

LIMITATIONS - GENERAL - PERMISSIBLE LIMITATIONS

II. GENERAL COMMENTS AND RECOMMENDATIONS

- ICCPR General Comment 31 (Eightieth Session, 2004): Article 2: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, A/59/40 (2004) 175 at para. 6.

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6. The legal obligation under article 2, paragraph 1, is both negative and positive in nature. States parties must refrain from violation of the rights recognized by the Covenant, and any restrictions on any of those rights must be permissible under the relevant provisions of the Covenant. Where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.

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- CRC General Comment 1 (Twenty-sixth session, 2001): Article 29 (1): The Aims of Education, CRC/C/103 (2001) 150 at para. 28.

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28. Implementation of comprehensive national plans of action to enhance compliance with article 29 (1) will require human and financial resources which should be available to the maximum extent possible, in accordance with article 4. Therefore, the Committee considers that resource constraints cannot provide a justification for a State party's failure to take any, or enough, of the measures that are required. In this context, and in light of the obligations upon States parties to promote and encourage international cooperation both in general terms (arts. 4 and 45 of the Convention) and in relation to education (art. 28 (3)), the Committee urges States parties providing development cooperation to ensure that their programmes are designed so as to take full account of the principles contained in article 29 (1).

- CRC General Comment 2 (Thirty-first session, 2002): The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child, A/59/41 (2004) 82 at paras. 6 and 11.

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6. Specialist independent human rights institutions for children, ombudspersons or commissioners for children's rights have been established in a growing number of States parties. Where resources are limited, consideration must be given to ensuring that the

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available resources are used most effectively for the promotion and protection of everyone's human rights, including children's, and in this context development of a broad-based NHRI [national human rights institution] that includes a specific focus on children is likely to constitute the best approach. A broad-based NHRI should include within its structure either an identifiable commissioner specifically responsible for children's rights, or a specific section or division responsible for children's rights.

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11. While the Committee acknowledges that this is a very sensitive issue and that State parties function with varying levels of economic resources, the Committee believes that it is the duty of States to make reasonable financial provision for the operation of national human rights institutions in light of article 4 of the Convention. The mandate and powers of national institutions may be meaningless, or the exercise of their powers limited, if the national institution does not have the means to operate effectively to discharge its powers.

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- CRC General Comment 3 (Thirty-second session, 2003): HIV/AIDS and the Rights of the Child, A/59/41 (2004) 89 at paras. 13 and 14.

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13. Experience has shown that many obstacles hinder effective prevention, delivery of care services and support for community initiatives on HIV/AIDS. These are mainly cultural, structural and financial. Denying that a problem exists, cultural practices and attitudes, including taboos and stigmatization, poverty and patronizing attitudes towards children are just some of the obstacles that may block the political and individual commitment needed for effective programmes.

14. With regard to financial, technical and human resources, the Committee is aware that such resources may not be immediately available. However, concerning this obstacle, the Committee wishes to remind States parties of their obligations under article 4. It further notes that resource constraints should not be used by States parties to justify their failure to take any or enough of the technical or financial measures required. Finally, the Committee wishes to emphasize in this regard the essential role of international cooperation.

- CRC General Comment 5 (Thirty-fourth session, 2003): General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), A/59/41 (2004) 114 at paras. 7 and 8.

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7. The second sentence of article 4 reflects a realistic acceptance that lack of resources -

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financial and other resources - can hamper the full implementation of economic, social and cultural rights in some States; this introduces the concept of “progressive realization” of such rights: States need to be able to demonstrate that they have implemented “to the maximum extent of their available resources” and, where necessary, have sought international cooperation. When States ratify the Convention, they take upon themselves obligations not only to implement it within their jurisdiction, but also to contribute, through international cooperation, to global implementation...

8. The sentence is similar to the wording used in the International Covenant on Economic, Social and Cultural Rights and the Committee entirely concurs with the Committee on Economic, Social and Cultural Rights in asserting that “even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances...”.^{e/} Whatever their economic circumstances, States are required to undertake all possible measures towards the realization of the rights of the child, paying special attention to the most disadvantaged groups.

Notes

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^{e/} General comment No. 3, HRI/GEN/1/Rev.6, para. 11, p. 16.

- ICESCR General Comment 14 (Twenty-second session, 2000): Article 12: The Right to the Highest Attainable Standard of Health, E/2001/22 (2000) 128 at paras. 28-33 and 47. For text of General Comment, see **HEALTH - GENERAL**.
- ICESCR General Comment 15 (Twenty-ninth session, 2002): The Right to Water (arts. 11 and 12 of the Covenant), E/2003/22 (2002) 120 at paras. 17-19, 30, 37, 38, 40-43, 44(c), 45, 47 and 52-54. For text of General Comment, see **ADEQUATE OR DECENT STANDARD OF LIVING - FOOD, CLOTHING, SHELTER**.