents to be submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights**

#### **A. The revised reporting system and organization of information to be included in the common core document and in the treaty-specific document submitted to the Committee on Economic, Social and Cultural Rights**

1. State reports submitted under the harmonized guidelines on reporting under the international human rights treaties consist of two parts: a common core document and treaty-specific document. The common core document should contain general information about the reporting State, the general framework for the protection and promotion of human rights, as well as information on non-discrimination and equality and effective remedies, in accordance with the harmonized guidelines.

2. The treaty-specific document submitted to the Committee on Economic, Social and Cultural Rights should not repeat information already included in the common core document or merely list or describe the legislation adopted by the State party. Rather, it should contain specific information relating to the implementation, in law and in fact, of articles 1 to 15 of the Covenant, taking into account the general comments of the Committee, as well as information on recent developments in law and practice affecting the full realization of the rights recognized in the Covenant. It should also contain information on the concrete measures taken towards that goal, and the progress achieved, including - except for initial treaty-specific documents - information on the steps taken to address issues raised by the Committee in the concluding observations on the State party's previous report, or in its general comments.

3. In relation to the rights recognized in the Covenant, the treaty-specific document should indicate:

(a) Whether the State party has adopted a national framework law, policies and strategies for the implementation of each Covenant right, identifying the resources available for that purpose and the most cost-effective ways of using such resources;

(b) Any mechanisms in place to monitor progress towards the full realization of the Covenant rights, including identification of indicators and related national benchmarks in relation to each Covenant right, in addition to the information provided under appendix 3 of the harmonized guidelines and taking into account the framework and tables of illustrative indicators outlined by the Office of the United Nations High Commissioner for Human Rights (HRI/MC/2008/3);

(c) Mechanisms in place to ensure that a State party's obligations under the Covenant are fully taken into account in its actions as a member of international organizations and international financial institutions, as well as when negotiating and ratifying international agreements, in order to ensure that economic, social and cultural rights, particularly of the most disadvantaged and marginalized groups, are not undermined;

(d) The incorporation and direct applicability of each Covenant right in the domestic legal order, with reference to specific examples of relevant case law;

(e) The judicial and other appropriate remedies in place enabling victims to obtain redress in case their Covenant rights have been violated;

(f) Structural or other significant obstacles arising from factors beyond the State party's control which impede the full realization of the Covenant rights;

(g) Statistical data on the enjoyment of each Covenant right, disaggregated by age, gender, ethnic origin, urban/rural population and other relevant status, on an annual comparative basis over the past five years.

4. The treaty-specific document should be accompanied by a sufficient number of copies in one of the working languages of the Committee (English, French, Russian and Spanish) of all other supplementary documentation which the State party may wish to have distributed to all members of the Committee to facilitate the consideration of the report.

5. If a State party is party to any of the ILO Conventions listed in appendix 2 of the harmonized guidelines or to any other relevant conventions of United Nations specialized agencies and has already submitted reports to the supervisory committee(s) concerned that are relevant to any of the rights recognized in the Covenant, it should append the respective parts of those reports rather than repeat the information in the treaty-specific document. However, all matters which arise under the Covenant and are not fully covered in those reports should be dealt with in the present treaty-specific document.

6. Periodic reports should address directly the suggestions and recommendations of the previous concluding observations.

## **B. Part of the treaty-specific document submitted to the Committee relating to general provisions of the Covenant**

### **Article 1 of the Covenant**

7. In what manner has the right to self-determination been implemented?

8. Indicate the ways and means by which the State party recognizes and protects the rights of indigenous communities, if any, to ownership of the lands and territories which they traditionally occupy or use as traditional sources of livelihood.<sup>23</sup> Also indicate the extent to which indigenous and local communities are duly consulted, and whether their prior informed consent is sought, in any decision-making processes affecting their rights and interests under the Covenant, and provide examples.

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<sup>23</sup> General comment No. 12, para. 13; general comment No. 14, para. 27.

## **Article 2**

9. Indicate the impact of international economic and technical assistance and cooperation, whether received or provided by the State party, on the full realization of each of the Covenant rights in the State party or, as the case may be, in other countries, especially developing countries.

10. In addition to information provided in the common core document (paras. 50 to 58 of the harmonized guidelines), provide disaggregated and comparative statistical data on the effectiveness of specific anti-discrimination measures and the progress achieved towards ensuring equal enjoyment of each of the Covenant rights by all, in particular the disadvantaged and marginalized individuals and groups.

11. If the State party is a developing country, provide information on any restrictions imposed under article 2, paragraph 3, of the Covenant, on the enjoyment by non-nationals of the economic rights recognized in the Covenant.

## **Article 3**

12. What steps have been taken to eliminate direct and indirect discrimination based on sex in relation to each of the rights recognized in the Covenant, and to ensure that men and women enjoy these rights on a basis of equality, in law and in fact?

13. Indicate whether the State party has adopted gender equality legislation and the progress achieved in the implementation of such legislation. Also indicate whether any gender-based assessment of the impact of legislation and policies has been undertaken to overcome traditional cultural stereotypes that continue to negatively affect the equal enjoyment of economic, social and cultural rights by men and women.

## **Articles 4 and 5**

14. See paragraph 40 (c) of the harmonized guidelines on a common core document.

### **C. Part of the report relating to specific rights**

## **Article 6**

15. Provide information on effective measures taken to reduce unemployment including on:

(a) The impact of targeted employment programmes in place to achieve full and productive employment among persons and groups considered particularly disadvantaged, in particular women, young persons, older persons, persons with disabilities and ethnic minorities, in rural and deprived urban areas; and

(b) The impact of measures to facilitate re-employment of workers, especially women and long-term unemployed workers, who are made redundant as a result of privatization, downsizing and economic restructuring of public and private enterprises.

16. Provide information on work in the informal economy in the State party, including its extent and the sectors with a large percentage of informal workers, and the measures taken to enable them to move out of the informal economy, as well as on measures taken to ensure access by informal workers, in particular older workers and women, to basic services and social protection.
17. Describe the legal safeguards in place to protect workers from unfair dismissal.
18. Indicate what technical and vocational training programmes are in place in the State party and their impact on empowering the workforce, especially disadvantaged and marginalized individuals, to enter or re-enter the labour market.

#### **Article 7**

19. Indicate whether a national minimum wage has been legally established, and specify the categories of workers to which it applies, as well as the number of persons covered by each category. If any category of workers is not covered by the national minimum wage, explain the reasons why. In addition, indicate:
  - (a) Whether a system of indexation and regular adjustment is in place to ensure that the minimum wage is periodically reviewed and determined at a level sufficient to provide all workers, including those who are not covered by a collective agreement, and their families, with an adequate standard of living; and
  - (b) Any alternative mechanisms in place, in the absence of a national minimum wage, to ensure that all workers receive wages sufficient to provide an adequate standard of living for themselves and their families.
20. Provide information on working conditions for all workers, including overtime, paid and unpaid leave and on the measures taken to reconcile professional, family and personal life.
21. Indicate the impact of the measures taken to ensure that women with the same qualifications do not work in lower-paid positions than men, in accordance with the principle of equal pay for work of equal value.
22. Indicate whether the State party has adopted and effectively implemented legislation that specifically criminalizes sexual harassment in the workplace, and describe the mechanisms to monitor such implementation. Also indicate the number of registered cases, the sanctions imposed on perpetrators and the measures taken to compensate and assist victims of sexual harassment.
23. Indicate what legal, administrative or other provisions have been taken to ensure safety and healthy conditions at the workplace and their enforcement in practice.

## Article 8

24. Indicate:

(a) What substantive or formal conditions, if any, must be fulfilled to form or join the trade union of one's choice. Also indicate whether there are any restrictions on the exercise of the right to form or join trade unions by workers, and how they have been applied in practice;

(b) How trade unions are guaranteed independence to organize their activities without interference, as well as to federate and join international trade union organizations, and the legal and de facto restrictions, if any, on the exercise of this right.

25. Provide information on collective bargaining mechanisms in the State party and their impact on labour rights.

26. Indicate:

(a) Whether the right to strike is constitutionally or legally guaranteed and to what extent such guarantees are observed in practice;

(b) Any restrictions on the right to strike in the public and private sectors and their application in practice;

(c) The definition of essential services for which strikes may be prohibited.

## Article 9

27. Indicate whether there is universal social security coverage in the State party. Also indicate which of the following branches of social security are covered: health care, sickness, old age, unemployment, employment injury, family and child support, maternity, disability, and survivors and orphans.<sup>24</sup>

28. Indicate whether there are legally established and periodically reviewed minimum amounts of benefits, including pensions, and whether they are sufficient to ensure an adequate standard of living for recipients and their families.<sup>25</sup>

29. Indicate whether the social security system also guarantees non-contributory social assistance allowances for disadvantaged and marginalized individuals and families who are not covered by the contributory schemes.<sup>26</sup>

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<sup>24</sup> General comment No. 19, para. 12 (a) to (i).

<sup>25</sup> Ibid., paras. 22 and 59 (a).

<sup>26</sup> Ibid., paras. 4 (b) and 50.

30. Indicate whether the public social security schemes described above are supplemented by any private schemes or informal arrangements.<sup>27</sup> If so, describe these schemes and arrangements and their interrelationship with the public schemes.

31. Indicate if there is equal enjoyment by men and women of pension rights as regards the age of access,<sup>28</sup> qualifying periods and amounts.

32. Provide information on social security programmes, including informal schemes, to protect workers in the informal economy, in particular in relation to health care, maternity and old age.<sup>29</sup>

33. Indicate to what extent non-nationals benefit from non-contributory schemes for income support, access to health care and family support.<sup>30</sup>

### Article 10

34. Indicate how the State party guarantees the right of men and, particularly, women to enter into marriage with their full and free consent and to establish a family.

35. Provide information on the availability, coverage and funding of social services to support families, as well as on legal provisions in place to ensure equal opportunities for all families, in particular poor families, families from ethnic minorities, and single parent families, in relation to:

(a) Child care;<sup>31</sup>

(b) Social services that enable older persons and persons with disabilities to remain in their normal living environment for as long as possible<sup>32</sup> and to receive adequate health and social care when they are dependent.

36. Provide information on the system of maternity protection in the State party, including working conditions and prohibition of dismissal during pregnancy. In particular, indicate:

(a) Whether it also applies to women involved in atypical work<sup>33</sup> and women who are not covered by work-related maternity benefits;

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<sup>27</sup> Ibid., para. 5.

<sup>28</sup> General comment No. 16, para. 26 and general comment No. 19, para. 32.

<sup>29</sup> General comment No. 19, paras. 16 and 34.

<sup>30</sup> Ibid., para. 37.

<sup>31</sup> Ibid., paras. 18 and 28; general comment No. 5, para. 30; general comment No. 6, para. 31.

<sup>32</sup> General comment No. 19, paras. 15, 18 and 20; general comment No. 5, para. 30; general comment No. 6, para. 31.

<sup>33</sup> General comment No. 19, para. 19.



(b) The duration of paid maternity leave before and after confinement and the cash, medical and other support measures provided during pregnancy, confinement and after childbirth.<sup>34</sup>

(c) Whether paternity leave is granted to men, and parental leave to men and women.<sup>35</sup>

37. Indicate the measures of protection and assistance taken on behalf of children and young persons, including:

(a) Age limits below which the paid employment of children in different occupations is prohibited under the law of the State party and the application of criminal law provisions in place punishing the employment of under-aged children and the use of forced labour of children.<sup>36</sup>

(b) Whether any national survey has been undertaken in the State party on the nature and extent of child labour and whether there is a national action plan to combat child labour;

(c) The impact of measures taken to protect children against work in hazardous conditions harmful to their health and against exposure to various forms of violence and exploitation.<sup>37</sup>

38. Provide information on the legislation and mechanisms in place to protect the economic, social and cultural rights of older persons in the State party, in particular on the implementation of laws and programmes against abuse, abandon, negligence and ill-treatment of older persons.

39. Provide information on the economic and social rights of asylum seekers and their families and on legislation and mechanisms in place for family reunification of migrants.

40. Indicate:

(a) Whether there is legislation in the State party that specifically criminalizes acts of domestic violence, in particular violence against women and children,<sup>38</sup> including marital rape and sexual abuse of women and children and the number of registered cases, as well as the sanctions imposed on perpetrators;

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<sup>34</sup> Ibid.

<sup>35</sup> General comment No. 16, para. 26; see also draft general comment No. 20, paras. 10 (b) (vii) and 16.

<sup>36</sup> General comment No. 18, para. 24.

<sup>37</sup> Ibid., para. 15.

<sup>38</sup> General comment No. 16, para. 27; general comment No. 14, paras. 21 and 51.

(b) Whether there is a national action plan to combat domestic violence, and the measures in place to support and rehabilitate victims;<sup>39</sup> and

(c) Public awareness-raising measures and training for law enforcement officials and other involved professionals on the criminal nature of acts of domestic violence.

41. Indicate:

(a) Whether there is legislation in the State party that specifically criminalizes trafficking in persons and the mechanisms in place to monitor its strict enforcement. Also indicate the number of reported trafficking cases from, to and through the State party, as well as the sentences imposed on perpetrators;

(b) Whether there is a national plan of action to combat trafficking and the measures taken to support victims, including medical, social and legal assistance.

## **Article 11**

### **A. The right to the continuous improvement of living conditions**

42. Indicate whether the State party has defined a national poverty line and on what basis it is calculated. In the absence of a poverty line, what mechanisms are used for measuring and monitoring the incidence and depth of poverty?

43. Indicate:

(a) Whether the State party has adopted a national action plan or strategy to combat poverty that fully integrates economic, social and cultural rights<sup>40</sup> and whether specific mechanisms and procedures are in place to monitor the implementation of the plan or strategy and evaluate the progress achieved in effectively combating poverty;

(b) Targeted policies and programmes to combat poverty, including among women and children, and the economic and social exclusion of individuals and families belonging to the disadvantaged and marginalized groups, in particular ethnic minorities, indigenous peoples and those living in rural and deprived urban areas.

### **B. The right to adequate food**

44. Provide information on the measures taken to ensure the availability of affordable food in quantity and quality sufficient to satisfy the dietary needs of everyone, free from adverse substances, and culturally acceptable.<sup>41</sup>

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<sup>39</sup> General comment No. 16, para. 27.

<sup>40</sup> See the Committee's Statement on poverty and the International Covenant on Economic, Social and Cultural Rights (2001).

<sup>41</sup> General comment No. 12, para. 8.

45. Indicate the measures taken to disseminate knowledge of the principles of nutrition, including of healthy diets.

46. Indicate the measures taken to promote equality of access by the disadvantaged and marginalized individuals and groups, including landless peasants and persons belonging to minorities, to food, land, credit, natural resources and technology for food production.<sup>42</sup>

47. Indicate whether the State party has adopted or envisages the adoption, within a specified time frame, of the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security. If not, explain the reasons why.

### **C. The right to water**

48. Indicate:

(a) The measures taken to ensure adequate and affordable access to water that is sufficient and safe for personal and domestic uses for everyone;<sup>43</sup>

(b) The percentage of households without access to sufficient and safe water in the dwelling or within its immediate vicinity, disaggregated by region and urban/rural population<sup>44</sup> and the measures taken to improve the situation;

(c) The measures taken to ensure that water services, whether privately or publicly provided, are affordable for everyone;<sup>45</sup>

(d) The system in place to monitor the quality of water.<sup>46</sup>

49. Provide information on education concerning the hygienic use of water, protection of water sources and methods to minimize water wastage.<sup>47</sup>

### **D. The right to adequate housing**

50. Indicate whether a national survey on homelessness and inadequate housing has been undertaken, and inform on its findings, in particular as regards the number of individuals and families who are homeless or inadequately housed and without access to basic infrastructures and services such as water, heating, waste disposal, sanitation, and electricity, as well as the number of persons living in overcrowded or structurally unsafe housing.

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<sup>42</sup> General comment No. 15, para. 7.

<sup>43</sup> General comment No. 15, paras. 12 (a) and 37 (a); general comment No. 14, para. 43 (c).

<sup>44</sup> General comment No. 15, paras. 12 (c) (i) and 37 (c).

<sup>45</sup> Ibid., paras. 24 and 27.

<sup>46</sup> Ibid., para. 12 (b).

<sup>47</sup> Ibid., para. 25.

51. Indicate:

(a) The measures taken to ensure access to adequate and affordable housing with legal security of tenure for everyone, irrespective of income or access to economic resources;

(b) The impact of social housing measures, such as the provision of low-cost social housing units for disadvantaged and marginalized individuals and families, in particular in rural and deprived urban areas, whether there are waiting lists for obtaining such housing and the average length of waiting time;

(c) Measures taken to make housing accessible and habitable for persons with special housing needs, such as families with children, older persons<sup>48</sup> and persons with disabilities;<sup>49</sup>

52. Indicate the legislative and other measures in place to ensure that housing is not built on polluted sites or in immediate proximity of pollution sources that threaten the health of inhabitants.<sup>50</sup>

53. Indicate whether there are any disadvantaged and marginalized individuals and groups, such as ethnic minorities, who are particularly affected by forced evictions, and the measures taken to ensure that no form of discrimination is involved whenever evictions take place.<sup>51</sup>

54. Indicate the number of persons and families evicted within the last five years and the legal provisions defining the circumstances in which evictions may take place and the rights of tenants to security of tenure and protection from eviction.<sup>52</sup>

## Article 12

55. Indicate whether the State party has adopted a national health policy and whether a national health system with universal access to primary health care is in place.

56. Provide information on the measures taken to ensure:

(a) That preventive, curative, and rehabilitative health facilities, goods and services are within safe reach and physically accessible for everyone, including older persons and persons with disabilities;<sup>53</sup>

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<sup>48</sup> General comment No. 6, para. 33.

<sup>49</sup> Ibid.

<sup>50</sup> General comment No. 4, para. 8 (f).

<sup>51</sup> General comment No. 7, para. 10.

<sup>52</sup> Ibid., paras. 9, 13-15, 16 and 19; see also Basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex 1).

<sup>53</sup> General comment No. 14, para. 12 (b).

(b) That the costs of health-care services and health insurance, whether privately or publicly provided, are affordable for everyone, including for socially disadvantaged groups;<sup>54</sup>

(c) That drugs and medical equipment are scientifically approved and have not expired or become ineffective;

(d) Adequate training of health personnel, including on health and human rights.<sup>55</sup>

57. Provide information on the measures taken:

(a) To improve child and maternal health and sexual and reproductive health services and programmes, including through education, awareness-raising and access to family planning, pre- and post-natal care and emergency obstetric services, in particular in rural areas and for women belonging to disadvantaged and marginalized groups;<sup>56</sup>

(b) To prevent, treat and control diseases linked to water and ensure access to adequate sanitation;<sup>57</sup>

(c) To implement and enhance immunization programmes and other strategies of infectious disease control;<sup>58</sup>

(d) To prevent the abuse of alcohol and tobacco and the use of illicit drugs and other harmful substances, in particular among children and adolescents, and to ensure adequate treatment and rehabilitation of drug users and support to their families;<sup>59</sup>

(e) To prevent HIV/AIDS and other sexually transmitted diseases, educate high-risk groups, children and adolescents as well as the general public on their transmission, provide support to persons with HIV/AIDS and their families, and reduce social stigma and discrimination;<sup>60</sup>

(f) To ensure affordable access to essential drugs, as defined by the WHO, including anti-retroviral medicines and medicines for chronic diseases;<sup>61</sup> and

(g) To ensure adequate treatment and care in psychiatric facilities for mental health patients, as well as periodic review and effective judicial control of confinement.

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<sup>54</sup> Ibid., paras. 12 (b), 19 and 36.

<sup>55</sup> Ibid., paras. 12 (d) and 44 (e).

<sup>56</sup> Ibid., paras. 14, 21-23 and 44 (a).

<sup>57</sup> General comment No. 15, paras. 8 and 37 (i).

<sup>58</sup> General comment No. 14, paras. 16 and 44 (b).

<sup>59</sup> Ibid., para. 16.

<sup>60</sup> Ibid., para. 16.

<sup>61</sup> Ibid., para. 43 (d).

### Article 13

58. Indicate to what extent the form and substance of education in the State party are directed towards the aims and objectives identified in article 13, paragraph 1, of the Covenant,<sup>62</sup> and whether school curricula include education on economic, social and cultural rights.

59. Indicate how the obligation to provide primary education that is compulsory and available free for all is implemented in the State party, regarding in particular:

(a) The level or grade until which education is compulsory and free for all;

(b) Any direct costs such as school fees, as well as the measures taken to eliminate them;

(c) Any indirect costs (e.g. expenses for school books, uniforms, transport, special fees such as exam fees, contributions to district education boards, etc.) and the measures taken to alleviate the impact of such costs on children from poorer households.

60. Indicate the measures taken to make secondary education in its different forms, including technical and vocational education, generally available and accessible to all, including:

(a) Concrete steps taken by the State party towards progressively achieving free secondary education;<sup>63</sup>

(b) The availability of technical and vocational education, and whether it enables students to acquire knowledge and skills which contribute to their personal development, self-reliance and employability.<sup>64</sup>

61. Indicate the measures taken to make higher education equally accessible to all and without discrimination, on the basis of capacity, and the concrete steps taken towards progressively achieving free higher education.<sup>65</sup>

62. Indicate the measures taken to promote literacy, as well as adult and continuing education, in a lifelong perspective.

63. Indicate whether minority and indigenous children have adequate opportunities to receive instruction in or of their native language and the steps taken to prevent lower educational standards for these children,<sup>66</sup> their segregation in special classes, and their exclusion from mainstream education.

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<sup>62</sup> General comment No. 13, paras. 4-5 and 49.

<sup>63</sup> Ibid., para. 14.

<sup>64</sup> Ibid., paras. 15-16.

<sup>65</sup> Ibid., para. 20.

<sup>66</sup> Ibid., para. 30.

64. Indicate the measures taken to ensure the same admission criteria for boys and girls at all levels of education,<sup>67</sup> and to raise awareness among parents, teachers and decision-makers on the value of educating girls.<sup>68</sup>

65. Indicate the measures taken to reduce the drop-out rates at the primary and secondary levels for children and young persons, in particular girls, children from ethnic minorities, indigenous communities and poorer households, as well as migrant, refugee and internally displaced children.

#### **Article 14**

66. If compulsory and free primary education is not currently enjoyed in the State party, provide information on the required plan of action<sup>69</sup> for the progressive implementation, within a reasonable number of years fixed in this plan, of this right. Also indicate any particular difficulties encountered in the adoption and implementation of this plan of action, as well as the measures taken to overcome these difficulties.

#### **Article 15**

67. Provide information on the institutional infrastructure to promote popular participation in and access to cultural life, especially at community level, including in rural and deprived urban areas. In this regard, indicate the measures taken to promote broad participation in, and access to, cultural goods, institutions and activities, including measures taken:

(a) To ensure that access to concerts, theatre, cinema, sport events and other cultural activities is affordable for all segments of the population;

(b) To enhance access to the cultural heritage of mankind, including through new information technologies such as the Internet;

(c) To encourage participation in cultural life by children, including children from poorer families, and migrant or refugee children;

(d) To eliminate physical, social and communication barriers preventing older persons and persons with disabilities from fully participating in cultural life.<sup>70</sup>

68. Indicate the measures taken to protect cultural diversity, promote awareness of the cultural heritage of ethnic, religious or linguistic minorities and of indigenous communities, and to create favourable conditions for them to preserve, develop, express and disseminate their identity, history, culture, language, traditions and customs.

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<sup>67</sup> General comment No. 16, para. 30.

<sup>68</sup> *Idem*.

<sup>69</sup> In general comment No. 11, paragraph 11, the Committee asks States parties to submit their plans of action as an integral part of the reports required under the Covenant.

<sup>70</sup> General comment No. 5, paras. 36-38; general comment No. 6, paras. 39-41.

69. Provide information on school and professional education in the field of culture and the arts.

70. Indicate:

(a) The measures taken to ensure affordable access to the benefits of scientific progress and its applications for everyone, including disadvantaged and marginalized individuals and groups;

(b) The measures taken to prevent the use of scientific and technical progress for purposes which are contrary to the enjoyment of human dignity and human rights.

71. Indicate the measures taken to ensure the effective protection of the moral and material interests of creators,<sup>71</sup> in particular:

(a) To protect the right of authors to be recognized as the creators and for the protection of the integrity of their scientific, literary and artistic productions;<sup>72</sup>

(b) To protect the basic material interests of authors resulting from their productions, which enable them to enjoy an adequate standard of living;<sup>73</sup>

(c) To ensure the protection of the moral and material interests of indigenous peoples relating to their cultural heritage and traditional knowledge;<sup>74</sup>

(d) To strike an adequate balance between the effective protection of the moral and material interests of authors and the State party's obligations in relation to the other rights recognized in the Covenant.<sup>75</sup>

72. Indicate the legal provisions in place to protect the freedom indispensable for scientific research and creative activity and any restrictions on the exercise of this freedom.

73. Indicate the measures taken for the conservation, development and diffusion of science and culture and to encourage and develop international contacts and co-operation in the scientific and cultural fields.

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<sup>71</sup> General comment No. 17, para. 39 (a).

<sup>72</sup> Ibid., para. 39 (b).

<sup>73</sup> Ibid., para. 39 (c).

<sup>74</sup> Ibid., para. 32.

<sup>75</sup> Ibid., para. 39 (e).



## ANNEX IX

### A. List of States parties' delegations which participated in the consideration of their respective reports by the Committee on Economic, Social and Cultural Rights at its fortieth session

**BENIN**

*Head of delegation:*

Mr. Honoré Akpomey  
Judge,  
Director of the Office of the Minister of Justice,  
Legislation and Human Rights of Benin

*Members:*

Ms. Anne-Marie Akpovo  
Legal Counsellor  
Ministry of Prospective, Development and Evaluation  
of Public Action of Benin

Mr. Naïm Akibou  
Chargé d'affaires a.i.  
Permanent Mission of Benin to the  
United Nations Office at Geneva

Mr. Thierry Alia  
Head of the Human Rights Directorate  
Ministry of Justice, Legislation and Human Rights  
of Benin

Mr. Yao Amoussou  
First Counsellor  
Permanent Mission of Benin to the  
United Nations Office at Geneva

Ms. Marie Gisèle Zinkpe  
Head of the Department for Human Rights Education  
and Promotion

Mr. Dieudonné Todjihounde  
Head of the Department for Associations and  
Mechanisms of Human Rights Protection at the  
Human Rights Directorate, Ministry of Justice,  
Legislation and Human Rights

<b>BENIN</b> ( <i>cont'd</i> )	<i>Members:</i> ( <i>cont'd</i> )	Mr. Erick Martial Hacheme Officer-in-Charge Department for the Protection and Defence of Human Rights
		Ms. Nadia Fagnisse Legal Adviser Human Rights Directorate, Ministry of Justice, Legislation and Human Rights
<b>BOLIVIA</b>	<i>Head of delegation:</i>	Mr. Wilfredo Chavez Deputy Minister of Justice and Human Rights of Bolivia
	<i>Members:</i>	H.E. Ms. Angélica Navarro Llanos Ambassador and Permanent Representative Permanent Mission of Bolivia to the United Nations Office at Geneva
		Ms. Maysa Ureña Menacho Counsellor Permanent Mission of Bolivia to the United Nations Office at Geneva
<b>FRANCE</b>	<i>Head of delegation:</i>	H.E. Mr. Jean-Baptiste Mattei Ambassador and Permanent Representative Permanent Mission of France to the United Nations Office at Geneva
	<i>Members:</i>	Mr. Armand Riberolles Legal Counsellor Permanent Mission of France to the United Nations Office at Geneva
		Ms. Véronique Basso First Secretary Permanent Mission of France to the United Nations Office at Geneva
		Mr. François Gorget Head of the Office for Multilateral Institutions and the Francophonie Directorate of European and International Relations and Cooperation, Ministry of Education/Ministry of Higher Education and Research

**FRANCE** (*cont'd*)

*Members:*  
(*cont'd*)

Ms. Dominique Roussel  
Deputy of the Sub-Director for Urban Planning and Housing, General Directorate of Urbanism, Housing and Construction, Ministry of Housing and Urban Affairs

Mr. Alain Bougnères  
Chargé de mission at the General Directorate of Urbanism, Housing and Construction, Ministry of Housing and Urban Affairs

Mr. Rodolphe Juy-Birmann  
Head of the Office for Legal and Civil Affairs at the State Secretariat for Overseas Territories

Mr. Pascal Noblet  
Chargé de mission at the Office for the combat against exclusion, Sub-Directorate for insertion strategies and combat against exclusion of the General Directorate for Social Action, Ministry of Labour, Social Relations, the Family and Solidarity

Mr. Charles Louis Molgo  
Head of the Office for Collective Labour Relations General Directorate of Labour, Ministry of Labour, Social Relations, the Family and Solidarity

Ms. Sylvie Mouranche  
Delegation for European and International Affairs Ministry of Labour, Social Relations, the Family and Solidarity

Ms. Françoise Rouch  
Chargé de mission  
Inter-Ministerial Delegation for Family Matters at the State Secretary for the Family, Ministry of Labour, Social Relations, the Family and Solidarity

Mr. Alain Kurkdjian  
Deputy of the Head of the Department for the Rights of Women and Equality at the State Secretary for Solidarity, Ministry of Labour, Social Relations, the Family and Solidarity

Ms. Marie-Paule Demiguel  
Head of the Office for Family Immigration (Sub-Directorate Residence-Employment) Ministry of Immigration

<b>FRANCE</b> ( <i>cont'd</i> )	<i>Members:</i> ( <i>cont'd</i> )	Mr. Christian Lefeuvre Department for European and International Affairs Ministry of Immigration
		Ms. Olivia Diego Department for European and International Affairs Ministry of Justice
<b>INDIA</b>	<i>Head of delegation:</i>	H.E. Mr. Swashpawan Singh Ambassador and Permanent Representative Permanent Mission of India to the United Nations Office at Geneva
	<i>Members:</i>	Mr. Pronab Sen Secretary (Statistics) Government of India
		Ms. Sangeeta Gairola Additional Secretary Ministry of Justice and Empowerment Government of India
		Mr. Mohinder S. Grover Deputy Permanent Representative Permanent Mission of India to the United Nations Office at Geneva
		Mr. Manjeev Singh Puri Joint Secretary Ministry of External Affairs, New Delhi
		Mr. Narinder Singh Joint Secretary Ministry of External Affairs, New Delhi
		Ms. Ruchira Pant Joint Secretary Ministry of Tribal Affairs, Government of India
		Mr. Rajiv K. Chander Minister Permanent Mission of India to the United Nations Office at Geneva
		Mr. Raj William Counsellor Permanent Mission of India to the United Nations Office at Geneva

**INDIA** (*cont'd*)

*Members:*  
(*cont'd*)

Mr. Vijay K. Trivedi  
Counsellor  
Permanent Mission of India to the  
United Nations Office at Geneva

Mr. Munu Mahawar  
First Secretary  
Permanent Mission of India to the  
United Nations Office at Geneva

Mr. Kajal Bhat  
Legal Officer  
Ministry of External Affairs, New Delhi

Ms. Paramita Tripathi  
Under Secretary  
Ministry of External Affairs, New Delhi

**B. List of States parties' delegations which participated in the consideration of their respective reports by the Committee on Economic, Social and Cultural Rights at its forty-first session<sup>76</sup>**

**ANGOLA**

*Head of delegation:* H.E. Mr. George Rebelo Chicoty  
Deputy Minister for Foreign Affairs of Angola

*Members:* H.E. Mr. Arcanjo Maria Do Nascimento  
Ambassador and Permanent Representative  
Permanent Mission of Angola to the  
United Nations Office at Geneva

Mr. José Silva  
Counsellor  
Permanent Mission of Angola to the  
United Nations Office at Geneva

Ms. Efigenia Perpétua Jorge  
Third Secretary  
Ministry for Foreign Affairs

Ms. Luisa Esperança  
Director of the Human Rights Department  
Ministry of Justice

Mr. José Manuel Simbi  
Ministry of the Interior

Ms. Maria Massocolo Neves  
Ministry of Health

Mr. Kiassekoka Miguel  
Ministry of Health

Ms. Maria Mpava Medina  
Ministry for the Family and for the Advancement  
of Women

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<sup>76</sup> At its forty-first session, the Committee also considered a document submitted by the United Nations Interim Administration Mission in Kosovo (UNMIK). A representative of the Republic of Serbia, H.E. Mr. Feodor Starčević, Ambassador, Assistant Minister, Ministry of Foreign Affairs of the Republic of Serbia, made a statement at the beginning of the consideration of the document submitted by UNMIK (see E/C.12/2008/SR.37).

<b>ANGOLA</b> ( <i>cont'd</i> )	<i>Members:</i> ( <i>cont'd</i> )	Mr. José Lima Nogueira Ministry of Territorial Administration
		Ms. Elisa Silva Ministry for Assistance and Social Reintegration
		Mr. Mario Homero Ministry of Education
		Mr. Henriques Leitão Ministry for Planning
		Ms. Fátima Viegas Ministry of Culture
		Mr. Aguinaldo Cristóvão Ministry of Culture
		Mr. Gaspar Pedro National Assembly
		Ms. Maria Teresa Manuel Attorney General
		Mr. Pedro Domingos Antonio Costa National Institute for Children
		Mr. Paulo Vazda Conceição Human Rights Specialist Permanent Mission of Angola to the United Nations Office at Geneva
Mr. João Castro Angolan NGO Federation		
<b>KENYA</b>	<i>Head of delegation:</i>	H.E. Ms. Martha Karua Minister for Justice and Constitutional Affairs
	<i>Members:</i>	H.E. Ms. Maria Nzomo Ambassador and Permanent Representative Permanent Mission of Kenya to the United Nations Office at Geneva
		Ms. Amina C. Mohamed First Secretary Permanent Mission of Kenya to the United Nations Office at Geneva

**KENYA** (*cont'd*)

*Members:*  
(*cont'd*)

H.E. Mr. Philip Richard O. Owade  
Ambassador and Deputy Permanent Representative  
Permanent Mission of Kenya to the  
United Nations Office at Geneva

H.E. Mr. Tom O. Mboya  
Ambassador and Deputy Permanent Representative  
Permanent Mission of Kenya to the  
United Nations Office at Geneva

Mr. Stephen K. Muleshe  
Minister of Medical Services

Ms. Elizabeth Faith Onuko  
Minister of Labour

Ms. Mary Kabaru  
Minister of Gender, Children and Social Development

Ms. Jean Kimani  
Principal Counsellor  
Permanent Mission of Kenya to the  
United Nations Office at Geneva

Mr. Samuel Gitau  
Principal Economist  
Ministry of Justice

Ms. Maryann Njau Kimani  
Deputy Chief Legal Officer  
Ministry of Justice

Mr. J. Kihwaga  
Head of Legal Affairs  
Ministry for Foreign Affairs

Mr. Nilly Kanana  
First Secretary (Legal Affairs)  
Permanent Mission of Kenya to the  
United Nations Office at Geneva

Ms. Anne C. Keah  
Third Secretary  
Permanent Mission of Kenya to the  
United Nations Office at Geneva



<b>NICARAGUA</b>	<i>Head of delegation:</i>	H.E. Mr. Carlos Robelo Raffone Ambassador and Permanent Representative Permanent Mission of Nicaragua to the United Nations Office at Geneva
	<i>Members:</i>	Mr. Lautaro Sandino Montes Director United Nations Department, General Directorate for Organizations, Ministry for Foreign Affairs
		Mr. Néstor Cruz Toruño First Secretary Permanent Mission of Nicaragua to the United Nations Office at Geneva
		Ms. Maria Elena Medal Garrido Counsellor Permanent Mission of Nicaragua to the United Nations Office at Geneva
		Mr. Norman Somarriba Fonseca First Secretary Permanent Mission of Nicaragua to the United Nations Office at Geneva
		Ms. Rosa Maria Lovo Hernández Specialist for International Politics, General Directorate for Organizations, Ministry for Foreign Affairs
<b>PHILIPPINES</b>	<i>Head of delegation:</i>	H.E. Ms. Erlinda F. Basilio Ambassador and Permanent Representative Permanent Mission of the Philippines to the United Nations Office at Geneva
	<i>Members:</i>	Mr. Ricardo R. Blancaflor Undersecretary (Vice-Minister) Department of Justice
		Ms. Alicia R. Bala Undersecretary (Vice-Minister) Department of Social Welfare and Development
		Mr. Severo S. Catura Undersecretary (Vice-Minister) Presidential Human Rights Committee of the Philippines

**PHILIPPINES**  
(*cont'd*)

*Members:*  
(*cont'd*)

Mr. Denis Y. Lepatan  
Deputy Permanent Representative  
Permanent Mission of the Philippines to the  
United Nations Office at Geneva

Mr. Evan P. Garcia  
Assistant Secretary  
Department of Foreign Affairs

Ms. Maria Teresa C. Lepatan  
Minister  
Permanent Mission of the Philippines to the  
United Nations Office at Geneva

Ms. Josephine M. Reynante  
Director  
Department of Foreign Affairs

Mr. Ricardo V. Gloria, Jr.  
Director  
Department of Labour and Employment

Mr. Jesus Enrique G. Garcia II  
Third Secretary  
Permanent Mission of the Philippines to the  
United Nations Office at Geneva

Mr. Fortunato R. Abrenilla  
Director  
National Economic Development Authority

Ms. Erlinda Capones  
Director  
National Economic Development Authority

Ms. Emmeline Versoza  
Executive Director  
National Commission on the Role of Filipino Women

Mr. Masli A. Quilaman  
Director  
National Commission on Indigenous People

Ms. Leigh Fajardo-Garcia  
Director  
Presidential Human Rights Committee of  
the Philippines

**PHILIPPINES**  
*(cont'd)*

*Members:*  
*(cont'd)*

Mr. Loreto J. Dapon, Jr.  
National Economic Development Authority

Mr. Enrique Garcia  
Department of Interior and Local Government

Ms. April H. Mendoza  
National Economic Development Authority

Ms. Leizel J. Fernandez  
Attaché  
Permanent Mission of the Philippines to the  
United Nations Office at Geneva

Ms. Katrina F. Ondiano  
Attaché  
Permanent Mission of the Philippines to the  
United Nations Office at Geneva

**SWEDEN**

*Head of  
delegation:*

Ms. Marianne Jenryd  
Director-General for Legal and Administrative Affairs,  
Ministry of Health and Social Affairs

*Members:*

Mr. Hans A. Andersson  
Director  
Ministry of Health and Social Affairs

Ms. Malin Ekman Aldén  
Desk Officer  
Ministry of Health and Social Affairs

Ms. Anna Santesson  
Deputy Director  
Ministry of Employment

Ms. Caroline Stein  
Desk Officer  
Ministry for Foreign Affairs

Ms. Bilge Tekin Befrits  
Desk Officer  
Ministry of Integration and Gender Equality

Mr. Anders Wilhelmsson  
Desk Officer  
Ministry of Integration and Gender Equality

<b>SWEDEN</b> ( <i>cont'd</i> )	<i>Members:</i> ( <i>cont'd</i> )	<p>Ms. Hanna Åkesson Desk Officer Ministry of Health and Social Affairs</p> <p>Mr. Måns Molander First Secretary Permanent Mission of Sweden to the United Nations Office at Geneva</p>
<b>UNMIK (document submitted by the United Nations Interim Administration Mission in Kosovo)</b>	<i>Head of delegation:</i>	Mr. Ernst Tschöepke Director UNMIK Office of Legal Affairs
	<i>Members:</i>	<p>Mr. Shahzad Bangash Head Office of Communities Returns and Minority Affairs</p> <p>Mr. Habit Hajredini Director Office on Good Governance and Human Rights in the Office of the Prime Minister</p> <p>Ms. Sadete Demaj Advisory Office on Good Governance and Human Rights in the Office of the Prime Minister</p> <p>Mr. Roque Raymundo Senior Human Rights Adviser UNMIK</p> <p>Mr. Christopher Decker Director OSCE Department of Monitoring</p> <p>Mr. Wolff-Michael Mors Chief Governance Section OSCE Department of Monitoring</p>

## ANNEX X

### A. List of documents before the Committee at its fortieth session

E/C.12/40/1	Draft agenda and programme of work of the fortieth session of the Committee
E/C.12/40/2	Status of ratifications and reporting
E/C.12/1990/4/Rev.1	Rules of procedure of the Committee
E/C.12/1991/1	Revised reporting guidelines
A/62/224	Report of the meeting of chairpersons of the human rights treaty bodies on their nineteenth meeting
HRI/GEN/1/Rev.8	Compilation of general comments and general recommendations adopted by human rights treaty bodies
HRI/GEN/2/Rev.4	Compilation of guidelines on the form and content of reports to be submitted by States parties
HRI/GEN/3/Rev.2 and Add.1	Compilation of rules of procedure adopted by human rights treaty bodies: note by the Secretariat
A/HRC/6/WG.4/2/Rev.1	Second revised draft optional protocol to the International Covenant on Economic, Social and Cultural Rights
E/C.12/BEN/2	Reports submitted by States parties to the Covenant: second periodic report of Benin
E/C.12/FRA/3	Reports submitted by States parties to the Covenant: third periodic report of France
E/C.12/IND/5	Reports submitted by States parties to the Covenant: second to fifth periodic reports of India
E/C.12/BOL/2	Reports submitted by States parties to the Covenant: second periodic report of Bolivia
HRI/CORE/1/Add.85	Core document forming part of the reports of States parties: Benin
HRI/CORE/1/Add.17/Rev.1	Core document forming part of the reports of States parties: France
HRI/CORE/1/Add.54/Rev.2	Core document forming part of the reports of States parties: Bolivia

E/C.12/BEN/Q/2	List of issues to be taken up in connection with the consideration of the second periodic report of Benin
E/C.12/FRA/Q/3	List of issues to be taken up in connection with the consideration of the third periodic report of France
E/C.12/IND/Q/5	List of issues to be taken up in connection with the consideration of the second to fifth periodic reports of India
E/C.12/BOL/Q/2	List of issues to be taken up in connection with the consideration of the second periodic report of Bolivia
E/C.12/BEN/Q/2/Add.1	Replies to the list of issues to be taken up in connection with the consideration of the second periodic report of Benin
E/C.12/FRA/Q/3/Add.1	Replies to the list of issues to be taken up in connection with the consideration of the third periodic report of France
E/C.12/IND/Q/5/Add.1	Replies to the list of issues to be taken up in connection with the consideration of the second to fifth periodic reports of India
E/C.12/BOL/Q/2/Add.1	Replies to the list of issues to be taken up in connection with the consideration of the second periodic report of Bolivia
E/C.12/1/Add.78	Concluding observations of the Committee on Economic, Social and Cultural Rights on the initial report of Benin
E/C.12/1/Add.72	Concluding observations of the Committee on Economic, Social and Cultural Rights on the second periodic report of France
E/1990/23, paras. 212-234	Concluding observations of the Committee on Economic, Social and Cultural Rights on the initial report (articles 13 to 15) of India
E/C.12/1/Add.60	Concluding observations of the Committee on Economic, Social and Cultural Rights on the second periodic report of Bolivia

## **B. List of documents before the Committee at its forty-first session**

E/C.12/41/1	Provisional agenda and draft programme of work of the forty-first session of the Committee
E/C.12/41/2	Status of ratifications and reporting
E/C.12/1990/4/Rev.1	Rules of procedure of the Committee
E/C.12/1991/1	Revised reporting guidelines
A/63/280	Report of the chairpersons of the human rights treaty bodies on their twentieth meeting

HRI/GEN/1/Rev.8 and Add.1	Compilation of general comments and general recommendations adopted by human rights treaty bodies
HRI/GEN/2/Rev.5	Compilation of guidelines on the form and content of reports to be submitted by States parties
HRI/GEN/3/Rev.2 and Add.1	Compilation of rules of procedure adopted by human rights treaty bodies: note by the Secretariat
A/HRC/8/7, annex I	Draft optional protocol to the International Covenant on Economic, Social and Cultural Rights
E/C.12/PHL/4	Reports submitted by States parties to the Covenant: second to fourth periodic reports of the Philippines
E/C.12/SWE/5	Reports submitted by States parties to the Covenant: fifth periodic report of Sweden
E/C.12/NIC/4	Reports submitted by States parties to the Covenant: second to fourth periodic reports of Nicaragua
E/C.12/AGO/3	Reports submitted by States parties to the Covenant: initial to third periodic reports of Angola
E/C.12/KEN/1	Reports submitted by States parties to the Covenant: initial report of Kenya
E/C.12/UNK/1	Document submitted by the United Nations Interim Administration Mission in Kosovo (UNMIK)
HRI/CORE/1/Add.37	Core document forming part of the reports of States parties: Philippines
HRI/CORE/1/Add.4/Rev.1	Core document forming part of the reports of States parties: Sweden
HRI/CORE/NIC/2008	Core document forming part of the reports of States parties: Nicaragua
HRI/CORE/AGO/2008	Core document forming part of the reports of States parties: Angola
HRI/CORE/UNK/2007	Core document submitted by the United Nations Interim Administration Mission in Kosovo (UNMIK)
E/C.12/PHL/Q/4	List of issues to be taken up in connection with the consideration of the second to fourth periodic reports of the Philippines

E/C.12/SWE/Q/5	List of issues to be taken up in connection with the consideration of the fifth periodic report of Sweden
E/C.12/NIC/Q/4	List of issues to be taken up in connection with the consideration of the second to fourth periodic reports of Nicaragua
E/C.12/AGO/Q/3	List of issues to be taken up in connection with the consideration of the initial to third periodic reports of Angola
E/C.12/KEN/Q/1	List of issues to be taken up in connection with the consideration of the initial report of Kenya
E/C.12/UNK/Q/1	List of issues to be taken up in connection with the consideration of the document submitted by UNMIK
E/C.12/PHL/Q/4/Add.1	Replies to the list of issues to be taken up in connection with the consideration of the second to fourth periodic reports of the Philippines
E/C.12/SWE/Q/5/Add.1	Replies to the list of issues to be taken up in connection with the consideration of the fifth periodic report of Sweden
E/C.12/NIC/Q/4/Add.1	Replies to the list of issues to be taken up in connection with the consideration of the second to fourth periodic reports of Nicaragua
E/C.12/AGO/Q/3/Add.1	Replies to the list of issues to be taken up in connection with the consideration of the initial to third periodic reports of Angola
E/C.12/KEN/Q/1/Add.1	Replies to the list of issues to be taken up in connection with the consideration of the initial report of Kenya
E/C.12/UNK/Q/1/Add.1	Replies to the list of issues to be taken up in connection with the consideration of the document submitted by UNMIK
E/C.12/1995/7	Concluding observations of the Committee on Economic, Social and Cultural Rights on the initial report (articles 10 to 12) of the Philippines
E/C.12/1993/Add.14	Concluding observations of the Committee on Economic, Social and Cultural Rights on the initial report (articles 10 to 12) of Nicaragua
E/C.12/1/Add.70	Concluding observations of the Committee on Economic, Social and Cultural Rights on the fourth periodic report of Sweden

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