

Equality for Women

A Handbook for NHRIs on Economic, Social and Cultural Rights



equitas

Centre international
d'éducation aux droits humains
International Centre for
Human Rights Education



UN
DP

Asia Pacific Gender Mainstreaming Programme
Asia Regional Governance Programme

"Like all standards and aspirations, women's economic, social and cultural rights ultimately depend on the ability to enforce them."

Adetoun O. Ilumoka

 BRITISH
COUNCIL



Canadian International
Development Agency

Agence canadienne de
développement international

Equality for Women

A Handbook for NHRI
on Economic, Social and Cultural Rights

Equality for Women: A Handbook for NHRIs on Economic, Social and Cultural Rights

Copyright © 2008 Equitas – International Centre for Human Rights Education. All rights reserved.

UNDP logo © 2008 United Nations Development Programme, British Council logo © 2008 British Council, CIDA logo © 2008 Canadian International Development Agency. All rights reserved. Used by permission.

Cover page citation by A. Ilumoka from “African Women’s Economic, Social and Cultural Rights – Toward a Relevant Theory and Practice” in Cook (ed.), *Human Rights of Women – National and International Perspectives* (University of Pennsylvania Press, 1994).

Cover photograph courtesy Ria Holcak.

ISBN 978-2-923696-02-7

Equitas – International Centre for Human Rights Education
666, Sherbrooke Street West, suite 1100
Montreal, Québec, Canada H3A 1E7
Website: www.equitas.org

Material contained in this publication may be freely quoted or reprinted with acknowledgement. Kindly provide a copy of the publication containing the reprinted material to Equitas – International Centre for Human Rights Education.

This publication was made possible by the generous support of the following organizations:



Asia Pacific Gender Mainstreaming Programme
Asia Regional Governance Programme



Agence canadienne de
développement international

Canadian International
Development Agency

Dedication

This Handbook is dedicated to individuals and institutions working to promote and protect the economic, social and cultural rights of women. We hope that it will encourage creative, effective and sustainable ways to improve the lives of women and girls and contribute to making the promise of human rights for all a reality in the global community of nations.

Table of Contents

Acknowledgments.....	VII
About This Handbook.....	VII
A. Who This Handbook Is Intended for.....	ix
B. Objectives.....	ix
C. Organization of the Handbook.....	x
MODULE 1 POSITIONING THE ISSUES.....	1
Introduction.....	2
Key Concepts.....	2
The Challenges.....	4
A. From a Socio-Cultural Perspective.....	4
B. From a Legal Perspective.....	4
C. From the Perspective of NHRI Programming.....	5
D. From a Broader Perspective of Democratic Development and Good Governance.....	5
THE LEGAL FRAMEWORK.....	6
STRATEGIES.....	6
A. Developing Institutional Capacity to Achieve Women’s ESC Rights.....	6
B. The Protection Mandate – Complaints, Investigations and Monitoring.....	7
C. The Promotion Mandate – Providing Advice, Raising Awareness and Education.....	7
A PRACTICAL EXAMPLE:	
A CASE STUDY ON HOUSING RIGHTS AND FORCED	
EVICCTIONS.....	9
“Making Way for Progress” – at What Cost to Women’s ESC Rights?.....	9
The Facts.....	9
The Government Decides to Revitalize the National Railroad.....	9
The Relocation of “Squatter” Communities.....	9
The Human Rights Impact of the Resettlement Process.....	10
The Community Mobilizes to Voice its Grievances.....	10
The Role of National Human Rights Institutions.....	11
The National Human Rights Commission Enters the Picture.....	11
Organizing the NHRC to Promote and Protect Women’s ESC Rights.....	11
The NHRC Applies a Gender Lens to the Situation.....	12
Identifying Strategies to Respond to the Situation from a Gender Equality Perspective.....	12
The Protection Mandate – Complaints, Investigations and Monitoring – Does the NHRC’s Statute Permit It to Intervene?.....	13
Launching an Investigation.....	13
The Findings of the Investigation Team.....	13
The NHRC Makes a Determination on the Complaint.....	14
The NHRC Identifies Remedies to Adequately Address the Issues.....	15
Following up the NHRC Investigation.....	16
Monitoring the Government’s Performance over Time.....	16
Gendering Budgets.....	17

Advising the Government.....	17
Education on Women’s ESC Rights.....	18
Conclusion.....	18
MODULE 2 EQUALITY, DEVELOPMENT AND RIGHTS – MAKING THE CONNECTIONS	19
OVERVIEW OF MODULE 2.....	20
SECTION 1 EQUALITY RIGHTS AND ECONOMIC, SOCIAL & CULTURAL RIGHTS.....	21
SECTION 2 WOMEN’S EQUALITY AND ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN CONTEXT	22
A. Understanding the Connections: Women’s Rights, ESC Rights and NHRIs	23
Limburg Principles (1986).....	24
Vienna World Conference (1993).....	24
Paris Principles (1993).....	24
Fourth World Conference on Women (Beijing, 1995).....	24
Maastricht Guidelines (1997)	24
United Nations Sub-Commission Resolution 1997/19	25
Regional Workshop on the Role of NHRIs in Advancing the International Human Rights of Women (2000).....	25
National Human Rights Institutions: Best Practice (Commonwealth Secretariat, 2001).....	25
Regional Workshop on the Role of National Human Rights Institutions and Other Mechanisms in Promoting and Protecting Economic, Social and Cultural Rights (2001).....	26
Montreal Principles on Women’s Economic, Social and Cultural Rights (2002)	26
Round Table of National Human Rights Institutions and National Machineries for the Advancement of Women (2004)	26
OHCHR Resolution 2005/74.....	27
International Round Table on National Institutions Implementing Economic, Social and Cultural Rights (2005)	27
General Comment No. 16.....	27
Asia-Pacific Regional Workshop on Women’s Economic, Social and Cultural Rights, January 2006.....	27
B. The Challenge of Cultural Rights	28
Declaration on Cultural Diversity (2001)	29
Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)	29
General Comment No. 28.....	30
Fribourg Declaration (2007).....	30
Why deal with traditional structures?.....	31
The Project Experience in Luo Nyanza	32
C. The Connection to Good Governance.....	32
D. The Millennium Development Goals.....	34
Examples from Goals 2, 3 and 5	36
E. Gender-based Violence.....	37
SECTION 3 KEY CONCEPTS	39
A. Women’s Equality and Discrimination.....	40
Sex Discrimination or Gender Discrimination.....	40

Does Intention Matter?.....	41
Acts or Omissions	41
B. Equality (Formal and Substantive)	41
Formal Equality	41
Substantive Equality	42
C. Interdependence and Indivisibility	42
D. Minimum Core Obligations.....	42
E. Multiple Grounds of Discrimination: Intersectionality	43
F. Temporary Special Measures	45
G. Principle of Non-Retrogression.....	46
SECTION 4 THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS.....	47
SECTION 5 LEGAL OBLIGATIONS OF NON-STATE ACTORS.....	49
CONCLUSION	51
MODULE 3 THE LEGAL FRAMEWORK	53
OVERVIEW OF MODULE 3	54
WOMEN'S ESC RIGHTS – PRINCIPLES, OBLIGATIONS AND CONCEPTS	55
SECTION 1 THE NHRI ENABLING LEGISLATION.....	56
A. Enabling Legislation.....	56
Key Question: Is the mandate of the NHRI broad enough to deal with ESC rights and gender equality for women?	57
B. Justiciability.....	59
SECTION 2 INTERNATIONAL HUMAN RIGHTS FRAMEWORK.....	62
A. The UN International Human Rights System	62
Universal Declaration of Human Rights (UDHR).....	63
Declaration on the Rights of Indigenous Peoples.....	63
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).....	64
Convention on the Rights of Persons with Disabilities (CRPD).....	65
Convention on the Rights of the Child (CRC).....	66
Convention on the Elimination of All Forms of Racial Discrimination (CERD).....	67
International Covenant on Civil and Political Rights (ICCPR).....	67
International Covenant on Economic, Social and Cultural Rights (ICESCR).....	68
Articles 2 and 3 of the ICESCR Outline State Party Obligations.....	68
The Obligation to Respect, Protect and Fulfill	69
The Obligation of Immediacy.....	70
“Undertakes to take steps ... by all appropriate means...”	71
“With a view to achieving progressively the full realization of the rights”.....	71
“To the maximum of its available resources”.....	71
Positive Obligations	72
The Committee on Economic, Social and Cultural Rights.....	72
The Optional Protocol to the ICESCR.....	73
B. Regional Systems.....	74

SECTION 3 BRINGING HUMAN RIGHTS HOME.....	75
A. Domestic Application of International ESC Rights	75
B. Role of NHRIs in Domestically Incorporating Women’s ESC Rights	75
1. Has the instrument been ratified by the Government?	75
2. Is implementing legislation required?	76
3. Is the State unwilling to take the necessary steps to pass implementing legislation?	76
SECTION 4 OTHER RELEVANT INSTRUMENTS, PRINCIPLES AND GUIDELINES	76
A. Limburg Principles	77
B. Maastricht Guidelines.....	77
C. Montreal Principles.....	78
D. Paris Principles	79
MODULE 4 ORGANIZING NHRIS TO ACHIEVE WOMEN’S ESC RIGHTS	81
OVERVIEW OF MODULE 4	82
SECTION 1 STRATEGIC PLANNING.....	83
SECTION 2 INSTITUTIONAL CAPACITY	88
A. Human Resource Planning.....	88
B. Gender Mainstreaming v. Specialized Approaches.....	89
C. Organizational Structure and Development	90
Mainstreaming: Internal Complaints Committee	90
Focal Points.....	90
Special Units and Departments	92
D. Knowledge Management	94
Information Systems	94
Knowledge Management and Strategic Planning.....	95
Data Collection: For What? From Whom?.....	95
E. Training.....	96
Training Resources	96
SECTION 3 COORDINATION AND COOPERATION.....	97
A. Donors	98
B. Engaging Civil Society.....	98
C. International Cooperation	100
General Resources.....	101
D. Cooperation with Government and Independent Agencies	102
CONCLUSION	104
MODULE 5 THE PROTECTION MANDATE – COMPLAINTS HANDLING, INVESTIGATION AND MONITORING	105
OVERVIEW OF MODULE 5	106
SECTION 1 THE PARIS PRINCIPLES AND INVESTIGATIONS.....	107
SECTION 2 INVESTIGATING WOMEN’S ESC RIGHTS VIOLATIONS.....	107
A. Early Intervention and Counselling	108
B. Identifying Patterns and Systemic Issues.....	108

C. Interviewing Women in Human Rights Investigations	111
Preparation	111
Interview Setting and Confidentiality	112
Interview Techniques	112
Recording Information	112
Irrelevance of Previous Sexual History Except in Relation to Past Sexual Attacks	113
Re-traumatization	113
Using Interpreters	113
Concluding Interview	113
Resources on Interview Techniques	113
D. Operations Manuals	114
E. Access to Justice	115
SECTION 3 PUBLIC INQUIRIES	116
SECTION 4 MONITORING	118
Additional Resources on Monitoring	123
SECTION 5 ALTERNATIVE DISPUTE RESOLUTION	123
CONCLUSION	124
MODULE 6 THE PROMOTION MANDATE – ADVICE, ADVOCACY AND EDUCATION	127
OVERVIEW OF MODULE 6	128
SECTION 1 ADVICE AND ASSISTANCE TO GOVERNMENT	129
A. Advice on Laws, Policies and Programs	129
Providing Legal and Policy Advice	130
B. Gendering National Budgets	131
C. Advocacy for International Standards	134
Advocating for the Ratification of International Instruments	134
Advocating for the Removal of Reservations to International Instruments	135
Advocating for Implementation of International Standards	136
Maximizing Effectiveness of NHRI Advocacy Efforts Aimed at Implementation of International Standards	140
Engagement of NHRIs at the International Level	140
D. Proactive Use of General Comments and Recommendations	140
E. Assistance in Preparing National Plans	141
F. Reports by States Parties	146
NHRIs Involvement in State Reports	147
Inter-Agency Cooperation	148
NHRI Submissions as Part of the State Party Reports	149
Representation of NHRIs at the Review Sessions	149
G. Alternative/Parallel/Shadow Reports by NHRIs	150
H. Universal Periodic Review	152
SECTION 2 HUMAN RIGHTS EDUCATION	152
A. Public Campaigns	153
B. Workshops, Training and Conferences	154
C. Publications and Media	154

Core Human Rights Material	155
Annual Report.....	156
D. Community-Based Initiatives	156
E. NHRIs as Clearing Houses for Human Rights Information.....	157
F. NHRI Engagement in Public School Curricula.....	157
CONCLUSION	158
NOTES.....	160
APPENDICES	173
Appendix 1: Glossary of Key Terms	175
Appendix 2: Economic, Social & Cultural Rights for Women – International Instruments Table	202
Appendix 3: Economic, Social & Cultural Rights for Women – Regional Instruments Table	207
Appendix 4: Full Text of Selected Key Documents on the Economic, Social and Cultural Rights of Women	209
4.1 Summary of the Convention on the Elimination of All Forms of Discrimination against Women...	210
4.2 Convention on the Elimination of All Forms of Discrimination against Women (1979).....	214
4.3 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999).....	224
4.4 Summary of the International Covenant on Economic, Social and Cultural Rights.....	229
4.5 International Covenant on Economic, Social and Cultural Rights (1966).....	235
4.6 CESCR General Comment No. 10 – The Role of National Human Rights Institutions in the Protection of Economic, Social and Cultural Rights	244
4.7 CESCR General Comment No. 16 – The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (art. 3 of the covenant).....	246
Appendix 5: Key International Instruments and UN Treaty Bodies for Women’s Economic, Social and Cultural Rights	255
Appendix 6: Selected Resources.....	263

Acknowledgments

This Handbook was inspired by the Asia-Pacific Regional Workshop on the Protection and Promotion of Women's Economic, Social and Cultural Rights held in January 2006 in Manila.

Equitas – International Centre for Human Rights Education is indebted to all those who dedicated their time and expertise to the preparation of this Handbook. We thank, in particular, Pearl Eliadis, Leilani Farha and Sneh Aurora who were most involved in the conception and drafting of the handbook. As well, we acknowledge the contributions of Maria Herminia Graterol.

We are also indebted to the following persons who generously gave their time and expertise in reviewing a draft of the Handbook and providing valuable comments: Radhika Behuria, United Nations Development Programme (Bangkok); Kerry Brogan, human rights and development specialist (Dili, Timor-Leste); Richard Carver, International Council for Human Rights Policy; Pip Dargan, Deputy Director, Asia Pacific Forum of National Human Rights Institutions; John Dwyer, international consultant in national human rights institutions (Ottawa); Gilbert Sebihogo, Secretariat of African National Human Rights Institutions; Lucie Lamarche, Henderson Chair in Human Rights, Faculty of Law, University of Ottawa; Chris Sidoti, Director, International Service for Human Rights (Geneva); Jarvis Matiya, Human Rights Unit, Commonwealth Secretariat (London); Helena Sharp, British Council (London); and Linda Dabros, Canadian Human Rights Commission.

The Equitas team, Ian Hamilton (Executive Director), Vincenza Nazzari (Director of Education), Paul McAdams (Senior Education Specialist) provided overall direction and offered important comments and suggestions throughout the process. Kim Smeby, Sanjay Patil, Silke Brabander and Sakina Frattina provided invaluable input into the content. Pamela Teitelbaum, Peter Wallet, Cathy London and Minda Miloff assisted with formatting and editing the Handbook to ensure accessibility of the content. Additional research was provided by Runa Deshpande, Carolina Yoko Furusho, Michelle Gabowicz, Sarah Goldbaum, Pamela Hojilla and Catee Lalonde.

The Asia Pacific Gender Mainstreaming Programme and the Asia Regional Governance Programme of the UNDP, the British Council and the Canadian International Development Agency provided generous financial support for this publication, which is gratefully acknowledged.

About This Handbook

The idea for this resource emerged from the *Asia-Pacific Regional Workshop on the Protection and Promotion of Women's Economic, Social and Cultural Rights* that was conducted by Equitas and the Commission on Human Rights (Philippines) in January 2006 in partnership with the UN Office of the High Commissioner for Human Rights (OHCHR), the United Nations Development Programme (UNDP) and the Commonwealth Secretariat. Participants from fourteen Asia Pacific national

human rights institutions, along with international resource persons from the Philippines, Venezuela and Sri Lanka, suggested that a handbook of this kind was needed to provide national human rights institutions with tools they needed to address women's equality through economic, social and cultural rights.

Because of its origins in the Asia Pacific context, many examples and case studies come from Asian countries. As the project developed, however, we recognized its potential as a resource for national human rights institutions anywhere in the world, and we added case studies and examples from Africa, North America and Europe.

Why a handbook? There are already many excellent resources available on women's rights, as well as on economic, social and cultural rights, and on national human rights institutions. But there does appear to be a gap in resources that address the intersection of all three areas. This Handbook is intended to help fill the gap by offering a specific tool for national human rights institutions to enhance their work in protecting and promoting women's equality through economic, social and cultural rights.

This Handbook is intended to complement rather than duplicate existing resources. It is not a legal treatise on equality law or economic, social and cultural rights: there are many excellent academic, international and NGO resources available on these matters. With respect to relevant handbooks already in existence, we draw the reader's attention to the UN Office of the High Commission for Human Rights 2005 *Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions*,¹ and to Equitas' 2006 training manual *National Institutions at Work: Asia-Pacific Regional Workshop on Women's Economic, Social and Cultural Rights*² which are both available online.

Several international organizations work, at least in part, in the intersection between national human rights institutions on the one hand, and economic, social and cultural rights and women's rights on the other. The "best practice" series and reports of the Commonwealth Secretariat,³ the British Council's "Gender", and "Law and Human Rights" publications and the "Our Rights Are Not Optional" publication by International Women's Rights Action Watch (IWRAW) Asia Pacific on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) are among the many valuable resources that are available online.⁴

Throughout, we have tried to minimize jargon and acronyms. However, acronyms, abbreviations and certain more technical terms have become very common in the area of human rights, and in the international context in particular. We offer several tips and tools to assist the reader:

- ▶ Common acronyms are spelled out in full at the beginning of each Module and are explained in a glossary (Appendix 1).
- ▶ Words that require further explanation are identified in **bold** the first time they appear in a module and are also explained in the glossary.

A. Who This Handbook Is Intended for

This Handbook is primarily for staff and members of **national human rights institutions (NHRIs)**. By NHRIs we mean:

- ▶ Human rights commissions at the regional, national and sub-national levels
- ▶ Ombudsman offices, public defenders and public protection offices that have human rights mandates⁵
- ▶ International, regional and national associations of national human rights institutions

In addition, organizations that work with NHRIs will find this resource useful as a way to enhance organizational development, capacity building and collaboration with NHRIs. For example, the UN and its specialized agencies are often partners in capacity building and other programs to support and develop NHRI effectiveness. Other bodies, such as the Commonwealth Secretariat, the British Council, *La Francophonie*, the Asia Pacific Forum of National Human Rights Institutions (APF), the Network of African National Human Rights Institutions, the Raoul Wallenberg Institute, the Danish Institute for Human Rights, the International Service for Human Rights, the Inter-American Institute of Human Rights, the African Commission on Human and Peoples' Rights, the International Ombudsman Institute and other leading international and regional organizations, also perform these roles and have various levels of engagement with NHRIs, women's equality and economic, social and cultural rights.

As well, **non-governmental organizations (NGOs)** work at many levels with NHRIs and may also have an interest in this resource.

Finally, Government is a vital partner for NHRIs and is the primary deliverer of basic social services on which women's equality rights depend, as well as being a respondent to human rights complaints. In addition, other national institutions (gender commissions and children's ombudsmen, for example) and independent agencies whose mandates are closely linked to NHRIs may also benefit from these materials.

B. Objectives

The Handbook has three objectives. First, it offers practical information and ideas that can assist NHRIs to fulfill their mandates to protect and promote women's equality through **economic, social and cultural (ESC) rights**.

Second, the Handbook seeks to re-focus and re-frame the obligation to promote and protect human rights in the specific context of women's equality and ESC rights at the practical level.

Third, by setting out the basic standards for NHRIs to uphold in the areas of women's equality and ESC rights, stakeholders will have better information with

which to lobby NHRIs as well as Government and the international community, in relation to the functioning of NHRIs. In the course of their work, NHRIs struggle with basic questions about their own mandates, how to set priorities and how to address the particular challenges that are involved in equality rights and ESC rights.

This Handbook attempts to help NHRIs get better at answering these questions by providing tools and information about how institutions around the world are tackling these complex challenges.

C. Organization of the Handbook

This Handbook is divided into six modules.

The modules are structured so that readers should be able to read and understand a module that is relevant to their needs without necessarily having to read the preceding ones. While this makes a certain amount of repetition inevitable, we have tried to minimize this through cross-referencing and referring the reader to other resources provided throughout the Handbook and the Appendices.

Module 1 – Positioning the Issues introduces the key concepts dealt with in the handbook and examines an ESC-related rights scenario in a developing country. The case study on housing rights and forced evictions illustrates how an NHRI might be best structured to handle the issue, and goes on to look at **investigation**, **monitoring** and other possible strategies to protect women’s **equality** through ESC rights. It also looks at how an institution might use the case in advising its Government on **remedying** the rights violations, as well as at various strategies to promote the human rights raised in the case in various sectors of society. The case study is included at the beginning of this handbook to illustrate the potential of NHRIs in the area of women’s ESC rights and to provide readers with an overview of the overall content of the handbook.

Modules 2 and 3 contain important background information about the history and evolution of equality rights and women’s ESC rights, as well as the legal groundwork on which they all rest.

Module 2 – Equality, Development, and Rights – Making the Connections, serves to place women’s ESC rights in context. Starting with the evolution of these rights, it discusses the particular challenge of cultural rights, the relationship between ESC rights,

Questions facing NHRIs in women’s ESC rights...

- What are ESC rights? What do they mean for women?
- How can we promote equality for women through ESC rights
 - in our complaints handling process?
 - in our monitoring activities?
 - in our public education programs?
 - in our advice to government?
- How do we tackle system-wide issues?
- Where do we start?
- How do we organize ourselves internally to promote equality of women?
- How can we help governments improve the lives of women and girls?
- What if our mandate overlaps with others, such as Gender Equality Commissions?

equality, **good governance** and development and, finally, women’s security. Section 1 also introduces concepts like “**sex discrimination**”, “**gender discrimination**” and “**substantive equality**”, from the particular perspective of national human rights institutions.

Module 3 – The Legal Framework, sets out the legal framework that applies to NHRIs in general, and in relation to women’s equality and ESC rights in particular. It starts with the NHRIs themselves, and the **enabling legislation** that gives NHRIs the legal power to promote and protect human rights. It also sets out the basic legal rights and obligations that flow from international law and **Treaty bodies**, and national constitutions. Section 2 also canvasses key principles that have developed to guide and inform the development of women’s equality and ESC rights by NHRIs.

Modules 4, 5 and 6 outline how NHRIs work and how they carry out their functions to strengthen women’s equality and ESC rights.

Module 4 – Organizing NHRIs to Achieve Women’s ESC Rights, examines how NHRIs can enhance women’s equality through ESC rights by developing appropriate internal organizational structures and systems, policies, and planning tools. Strategies discussed include **strategic planning**, “mainstreaming” gender issues into organizational activities, creating institutional areas dedicated to women’s issues within the organization (special units, for example) and the use of specialized research projects.

Module 5 – The Protection Mandate – Complaints Handling, Investigation and Monitoring, examines how NHRIs can *protect* women’s equality rights through ESC rights. Section 4 looks at complaints-handling strategies, investigations and monitoring; **alternative dispute resolution** (at both the individual and community levels), and monitoring women’s ESC rights.

Module 6 – The Promotion Mandate – Advice, Advocacy and Education, discusses strategies for *promoting* women’s ESC rights through public education, media relations, advice and assistance to Government, reporting, policy development, and programs of cooperation that can “pool” resources and achieve broader impact.

Wherever possible, concrete examples of work being done with and by national human rights institutions are used to illustrate the issues in the field.

Finally, the Appendices contain:

- ▶ a glossary of terms and acronyms
- ▶ a table of international instruments
- ▶ a table of regional instruments
- ▶ full text of several key documents on women’s ESC rights
- ▶ a listing of key international instruments and UN Treaties on women’s ESC rights including General Comments and Recommendations
- ▶ a list of selected resources.

Module 1

Positioning the Issues

1



Photo: Equitas

Introduction

National human rights institutions (NHRIs) are expected to have broad mandates as well as the necessary powers and resources to effectively protect and promote human rights⁶. International experience has shown that NHRIs face unique challenges in living up to this expectation. They may encounter limitations on their mandate or powers resulting from their founding statutes, a shortage of human and financial resources, or constraints arising from the social and political environment in which they function. Therefore, out of necessity, NHRIs are compelled to make strategic choices about how to focus their efforts to ensure that they are having the desired impact.

This Handbook argues that these choices must ensure that gender equality is in the forefront of their considerations, particularly as the NHRIs address **economic, social and cultural rights (ESC) rights**. However, a commitment to gender equality is not enough to ensure effective protection and promotion of women's ESC rights. NHRIs must also ensure that they have the capacity to:

- ▶ Understand and apply the appropriate international, regional and/or domestic legal framework to the situation
- ▶ Develop effective internal systems, procedures and plans to address women's ESC rights
- ▶ Identify the most effective and appropriate strategies to address particular issues

Module 1 provides an overview of some of the key content included in subsequent modules. It is intended as an introduction for those who will be reading through the entire Handbook or as a practical summary that will give a reader a sense of the possibilities for NHRI action.

The Module identifies some key concepts related to women's ESC rights, some of the challenges facing NHRIs as well as the different types of strategies that can be adopted. A case study on housing rights and forced evictions illustrates how an NHRI might put these tools to use in practice in its efforts to ensure the equal enjoyment of ESC rights.

Key Concepts

This Handbook emphasizes two main ideas:

- ▶ Economic, social and cultural (ESC) rights are essential to equality for women
- ▶ NHRIs have a fundamental role in connecting ESC rights to equality

There has been growing recognition of the importance of ESC rights as interdependent and indivisible from other human rights. No longer the "poor cousins" of civil and political rights, ESC rights are increasingly understood as

inextricably linked to human well-being and development. Moreover, while the acceptance of this idea has not always been universal, this Handbook asserts that a **rights-based approach** transforms ESC rights from positive aspirations to **State obligations** that can be enforced.

In practice, making ESC rights a reality presents significant challenges for NHRIs. First, the legal context is complex. Do NHRIs have **jurisdiction**? How do they know what the legal basis for their actions should be? The answers are not always simple. In addition to the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, many other human rights instruments are relevant to this area. Thus, the Handbook reviews the various applicable legal sources that are relevant for women's equality and ESC rights.

The promotion and protection of women's equal enjoyment of ESC rights present unique and specific challenges.

Women experience particular and severe forms of **discrimination** — including system-wide forms of discrimination. These forces combine to create a context of social beliefs, legal regimes, and economic structures that subordinate women to men in many countries, cultures and communities around the world. As a result, women's equality cannot be understood outside the context in which women live.

Human Rights Watch, Women's Rights Division

"Abuses against women are relentless, systematic, and widely tolerated, if not explicitly condoned. Violence and discrimination against women are global social epidemics, notwithstanding the very real progress of the international women's human rights movement in identifying, raising awareness about, and challenging impunity for women's human rights violations."
<http://www.hrw.org/women/>.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), the **Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)**, and many other international instruments form a group of rights that support the achievement of equality for women. They include such rights as the right to an adequate standard of living (housing, adequate food, shelter); the right to health; and the right to education, to name a few.

This group of rights presents several unique challenges in relation to women because of the particular way in which women's rights are embedded in historical, social economic and cultural contexts. Cultural rights create particular challenges, but also offer opportunities for NHRIs working locally.

In their efforts to promote and protect women's ESC rights, NHRIs should look beyond formal equality to ensure that equality contains a substantive meaning. **Gender-neutral** laws and policies can perpetuate sex inequality because they do not take into account the economic and social disadvantage of women; they may therefore simply maintain the status quo. Whether the measures taken to protect rights are adequate "must always be assessed against the background of women's actual conditions, and evaluated in the light of the effects of policies, laws and

practices on those conditions.”⁷ (Adapted from principle 9 of the Montreal Principles)

By examining more closely the basic concepts linked to women’s ESC rights – notably discrimination, equality, **intersectionality** and **temporary special measures** – it becomes easier to identify not only what these concepts mean, but how NHRIs can be more effective in using them to enhance the quality of life for women and girls.

The Challenges

The complexity of women’s ESC rights may not be readily apparent to an NHRI when investigating single incidents of human rights violations. Rather, the issues are lodged in systems, traditions, social structures, budget allocations and Government programs. They can be hard to identify, let alone understand and address. Below are some challenges specific to the promotion and protection of women’s equal enjoyment of ESC rights that are addressed in the Handbook.

A. From a Socio-Cultural Perspective

Inequality in the enjoyment of human rights by women throughout the world is often deeply embedded in poverty, history, social structures and culture, including religious attitudes.

Protection of ESC rights often requires looking closely at areas that were, until relatively recently, considered to be beyond the reach of human rights law; such as, the family, religious and cultural areas, and so on. Equality requires a critical analysis of the power dynamics between men and women that are inherent in family and social structures.

Addressing women’s ESC rights requires fundamental changes to social structures and the culture of respect for human rights in all aspects and sectors of society.

B. From a Legal Perspective

Legal regimes are frequently discriminatory against women.

There are many international and regional human rights instruments that define a State’s **obligations to respect, protect and fulfill** women’s ESC rights. These instruments interact and overlap. Understanding the legal regime at the international, regional and domestic levels is not a simple process, even for experts.

Many countries have ratified human rights instruments, but have issued **reservations** to protections for women. For example, many of the reservations to CEDAW – to fundamental equality rights, for example – seriously undermine the basic objective of the instrument. Other nations point out, with justification, that reservations should not be used in this way.

Ratification of human rights instruments does not necessarily translate into the political will to implement these legal standards.

Addressing women's equality rights in the ESC context almost always requires more than just addressing single episodes of human rights violations.

Similarly, ESC rights frequently engage more than one “perpetrator” or person responsible for the violation because problems are systemic in nature.

For both historical reasons and as a self-serving strategy, some countries do not recognize the enforceability of ESC rights. Since women's enjoyment of human rights generally resides in and depends on ESC rights, this is a serious barrier to equality.

C. From the Perspective of NHRI Programming

NHRIs are not always well-structured to identify and address women's equality issues.

With so many competing priorities for NHRIs, it is often difficult to know where to begin.

Even when ESC rights are identified as priorities, the daily urgency of incidents involving civil and political rights frequently push ESC rights to the background in NHRI programming and activities. Because women usually occupy less powerful positions socially and economically, these consequences may be magnified when the subject involves women's rights.

Protecting women's ESC rights often requires long-term and progressive effort in collaboration with multiple stakeholders, partners and funders.

Protecting women's ESC rights also often requires challenging deeply held traditions and cultural norms and widening the concept of human rights beyond the conventional wisdom.

D. From a Broader Perspective of Democratic Development and Good Governance

There are close links between the enjoyment by women of their rights and a particular country's development performance by means of democratic development and good governance.

- ▶ Women's groups and non-governmental organizations (NGOs) are generally less equipped to carry out their work, because of power imbalances. As part of their own **good governance** projects, Governments need to ensure a “voice” for women when public policy is being developed. NHRIs must do the same.
- ▶ Development programs usually have a good governance envelope or component, which generally include a range of justice projects, as well as projects to increase

the capacity and effectiveness of Government (including NHRIs) and local leadership, as well as civil society. All these players are part of achieving equality for women.

- ▶ There have been global efforts to “mainstream” women’s rights into human rights work and good governance agendas. However, **gender mainstreaming** has had its limitations, sometimes at the expense of dedicating efforts and resources to the women who most need assistance.
- ▶ The capacity to identify progress depends on access to good data across most of the rights areas addressed by ESC rights. This requires access to accurate and timely **sex-disaggregated data**.

The Legal Framework

NHRIs function within a specific legal framework. The NHRIs **enabling legislation** creates an NHRI’s mandate. The legal or normative framework includes not only the human rights obligations that flow from international and domestic law, but also includes **principles** that inform the development of rights, the acceptance of universal human rights, and respect for the rule of law.

Strategies

NHRIs have a variety of strategies and possible actions available to strengthen efforts to protect and promote women’s ESC rights. In this Handbook, these have been organized under the following headings:

- ▶ Developing Institutional Capacity to Achieve Women’s ESC Rights
- ▶ The Protection Mandate – **Complaints, Investigations and Monitoring**
- ▶ The Promotion Mandate – Providing Advice, Raising Awareness and Education

A. **Developing Institutional Capacity to Achieve Women’s ESC Rights**

Strategic planning helps to identify priorities for the NHRI and helps to guide the allocation of resources. Strategic planning is important for the NHRI because:

- ▶ It helps direct energy and resources towards important, achievable program initiatives
- ▶ It provides a mechanism by which progress can be measured
- ▶ It can be used to communicate and coordinate with other stakeholders in a transparent, mutually respectful and beneficial manner

To achieve its targets in the area of women’s ESC rights, NHRIs must also develop their institutional capacity in the following areas:

- ▶ Human resources
- ▶ Gender mainstreaming v. specific programs for women's equality
- ▶ Organizational structure and development
- ▶ Knowledge management
- ▶ Training

NHRIs should also be structured internally to cooperate and collaborate with a variety of stakeholders, including Government, civil society and the private sector.

B. **The Protection Mandate – Complaints, Investigations and Monitoring**

The **Principles relating to the Status of National Institutions (Paris Principles)** provide that NHRIs should promote and protect human rights. The *protection* aspect of the mandate depends on the NHRI's power to investigate and monitor human rights and, in most cases, to accept and investigate individual complaints. The Handbook also proposes that **alternative dispute resolution** and **public inquiries** can enhance the protection of women's ESC rights.

In the context of ESC rights, the complexity of social beliefs, legal regimes, and economic structures that give rise to rights violations are not always easily attributable to single incidents or particular perpetrators. The classic investigative techniques that are well suited to most civil and political rights cases may not necessarily lend themselves as well to ESC complaints and women's equality issues.

Although generalizations are difficult to make, it is often true that systemic approaches, grouped complaints and research-based approaches to establishing a fact base may be better suited to these complaints.

The Handbook proposes that a mix of gender mainstreaming coupled with more directed and targeted approaches are required to address women's ESC rights, rather than adopting one or the other of these approaches.

C. **The Promotion Mandate – Providing Advice, Raising Awareness and Education**

NHRIs have the mandate to promote human rights in order to conform to the requirements of the Paris Principles. Almost all NHRIs have promotion in their mandates, carrying out a range of activities, from advising Government, to developing and disseminating publications, to running training and education sessions, to public awareness campaigns.

The Handbook advocates that NHRIs must take a proactive leadership role in engaging social actors and the public in promoting women's rights and women's ESC rights in particular. Given how deeply embedded inequality is in legal, social, political and business cultures, supporting broad culture change for human rights is probably

one of the most important, yet complex, aspects of an NHRI mandate. NHRIs must speak out about issues that no one else may be talking about on the public stage.

NHRIs can fulfill the promotion side of their mandate by:

- ▶ Advising and assisting Government
- ▶ Gendering national budgets
- ▶ Raising awareness and educating stakeholders

A Practical Example: A Case Study on Housing Rights and Forced Evictions

“Making Way for Progress” – at What Cost to Women’s ESC Rights?

The following case study is intended to identify some of the approaches and strategies that National Human Rights Institutions (NHRIs) can apply to effectively protect and promote women’s economic, social and cultural (ESC) rights. It is included at the beginning of this handbook to illustrate the potential of NHRIs in this area and to provide readers with an overview of the overall content of the handbook. Page references are included in the case study to make it easy to refer to the relevant section in the handbook. The case study is also meant to act as a tool to stimulate creative thinking about the work of NHRIs in the area of women’s ESC rights.

The scenario and NHRI described in the case study are fictional. They are intended to be generic enough so that the reader can identify similarities with the issues they face and the institutions with whom they work.

The Facts

The Government Decides to Revitalize the National Railroad

In recent decades, the national rail system has fallen into a state of disrepair. There are only limited operations south of the nation’s capital, and operations have completely ceased in the northern part of the country. The Government has decided to modernize the system by making structural changes to accommodate diesel-fueled trains, rehabilitating rail stations, and reinforcing tracks and bridges. The overall aim of the project is to reduce traffic congestion, improve transport between the airports and seaports and generally to strengthen economic activity that might be dependent on rail travel. The national Government is leading this renewal project; however, funds for the project are also coming from International Export and Import.

The Relocation of “Squatter” Communities

In order to implement this project, the Government will evict “squatter” communities who are living along the railway lines, many of whom have lived there for decades. Approximately 70,000 families will be affected. The Government has pledged close to \$100 million to cover the relocation costs of settlers living along the railway through a home ownership scheme. Families are to be provided with a no-interest loan to build their own homes. The loans will be amortized over 25 years, with the first year being a grace period where no loan re-payments need to be made.

The Government recently started to implement the relocation process, evicting close to 30,000 families and resettling them to various relocation sites. Many families have been relocated to sites several hundred kilometres from their original homes. Others have been relocated to sites in closer proximity to their original homes.

The Human Rights Impact of the Resettlement Process

The problems associated with the relocation process, in general, include:

- Lack of information and consultation with affected families
- Eviction from their homes and relocation to the sites before the sites are actually habitable
- Insufficient Government-provided loans for the construction of houses
- Few economic opportunities at the relocation sites
- Lack of basic services such as potable water, electricity, adequate drainage, as well as health and school facilities at the sites

For one group in particular, the relocation site is situated adjacent to a waste dump. During heavy rains, flood waters are contaminated by run off from the dumpsite which then floods houses in the relocation site for hours on end. Lack of access to safe drinking water and poor drainage and sanitation have exacerbated health concerns in this community. There is no functioning health clinic at the site, and the nearest hospital is not obliged to accept people from the relocation site.

In an attempt to address some of the concerns identified in the resettlement process, the Government established a Coordinating Committee, chaired by the Mayor of the municipality. Despite the presence of some representatives of NGOs, the Coordinating Committee lacks transparency and is not considered credible by the families who have been relocated.

The Community Mobilizes to Voice its Grievances

Seeing no other options, the women of the community decide to organize a series of peaceful demonstrations near the site of their old homes and in front of Parliament to raise awareness of their plight and seek Government action. The protest attracts media attention and the families' concerns are widely reported by independent newspapers and radio stations; however, they are ignored by the Government. Realizing they are getting nowhere, the women's group leading the protest submits a **complaint** to the National Human Rights Commission (NHRC) alleging that they are being denied their ESC rights and that the women in the community have become victims of **discrimination** and **sexual violence** due to the relocation process. The complaint identifies the following respondents:

- Ministry of Transportation which initiated the evictions
- Ministry of the Interior which is responsible for the police who carried out the evictions
- Ministry of Social Affairs which was designated to provide services to the relocation sites

The Role of National Human Rights Institutions

See Module 3, section 1: "The NHRI Enabling Legislation" (pp. 56-61).

The National Human Rights Commission Enters the Picture

As recommended by the **Paris Principles**, the NHRC's **enabling legislation** grants it a broad mandate to protect and promote the human rights defined in the Constitution as well as those included in the international instruments that have been **ratified** by the **State**. In this case, the State has ratified the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, the **International Covenant on Civil and Political Rights (ICCPR)**, the **Convention on the Rights of the Child (CRC)** and the **Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)**.

The statute also provides the NHRC with broad powers to:

- Inquire and investigate into all allegations of violations of human rights, including the power to undertake **investigations** on its own motion (i.e., without the need to receive a formal complaint or invitation from a Government agency)
- **Monitor** compliance with the State's domestic and international human rights obligations
- Advise the State on issues related to human rights
- Promote awareness and education about human rights

See Module 4, section 1: "Strategic Planning" (pp. 83-88).

Organizing the NHRC to Promote and Protect Women's ESC Rights

With increasing attention being given internationally to issues of ESC rights and gender **equality**, the NHRC had recently committed itself to strengthening its institutional capacity to promote and protect women's ESC rights. During the recently completed **Strategic Planning** process, the NHRC had recognized its role and responsibilities in protecting women's ESC rights, promoting gender equality and addressing the root causes of gender inequality in society.

See Module 4, section 2: "Institutional Capacity" (pp. 88-97).

Important outcomes of the Strategic Planning process to which the NHRC committed itself included:

- Taking steps to ensure a gender balance in its own membership, senior management and staff
- Adopting internal policies and procedures to promote gender equality within the institution
- Establishing a special multidisciplinary Task Force with a mandate to coordinate an approach to all investigation, monitoring and promotion activities related to women's ESC rights

- Ensuring that its information management systems are able to produce **gender-disaggregated data** and track progress towards achieving its own strategic targets or international **benchmarks**
- Putting in place appropriate training programs for its staff and key stakeholders and seeking out opportunities to participate in regional and international workshops and training programs
- Developing cooperative relations with Government agencies, civil society organizations, international organizations and others that have an interest or responsibilities linked to women's ESC rights

The NHRC Applies a Gender Lens to the Situation

See Module 2, section 3A: "Women's Equality and Discrimination" (pp. 40-41); section 3B: "Equality" (pp. 41-42).

Upon being made aware of the evictions, the Task Force on Women's ESC rights recognizes that the impact of the evictions will not necessarily be the same for the women as the men. Addressing the discrimination allegation will require a complex gender-based analysis. Keeping in mind the principle of Article 3 of the ICESCR (non-discrimination and equality between women and men), the Task Force realizes the need to look at the situation from the perspective of **substantive equality** and assess whether the eviction has had a disproportionate impact on women. This will include looking beyond equal treatment under the applicable law or policy to examine whether the relocation has resulted in a negative impact on the ability of women to enjoy their rights.

Identifying Strategies to Respond to the Situation from a Gender Equality Perspective

See Module 4, section 2C: "Organizational Structure and Development" (pp. 90-93).

In looking at the rationale for taking on the complaint, the Task Force determines that this particular complaint is part of a pattern that may lead to many more such complaints. As the Government seeks to make the country attractive to foreign investors, a number of large-scale development projects are being planned that call for relocations. Understanding that such initiatives could generate more complaints that may overwhelm the NHRC's modest resources, the Task Force convinces the Commissioners of the strategic value in responding in a holistic manner.

The Task force recommends that the NHRC undertake the following actions in response to the complaint:

- Investigating the complaint
- Monitoring, over a period of time, the Government's compliance with its obligations to realize the ESC rights of women in communities affected by relocations and evictions
- Advising the Government on the steps required to respect, protect and fulfill the rights of women who are affected by forced evictions
- Implementing an education campaign about the values and principles of women's ESC rights aimed at Government officials, affected communities, NGOs and the public in an effort to prevent rights abuses

The Protection Mandate – Complaints, Investigations and Monitoring – Does the NHRC’s Statute Permit It to Intervene?

See Module 5, section 1: “The Paris Principles and Investigation” (p. 107); section 2: “Investigating Women’s ESC Rights Violations” (pp. 107-115).

Following their standard procedures, investigators review the complaint to consider whether it is admissible.

- Is the complaint within the NHRC’s jurisdiction?
- If proven, will these allegations constitute violations of human rights under its statute?

With reference to the **sex-discrimination** allegation, the Constitution protects women’s equality rights and the right to be free from discrimination based on sex. Furthermore, the State has ratified CEDAW and the ICESCR. Therefore, the NHRC can establish its **jurisdiction** based on the explicit recognition of women’s equal rights with respect to the right to adequate housing in the ICESCR.

Launching an Investigation

See Module 5, section 2: “Investigating Women’s ESC Rights Violations” (pp. 107-115).

Having concluded that the complaint is admissible, a detailed Investigation Plan is developed. The Investigation Team proceeds to conduct its investigation following established procedures and principles. The investigators undertake the following steps to ensure that they will be able to assess the complaint in a gender-sensitive manner:

- Analyzing the role of gender in the community – What are the roles and needs of men and women, and how do they differ? How are resources controlled in the community?
- Ensuring that interviews with women are conducted in a sensitive manner with female investigators taking the lead during interviews with women who were victims of violence during the eviction process.
- Ensuring that counselling services are available for those who have been traumatized.

The Findings of the Investigation Team

The investigators record the following findings on the allegation of sex discrimination:

- Police and security guards who participated in the forced eviction (a violent act itself) were involved in gender-specific **violence against women** in the community – sexual assault and rape.
- Women community leaders were not consulted in a meaningful way before, during or after the eviction, despite being at the forefront of the resistance to the eviction (often, literally standing in front of bulldozers, confronting State authorities, etc.). They continue to be instrumental in reforming and negotiating the resettlement process and sites. Moreover, many indicated that

they had been specifically maligned by Government authorities for their role in the eviction/relocation process.

- The forced eviction resulted in social upheaval. Men were dislocated from employment. As a result, their role as “provider” was undermined and, often, alcohol consumption increased. Coupled with overcrowded living conditions – a common characteristic in relocation sites – it was reported that violence perpetrated by men against women was on the rise.
- The eviction had a severe emotional impact on all family members. Men described being distraught, feeling disempowered without employment in the relocation site, and feeling their social role as “breadwinner” had been undermined. Children were bewildered by the violence of the eviction and being removed from their communities and schools. As women are often the emotional centre of the family, it fell on their shoulders to ensure the emotional well-being of all members of the household, while at the same time coping with their own emotional upheaval.
- The relocation sites did not have basic services such as potable water, electricity, health clinics and schools. This increased women’s daily workload and anxiety as a result of their role within the family. They were required to carefully ration food and other basic necessities to ensure the rest of the family is adequately provided for.
- Title for houses in the relocation sites were only being registered in the name of the male “head of household”. Where no male of head of household was available, women had to receive the consent of a male relative in order to secure a home within the new relocation site.
- Single women with children had a particularly difficult time repaying the housing loan because of the lack of opportunities for employment and given the economic situation of most female-led households.
- The women noted that their standard of living was higher in their original communities. Because the relocation sites are removed from the city centre, women find it difficult to engage in informal sector employment – which was their chief source of income – as there is not enough city foot-traffic to sustain such businesses. Moreover, because households within the relocation sites are poorer, there is less money for non-essentials, making their businesses less viable.

The NHRC Makes a Determination on the Complaint

Based on this evidence, the Commission concludes that the forced eviction is a violation of women’s equal rights to housing under **international human rights law**. Discrimination and inequality must be addressed as a matter of immediacy (**progressive realization** does not apply), unless the State can demonstrate that to **remedy** the violation immediately would cause “undue hardship”. The Commission finds that a number of remedies can be implemented without causing the State undue hardship, and in fact, will cost the State very little. The Commission further finds that the forced eviction and relocation constitute a “**retrogressive measure**” as the

See Module 3, section 2: “International Human Rights Framework” (pp. 62-74).

women had, on the whole, suffered a decline in living standards once evicted and relocated to the new site. Retrogressive measures are prima facie violations of economic, social and cultural rights.

The NHRC Identifies Remedies to Adequately Address the Issues Raised

The Commission makes the following recommendations to remedy the violations found in the complaint:

- The State should cease and desist immediately from evicting families or individuals living along the railway lines until such time as all existing relocation sites meet international and national housing rights standards
- In this regard, at a minimum, the State must immediately ensure that all communities have easy access to potable water and electricity and other basic services including medical clinics and primary and secondary schools
- The State should immediately create an effective review mechanism for complaints regarding the housing and living conditions of evictees living in relocation sites. This mechanism must include community members in decision making roles, and must have the authority to remedy complaints
- The State must immediately establish support services for women victims of violence in consultation with women community members
- The State must ensure that female-headed households and single women are provided title to their new homes, without requiring the consent of a male family member
- The State needs to address the livelihood issues confronting the evictees in relocation sites. Efficient, cost-free transportation must be put in place to ensure evictees can return to their former jobs or employment opportunities need to be created in and around the relocation sites. In the alternative, the State needs to develop and implement a social welfare program or income support program to ensure all households have adequate funds for food, clothing, health care and other basic services

Following up the NHRC Investigation

After informing the complainants and the Government of its findings and recommendations, the NHRC adopts a detailed plan to address the systematic issues raised in the complaint.

In this instance, the NHRC chose to proceed with an investigation given the immediacy of the issues and the time and resources required to plan and undertake an

inquiry. Having produced its findings and recommendations, however, the NHRC noted that a Public Inquiry might be needed in the future if the Government does not implement its recommendations and changes its practices when it comes to evictions.

See Module 5, section 3: "Public Inquiries" (pp. 116-118).

Public Inquiries – An Alternative Approach

In this case, the NHRC chose to investigate the complaint. An alternative could have been a National Inquiry aimed at bringing the systemic issues related to the eviction to the attention of the Government and public at large. When the NHRC launches **public inquiries**, it establishes a Panel with defined terms of reference, and a mandate to hold hearings to which witnesses can be summoned to testify. In its proceedings, an inquiry acts somewhat like a court, but with less formality. The ultimate purpose is to make comprehensive, sound recommendations for dealing with the issue under review. In addition, inquiries are useful in monitoring Government activity in a defined area, and promoting public discussion and examination of an important issue, potentially bringing a hidden issue into the public domain.

See Module 5, section 4: "Monitoring" (pp. 118-123).

Monitoring the Government's Performance over Time

Following the investigation, the NHRC develops a plan to monitor the Government's performance in meeting its **obligations to respect, protect and fulfill** women's economic, social and cultural rights that would examine the impact of evictions on women's rights across the country and over a period of time.

Their plan includes the following steps in the monitoring effort:

Monitoring Plan

Steps	
1.	Identifying appropriate indicators compatible with the State’s obligations in relation to economic, social and cultural rights, for monitoring these rights at the national and international levels; in particular, by reviewing existing international commitments and targets such as the Millennium Development Goals and the Beijing Platform of Action as well as any concluding comments or recommendations that were produced following country reports to the CEDAW Committee or Committee on ESC rights
2.	Establishing appropriate national benchmarks and targets in relation to each indicator and asking: <ul style="list-style-type: none"> • What movement has there been from the benchmark and, if there has not been positive movement, why not? • Has the State set targets and, if not, why not? • Have the targets been met and, if not, why not?
3.	Collecting data (during the monitoring period) which can be disaggregated according to gender and which are comparable, accurate, impartial and provided over time.
4.	Analyzing results, drawing conclusions, making recommendations and reporting on findings for the monitoring period by: <ul style="list-style-type: none"> • Considering data from indicators with established benchmarks (national and international) to give the current status of economic, social and cultural rights and help in developing targets to be met; • Gauging trends by comparing results over time with previous monitoring periods (multi-year analysis) to determine whether and what progress has been made and national benchmarks achieved; • Comparing results with international benchmarks also.

Gendering Budgets

See Module 6, section 1B: “Gendering National Budgets” (pp. 131-134).

Recognizing that part of the problem stems from the way the Government is allocating its budget, the NHRC decides to monitor financial allocations in the National Budget for building new schools, health centres, digging wells and providing the other services the relocated communities are lacking. Having found that resources for the Ministries of Education, Health and Social Affairs continue to be going disproportionately to middle class areas, the NHRC successfully argues for increased investments in communities that have been relocated or evicted.

Advising the Government

See Module 6, section 1: “Advice and Assistance to Government” (pp. 129-152).

The NHRC also recognizes the need to work with the Government to change the legislative and policy framework that makes the violation of women’s ESC rights possible. At the instigation of the NHRC, a Working Group on Women’s ESC Rights is established that brings key ministries, civil society organizations and the NHRC together at the same table.

For more information on the Optional Protocol to the ICESCR, see Module 3, section 2A, p. 73.

See Module 6, section 2: "Human Rights Education" (pp. 152-159).

The Working Group eventually comes up with a number of important recommendations:

- Review of existing legislation and policies addressing relocations to build in safeguards to protect women's rights.
- Better dissemination of the concluding observations on the Government Reports to the Committee on ESC rights, Committee on CEDAW and the new **Universal Periodic Review (UPR)** Mechanism to all relevant Government agencies and the public.
- The Government to sign and ratify the **Optional Protocol** to the ICESCR.
- Development of a National Action Plan on Women's Rights, as per the State's Commitments under the Beijing Declaration. The Action Plan should include explicit measures to promote and protect women's ESC rights.

Education on Women's ESC Rights

In order to achieve a longer-term culture change that will help to prevent future violations of women's ESC rights, the NHRC's education unit is tasked with launching an education campaign to promote women's equality, particularly in relation to the rights to housing and health.

In developing its plan, the NHRC decides to integrate gender equality into all its existing efforts including:

- Public Campaigns
- Workshop, Training and Conferences
- Media Relations
- Annual Reports
- Community Engagement, and
- Revisions of the national school curriculum

Furthermore, it decides to launch a specific training initiative for Government officials and women's organizations to increase their understanding of the principles of women's ESC rights as well as their capacity to take concrete action to respect, protect and fulfill these rights.

Conclusion

The approaches and strategies presented in this case study illustrate the broad range of possibilities available to NHRIs with respect to their work in the area of women's ESC rights. You are encouraged to consult the subsequent modules for more detailed information on the subjects presented in the case study.

Module 2 Equality, Development and Rights – Making the Connections

2



Photo courtesy Ria Holcak

Overview of Module 2

Module 2 contains five sections.

- ▶ *Section 1 – Equality Rights and Economic, Social and Cultural Rights*, offers a preliminary overview of **ESC rights** including the State's **minimum core obligations**. This section also briefly discusses the particular challenges faced in securing women's **equality**, with particular regard to cultural rights.
- ▶ *Section 2 – Women's Equality and Economic, Social and Cultural Rights in Context*, presents ESC rights as a complex interplay of historical, traditional, economic, social and cultural factors. Human rights violations related to ESC rights are frequently attributable to system-wide problems and to the activities of many persons and organizations - both official and unofficial. This section looks at key dimensions of women's equality in relation to good governance, the **Millennium Development Goals (MDGs)** and **women's human security**.
- ▶ *Section 3 – Key Concepts*, discusses concepts that are essential to this area of work and to **national human rights institutions (NHRIs)** seeking to be more effective in dealing with women's ESC rights. The concepts discussed are: **discrimination**, **substantive equality**, interdependence and indivisibility, **multiple grounds of discrimination** (or intersectionality, along with its special role in protecting women within vulnerable and disadvantaged groups), **temporary special measures**, and the principle of **non-retrogression**.
- ▶ *Section 4 – The Role of National Human Rights Institutions*, examines the emerging role of NHRIs in the area of women's rights and ESC rights.
- ▶ *Section 5 – Legal Obligations of Non-State Actors*, looks at the responsibilities of **non-governmental organizations (NGOs)**, corporations, and other **non-State actors**. NHRIs often have legal mandates that extend to these actors, and so it is important to understand what the standards are and how NHRIs can engage non-government actors.

Section 1

Equality Rights and Economic, Social & Cultural Rights

Economic, social and cultural rights are **human rights** that address the fundamentals of human existence: the right to basic necessities of life; the right to learn, to work, and to form a family as well as the right to enjoy one's cultural identity and the benefits of science and development. The examples provided in the box below are some of the traditional formulations of ESC rights.⁸

ESC rights are connected with civil and political rights in both theory and in practice: “the right to speak freely” means little without a basic education. “The right to work” is less meaningful if you are not allowed to meet and assemble with co-workers to discuss how to improve work conditions.”⁹

Women’s equality in the context of ESC rights is grounded in a large number of **State obligations**, laws and norms that empower women and girls to achieve full equality across the economic, social and cultural dimensions of their lives.¹⁰

In 2002, a civil society expert group met in Montreal to further define the categories and content of ESC rights using the **International Covenant on Economic, Social and Cultural Rights (ICESCR)** and the **Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)**. They developed the **Montreal Principles on Women’s Economic, Social and Cultural Rights (Montreal Principles)**. The following sections offer categories that are adapted from the Montreal Principles.

Women’s ESC rights include:

- Adequate standard of living
- Assistance and protection for families
- Benefiting from scientific progress
- Education and training
- Employment and safe working conditions
- Equal marriage rights for men and women
- Forming, joining and acting together in trade unions
- Freedom from violence
- Healthy environment
- Owning and inheriting property
- Participating in the cultural life of the community
- Social security

Adequate standard of living includes the rights to:

- ▶ Food and freedom from hunger
- ▶ Water
- ▶ Clothing
- ▶ Housing and freedom from forced eviction

- ▶ Continuous improvement of living conditions

Employment and safe working conditions include the right to:

- ▶ Freely chosen work
- ▶ Just and favourable conditions of work including fair wages, equal remuneration
- ▶ Protection from **sexual harassment** and **sex discrimination** at work
- ▶ Freedom from economic exploitation

Health includes the right to the highest attainable standard of:

- ▶ Mental health
- ▶ Physical health
- ▶ Reproductive and sexual health and freedom throughout the woman's cycle of life

The right to social assistance includes the right to:

- ▶ Social security
- ▶ Social protection
- ▶ Social insurance
- ▶ Social services, including special assistance before, during and after childbirth

Although the main legal sources of women's ESC rights are the ICESCR and CEDAW there are many other instruments that contain ESC rights. The **International Covenant on Civil and Political Rights (ICCPR)**, for example contains an equality guarantee in Article 26 which states that "all persons are equal before the law and entitled without any discrimination to the equal protection of law." The **Convention on the Rights of the Child (CRC)** and a number of labour instruments from the International Labour Organization also address ESC rights.

For more details, Appendix 2 contains a table of key international human rights instruments dealing with equality rights for women and ESC rights. A table of regional instruments can be found in Appendix 3.

Section 2

Women's Equality and Economic, Social and Cultural Rights in Context¹¹

ESC rights are fundamental human rights. They are enshrined in international human rights instruments and are integral to the legal framework in which NHRIs operate.¹² Nonetheless, women's experiences show that inequality persists and is deeply rooted

in history, tradition, and religion. These forces combine to create a context of social beliefs, legal regimes, and economic structures that subordinate women to men in many countries, cultures and communities around the world.

If the ICESCR has had little relevance to many women, as some say, it is primarily because it has failed to reflect the economic, social and cultural contexts within which most women live. In order to understand women's equality, these **contexts** must be considered a critical factor, significant to rights, and their implementation.

ESC rights and equality can therefore best be understood in their specific context, and in the lived experience of women. For example, Article 7 of the ICESCR sets out the right to just and favourable conditions of work but is restricted to the public sphere. It ignores the activities which women perform without pay in their households – and yet for many women these activities are at the centre of their lives.

The complexity, context and interdependence of rights are elegantly described in the excerpt below:

In lived experience, the denial and exercise of certain rights is often dependent upon others: access to education and literacy may be necessary for meaningful participatory democracy. Likewise, democratic participation in the political process may be necessary to achieve access to clean water. Some critics of ESCRs contend that the inclusion of these rights into mainstream human rights work ought to be limited because of the difficulties of objectively defining what constitutes their meaningful exercise... this is a strength of ESCRs: they are best understood, negotiated and prioritized in particular contexts.¹³

Public policies that implement ESC rights *must account for women's realities and lives*. NHRIs in turn should be able to identify and address the specific ways in which women's rights are not being respected, protected and fulfilled, or in which they are assumed to have fewer rights.

A. Understanding the Connections: Women's Rights, ESC Rights and NHRIs

Equality is at the hub of women's rights. Article 3 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that **States Parties** should:

Undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights....

Although this seems simple, human rights bodies, Governments and policy makers have often ignored ESC rights in general, and women's rights in particular.

Some States Parties, for example, claim that ESC rights are not **justiciable**, meaning that they are only "aspirations", and cannot be enforced or brought to the courts. Second, for many years, women's rights were insulated from the reach of human

rights because violations were sheltered by family, traditions and culture, or by religious rules.

Despite these and other obstacles, links have been slowly forged between human rights in general, women's rights in particular, and the overarching framework of ESC rights as a force of law and a source of norms about **good governance**. This evolution gained considerable speed in the mid-eighties.

Following is a list of important documents which NHRIs should be aware of.

Limburg Principles (1986)

In 1986, a group of distinguished international law experts met at the University of Limburg at Maastricht, the Netherlands and developed a set of principles on ESC rights called **Limburg Principles**.¹⁴ They created an explicit link between the equality rights in Article 3 of the ICESCR, cited above, and CEDAW as well as with other relevant instruments, and with the activities of the CEDAW's supervisory committee.

Vienna World Conference (1993)

In 1993, the United Nations World Conference on Human Rights in Vienna strengthened the link at the urging of women's groups from around the world who demanded that women's rights be understood and treated as a central element of the human rights framework. Through the "**Vienna Declaration**", human rights generally were declared to be indivisible and interdependent. Women's rights were declared to be human rights by all State Parties, and this cemented a commitment at the State level to both the principle and its practical implementation.

Paris Principles (1993)

Also in 1993, the UN General Assembly passed a resolution approving the **Paris Principles** that set the basic standards for NHRIs and identified them as key national actors in the protection and promotion of human rights.

Fourth World Conference on Women (Beijing, 1995)

In 1995, the Fourth World Conference on Women produced the **Beijing Declaration and the Beijing Platform for Action**, calling for new (or stronger) national institutions, strengthening women's human rights, **gender mainstreaming** and the development of programs to protect the human rights of women by national mechanisms.¹⁵ For strategic reasons, many women's organizations positioned their work in the context of **civil and political rights**, although by the late nineties, equality rights were much more firmly anchored in ESC rights as well.

Maastricht Guidelines (1997)

In 1997, the **Maastricht Guidelines** reviewed the decade of progress since the Limburg Principles, reiterating that **discrimination against women** under the ICESCR should be understood in light of equality for women under CEDAW. The

additional link was then made between ESC rights, women's rights and the elimination of gender discrimination arising out of social, cultural and other structural disadvantages.¹⁶

By 2000, NGOs which had traditionally concentrated on civil and political rights began to gradually and slowly expand their focus to include ESC rights. The research agenda of organizations such as the Center for Economic and Social Rights, and its focus on **monitoring, advocacy**, and the development of good socio-economic data, point to the development of multidisciplinary and multi-actor approaches to resolve ESC rights violations.¹⁷

United Nations Sub-Commission Resolution 1997/19

For the first time, in 1997 the UN **Commission on Human Rights** (UNCHR) adopted a resolution on women's rights to land, property and adequate housing. This was the first time the UNCHR had adopted a resolution specific to women under an ESC rights agenda item.¹⁸ Thematic **Special Rapporteurs** under the new **Human Rights Council** have started to pay particular heed to women's experiences. For example, the Special Rapporteur on adequate housing has initiated regional consultations on women's housing rights across the world.

Regional Workshop on the Role of NHRIs in Advancing the International Human Rights of Women (2000)

This workshop held from 5-7 May 2000 in Fiji Islands, urged NHRIs to pay greater attention to ESC rights of women, including shelter, food, water, primary education and primary health care, as well as sexual and reproductive rights. NHRIs were encouraged to actively monitor Government reporting obligations under CEDAW and other international human rights instruments, to collate and consider **gender-disaggregated data**, and to recommend to Governments suitable programs that are achievable, cost-effective and within a set time frame.

National Human Rights Institutions: Best Practice (Commonwealth Secretariat , 2001)

In 2001, the Commonwealth Secretariat issued *National Human Rights Institutions Best Practice* (Best Practice Guidelines), which stressed that “regardless of a country's formal recognition of economic, social and cultural rights, national human rights institutions should be well versed with those rights. [They] should develop and conduct educational programs to promote rights awareness in this category of rights.”¹⁹ The Best Practice Guidelines state that NHRIs should be prepared to address human rights violations committed because of a victim's gender or sex, and NHRI staff should be properly trained to respond sensitively to human rights issues or violations related to sex or gender.

The Best Practice Guidelines also suggest that NHRIs should:

- ▶ Advise Government on the development and **implementation** of economic policies to ensure that the ESC rights of people are not adversely affected (e.g., structural adjustment programmes and other aspects of economic management)
- ▶ Facilitate public awareness of Government policies relating to ESC rights and encourage the involvement of various sectors of society in the formulation, implementation and review of relevant policies

Regional Workshop on the Role of National Human Rights Institutions and Other Mechanisms in Promoting and Protecting Economic, Social and Cultural Rights (2001)

Also in 2001, the Asia Pacific Forum of National Human Rights Institutions (APF), together with the Hong Kong Equal Opportunities Commission, hosted a regional workshop on the *Role of National Human Rights Institutions and Other Mechanisms in Promoting and Protecting Economic, Social and Cultural Rights*. The workshop highlighted the importance of addressing discrimination in the implementation of ESC rights and the importance of developing national institution expertise with regard to such rights. Affirming the importance of international standards in the area of ESC rights (and in particular the ICESCR), the workshop stated that “Governments and national human rights institutions have a responsibility to ensure that no peoples are discriminated against in their enjoyment of economic, social and cultural rights.”²⁰

Montreal Principles on Women’s Economic, Social and Cultural Rights (2002)

In 2002, reflecting the growing interest in ESC rights and especially the impact on women, the *Montreal Principles on Women’s Economic, Social and Cultural Rights* were adopted at a meeting of experts. The Principles were the first articulation of the meaning and application of ESC rights for women. They offer a guide to the interpretation and implementation of the guarantees of non-discrimination and equal exercise and enjoyment of ESC rights.²¹ The Principles also explicitly identify the need for a national system of institutions and mechanisms, including NHRIs, commissions, and Ombudsman offices, to support strategies, plans and policies specifically designed to guarantee women’s equal exercise and enjoyment of their ESC rights.

Round Table of National Human Rights Institutions and National Machineries for the Advancement of Women (2004)

From 15-19 November 2004, the UN **Office of the High Commissioner for Human Rights (OHCHR)** and the **Division for the Advancement of Women/Department of Economic and Social Affairs** held a *Round Table of National Human Rights Institutions and National Machineries for the Advancement of Women* in Ouarzazate, Morocco. The meeting recommended that NHRIs should ensure that the protection and promotion of women’s rights are an integral part of their own work and that they should use CEDAW as a framework for their activities.

OHCHR Resolution 2005/74

In 2005, the OHCHR, in its Human Rights Resolution 2005/74, affirmed the importance of NHRIs, in cooperation with other human rights mechanisms, in the protection and promotion of the human rights of women.²²

International Round Table on National Institutions Implementing Economic, Social and Cultural Rights (2005)

Also in 2005, the National Human Rights Commission of India, in collaboration with the OHCHR, organized a three-day *International Round Table on National Institutions Implementing Economic, Social and Cultural Rights*, mainly to discuss and strengthen the role and capacity of national institutions in protecting and promoting ESC rights. The resulting *New Delhi Concluding Statement* sought to:

- ▶ Familiarize national institutions with ESC rights including the key international and regional mechanisms available for their protection and promotion
- ▶ Explore the “new dimension” of ESC rights in the changing political, economic and social scenario
- ▶ Provide a forum for national institutions to meet and exchange best practices on ESC rights including the best ways to implement them

General Comment No. 16

In 2005, the Committee on Economic, Social and Cultural Rights adopted its much-anticipated General Comment No. 16 on the meaning of equality of men and women in ESC rights, a comment which gave greater depth and content to substantive equality as a central concept for women’s ESC rights.²³ General Comment 16 is important because it clarifies that national policies and strategies should provide for the establishment of effective mechanisms and institutions where they do not exist, including administrative authorities, ombudspersons and other national human rights institutions, courts and tribunals. These institutions should investigate and address alleged violations relating to the equality of men and women and provide **remedies** for such violations, or engage with States Parties to ensure that such remedies are effectively implemented.

Asia-Pacific Regional Workshop on Women’s Economic, Social and Cultural Rights, January 2006

In 2006, Equitas and the Commission on Human Rights of the Philippines convened an international workshop, sponsored by the OHCHR, the UNDP and the Commonwealth Secretariat, to explore in depth the role of NHRIs in promoting women’s ESC rights. The conclusions of that group included the development of a practical tool to better focus on the developments at the intersection of ESC rights, women’s rights and the role of NHRIs as a key agent in the protection and promotion of both sets of rights.

This brief overview is by no means exhaustive, as there have also been several regional and international workshops and conferences that have dealt with ESC

rights and women's rights since the Vienna Declaration in 1993. Reports and conference information can be found online at <http://www.nhri.net>.

Progress, while slow, has also been positive overall, and has helped shine light on some of the persistent and intractable obstacles to women's rights. One of these areas is cultural rights.

B. The Challenge of Cultural Rights

*Culture is one of the two or three most complex words in the English language. This is so partly because of its intricate historical development...but mainly because it has now come to be used for important concepts in several distinct intellectual disciplines and in several distinct and incompatible systems of thought.*²⁴

Inequality in the enjoyment of human rights by women throughout the world is often deeply embedded in tradition, history and **culture**, including religious attitudes. While culture is central to ESC rights, it also poses unique and particular difficulties for equality between women and men. On the one hand, culture and traditions play an important role in human development. On the other hand, while they form part of our identity and basic rights, they are also the source of traditions and **harmful traditional practices** that discriminate against women and girls. This group of rights can be especially divisive when questions of religious observance, ethnic identity and established tradition confront women's equality claims.

Despite the profound links between culture and women's equality, the relationship received comparatively little attention until the early nineties. This has been changing, as experts have sought to reframe the issues so as to draw on context and local realities to find innovative solutions, and have developed new theoretical perspectives on the topic.²⁵

As one commentator who reviewed this Handbook observed, powerful elements such as peer pressure are part of culture and may affect attempts to eliminate harmful practices. For example, peer pressure should not be underestimated in programs and awareness campaigns focused on **female genital mutilation (FGM)**, as young girls feel pressure to undergo the rite and not feel left out or socially excluded. Therefore, NHRIs need to first ascertain the cultural rationale behind such violations of women's rights before launching into investigations or promotional programs.

It should also be noted that in male-dominated cultures in developing countries, there is the perception that empowerment of women will mean the disempowerment of men. This has led to a backlash against women perceived to be empowered. NHRIs have an important role in addressing these changes and reactions through public education and promotion programs.

Following is a list of important international documents related to cultural rights.

Declaration on Cultural Diversity (2001)

On the one hand, the UNESCO Universal Declaration on Cultural Diversity (2001)²⁶ acknowledges cultural heritage as a basic part of how human beings identify and express themselves. Cultural heritage is defined as “practices, representations and expressions, and knowledge and skills which are transmitted from generation to generation and which provide communities and groups with a sense of identity and continuity.” Specific examples are:

- ▶ Oral expressions and traditions, including language as a vehicle for the intangible cultural heritage
- ▶ Performing arts
- ▶ Social practices, rituals and festive events
- ▶ Knowledge and practices concerning nature and the universe
- ▶ Traditional craftsmanship and music
- ▶ Cultural spaces: places where popular and traditional cultural activities occur

Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)

Referred to as the “UNESCO Convention”,²⁷ this instrument provides that:

Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions, but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used.

The 2005 UNESCO Convention also acknowledges and addresses the tension that sometimes exists between culture and human rights:

Cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed. No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by international law, or to limit the scope thereof.

The recognition of the dignity and worth of women as full human beings is fundamental – cultural rights or religious norms cannot be invoked to deny or violate women’s human rights and fundamental freedoms. As such, “cultural relativism” is not an excuse to violate or deny human rights. It is for this reason that CEDAW specifically obliges States to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices, customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.²⁸

General Comment No. 28

UN Human Rights Committee's General Comment No. 28 provides a critical link between the International Covenant on Civil and Political Rights (ICCPR), cultural rights, and women's issues, specifically addressing the role of NHRIs in matters of tradition, history and culture:

5. It is in this framework of interdependence and careful weighing of relative rights and obligations that NHRIs should address cultural issues in the context of women's equality rights and ESC rights in particular. [Women's] inequality ... is deeply embedded in tradition, history and culture, including religious attitudes... The subordinate role of women in some countries is illustrated by the high incidence of prenatal sex selection and abortion of female fetuses. States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right[s]. States parties should furnish appropriate information on those aspects of tradition, history, cultural practices and religious attitudes which jeopardize, or may jeopardize, compliance with Article 3 [of the ICCPR], and indicate what measures they have taken or intend to take to overcome such factors.²⁹

Fribourg Declaration (2007)

More recently, women's active participation in the interpretation of culture was affirmed by an international group of experts in the Fribourg Declaration on cultural rights.³⁰

Care should thus be taken to ensure that women have an active role in interpreting and communicating their own traditions and cultural perspectives, and to ensure that their voices are given equal weight in understanding history, religion and tradition.

Culture and equality can be balanced one against the other, rather than being opposed. In an equality framework, women are part of the process of defining the delivery of social rights in a culturally sensitive way.

And what of the role of NHRIs in helping build these bridges? The following case study offers a revealing and exciting strategy for treating culture as an opportunity for reform rather than an obstacle to progress. NHRIs are playing an important role in navigating these difficult waters as the following example from the Kenya National Commission on Human Rights demonstrates.

Example: Working with Cultural Institutions to Strengthen the Protection and Promotion of Human Rights, particularly the Vulnerable (Women, Widows, Children, Orphans and Others)³¹

Conventional wisdom views cultural practices as a key obstacle to the realization of human rights. Recent work of the Kenya National Commission on Human Rights (KNCHR) demonstrates that in fact many traditional cultures had systems that ensured the protection and care of the most vulnerable members of society such as widows and orphans. These structures and systems have over the years been ignored or manipulated in ways that perpetuate human rights violations.

The KNCHR believes that there is need to revive and encourage cultural structures and practices that can be used to protect the vulnerable in society, especially women and children. There is need to breathe life into known but little used alternative methods and traditional cultural safety nets, which have since time immemorial been used to redress disputes and prevent human rights violations.

Using cultural frameworks to address human rights and development is imperative: in spite of the protection offered by national laws and formal institutions, many vulnerable members of society are unable to seek redress from the mainstream legal justice system in their claim for their rights.

The formal legal system has by and large worked to the detriment of the vulnerable in society in regard to the protection and enforcement of their human rights. In the case of land for example, which is so critical to securing livelihoods, women's share of land ownership is a meagre 5 %.

Why deal with traditional structures?

Cultural institutions form the first line of governance structure in the lives of many rural communities in Kenya. The majority of families in the country conduct their transactions on issues such as ownership and inheritance of property in accordance with customs. To effectively intervene in matters relating to human rights, one must therefore address issues relating to customs and traditions.

Human rights defenders need to dialogue with elders; they need to identify and work with cultural structures that are supportive of human rights and development. Since cultural institutions are a real and present structure in Kenyan society it is important to acknowledge this and to work with them in addition to formal structures.

This is not to downplay the role of formal structures. Rather, we need to recognize that, whereas the legal and formal structures are important, they are not accessible to the majority. Therefore, insisting on *only* working with them amounts to the marginalization of those unable to access them. We believe that only a multi-dimensional approach in addressing human rights and development will help to achieve the realization of ESC rights for the most vulnerable.

The Project Experience in Luo Nyanza

The KNCHR in partnership with Health Policy Initiative (Futures Group) and the Luo Council of Elders (Luo is one among several Kenyan communities) has been involved in “groundbreaking” work under its women’s property and inheritance rights project that challenges the status quo regarding culture and human rights.

The project aims to apply cultural norms to strengthen the protection of the property inheritance rights of widows and orphans in the context of the HIV/AIDS pandemic.

Those knowledgeable in the culture and traditions of the Luo are aware that the current practices of disinheriting widows and orphans of their land and property are not part of the Luo culture. Traditionally, land belonged to the wife and the children; men had no right to impose their will on land use.

This is a case where traditional culture provides protection to vulnerable groups and is therefore an ally for development. It also promotes debate about negative practices within cultural institutions that may be harmful to human rights and development.

Achievements:

- ▶ A documentation centre was set up in the town of Kisumu for all of the Luo in the province of Nyanza
- ▶ A documentation officer and community liaison officer were identified and contracted
- ▶ A documentation tool for identifying cases for relocation was developed and documentation began in November 2006. By mid-March 2007, a total of 76 cases had been documented and 21 others were referred to other local organizations for legal assistance. The tool identified different needs of the widows including materials for putting up houses; transport to go back home and carry household materials; court fees to pursue documents of administration of estates, marriage certificates, title deeds, taking orphans to school, among others
- ▶ Guidelines on the relocation fund were developed and ready by mid-March 2007. The guidelines included the following elements: the background of the project, a description of the fund and who could benefit from it, the types of assistance that the fund could support, the levels and nature of support, etc.
- ▶ A booklet on Luo culture and the rights of women to own and inherit was developed
- ▶ Property was distributed

C. The Connection to Good Governance

The elements of what is often called good governance range from poverty alleviation to capacity development in the justice sector, to improving basic infrastructure and human services, to enhancing local decision-making. Good governance is an

umbrella concept that provides a framework for the many project documents and international development assistance programs.

What does this have to do with human rights? In many of these “good governance” projects, international partners and donors do not treat ESC rights as driving the policy agenda, which is often closely linked to economic policy decisions.

But women can be hard hit by good governance decisions and economic policies such as structural adjustment programs, privatization of services that cut back on necessary social services, and other decisions that increase women’s burdens as unpaid caregivers. This makes it harder for women to take up paid employment because they have less time to work outside of the home.

Good governance, however defined, should be driven at least in part by ensuring that legal standards are recognized as overarching norms. They should be enforceable. NHRIs should insist that the connections be made to human rights in all governance programs, including economic ones. The following Ugandan example illustrates this point.

Example: An NHRI's rights-based approach to poverty in Uganda ³²

Poverty is an economic and social rights issue, with a major impact on women. In 2004, Uganda used a rights-based approach to poverty eradication to ensure that human rights were the ultimate goal of development and provide a rights framework for social planning. The Uganda Human Rights Commission championed this approach, targeting governance and poverty eradication as a fundamental human rights issue, both a development target and a good governance issue.

Few major national policies are delivered through laws alone. As a general rule, Governments use “**policy instrument mixes**” that include not only laws but also administrative arrangements, guidelines and rules, public education policies and programs to effect governance objectives.³³

NHRIs must pay attention, then, to this broader policy “mix” in order to effect any kind of meaningful change, and to be enabled to do so. This includes looking at taking a rights-based approach in areas that are usually thought of as an area of pure Government and policy decisions. As the above Ugandan example illustrates, developing a “rights-based” approach to major governance objectives, such as poverty alleviation, can be a broad strategic priority for NHRIs.

In 2000, the UNDP Human Development Report, *Human Rights and Human Development* made the explicit link between ESC rights and human development. In 2005, the UNDP's Human Development Report *International Cooperation at a Crossroads: Aid, Trade and Security in an Unequal World* made reference to the close ties between a country's development and inequalities on the one hand, and the well-being of women on the other hand. From prenatal care to maternal health; from household incomes to nutrition and education, these **indicators** of inequality are also the indicators of women's ESC rights.

They also happen to be the basic measures for the development ranking of nations.

For NHRIs, women's rights are not only legal standards but also central to the indicators of well-being, which help us to know when States are achieving and missing their targets. More broadly, the capacity to make the connection to good governance is profoundly linked to poverty, development, and decentralization initiatives (which move more decision-making to local levels). The MDGs are important tools in creating the links between women's ESC rights and measures of how well we are progressing towards equality through human development and good governance.

Millennium Development Goals (MDGs)

- Goal 1: Eradicate extreme poverty and hunger
- Goal 2: Achieve universal primary education
- Goal 3: Promote gender equality and empower women
- Goal 4: Reduce child mortality
- Goal 5: Improve maternal health
- Goal 6: Combat HIV/AIDS, malaria and other diseases
- Goal 7: Ensure environmental sustainability
- Goal 8: Develop a global partnership for development

D. The Millennium Development Goals

There are eight UN Millennium Development Goals (MDGs) that range from halving extreme poverty, to halting the spread of HIV/AIDS, to providing universal primary education, all by the target date of 2015. They form a blueprint agreed to by all the world's countries and all the world's leading development institutions.

The MDGs have galvanized unprecedented efforts to meet the needs of the world's poorest.³⁴ The goals are the direct result of commitments to: human rights generally, the protection of the vulnerable, compliance with CEDAW, and efforts to eradicate **violence against women**.

All eight MDGs are important to women and girls. MDG Goals 3 and 5, of course, address women directly.

However, even the more general MDGs are linked to inequality and discrimination facing women, in part because infringements of ESC rights often have a disproportionate impact on women and girls.

For example: girls tend to receive less primary education than boys in some developing countries (Goal 2); the reduction of child mortality has particular implications for girl children, who are the victims of gender selection preferences for males, and who tend to be less well-nourished than boys (Goal 4).

The realization of the UN MDGs, whose target date is 2015, is the material result of the successful implementation of women's ESC rights.

Development goals are related to the following ESC rights:

Housing, and clothing, for example when women:

- ▶ Are denied access to housing because they are widowed, single, have children, or receive Government assistance, or they are forcibly evicted from their homes and lands and rendered homeless

Health, when women:

- ▶ Cannot access basic public health services, such as sanitation, because they are required to pay for services, or because services are not available locally
- ▶ Die in childbirth because of inadequate maternal health care and facilities³⁵
- ▶ Are subjected to harmful cultural practices that affect their health and physical integrity

Education, when girls:

- ▶ Are denied or cannot access primary school education
- ▶ Are charged for tuition fees and uniforms for public schools, which might result in receiving less education than boys who are given preference
- ▶ In single women-headed households are less likely to go to school than girls in male-headed households
- ▶ Cannot travel safely to school

Employment, when discriminatory laws, policies and practices prevent women from:

- ▶ Seeking work
- ▶ Working on terms equal to men
- ▶ Returning to work after maternity leave, accessing maternity benefits and being able to access working arrangements to facilitate nursing and caring for young children³⁶
- ▶ Forming trade unions

Each MDG is linked to specific ESC rights, which in turn engage the State's **responsibility to respect, protect and fulfill** the rights. The MDGs thus offer a "road map" to NHRIs that are trying to determine priorities in their respective countries in part by providing progress indicators to track and monitor specific goals.

The following examples illustrate how the MDGs can be used to set priorities for women's rights.

Examples from Goals 2, 3 and 5

► Goal 2: Achieve Universal Primary Education

- TARGET 2A: Ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling
- Progress indicators
 - 2.1 Net enrolment ratio in primary education (UNESCO)
 - 2.2 Proportion of pupils starting grade 1 who reach grade 5 (UNESCO)
 - 2.3 Literacy rate of 15-24 year-olds (UNESCO)

► Goal 3: Promote Gender Equality and Empower Women

- TARGET 3A: Eliminate gender disparity in primary and secondary education, preferably by 2005, and in all levels of education no later than 2015
- Progress Indicators
 - 3.1 Ratio of girls to boys in primary, secondary and tertiary education (UNESCO)
 - 3.2 Ratio of literate women to men, 15-24 years old (UNESCO)
 - 3.3 Share of women in wage employment in the non-agricultural sector (International Labour Organization)
 - 3.4 Proportion of seats held by women in national parliament (Inter-Parliamentary Union)

Example: Cambodia's MDG on Reducing Violence against Women³⁷

Violence against women is forbidden by law in Cambodia but is nevertheless widespread and socially acceptable. These are the findings of a study on domestic violence conducted by the Cambodian Ministry of Women's Affairs published on 3 May 2006. According to the study, more than 30% of the Cambodian population is of the opinion that physical violence is appropriate if a woman questions her husband's privileges, quarrels with him or fails to show him sufficient respect. A third of people interviewed went as far as to consider shot wounds, acid attacks, and even murder to be legitimate in these circumstances.

Cambodia is the first country in the world with a Millennium Development Goal (MDG) concerning the reduction of violence against women.

► Goal 5: Improve Maternal Health

- TARGET 5A: reduce by three-quarters, between 1990 and 2015, the maternal mortality ratio
- Progress Indicators
 - 5.1. Maternal mortality ratio (UNICEF-WHO)

5.2 Proportion of births attended by skilled health personnel (UNICEF-WHO).

The MDGs and the UNDP Global Reports on Human Development together have helped to develop **benchmarks** and targets. NHRIs, among others, can use them to identify objectives and track progress. Some goals tackle the disadvantages that women experience in the social structures and institutions: more specific targets have been developed as priorities that can help NHRIs in choosing their own priority areas.

Although the MDGs are a blueprint, they require national ownership and adaptation to the country context, and this is important to women's equality. For example, there are countries that have moved beyond the limited nature of Goal 3 (promoting gender equality and promoting women) and Goal 5 (improving maternal health) and added new dimensions to the gender equality goals, for example in the areas of violence against women.

E. Gender-based Violence

Gender-based violence is a form of discrimination against women. Violence against women and girls has been described as a problem of pandemic proportions. One out of three women around the world has been beaten, coerced into sex, or otherwise abused in her lifetime — with the abuser usually someone known to her. According to UNIFEM, violence against women is:

“perhaps the most pervasive human rights violation that we know today, it devastates lives, fractures communities, and stalls development.”

Statistics paint a horrifying picture of the social and health consequences of violence against women. For women aged 15 to 44 years, violence is a major cause of death and disability. In a 1994 study based on World Bank data about ten selected risk factors facing women in this age group, rape and domestic violence rated higher than cancer, motor vehicle accidents, war and malaria. Moreover, several studies have revealed increasing links between violence against women and HIV / AIDS. Women who have experienced violence are at a higher risk of HIV infection: a survey among 1,366 South African women showed that women who were beaten by their partners were 48 percent more likely to be infected with HIV than those who were not.³⁸

The right to security for women was introduced through the recognition of full women's rights. Since so much violence against women is in the home, women's advocacy groups pushed to extend human rights protection - into the “private” realm in order to get at pervasive violence against women in its many forms. Violence against women is being reframed, from a private matter within a family, or from something ancillary to military conflicts, to a fundamental violation of the right to life, liberty and security of the person. States are obliged to take steps to deal with these issues and indeed, should do so regardless of whether such matters are perceived as private or public.

UNIFEM highlights the following key areas affecting women:

- ▶ Domestic and Intimate Partner Violence
- ▶ Sexual Violence
- ▶ Harmful Traditional Practices
- ▶ Trafficking in Women and Girls
- ▶ HIV/AIDS and Violence
- ▶ Crimes against Women in Situations of Armed Conflict
- ▶ Violence against Women as a Human Rights Violation

For example, violence in the family, dowry-related deaths and attacks, acid throwing, and other forms of violence violate women's dignity and equality. Many rights scholars and advocates have articulated examples of human rights violations related to women's rights: rape as a war crime in conflict areas, for example, especially on the heels of Bosnia, Rwanda and Darfur.

CEDAW does not explicitly mention violence against women, but the Committee on the Elimination of Discrimination against Women, which is responsible for interpreting and monitoring implementation, has clarified in its **General Recommendation No. 19** (1992) that States Parties to the Convention are obliged to “take all appropriate means to eliminate violence against women.”³⁹ **General Comment No. 16** of the Committee on Economic, Cultural and Social Rights (2005) makes explicit the link between violence against women and equality, by clearly positioning violence as a form of discrimination.

*Gender-based violence is a form of discrimination that inhibits the ability to enjoy rights and freedoms, including economic, social and cultural rights, on a basis of equality. States parties must take appropriate measures to eliminate violence against men and women and act with due diligence to prevent, investigate, mediate, punish and redress acts of violence against them by private actors.*⁴⁰

Related issues in this area include:

- ▶ Women's right to physical integrity, especially in vulnerable situations such as displaced persons centres and refugee camps
- ▶ Practices of “honour killings,” domestic and dowry-related violence

The following two examples show some of the work that can be done by NHRIs alone or in partnership with NGOs.

Example: “Honour Killings” in Iraq

In the Region of Kurdistan, an NGO called the Women's Affairs Committee has worked to change the law relating to murder and other forms of homicide. “Honour” is no longer considered an “extenuating” but rather an “aggravating” circumstance. Much work still remains to be done to ensure that the police force considers “honour crimes” as serious crimes and investigate them accordingly. Some of this work lies in the social and cultural education required at the family and community levels.

Example: Domestic Violence in Nepal: an NHRI Strategic Priority⁴¹

In the National Human Rights Commission of Nepal's Strategic Plan for 2004-2008, it committed to:

“help improve the legislative and regulatory mechanisms for control and cessation of: a) domestic and dowry-related violence against women and b) trafficking of women.”

While these forms of violence are or should be criminal offences, traditional views often place such acts “within the family”. This in itself raises ESC rights issues because of the interplay of social and cultural dimensions attached to these practices.

In many countries, domestic and intimate partner violence is recognized as a human rights issue in principle but in practice, few NHRIs pursue active programs to address the impact on women and girls. This is an important but untapped area for NHRI activity. For example, NHRIs can advocate for the creation of appropriate criminal offences where none exist, or for changes in the burden of proof required to bring a complaint of domestic violence. Complementing these initiatives, NHRIs can launch public awareness programs and engage in targeted discussions with local leaders and community workers aimed at alleviating violence. To better understand the implications of these ideas for ESC rights, NHRIs need to make violence against women a priority issue, rather than a matter that is just handed over to the police.

Section 3

Key Concepts

There are several key concepts relevant to understanding ESC rights and how they apply to women's equality. Although some have already been touched on, they merit further discussion. These are:

- ▶ Discrimination
- ▶ Equality (formal and substantive)
- ▶ Interdependence and indivisibility
- ▶ **Intersectionality**
- ▶ Non-retrogression and

- ▶ Temporary special measures

A. Women's Equality and Discrimination⁴²

Women's equality depends on the elimination of discrimination, but in the area of ESC rights, it is not always easy to see what the discriminatory "act" might be, let alone how to address it.

Article 1 of CEDAW (see the box at the right) offers a definition of discrimination. Sex or **gender discrimination** is discrimination that occurs or is more likely to occur when the person is female.

Sex Discrimination or Gender Discrimination

The term "sex discrimination" is used in the international instruments, although general comments and academic literature suggest that the term "gender discrimination" better reflects the social and cultural aspects of discrimination against women. For example, the Montreal Principles state that:

The terms "gender" and "sex" should both be understood as referring to the range of economic, social, cultural, historical, political and biological constructions of norms of behaviour that are considered appropriate for women and men. Implicit in such an understanding of "gender" or "sex"... is that male and female norms have been constructed so as to privilege men and disadvantage women. "Gender" and "sex" discrimination can be used interchangeably, and both "gender inequality" and "sex inequality" are used to refer to the disadvantaged position of women.

Whichever term is used – whether sex or gender discrimination - we are, at least in this Handbook, referring to more than just discrimination based on the biological differences between men and women. Instead, sex discrimination and gender discrimination should be understood to encompass how we, as a society, "build" our ideas about how men and women should behave. For the purposes of this Handbook, the terms "sex" and "gender" discrimination are used interchangeably.

Examples of sex or gender discrimination are discrimination on the basis of a woman's:

- ▶ Marital status, for example, if she experiences a distinction or exclusion because she is a wife, common-law spouse, unmarried woman, divorced or widowed.
- ▶ Family status or family responsibility
- ▶ Pregnancy or reproductive capacity

Article 1 CEDAW

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

- Sexuality, noting that sexual harassment of women and violence against women are forms of sex discrimination. Violence against women is also a criminal offence in most countries⁴³

Does Intention Matter?

Discrimination targets outcomes and impacts, and not intentions or sexist attitudes. For example, **gender-neutral** laws, policies and practices can nonetheless keep women at a disadvantage by failing to address their needs and realities or their economic, social and cultural disadvantages. This means that a gender-neutral law may still be discriminatory if the effect of the law is to impair women's ESC rights. A law or policy must be evaluated in terms of its effect on women, in light of women's real circumstances. The underlying intention is not required as an element of proof.

Acts or Omissions

Beyond explicit acts or legally sanctioned discrimination, there are also cases where just refraining from or omitting to act will result in discrimination.

An example of an omission giving rise to discrimination is the failure of a Government to enact new rules or laws to correct discriminatory situations. For example, in some countries, the laws of evidence require that a woman is obliged to have external corroboration of domestic violence, such as evidence of serious and visible injuries (lacerations, broken bones), before an assault charge will be laid. By failing to amend the applicable laws and give appropriate direction to the police, the State is omitting to address the rights violation. This in itself is a violation of human rights.

B. Equality (Formal and Substantive)

CEDAW requires the elimination of discrimination against women because this is necessary to ensure equality between men and women.⁴⁴ There are different but interconnected concepts in the area of equality. One is called **formal equality**, and the other is called substantive equality.

Formal Equality

Sometimes called *de jure* equality, formal equality simply means that men and women are treated the same way.

For example, a neutral rule that allows an employer to hire someone new if an employee is away for several months results in formal equality because it treats everyone the same. But, it clearly discriminates against women by failing to recognize that women need maternity leave and return-to-work guarantees. Clearly, formal equality will rarely be enough to

Interpretation: General Comment No. 16

...States Parties should take into account that such laws, policies and practice can fail to address or even perpetuate inequality between men and women because they do not take account of existing economic, social and cultural inequalities, particularly those experienced by women. (2005)

ensure equal rights – to do this, something more is needed: substantive equality.

Substantive Equality

Paragraph 6 of General Comment No. 16 on Article 3 of the ICESCR recognizes the importance of ensuring substantive equality in the interpretation of ESC rights.

The rights set forth in the Covenant are to be enjoyed by men and women on a basis of equality, a concept that carries substantive meaning. (para. 6)

Substantive equality is concerned with the effects of laws, policies and practices. In practical terms, this means that just being neutral is not enough.

Article 3 ICESCR

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

Substantively equal enjoyment of rights cannot be achieved through the mere passage of laws or promulgation of policies that are gender-neutral on their face. Gender-neutral laws and policies can perpetuate sex inequality because they do not take into account the economic and social disadvantage of women; they may therefore simply maintain the status quo. [Formal equality] does not, by itself, provide [real] equality. ... Whether the measures taken to protect rights are adequate must always be assessed against the background of women's actual conditions, and evaluated in the light of the effects of policies, laws and practices on those conditions.⁴⁵

C. Interdependence and Indivisibility

All rights – civil, political, economic, social and cultural – are interdependent and indivisible. The interrelationship between civil and political rights on the one hand and ESC rights on the other is unavoidable. For example, do the rights to freedom of assembly and of opinion have any meaning without the right to education?

The centrality of interdependence was affirmed during the 1993 Vienna World Conference on Human Rights. Although human rights are interrelated and interdependent, no rights claims can operate in isolation to infringe gender equality. While there are inevitably conflicts between rights, it is an error to see such conflicts as requiring a particular or uniform set of outcomes. Rather, equality is assessed on a case by case basis, bearing in mind the overall importance of ensuring that nothing is interpreted to minimize gender equality.

D. Minimum Core Obligations

In international law ESC rights are to be “progressively implemented” to the “maximum extent of available resources.” Nonetheless, all States have minimum core obligations that are immediately binding and are to be implemented in full.

Despite the flexibility of **progressive realization**, there is nonetheless a minimum level of ESC rights. If a state fails to provide this bare minimum – food, essential primary health care, basic shelter and housing, and the most basic forms of education – then progressive realization cannot be used as an excuse for failing to meet these minimum core obligations. Failure is considered to be a violation of the minimal core obligations of the State and is “on its face”, or *prima facie*, an infringement of the ICESCR. The practical result is that the burden of justifying why these basic rights are not being respected, protected or fulfilled falls on the State.⁴⁶ Minimum core obligations are the immediate and essential dimension of all rights protected by the ICESCR but do not represent the ultimate achievement of such rights.

In short, minimum core obligations exist irrespective of the availability of resources of the country concerned, or any other factors and difficulties.

Countless human development reports and indices have pointed out that women are the primary family caregivers; they are generally designated as a vulnerable population in terms of exposure levels to poverty, lack of education, mortality and morbidity due to lack of adequate health care and maternal and reproductive health care in particular, and the likelihood of being a refugee or displaced person, among many other socioeconomic conditions. The failure to meet minimum core obligations has a particular impact on women and children. NHRIs should pay particular attention to the State’s progress in meeting these obligations and should give priority to monitoring them as part of their efforts in promoting women’s equality.

E. Multiple Grounds of Discrimination: Intersectionality⁴⁷

A human rights issue can involve multiple and intersecting grounds of discrimination and the interaction of these multiple grounds can have a particular impact on women who are already at a relative disadvantage.

Many women encounter distinct forms of discrimination due to the intersection of sex with such factors as: race, language, ethnicity, culture, religion, disability, or socio-economic class. Indigenous women, migrant women, displaced women, and non-national or refugee women experience distinct forms of discrimination because of the intersection of their sex and race, or their sex and citizenship status. Women may also confront particular forms of discrimination due to their age or occupation; family status, as single mothers or widows; health status, such as living with HIV/AIDS; sexuality, such as being lesbian; or because they are engaged in prostitution. Intersecting discrimination can determine the form or nature that discrimination takes, the circumstances in which it occurs, the consequences of the discrimination, and the availability of appropriate remedies.⁴⁸

This is why the Montreal Principles recommend that:

To ensure that all women enjoy the benefits of their economic, social and cultural rights, specific measures are needed to address the ways in which women are

*differently affected in their enjoyment of a right as a result of the intersection of discrimination based on sex with discrimination based on other characteristics.*⁴⁹

The combination of various types of discrimination can, when experienced together, produce something unique and distinct from any one form of discrimination standing alone. An “intersectional approach” is one that takes into account historical, social and political contexts, while recognizing the unique experience of the individual. It allows for the interaction of different grounds involved to be acknowledged and addressed.

For example, women may experience not only discrimination on the ground of sex, but may also experience the compounding effects of race, ethnic or religious identity, disability, age, class, or caste.

Racial minority or racialized women⁵⁰ experience discrimination in a completely different way than racial minority men or even than women on the ground of sex alone. This is because groups often experience distinctive stereotyping or barriers based on a combination of race and gender.

- ▶ An intersectional approach can recognize the combined effects of race, ethnicity and gender or other grounds as well.
- ▶ A person from a minority ethnic group who is also a religious minority may face multiple forms of discrimination.
- ▶ Women may be more likely to experience sexual harassment if they are more vulnerable by virtue of other social or economic factors, such as being a refugee, or having a disability.⁵¹

Example: Intersectionality: Addressing Women’s ESC Rights in Human Rights Complaints

An NHRI received a complaint from a young Black woman who alleged that she was sexually harassed in the workplace by her manager.

The persistent and damaging effects of the harassment were aggravated by the stereotype held by the manager that Black women are socially inferior, more vulnerable, more sexually available and promiscuous. The victim’s youth magnified the impact of these stereotypes on the victim.

The investigating officer analyzed not only the obvious sex discrimination, but also investigated violations of human rights because of racist stereotyping and the resulting violation of the rights of women of colour in the workplace. Because of the victim’s youth, a third element of analysis was added to the investigation, namely age.

Using this intersectional approach based on three grounds (age, sex and race or colour), the remedy sought was significantly higher in terms of monetary compensation than it would have been if only one ground were involved. The human rights adjudicator specifically mentioned the special and damaging effects of this form of multiple grounds discrimination.

- Based on a Canadian human rights case.

F. Temporary Special Measures

Because it has proved so difficult to achieve concrete gains for women in so many areas, special temporary measures are designed to ensure, or accelerate, equality.

Legal support for temporary special measures can be found in Article 4 of CEDAW:

(1) Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

(2) Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

NHRIs should support States Parties who make use of temporary special measures such as positive or **affirmative action**, preferential treatment or quota systems to advance women's integration into education, the economy, politics and employment.

Special measures related to maternity are referred to in Article 4(2) of CEDAW and by their nature can be permanent. For example, measures to provide women with maternity benefits, or to preserve women's jobs during maternity leave are permanent special measures and are not discriminatory since these initiatives enhance women's substantive equality.⁵²

Temporary special measures, on the other hand, are part of a necessary strategy to achieve substantive equality for women and men in the enjoyment of human rights and fundamental freedoms. General Recommendation No. 25 from the **CEDAW Committee** states that a temporary special program can be used to remedy the effects of past discrimination against women. As well, the obligation to improve the position of women by working toward substantive equality exists irrespective of any proof of past discrimination.

The measures also serve to protect State-sponsored initiatives like hiring women from charges of discrimination against men. At the same time, not all initiatives qualify as temporary special measures. The following excerpts from General Recommendation No. 25 are especially important:

19. States Parties should clearly distinguish between temporary special measures taken under Article 4, paragraph 1... and other general social policies adopted to improve the situation of women and the girl child. Not all measures that potentially are, or will be, favourable to women are temporary special measures. The provision of general conditions in order to guarantee the civil, political, economic, social and cultural rights of women and the

girl child, designed to ensure for them a life of dignity and non-discrimination, cannot be called temporary special measures.

20. Article 4, paragraph 1, explicitly states the “temporary” nature of such special measures. Such measures should therefore not be deemed necessary forever, even though the meaning of “temporary” may, in fact, result in the application of such measures for a long period of time. The duration of a temporary special measure should be determined by its functional result in response to a concrete problem and not by a predetermined passage of time. Temporary special measures must be discontinued when their desired results have been achieved and sustained for a period of time.⁵³

In their reporting, NHRIs can refer to appropriate temporary special measures as evidence of State Party compliance with international instruments, or they may recommend the creation of such measures. In addition, NHRIs can recommend the creation of such measures in response to individual **complaints**.

General Recommendation No. 25, cited above, specifically provides that the responsibility for creating special measures may be vested in Government – this would include not only the executive arm of Government such as women’s ministries, women’s departments within ministries or presidential offices, but would extend to independent Government bodies such as **ombudspersons**, or to the judiciary (courts and tribunals). The Committee also recommends that States Parties ensure that women in general and affected groups of women in particular, have a role in the design, implementation and evaluation of such programs. Collaboration and consultation with civil society and NGOs representing various groups of women is especially recommended.

Example: Retrogressive Measures in Women’s ESC Rights

In order to comply with structural adjustment programs a State slashes its social expenditures budget. As a result, the health care system becomes weaker, and hospitals in rural areas are to be closed. Rural women, women who are pregnant and who have HIV/AIDS are particularly affected by such measures, which are retrogressive in nature.

The introduction of user fees in secondary education which had formerly been free of charge is a retrogressive measure. When resources are scarce, families often choose to send boys to school and keep girls at home.

G. Principle of Non-Retrogression

International law imposes an obligation on States to realize ESC rights progressively. States should not, therefore, introduce “retrogressive measures”, which “directly or indirectly, lead to backward steps being taken with respect to the rights recognized in the Covenant.”⁵⁴

According to the Committee on Economic, Social and Cultural Rights, any deliberately “retrogressive measure” taken by a State Party may be a violation of Art. 2 of the ICESCR.⁵⁵

If a State Party does adopt a retrogressive measure, the measure must not be discriminatory, and it should only be adopted after “the most careful consideration of all the alternatives”, and further “justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.”⁵⁶

Retrogressive measures often come in the form of the privatization of services such as water and education. Cuts to social expenditures such as social security, health care services and childcare may be retrogressive measures as they are most often undertaken deliberately to enhance economic efficiency, to pay down debt and for related fiscal reasons. Of course, these measures increase the costs for such services and decrease their availability to women and girls. Not only are women often deprived of these services, they are then often relied upon to provide these very services themselves – for free. NHRIs should consider retrogressive measures seriously as points of departure for **investigations** and monitoring of ESC rights violations.

Section 4

The Role of National Human Rights Institutions

States have three broad sets of obligations in international human rights, namely the **obligations to respect, protect and fulfill** human rights. In order for these obligations to become reality at the national level, States are required to take all appropriate steps, including legislative, to ensure rights are realized at the State level. Establishing NHRIs, is an important way of doing this, because NHRIs link the international human rights framework and the domestic or national sphere.

NHRIs are established in accordance with basic principles, called the “Paris Principles.”⁵⁷ The Principles link the domestic protection of human rights and the international framework and require NHRIs to have as broad a mandate as possible in the promotion and protection of human rights. However, the Principles do not say a great deal about ESC rights (or indeed any particular category of rights). In the area of women’s equality, one of the more challenging tasks facing NHRIs is to determine how they can best promote women’s ESC rights.

Under the Paris Principles, NHRIs are required to:

- ▶ Protect human rights, including by receiving, investigating and resolving complaints, mediating conflicts and monitoring activities.
- ▶ Promote human rights, through education, outreach, media, publications, training and capacity-building activities, as well as by advising and assisting Governments.

In many countries, human rights commissions, Ombudsman offices and other public protection bodies have been working for decades, operating under national laws that were inspired or influenced by international law. In the last fifteen years, however, the number of NHRIs has surged, largely as a result of the United Nations' push to support these institutions "on the ground" as a force for making international human rights obligations a national reality.

The roles and responsibilities of NHRIs devolve directly from the State. A human rights institution is a State-sponsored and State-funded organization. It is part of the State, but is independent.

There is no single model of an NHRI, and the national mechanisms chosen vary greatly. There are a variety of institutions. For example, the Ombudsman model is used in continental European countries and CIS States. Similarly, the scope and range of an institution's authority reflect the particular situation and needs of the people, its own economic capacity and its political maturity. Some institutions, for example, have **jurisdiction** only over the public sector in part because the private sector is so fragile.⁵⁸

The OHCHR has placed NHRIs at the front lines of implementing international human rights obligations. As independent institutions with a mandate to combat discrimination and promote and protect universal human rights, NHRIs should also protect and promote the ESC rights of women.⁵⁹ The CEDAW Committee's General Recommendation No. 6 specifically promotes the establishment and/or strengthening of effective national institutions that help formulate new policies and effectively carry out strategies and measures to eliminate discrimination.

It is also important to remember that the 1993 Vienna Declaration and the 1995 Beijing Declaration and Platform for Action recognized women's rights and girls' rights as fundamental human rights. Their protection thus depends on the interconnected and interdependent nature of human rights protections. All the rights contained in the international human rights instruments – all of them – must be understood as applying fully to women.⁶⁰ At the same time, however, women's rights and ESC rights in particular, depend equally on the specificity of women's experiences and differences, and on the capacity of human rights as a system to identify and address violations that affect women exclusively or primarily.

In 1995, the United Nations emphasized that, although NHRIs in particular tend to be concerned with civil and political rights, they may also be empowered to promote and protect ESC rights.⁶¹

General Comment No. 10 – UN Committee on Economic, Social and Cultural Rights (1998)

"National institutions have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights. Unfortunately, this role has too often either not been accorded to the institution or has been neglected or given a low priority by it. It is therefore essential that full attention be given to economic, social and cultural rights in all of the relevant activities of these institutions."

The role of NHRIs in ESC rights is addressed in General Comment No. 10 of the ESCR Committee (December 1998)⁶² which notes that “national institutions have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights” and that “it is therefore essential that full attention be given to economic, social and cultural rights in all of the relevant activities of these institutions.”⁶³

The Committee also calls upon States Parties at paragraph 4 of General Comment No. 10 to include details of the mandate and relevant activities of NHRIs when preparing and submitting their periodic reports under the ICESCR. General Comment No. 10 also sets out the types of activities NHRIs can undertake to protect and promote ESC rights. These activities include:

- ▶ Promoting educational and information programs designed to enhance awareness and understanding of ESC rights, both within the general public and among particular groups, such as the public service, the judiciary, the private sector and the labour movement
- ▶ Scrutinizing existing laws, administrative acts, draft bills, and other proposals to ensure that they are consistent with the requirements of the ICESCR
- ▶ Providing technical advice or undertaking surveys in relation to ESC rights
- ▶ Identifying national benchmarks for measuring the progressive realization of ESC rights
- ▶ Conducting research and inquiries to ascertain the extent of realization of particular ESC rights, at the national level, or in relation to specific vulnerable communities
- ▶ Monitoring compliance with regard to specific rights under the Covenant and providing reports to public authorities and civil society

Indeed, in a recent statement by a UN official, it was noted that:

*OHCHR gives priority to the establishment and strengthening of NHRIs in compliance with the Paris Principles because they are the central element of strong and effective national human rights protection systems which in turn are key to peace, security and economic and social development. The Office provides tailored advice to a growing number of countries on appropriate constitutional or legislative frameworks regarding the establishment of NIs and on the nature, functions, powers and responsibilities of such institutions.*⁶⁴

Section 5

Legal Obligations of Non-State Actors

Non-State actors are all individuals or organizations that are not part of the Government or acting on behalf of the Government. They include NGOs, the private sector (for-profit companies, multi-nationals, financial institutions, corporations), religious institutions, private or corporate landlords, individuals and

private service providers. States have the obligation to protect women from human rights abuses that may be committed by non-State actors.

None of these actors is a formal party to international human rights instruments, but that does not mean that non-State actors are exempt from international human rights obligations. Indeed, many of these actors are partners in the protection of women's ESC rights.

The ICESCR and CEDAW (among other conventions) oblige States Parties to ensure that non-State actors are not in any way authorized to engage in activities that violate human rights. Article 5 of the ICESCR, for example, states that:

Nothing in the present Covenant may be interpreted as implying for any State, group or person, any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant. [Emphasis added].

When a State knows, or ought to know about human rights abuses and fails to act to take appropriate steps, then the State bears the responsibility of the action.⁶⁵ As well, Article 2 of CEDAW states:

States Parties condemn discrimination against women in all its forms ... and, to this end, undertake: (e) to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.

Exercising “due diligence” of this nature can require the State to “take effective steps to prevent abuses, to investigate them when they occur, to prosecute the alleged perpetrators and bring them to justice in fair proceedings, and to ensure adequate reparations for the victims, including rehabilitation and redress.”⁶⁶ This is a critical activity for NHRIs, whose own monitoring activities are part of the “due diligence” in their own work.

Example: Female Genital Mutilation (FGM)

Female genital mutilation (FGM) is a traditional practice carried out in many countries. It is often carried out in unsafe, unsanitary conditions. It is generally performed by members of the community, not by State authorities, and is defended on the basis of custom, culture and tradition.

FGM gravely threatens women's equal right to health, physical integrity and sexuality. A State party to CEDAW, the Convention on the Rights of the Child (CRC) and the ICESCR is obligated to take appropriate steps to prevent the violation and to eliminate traditional practices that harm girls. Laws against the practice are a start but engagement of the broader community is also required. For example, this may involve funding education and awareness campaigns for the community at large, as well as for community leaders, traditional birth attendants, midwives, health workers, etc. of the harmful effects of FGM. It may also include outreach – through NGOs – to women to inform them of their right not to submit to FGM and support them within their communities should they make this choice.

The Committees on ESC rights and CEDAW have included this extended understanding of States Parties' legal obligations in their own General Comments. For example, in the CESCR's General Comment No. 16 on Article 3 of the ICESCR, the Committee states at para. 19:

States Parties' obligation to protect under Article 3 of the ICESCR includes ... the adoption of legislation to eliminate discrimination and to prevent third parties from interfering directly or indirectly with the enjoyment of this right.

At para. 20, also with respect to protecting the rights in the Covenant, the Committee notes:

States Parties have an obligation to monitor and regulate the conduct of non-State actors to ensure that they do not violate the equal right of men and women to enjoy economic, social and cultural rights. This obligation applies, for example, in cases where public services have been partially or fully privatized.

A number of CEDAW's General Recommendations refer to the obligation on States Parties to ensure the compliance of non-State actors with treaty provisions. For example, General Recommendation 19 on violence against women emphasizes that States may be responsible for "private acts" if the State fails to act with due diligence to prevent violations of rights or to investigate and punish acts of violence (para. 9). And, the Committee recommends that States Parties should take appropriate and effective measures to overcome all forms of gender-based violence, "whether by public or private act" (para. 24(a)).

The Paris Principles are consistent with a broader application of the NHRI mandate to cover both the private sector and the public sector. NHRIs should ensure that the State is fulfilling its obligation to protect women from abuses committed in both the private sector and the public sector. This is especially important in the areas of discrimination in employment, housing, and goods and services because these are typically offered by the private and non-profit sectors. Some States only protect human rights in relation to the acts of public officials: however, human rights protection should exist regardless of who is responsible for the violation.

Conclusion

The ICESCR, CEDAW and many other international instruments form a group of rights that support the achievement of equality for women in all spheres of their lives. They include such rights as the right to: an adequate standard of living (housing, adequate food, shelter); health; education, etc.

This group of rights presents several unique challenges in relation to women because of the particular way in which women's rights are embedded in historical, social, economic and cultural contexts. Cultural rights in particular create challenges for particular aspects of rights, but also offer opportunities for NHRIs working locally.

By examining more closely the basic concepts linked to women’s ESC rights – notably discrimination, equality, intersectionality and special measures – it becomes easier to identify not only what these concepts mean, but how NHRIs can be more effective in using them to enhance the quality of life for women and girls.

Module 3 The Legal Framework

3



Photo courtesy Ria Holcak

Overview of Module 3

Module 3 sets out the key elements of the legal framework as it applies to women's **equality** and **economic, social and cultural (ESC) rights**, and the role of **national human rights institutions (NHRIs)** in the protection of those rights.

The legal or normative framework includes not only the human rights obligations that flow from international and domestic law, but also includes **principles** that inform the development of women's ESC rights and more generally the acceptance of universal **human rights** and respect for the rule of law. The table⁶⁷ on page 55 illustrates a framework for analyzing the underlying principles of women's ESC rights and **State obligations** according to international human rights standards.

- ▶ **Section 1 – The NHRI Enabling Legislation**, deals with the legal sources of an NHRI's mandate to address women's ESC rights, by examining **enabling legislation**, constitutional law and international law.
- ▶ **Section 2 – International Human Rights Framework**, sets out the international legal framework for women's ESC rights. It includes non-treaty instruments such as the **Universal Declaration of Human Rights (UDHR)** and selected conventional (that is, agreed upon among nations) international instruments.
- ▶ **Section 3 – Bringing Human Rights Home**, examines how different States transform international obligation into national law.
- ▶ **Section 4 – Other Relevant Instruments**, sets out the main principles and guidelines that provide guidance to NHRIs in their work in equality and ESC rights. These instruments play a role of legal interpretation, even though they are not binding in the same way as a law.

Women’s ESC Rights – Principles, Obligations and Concepts

Women’s ESC Rights

- adequate standard of living (including food and freedom from hunger, water, clothing, housing and freedom from forced eviction, continuous improvement of living conditions)
- highest attainable standard of mental and physical health, including reproductive and sexual health and freedom
- equal inheritance and ownership of land and property
- social security, social protection, social insurance and social services, including special assistance before, during and after childbirth
- training and education
- freely chosen work as well as just and favourable conditions of work including fair wages, equal remuneration and protection from sexual harassment and sex discrimination at work
- form and join trade unions
- protection from economic exploitation
- protection from coerced and uninformed marriage
- clean and healthy environment
- participate in cultural life
- claim and enjoy the benefits of patents and intellectual property
- freedom from trafficking and exploitation; recognition of the human rights of trafficked persons

Sources / further explanation of terms:

- CEDAW, ICESCR
- Montreal Principles, Part B

Understanding of women’s ESC rights leads to an understanding of state obligations

Obligations

- Obligation to **respect**
- Obligation to **protect**
- Obligation to **fulfill**

Key Sources:

- CESCR General Comment 3 (on State obligations)
- Limburg Principles 1-15
- Maastricht Guidelines 6-9
- Montreal Principles Part E

Further explanation of terms:

- **Undertake steps by all appropriate means:** Limburg Principles 16-20
- **Progressive realization:** Limburg Principles 21-24, Maastricht Guideline 8
- **Maximum of available resources:** Limburg Principles 25-28, Maastricht Guideline 10
- **International assistance and cooperation,** Limburg Principles 29-34

Central concepts

- Minimum core content
- Justiciability
- Avoiding retrogressive measures

Underlying principles of women’s ESC rights using a rights-based approach

Equality

Key sources / further explanation of terms:

- CESCR General Comment 16
- CEDAW Article 3
- ICESCR Article 3
- Limburg Principle 45
- Millennium Development Goal 3
- Montreal Principles Part C

Non-discrimination

Key sources / further explanation of terms:

- CESCR General Comment 16
- CEDAW Article 1
- Limburg Principles 35-41
- Maastricht Guideline 12
- Montreal Principles Part C

Module 3

Section 1

The NHRI Enabling Legislation

The mandate of NHRIs – what they *can* do – depends on three things:

First is the NHRIs enabling legislation, the legal basis for its existence which confers lawful authority to act.

Second, international instruments have legal effect and are a principal source of ESC rights at the international level. In some countries, ratified **conventions** or **covenants** are automatically part of the country’s law. In others, the country must take an extra step and enact legislation. This is called “**transformation**”, and is discussed later on in this Module of the Handbook. **Declarations** such as the Universal Declaration of Human Rights (UDHR) have the effect of **customary international law**.⁶⁸

Third, are principles that aid in interpreting instruments or laws, or that may set out basic standards that apply to NHRIs, as is the case for the **Paris Principles**, which are not legally binding.

Example: A Broad NHRI Mandate: Human Rights Commission Act, 1994 South African Human Rights Commission⁶⁹

“WHEREAS the Constitution provides that the Human Rights Commission shall, inter alia, be competent and obliged to *promote the observance of, respect for and the protection of fundamental rights; to develop an awareness of fundamental rights* among all people of the Republic...” (Emphasis added).

A. Enabling Legislation

National human rights institutions are creatures of statute – they depend on laws (enabling legislation) for their existence and legitimacy, and to authorize their actions.

A constitution may provide for the creation of an NHRI, and then the institution itself is created by a legislative act. Some countries use orders-in-council (or executive orders), proclamations or other legal instruments. However, a constitutional base and law passed by a national legislature are preferable to executive orders (Paris Principles).

The Paris Principles provide that NHRIs should adopt a broad, liberal and purposive approach to interpreting and implementing their mandate.

While a broad approach cannot be used to “read in” rights that do not exist, it can be used to interpret a set of rights more expansively and in a way that is more consistent with the achievement of human rights.

Enabling legislation may provide for human rights generally, or it may define specific ESC rights.

However, each country's constitution and NHRI enabling law will vary, and should be carefully read.

The following exercise shows how enabling legislation interacts with constitutional provisions and international law. Based on the responses to the questions, one can identify or locate the nature and extent of women's ESC rights in a particular country, and then determine, strategically, how to proceed.

Key Question: Is the mandate of the NHRI broad enough to deal with ESC rights and gender equality for women?

1. Begin by examining the country's constitution:
 - a. Does the constitution set out basic rights and freedoms, including the right to equality or non-discrimination on the basis of sex?
 - b. Does the constitution recognize/ guarantee the rights contained in international instruments ratified by the country that include ESC rights?
2. Then examine the NHRI enabling law.
 - a. Does the enabling legislation provide for as broad a mandate as possible for the NHRI to protect and promote all human rights as set out in international instruments ratified by the country?
 - b. Is there a specific mention of ESC rights?
 - c. Are there provisions to address equality of women and men and/or a prohibition against **sex discrimination**?
3. Has the country ratified international instruments such as the **International Covenant on Economic, Social and Cultural Rights (ICESCR)** and the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**?

The following examples look at commissions that do not specifically protect ESC rights, but which nonetheless have programming in ESC rights.

Example: Kenya National Human Rights Commission**Does the constitution guarantee human rights/ESC rights?**

The Constitution of Kenya does not explicitly set out ESC rights but it codifies fundamental rights and freedoms, and guarantees the enjoyment of them without discrimination.

Does the Kenya National Commission on Human Rights' enabling law protect and promote ESC rights?

The Commission is an autonomous NHRI established by an Act of Parliament in 2002. Its core mandate is to further the protection and promotion of *all* human rights in Kenya (Section 16 of the *Constitutive Act* of the commission).

Economic, Social, Cultural Rights Program implemented by the Kenya National Commission on Human Rights

The Program fulfills its mandate to protect and promote ESC rights by designing interventions that:

- Address violations of rights – often providing broad policy responses since ESC rights are often the subject of systemic violations with broad causes and effects, they therefore require systemic responses
- Monitor the realization of ESC rights through systematically tracking and assessing State performance against benchmarks and targets
- Promote ESC rights, i.e., creating awareness and imparting knowledge about human rights
- Conduct research and produce publications on ESC rights

Example: The Philippines Commission on Human Rights**Does the constitution guarantee human rights / ESC rights?**

The Philippines Constitution of 1987 stipulates that the Philippine Commission shall “investigate ... all forms of human rights violations involving civil and political rights” and shall “monitor the Philippine Government’s compliance with international treaty obligations on human rights.”

The 1987 Constitution guarantees rights, including ESC rights. As well, an NHRI is authorized to “provide appropriate legal measures for the protection of human rights of all persons.” However, the Commission may only investigate civil and political rights violations. Because of the constitutional limitation on the power to investigate ESC rights complaints, the Supreme Court held in 1994 that the Philippine Commission could only investigate violations of civil and political rights.

Does the constitution guarantee women’s human rights?

Protection of human rights (general) and women’s labour rights (general), but no general equality guarantee.

Does the NHRI enabling law promote and protect human rights as set out in instruments ratified by the State?

No, but Executive Order 163 invokes authority to “provide appropriate legal measures for the protection of human rights of all persons” subject to the limitation that only civil and political rights may be investigated.

Have the Philippines ratified ICESCR and CEDAW?

Yes. The Philippine Commission has interpreted its mandate broadly (and creatively) to ensure that it can undertake certain investigations of violations of ESC rights. Thus while the Philippines Commission on Human Rights cannot accept a direct complaint in the matter of an ESC right, it can accept a case dealing with a systematic violation of housing rights. Although this form of discrimination is a violation of ESC rights, it is also a violation of the equality guarantee in the International Covenant on Civil and Political Rights (ICCPR).

B. Justiciability

States must implement the ESC rights in ratified international instruments. The Committee on Economic, Social and Cultural Rights issued General Comment No. 9, and in reference to the domestic application of the ICESCR, the Committee wrote that “legally binding international human rights standards should operate directly and immediately within the domestic legal system of each State party.”⁷⁰ However, the Committee is not concerned with *how* this is done.

Although the precise method by which Covenant rights are given effect in national law is a matter for each State Party to decide, the means used should be appropriate in the sense that the results are consistent with the full discharge of its obligations.⁷¹ In this regard, ESC rights are – at least in theory – “**justiciable**”, meaning that they can be brought before the courts and a **remedy** can be sought and obtained.

Many countries argue that ESC rights are not judicially enforceable, that they are too vague to be monitored effectively, or that the basic obligations that are linked to ESC rights are matters for the legislatures, not courts or tribunals.

In response to the first and third concerns, States that have ratified instruments and that have included all or some ESC rights in their constitutions or in their NHRI's enabling legislation (or both), have already accepted international law. There are numerous examples of courts applying domestic and international law to protect ESC rights even where the Government has not formally transformed the norm into law. Moreover, the rights that are protected by most human rights commissions and **ombudsman** offices that address equality and non-discrimination – for example housing, employment and access to health care, to name but a few – are fundamentally about ESC rights. These issues have been adjudicated in the courts for half a century in countries like Canada, for example, where there is a long-standing tradition of NHRIs.

In terms of the vagueness issue, international development agencies have been producing research on social and economic conditions and human well-being for decades. Far from being “vague,” these areas are the ones we know the most about. From the United Nations Development Programme's (UNDP) Human Development Index (HDI), to gender-related indices, to the United Nations Children's Fund's (UNICEF) rate of progress measurements, and the World Bank's World Development Reports, the problem is not insufficient or vague data, but rather how to marshal it all in the human rights context.⁷²

As the Centre for Economic, Social and Cultural Rights has pointed out: “Historical neglect of ESCR is not a methodological obstacle. While there is always a need for additional **indicators** to measure compliance with specific rights, it must be emphasized that the definition of all rights changes and expands over time through concrete practice. The main obstacle to realizing ESC rights remains a lack of political will and commitment on the part of States, international institutions and **non-governmental organizations (NGOs)** whose responsibility it is to respect, protect and promote these rights for the benefit of all human beings.”

The Centre provides a few examples of ESC rights violations that are already being tried in courts around the world:

- ▶ Forcible evictions
- ▶ Terminating an employee without cause
- ▶ Deliberate poisoning of a water supply
- ▶ Discrimination in access to medical care, work, housing, education etc.
- ▶ Banning unions
- ▶ Depriving children of adequate food and water
- ▶ Failing to provide any primary level education
- ▶ Failing to provide basic health care facilities
- ▶ Educational institutions in such poor condition that they are a risk to safety
- ▶ Housing in such poor condition that it is a risk to safety.⁷³

One of the most well-known and internationally significant of the cases showing the justiciability of ESC rights is the *Grootboom Case*, a South African case involving housing rights. The following summary is drawn from the Association for Women's Rights in Development's (AWID) publication, *Strategies and Lessons from Experience: Respecting and Protecting the Right to Housing: the South African Experience*.⁷⁴

Example: Grootboom Case⁷⁵

The *Grootboom* decision of the South African Constitutional Court involved about 900 people (including Irene Grootboom) who had been living in terrible conditions in the municipality of Oostenberg in South Africa. Most of these people had already applied for low-cost housing, but were becoming increasingly frustrated after many years of waiting with no response from authorities. Desperate, they decided to illegally occupy a vacant piece of private property across the road from the site that had been earmarked for low-cost housing.

The owner of the property applied for and received a court magistrates order to evict the occupying community. The homes of the people occupying the land were destroyed. Now homeless, the community responded by petitioning the High Court for an order to provide them with temporary shelter, until they could be permanently accommodated under a provincial housing plan. The Government ... [offered] access to a piece of land and some building materials, as well as access to basic services while they waited for housing to become available. Subsequently, however, the Government failed to honour its promise. The community then took their case to the High Court, basing their arguments on Section 26 of the South African Constitution, which states that:

Everyone has the right to have access to adequate housing; and *the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right.*

The court ruled ... that the community's right to have access to adequate housing had indeed been violated... [and] that a legislative or policy framework aimed at the progressive realization of social rights must be adequate to facilitate the progressive realization of the right within the prevailing resource constraints and that it must be comprehensive, coherent, balanced and flexible.... Section 26 imposed a negative duty on States not to prevent or impair the access to housing, as well as a positive obligation to create an enabling environment for the fulfillment of this right. The State's housing plan must respond to the needs of crisis situations, and may not exclude any significant sector of society, especially vulnerable populations. The housing plan in this case did not meet these standards, and therefore the Government had a duty to rectify the situation.

The *Grootboom* decision was a landmark decision: It recognized, first, that ESC rights enshrined in a Constitution were justiciable – that is, they could be adjudicated in a court of law and remedies found to compensate victims. The decision also recognized the obligation of the State to ensure access to these rights, irrespective of budgetary or other constraints.

Section 2

International Human Rights Framework

There are three general sources of international law:

- ▶ Treaty or conventional law
- ▶ Customary international law
- ▶ General principles of law

This Handbook deals primarily with the first source and focuses on those conventions which contain provisions regarding women's ESC rights.

Upon **ratifying** a **treaty** or convention, a State undertakes certain legal obligations. The meaning and application of these legal obligations are set out in the conventions themselves, and the interpretation of specific sections is provided in **General Comments** prepared by the **Treaty bodies** or committees that are responsible for a particular convention. The Committees on the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child are the main examples, and they routinely adopt General Comments and make **General Recommendations** to provide guidance on the interpretation and application of their respective covenants.

These three committees are not the only ones that issue comments and recommendations, of course, but they are the focus of this Handbook as regards women's ESC rights.

A. The UN International Human Rights System

At the international level, instruments of particular importance are those that deal in substance with the rights, or categories of rights, under the **International Bill of Human Rights**, which consists of the UDHR, the ICESCR, and the ICCPR and its two **Optional Protocols**.⁷⁶

These instruments impose basic obligations on States that have ratified the instruments. The following sections contain more detail on these selected key instruments.⁷⁷

- ▶ Universal Declaration of Human Rights (UDHR)
- ▶ Declaration on the Rights of Indigenous Peoples
- ▶ Convention on the Elimination of Discrimination against Women (CEDAW)
- ▶ Convention on the Rights of Persons with Disabilities (CRPD)
- ▶ Convention on the Rights of the Child (CRC)

- ▶ Convention on the Elimination of all forms of Racial Discrimination (CERD)
- ▶ International Covenant on Civil and Political Rights (ICCPR)
- ▶ International Covenant on Economic, Social and Cultural Rights (ICESCR)
- ▶ Optional Protocol to the ICESCR

CEDAW Article 1

“For the purposes of the present Convention ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

Universal Declaration of Human Rights (UDHR)

The Universal Declaration of Human Rights is not a treaty or convention. Nonetheless, experts are of the view that the Declaration has the force of customary law. It provides a framework for the development, expansion or explanation of rights in international conventions.

“All human beings are born free and equal in dignity and rights” (Art. 1), and “Everyone is entitled to all the rights and freedoms ... without distinction of any kind, such as ... sex...” (Art. 2). These foundational rights are applied in accordance with the principles of equality and non-discrimination to the:

- ▶ Equal rights for men and women as to marriage, during marriage, and at its dissolution (Art. 16)
- ▶ Right to own property (Art. 17)
- ▶ Right to social security (Art. 22)
- ▶ Right to work and the right to equal pay for equal work (Art. 23)
- ▶ Right to form and to join trade unions (Art. 23)
- ▶ Right to an adequate standard of living, including the right to food, clothing, medical care and housing, with special care and assistance for motherhood and childhood (Art. 25)
- ▶ Right to education (Art. 26)
- ▶ Right to participate freely in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits (art. 27)

Declaration on the Rights of Indigenous Peoples

With a majority of 143 votes in favour (negative votes were cast by Canada, Australia, New Zealand, United States), the **United Nations General Assembly** adopted the **Declaration on the Rights of Indigenous Peoples** on September 13, 2007. This Declaration states that indigenous peoples and individuals are free and equal to all other peoples and that indigenous peoples have the right to freely pursue their economic, social and cultural development. States have **positive obligations** to take

effective measures and, where appropriate, special measures, to ensure continuing improvement of economic and social conditions.

Article 21 provides that particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities. Article 22 also states that particular attention shall be paid to the rights and special needs of vulnerable individuals, including elders, women, youth, children and persons with disabilities in the implementation of the Declaration.

Temporary special measures are to be taken, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

CEDAW is sometimes called the “international bill of rights for women.” Adopted in 1979, it is a comprehensive and legally binding instrument that prohibits **discrimination against women** and obliges Governments to take steps to advance equality of women. It draws no distinction between public and private life and does not accept **culture** as an excuse for discrimination.

CEDAW protects women’s rights to equality and non-discrimination in economic, social and cultural realms. The right to be treated on an equal basis in domestic and family matters is essential for women’s economic and social rights.

NHRIs should make particular reference to policies or practices that appear either in **complaints** or through the course of **monitoring** practices that discriminate against women in these key areas: trafficking in women, political and public life, nationality, education, employment, health care and family planning, economic and social benefits (including loans, access to bank mortgages and other forms of credit), participation in cultural life, issues involving rural women, property rights, and marriage and family relations.

In General Recommendation No. 6: Effective National Machinery and Publicity, the **CEDAW Committee** states that NHRIs should have the resources, commitment and authority to:

Areas covered by the CEDAW Convention include:

- Article 6: Trafficking in women and prostitution
- Article 7: Political and public life
- Article 8: Participation at the international level
- Article 9: Nationality
- Article 10: Education
- Article 11: Employment
- Article 12: Health care and family planning
- Article 13: Economic and social benefits
- Article 14: Rural women
- Article 15: Equality before the law
- Article 16: Marriage and family relations

Source: “Our Rights Are Not Optional”
IWRAP Asia Pacific,
<http://www.iwraw-ap.org>

- ▶ Advise on the impact on women of all Government policies
- ▶ Monitor the situation of women comprehensively
- ▶ Help formulate new policies and effectively carry out strategies and measures to eliminate discrimination

General Recommendations are a valuable source of information for NHRIs on **reporting procedures** and guidelines, as well as on substantive and thematic issues involving women's rights and ESC rights. See Appendix 5 for relevant General Recommendations that have been issued by the CEDAW Committee.

In 1999, the UN General Assembly adopted the Optional Protocol to CEDAW.⁷⁸ By ratifying the Optional Protocol, a State recognizes the competence of the Committee on the Elimination of Discrimination against Women – the body that monitors States Parties' compliance with the Convention – to receive and consider complaints from individuals or groups about States Parties that have ratified CEDAW. It should be noted that the Protocol contains (1) a communications procedure that allows individuals, or groups of individuals, to submit claims of violations of rights protected under the Convention to the Committee, and (2) an inquiry procedure enabling the Committee to initiate inquiries into situations of grave or systematic violations of women's rights.

The Optional Protocol entered into force on 22 December 2000, following the ratification of the tenth State Party to the Convention, putting the Optional Protocol on an equal footing with the **International Covenant on Civil and Political Rights (ICCPR)** and the **Convention on the Elimination of Racial Discrimination (CERD)** which also have communications procedures.

There is a role for NHRIs in the communications procedure, either to facilitate the process of making a complaint, or carrying forward a communication itself in the event that internal national processes are exhausted or do not exist. More details on this type of activity are found in Module 6.

Despite these positive aspects, CEDAW has among the largest number of **reservations** by Governments. Most of the reservations focus on the core objective and underlying rationale of the Convention, namely the imperative of changing unequal power relations between men and women and this resistance undermines the very purpose of the convention.⁷⁹ The NHRI's role in removing or objecting to reservations is also discussed in more detail in Module 6.

Convention on the Rights of Persons with Disabilities (CRPD)

According to the UN **Convention on the Rights of Persons with Disabilities**, “discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 6(1) of the 2006 Convention specifically recognizes the importance of multiple effects of discrimination for women with disabilities.⁸⁰

Convention on the Rights of the Child (CRC)

Girls have particular vulnerabilities in a number of economic, social and cultural areas such as education, health, and economic exploitation. For these reasons, the ESC rights provisions in the CRC may provide needed protections.

The ESC rights included in this Convention include the rights to:

- ▶ The highest attainable standard of health (Art. 24)
- ▶ Benefit from social security (Art. 26)
- ▶ A standard of living adequate for the child's physical, mental, spiritual, moral and social development (Art. 27)
- ▶ Education (Art. 28)
- ▶ Protection from economic exploitation (Art. 32)

In its General Comment No. 1 (2001) on the aims of education, the Committee on the Rights of the Child has noted that **gender discrimination** can be reinforced by school curricula that are inconsistent with gender equality, as well as by arrangements that limit benefits that girls can obtain from the educational opportunities offered, and by unsafe or unfriendly environments which discourage girls' participation. General Comment No. 1 also addresses discrimination against children with disabilities, including those with HIV/AIDS which is pervasive in many formal educational systems and in a great many informal educational settings, including in the home. All such discriminatory practices directly contradict the requirements in Article 29 (1) (a) that education be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential.

Because NHRIs frequently work with their Governments in the development of human rights modules or curricula for schools, this is an important area of activity.

In its General Comment No. 2 (2002), the Committee on the Rights of the Child sets out the role of independent NHRIs in the promotion and protection of the rights of the child. Article 4 of the CRC obliges States Parties to “undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention.” Independent NHRIs are an important mechanism to promote and ensure the **implementation** of the CRC; indeed, the Committee on the Rights of the Child considers the establishment of NHRIs as part of the commitment made by States Parties upon ratification of the CRC to ensure the implementation of the Convention and advance the universal realization of children's rights.

Convention on the Elimination of All Forms of Racial Discrimination (CERD)

CERD forbids any “distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing of human rights and fundamental freedoms in political, economic, social, cultural or any other field of public life.”

For many racial minority women who file race and sex discrimination complaints, CERD provides an avenue to ensure that the race element is addressed in the economic, social and cultural realms. Article 5(e) of this Convention codifies a number of ESC rights including the right to:

- ▶ Work, and free choice of employment
- ▶ Just and favourable working conditions
- ▶ Equal pay for work of equal value
- ▶ Housing
- ▶ Public health, medical care, social security and social services
- ▶ Education and training
- ▶ Equal participation in cultural activities
- ▶ Access to any place or service intended for the general public

International Covenant on Civil and Political Rights (ICCPR)

While this Covenant focuses on civil and political rights, Article 3 deals specifically with the equality of men and women, and thus creates a link with the rights set out in the ICESCR.

Article 3 of the ICCPR provides that:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

General Comment 28 from the Human Rights Committee sets out the link between the ICCPR and ESC rights. Relevant sections are set out below:

3. ... The State party must not only adopt measures of protection, but also positive measures in all areas so as to achieve the effective and equal empowerment of women. ...

4. States parties are responsible for ensuring the equal enjoyment of rights without any discrimination [and] to take all steps necessary, including the prohibition of discrimination on the ground of sex, to put an end to discriminatory actions, both in the public and the private sector, which impair the equal enjoyment of rights.⁸¹

This Article has been used to challenge discrimination against women in economic, social and cultural realms. As well, Article 26 of the ICCPR provides a broad right to be free from discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

The principal codification of ESC rights is found in the ICESCR. The ICESCR recognizes rights to:

- ▶ Equality between women and men (Art. 3)
- ▶ Work and favourable conditions of work (Arts. 6 and 7)
- ▶ Form and join trade unions (Art. 8)
- ▶ Social security (Art. 9)
- ▶ Protection of the family, mothers and children (Art. 10)
- ▶ An adequate standard of living including: adequate food, housing and clothing (Art. 11.1)
- ▶ The highest attainable level of health and health care (Art. 12)
- ▶ Education (Art. 13)
- ▶ Free and compulsory primary education (Art. 14)
- ▶ Take part in cultural life; benefit from scientific progress; and benefit from the protection of scientific, literary or artistic production of which one is the author (Art. 15)

Some rights tend to be less “visible” in discussions on women’s rights, but it is important to point out that rights to own, manage and inherit property are also fundamental to women’s equality. As well, the freedom from **violence against women**, including in the context of intimate partner and other forms of domestic violence, is closely linked to ESC rights.

Articles 2 and 3 of the ICESCR Outline State Party Obligations

The key principles that inform State obligations to uphold ESC rights include the following:

- ▶ To respect, protect and fulfill
- ▶ “Undertake to take steps ... by all appropriate means, including particularly the adoption of legislative measures”
- ▶ “With a view to achieving progressively the full realization of the rights”
- ▶ Not use retrogressive measures
- ▶ Positive obligations
- ▶ “To the maximum of its available resources”

- “Without discrimination”

The UN **Office of the High Commissioner for Human Rights’ Handbook on Economic, Social and Cultural Rights for National Human Rights Institutions** (OHCHR Handbook) explains thoroughly what each term means.⁸² Rather than repeat this information in its entirety, a brief summary is provided, followed by an analysis of the implications of these terms for women’s ESC rights. Where appropriate, examples are provided to illustrate the analysis. Readers seeking more information should consult the OHCHR Handbook.

ICESR Articles 2 & 3

2(1) Each State Party ... undertakes to take steps...to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2(2) The States Parties ...undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. The States Parties...undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights...

The Obligation to Respect, Protect and Fulfill⁸³

To respect means that the State cannot take any action or impose any measure that is contrary to the rights guaranteed by the treaty or convention. This is sometimes referred to as a “negative obligation.” States are required to repeal laws and policies that discriminate either directly or indirectly. According to the Committee on Economic, Social and Cultural Rights, this means that:

States Parties must refrain from discriminatory actions that result in the denial of the equal right of men and women to their enjoyment of economic, social and cultural rights (para. 18).⁸⁴

To protect means that it is not sufficient for the State merely to refrain from breaching a particular right in international law; it must also ensure that others do not deny the right. The State obligation to protect includes the establishment and strengthening of democratic institutions – this requires State action, intervention and support.

In short, States Parties must eliminate the practices that perpetuate inequalities, adopt legislative provisions on equality and non-discrimination and prevent third parties from interfering with the enjoyment of Article 3 (para. 19 and 20).

To fulfill – States Parties must take steps to ensure that in practice women and men enjoy their economic, social and cultural rights equally, for example, by ensuring the availability and accessibility of remedies through appropriate venues such as courts and tribunals; adopting temporary special measures to accelerate women’s equal

enjoyment of their rights; and by undertaking human rights education and training programs for judges and public officials (para. 21).

This is also referred to as “positive” action on the part of the State. Such actions would include, for example, efforts to promote better understanding about human rights through effective education and information campaigns. The State is seen as the most appropriate vehicle for these efforts – as opposed to the international community – because such campaigns are likely to be most effective when they are designed and carried out at the national or local level and take the local cultural and traditional context into account.

According to Principle No. 14 of the Montreal Principles, in order to fulfill the obligation of immediacy States Parties may be required to “respect, protect, and fulfill” simultaneously, rather than in stages, in order for women to enjoy substantive equality in economic, social and cultural realms. That is, depending on the infringement, a State Party may be required to both refrain from acting discriminatorily *and* to take positive steps to redress sex-discrimination and inequality in economic, social and cultural realms.

The Obligation of Immediacy

Some obligations require immediate implementation in full by all States Parties. General Comment No. 16 to the ICESCR states:

The equal right of men and women to the enjoyment of economic, social and cultural rights is a mandatory and immediate obligation of States parties.⁸⁵

The Montreal Principles also provide that:

...This obligation is not subject to progressive realization. The obligation is also an immediate one for inter-governmental bodies and quasi-State actors or other groups exercising control over territory or resources.

- ▶ Thus, undertaking to guarantee that relevant rights will be exercised without discrimination and take steps towards full realization are of immediate effect. **Minimum core obligations** are also subject to the principles of immediacy
- ▶ The obligation of immediacy may be subject to a standard of reasonableness
- ▶ On the other hand, a State’s failure to take steps within a reasonable time after the Covenant’s **entry into force** is a violation of the Covenant
- ▶ The immediacy principle means that it is contrary to human rights law and the principle of dignity to allow discrimination to continue unaddressed for any period of time

“Undertakes to take steps ... by all appropriate means...”

Legislative reform may be a necessary step, but it may not be sufficient.

Administrative, judicial, policy, economic, social, educational measures are examples of the other steps that are usually part of the implementation of a given right and will be required of Governments to ensure these rights to all.

This is where the promotional aspect of NHRI mandates becomes especially important. NHRIs can undertake partnerships with other institutions – including public authorities in their obligations under international law – to change not only the laws, but also the other “tools of governance” that are used to implement policy choices.

“With a view to achieving progressively the full realization of the rights”

Progressive realization recognizes that States do not have limitless resources and cannot realize *all* ESC rights immediately. States may therefore work towards ESC rights over time, to the maximum extent permitted by their economies. At the same time, *States Parties should move as expeditiously as possible towards the realization of rights (Limburg Principles, 21). States are obliged to ensure that inequalities experienced by disadvantaged groups are eradicated so that all groups are in an equal position to attain those rights and aspects of those rights that may be realized progressively.*

- ▶ The progressive realization of rights does not mean that States can defer indefinitely efforts to ensure full realization. (Limburg Principles, 21)
- ▶ States must show discernible progress towards the enjoyment by everyone of the rights contained in the Covenant
- ▶ The obligation of progressive realization includes an obligation not to take or permit backward or **retrogressive measures**. (See the section below on the Principle of Non-Retrogression)

The obligation of progressive realization means that NHRIs must be vigilant, disciplined and regular in monitoring women’s ESC rights. Regular and systematic data collection should be coupled with efforts to map the data against Government plans or other tools that show the Government’s intention and progress in improving the quality of human rights for women.

“To the maximum of its available resources”

Because States may not have sufficient resources, they may be able to justify the failure to ensure the full enjoyment of ESC rights. However, States cannot escape the minimum core obligations: “Resource scarcity does not relieve States of certain minimum obligations in respect of the implementation of economic, social and cultural rights.”⁸⁶

From the perspective of an NHRI, this means that it is critical to work with public institutions to develop and monitor feasible, long-term and progressive plans that are achieved over time. The ICESCR in Article 2(1) imposes an implicit, some would say

explicit, obligation on first world countries to assist third world countries achieve this objective through economic and technical assistance. In other words, “available resources” may include development assistance from other countries and not just the nation’s own resources.

Positive Obligations

All human rights – civil, cultural, economic, political, and social – impose both negative and positive obligations on States to prevent discrimination. States are required not only to refrain from infringing rights, but also to take positive steps to achieve equality.

This means that merely *not* doing something may be insufficient: positive steps, such as taking an initiative, launching a program and allocating resources, including financial resources to address rights violations may also be required. NHRIs have an important role to play in encouraging countries to take needed steps.

For example, the right to education may require States to take special measures to promote the education of girls. Similarly, the right to adequate housing may require a State not only to refrain from forcibly evicting people from their homes and lands, but it may also entail the provision of resources to ensure adequate housing for marginalized groups. The right to health means that States must take positive measures to ensure that their citizens have access to existing medication, as shown in the example.

Positive measures generally require the progressive realization of rights through the development of programs and the expenditure of resources (e.g. the provision of services).

Article 3 of the ICCPR, which creates a link between the equality rights of men and women, is also relevant to women’s ESC rights. General Comment 28 from the Human Rights Committee states that:

3. [...] The State party must not only adopt measures of protection, but also positive measures in all areas so as to achieve the effective and equal empowerment of women. States parties must provide information regarding the actual role of women in society so that the Committee may ascertain what measures, in addition to legislative provisions, have been or should be taken to give effect to these obligations, what progress has been made, what difficulties are encountered and what steps are being taken to overcome them.

The Committee on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights monitors implementation of the ICESCR. The Committee has issued General Comments on most of the rights contained in the Covenant, as well as on the domestic implementation of ICESCR rights and their relevance for NHRIs. The Committee has also addressed women’s inequality with respect to all ICESCR rights through the adoption of General Comment 16, Article 3 of the Covenant.⁸⁷

Example: Financial Resources for HIV/AIDS Victims

A State decides to refuse to provide financial resources for HIV/AIDS victims within its borders. Women are being infected and dying from this disease disproportionately. As a result, women's right to equal enjoyment of the right to health is infringed.

In this case, it is the State's failure to act that has caused the infringement.

To remedy the situation, the State is obliged to act – take *positive steps*, e.g., to establish an HIV/AIDS prevention and treatment strategy; education/outreach, particular treatment programs (e.g., anti-retroviral), programs to assist those infected.

The comments of the Committee are critical to understanding the nature and content of specific ESC rights. They include comments on broad themes or issues, such as the rights to: work, adequate housing, education and health. They also contain references to discrimination against women. The OHCHR table with regard to the relevant general comments is reproduced on the next page.

The Optional Protocol to the ICESCR⁸⁸

The Optional Protocol to the ICESCR was approved by the United Nations Human Rights Council on June 18, 2008⁸⁹. It will provide a mechanism for the submission of individual complaints to the United Nations Committee on Economic, Social and Cultural Rights if complainants are unable to obtain redress at the national level.

It contains significant provisions that can contribute to the better promotion and protection of ESC rights:

- ▶ States Parties to the Covenant joining the Protocol recognize the competence of the UN Committee on Economic, Social and Cultural Rights to receive and consider communications alleging violations of the economic, social and cultural rights set forth in the Covenant.
- ▶ The Protocol provides for the possibility of so-called “interim measures” by providing that the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures to avoid possible irreparable damage to the victims of the alleged violations.
- ▶ The Protocol also creates an inquiry procedure, setting out that if the Committee receives reliable information indicating grave or systematic violations of the Covenant, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned. The inquiry may include a visit to the territory of the State Party concerned.
- ▶ The Protocol requires that States take all appropriate measures to ensure that individuals under its jurisdiction are not subjected to any form of ill-treatment or intimidation as a consequence of communicating with the Committee pursuant to the Protocol.

It is important to underline, however, that the Committee can only look into complaints originating from States who have signed the Optional Protocol.

Table: Committee on Economic, Social and Cultural Rights: List of Key Comments⁹⁰

ICESCR Right	Comment no.	Date
The right to social security	19	2007
The right to work (Art. 6)	18	2005
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 (Art. 15 (1) (c))	17	2005
The equal right of men and women to the enjoyment of all economic, social and cultural rights (Art.3)	16	2005
The right to water (arts. 11 and 12)	15	2002
The right to the highest attainable standard of health (Art. 12)	14	2000
The right to education (Art. 13)	13	1999
The right to adequate food (Art. 11)	12	1999
Plans of action for primary education (Art. 14)	11	1999
The role of national human rights institutions in the protection of economic, social and cultural rights	10	1998
The domestic application of the Covenant	9	1998
The relationship between economic sanctions and respect for economic, social and cultural rights	8	1997
The right to adequate housing: forced evictions (Art.11 (1))	7	1997
The economic, social and cultural rights of older persons	6	1995
Persons with disabilities	5	1994
The right to adequate housing	4	1991

B. Regional Systems

A review of all the regional instruments that are relevant to women's ESC rights and the work of NHRIs is beyond the scope of this Handbook. However, key regional instruments are provided in the Tables in Appendix 3 and cross referenced to specific ESC rights.

Section 3

Bringing Human Rights Home

How does an international or regional instrument become part of national or domestic law? This question is central to the issue of justiciability which refers to the ability to use a human rights standard before the courts.

The way in which international law becomes part of domestic law is part of a legal concept called “transformation”. The way in which transformation works depends on the country, and whether the country is “dualist” or “monist”.

Most common law jurisdictions are dualist, meaning that an international instrument will only apply if it has been incorporated into law by national legislation.⁹¹ For instance, Commonwealth nations such as Canada and India⁹² follow this common law tradition, as do most Anglophone nations in Africa.⁹³

In contrast, many countries with civil law systems are “monist”, and they accept ratified instruments automatically as part of domestic law. This means that rights and duties exist without the need for specific legislation.⁹⁴ For example, Article 94 of the 1983 Dutch Constitution provides that treaties have precedence in the Netherlands.⁹⁵ A similar monist approach is taken by France, Germany⁹⁶ and other countries with a civil law tradition, including Francophone countries in Africa.

A. Domestic Application of International ESC Rights

Statements such as the **Limburg Principles**⁹⁷ and the **Maastricht Guidelines**⁹⁸ suggest that States Parties are obligated to incorporate international instruments recognizing ESC rights within the domestic legal order. In fact, General Comment No. 3 of the Committee on Economic, Social and Cultural Rights goes further and suggests that some provisions of the ICESCR are self-executing and do not even need to be formally incorporated into national law in order to have effect.⁹⁹

States Parties are required to take all appropriate measures, including legislation, to ensure the full development and advancement of women. This applies to all fields, in particular in the political, social, economic and cultural fields, for the purpose of guaranteeing to women the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.¹⁰⁰

B. Role of NHRIs in Domestically Incorporating Women’s ESC Rights

NHRIs’ influence the domestic application of international instruments that advance women’s equality through ESC rights by asking three questions:

1. Has the instrument been ratified by the Government?

If so, NHRIs can make the argument that the State is obligated to incorporate the international instrument in national law (see above). If not, the NHRI can develop and implement a program that is meant to move the State towards ratification.

Similarly, if the State has ratified the instrument but listed reservations on its application, the NHRI can document the impact of those reservations and attempt to influence the State to remove them.

2. Is implementing legislation required?¹⁰¹

If so, the NHRI can actively encourage the State to pass legislation incorporating the treaty into domestic law.¹⁰² NHRIs can also review draft legislation to make sure that the provisions contained therein are appropriate and fully consistent with the treaty obligation.

3. Is the State unwilling to take the necessary steps to pass implementing legislation?

If so, the NHRI can argue before the judiciary that unincorporated conventions still can have an indirect effect on domestic law. There are a number of common law cases that essentially hold that, where an ambiguity exists in domestic law, the State's domestic law will be interpreted in a way, which is consistent with the State's international treaty obligations.¹⁰³ Moreover, the NHRI can also argue that Commonwealth courts have used international human rights law in their interpretation of domestic law.¹⁰⁴ The NHRI also has an active and ongoing responsibility to advise their Government on an ongoing basis in relation to all these endeavours.

Section 4

Other Relevant Instruments, Principles and Guidelines

In addition to conventions and treaties, there are also other instruments, such as declarations, principles, guidelines, standards, rules and recommendations. These types of instruments are called “soft” law. They are non-treaty standards, usually but not always, adopted within the framework of the United Nations system. Although not legally binding in and of itself, soft law helps interpret and explain treaty provisions and to develop new standards in emerging areas of international law.¹⁰⁵ It can have persuasive authority, and/or provide practical guidance to States, NHRIs and other bodies in the implementation of treaty obligations.

Meeting outcome documents and agreements can also reflect expert consensus on agreed meanings and areas for further development. In the context of women's ESC rights, particular reference should be made to the **Vienna Declaration** and the **Beijing Platform for Action**.

Key principles relevant to NHRIs and women's ESC rights are discussed in this section:

- ▶ Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (Limburg Principles) 1986

- ▶ Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (Maastricht Guidelines) 1997
- ▶ Montreal Principles on Women’s Economic, Social and Cultural Rights (Montreal Principles) 2002
- ▶ Principles relating to the Status of National Institutions, (Paris Principles) General Assembly Resolution 48/134, 20 December 1993

A. **Limburg Principles**¹⁰⁶

In 1986, a group of distinguished international experts in international law met at the University of Limburg in Maastricht, the Netherlands. They developed a set of principles called *The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* which provide views on the interpretation of key provisions of the ICESCR.

The Limburg Principles preceded General Comment No. 3 (1990) of the Committee on Economic, Social and Cultural Rights on the nature of States parties’ obligations under the Covenant, and were influential during the preparation of that general comment. The Limburg Principles also deal with reporting by States on their compliance with the Covenant.

The Limburg Principles create an explicit link between Section 3, the equality section, of the ICESCR, and the Declaration on the Elimination of All Forms of Discrimination against Women (DEDAW) and CEDAW. This is important because the interdependence of these two instruments is a strategy for ensuring the respect for women’s rights across economic, cultural and social dimensions.

B. **Maastricht Guidelines**¹⁰⁷

More than ten years after the Limburg Principles, more than thirty experts met in Maastricht at the invitation of the International Commission of Jurists (Geneva, Switzerland), the Urban Morgan Institute on Human Rights (Cincinnati, Ohio, USA) and the Centre for Human Rights of the Faculty of Law of Maastricht University (the Netherlands). The objective of this meeting was to elaborate on the Limburg Principles with respect to the nature and scope of violations of ESC rights and appropriate responses and remedies.

The result was the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights. Discrimination against women in relation to ESC rights was stated to have been recognized in the ICESCR, and was to be understood in light of the standard of equality for women under CEDAW, which in turn requires elimination of all forms of discrimination against women including gender discrimination arising out of social, cultural and other structural disadvantages.

These guidelines are especially relevant to NHRIs because they assist in understanding and determining violations of ESC rights and in providing remedies, in particular regarding monitoring and decision-making at the national, regional and international levels.

C. Montreal Principles

The Montreal Principles were adopted at a meeting of experts held December 7-10, 2002 in Montreal, Canada. These principles are meant to direct the interpretation and implementation of the guarantees of non-discrimination and equal exercise and enjoyment of ESC rights, found in Articles 3 and 2(2), among others of the ICESCR, so that women can enjoy these rights fully and equally.¹⁰⁸

The Principles set out the content and legal source of many women's ESC rights, and these are provided in detail below.

An adequate standard of living includes:

- ▶ Food and freedom from hunger
- ▶ Water
- ▶ Clothing
- ▶ Housing and freedom from forced eviction
- ▶ Continuous improvement of living conditions¹⁰⁹
- ▶ Health (which means the highest attainable standard of mental and physical health throughout a woman's life cycle, including reproductive and sexual health and freedom¹¹⁰)
- ▶ Equal inheritance and ownership of land and property¹¹¹
- ▶ The right to social assistance includes social security, social protection, social insurance and social services, including special assistance before, during and after childbirth¹¹²
- ▶ Training and education¹¹³
- ▶ Employment rights include freely chosen work as well as just and favourable conditions of work including fair wages, equal remuneration and protection from sexual harassment and sex discrimination at work¹¹⁴
- ▶ The right to form and join trade unions¹¹⁵
- ▶ Protection from economic exploitation¹¹⁶
- ▶ Protection from coerced and uninformed marriage;¹¹⁷
- ▶ A clean and healthy environment¹¹⁸
- ▶ Participate in cultural life¹¹⁹
- ▶ Claim and enjoy the benefits of patents and intellectual property¹²⁰
- ▶ Nationality, and to bestow nationality on children¹²¹
- ▶ Freedom from trafficking and exploitation; recognition of the human rights of trafficked persons¹²²

D. Paris Principles

The *Principles relating to the Status of National Institutions* (known as the Paris Principles), were endorsed by the UN General Assembly in 1993. The Paris Principles are international minimum standards on the status and roles of NHRIs. These Principles were developed at a UN-sponsored meeting of representatives of national institutions in Paris in 1991, and subsequently endorsed by the United Nations **Commission on Human Rights** and the General Assembly.¹²³

NHRIs have special status in the international **human rights community**. Typically, NHRIs that conform to the Paris Principles have a unique mandate to work in the area of human rights. They are official independent organizations established by law, with specified powers and functions as set out in their enabling legislation. These institutions combine Government legitimacy and authority, with independence and a “watch-dog” function that works in parallel with civil society.¹²⁴

This gives them status, expertise, credibility, and greater access to State use of enforceable authority than either governmental or non-governmental organizations. NHRIs can be catalysts for action and positive change in relation to all human rights.

Generally speaking, the Paris Principles require that NHRIs have:

- ▶ Independence
- ▶ Competence to protect and promote human rights
- ▶ A broad mandate clearly set forth in a constitutional or legislative text, and based on universal human rights standards
- ▶ Pluralism in membership and staff
- ▶ Sufficient resources to fulfill their mandates and perform their functions in an independent manner
- ▶ Adequate powers of investigation
- ▶ A methodology of cooperation with Government, non-governmental and private-sector organizations and individuals, nationally and internationally

In terms of activities and operations, the Paris Principles call for national institutions to:

- ▶ Submit opinions, recommendations, proposals and reports concerning the promotion and protection of human rights
- ▶ Promote and ensure the harmonization of national legislation, regulation and practices with international human rights instruments to which a State is a party – and their effective implementation
- ▶ Encourage the ratification of international human rights instruments, or accession to those instruments, and to ensure their implementation

- ▶ Contribute to the reports which a State is required to submit to United Nations bodies and committees, and where necessary, express an opinion on the subject, with due respect for the institution's independence
- ▶ Cooperate with the United Nations and other organizations in the United Nations system, the regional institutions and the national institutions of other countries
- ▶ Assist in the formulation of **human rights education** and research programs and to take part in their execution
- ▶ Publicize human rights and make efforts to combat all forms of discrimination by increasing public awareness, especially through information and education, and by making use of all press organs

In addition, national institutions may be authorized to hear and consider individual complaints and petitions concerning individual human rights violations. They may also encourage and facilitate mediation and **alternative dispute resolution**, and determine or recommend appropriate remedies.

Although the Paris Principles make no specific reference to ESC rights, the Principles do state that “a national human rights institution shall be vested with competence to promote and protect human rights.”¹²⁵ NHRIs are to be given “as broad a mandate as possible” and this should be “clearly set forth in a constitutional or legislative text”, which shall specify “its sphere of competence.” They further state that “a national human rights institution shall be vested with competence to promote and protect human rights.” This includes ensuring that ESC rights are realized by both women and men, without discrimination.

Module 4

Organizing NHRIs to Achieve Women's ESC Rights

4



Photo courtesy Sneh Aurora

Overview of Module 4

Module 4 looks at how **National Human Rights Institutions (NHRIs)** organize themselves internally to address women’s **equality** through **economic, social and cultural (ESC) rights**.

Module 4 is divided into three sections:

- ▶ **Section 1 - Strategic Planning.** **Strategic planning** has been a key area of focus for the United Nations and other organizations since the 1990s when the **Office of the High Commissioner for Human Rights** began promoting the development of NHRIs as the national guardians of human rights law and of international human rights standards. This section looks at good practices for making women’s equality and ESC rights a priority in the NHRI planning process.
- ▶ **Section 2 - Institutional Capacity.** NHRIs must “walk the talk”. The internal organization of the institution — in its structure and its work — should reflect the values that the NHRI is attempting to foster among society at large.

Five areas are discussed here:

1. Human Resources: Staffing and professional development strategies help NHRIs actively promote equality of women internally in terms of gender balance and women-positive policies.

2. Gender Mainstreaming v. Specific Programs for Women’s Equality: This section discusses briefly the pros and cons of **gender mainstreaming** as opposed to specific programs dedicated to women’s issues, and the implications for NHRIs.

3. Organizational Structure and Development: This section provides surveys a range of strategies NHRIs use to enhance their internal capacity to address ESC rights and women’s equality.

4. Knowledge Management: NHRIs need to collect and analyze information about ESC rights and the specific situation of women in their country. They also need to be able to capture and report on their own data about their own organizations. These objectives require information systems, research capacity, access to data and analytical capacity.

5. Training: Successful program delivery for women’s equality and ESC rights requires that staff have technical and professional knowledge, skills and abilities.

- ▶ **Section 3 – Coordination and Cooperation.** NHRIs should be structured internally to cooperate and collaborate with a variety of stakeholders. This is especially important for women’s ESC rights because of their **contextual** nature, and the fact that they are so often the result of complex and socially embedded factors, requiring networks and the engagement of multiple social actors. In short, cooperation is not a luxury for NHRIs – it is a necessity. The following topics are discussed in more detail in this section: donors, engaging **civil society**,

international cooperation, and cooperation with Government and independent agencies.

Section 1 Strategic Planning

NHRIs must develop and implement mechanisms to ensure that women's issues and ESC rights are included in their plans of action. This has to be done on two levels:

- ▶ First, a gender perspective needs to be applied to all NHRI activities
- ▶ Second, specific activities directed towards women's equality need to be developed

As well, action plans should be **monitored** to ensure that results are being achieved. This requires planning and follow-up.

It all begins with strategic planning – the identification of priority areas to which an NHRI will direct its resources, given the external situation and its internal capacities. Strategic planning is important for the NHRI because:

- ▶ It helps direct energy and resources towards important, achievable program initiatives
- ▶ It links planning to what is happening externally
- ▶ It provides a mechanism through which progress can be measured
- ▶ NHRIs can use planning to communicate and coordinate with other stakeholders in a transparent, mutually respectful and beneficial manner
- ▶ Donors see planning as an indication of organizational maturity, and often set planning as a condition for supporting the NHRI in future
- ▶ It is the first reference point for evaluations

It is beyond the scope of this Handbook to provide a complete guide to strategic planning. There are, however, some important considerations to bear in mind to ensure that women's issues, and specifically women's issues relevant to ESC rights, inform the strategic planning process.

Including Women's ESC Rights in Strategic Planning – Questions NHRIs Need to Address

- What are the key issues facing women in our country, and how do we find out?
- What does the country data say about the status of women's issues?
- What are the **minimum core obligations** of the State in relation to women's equality rights?
- What are the specific **Millenium Development Goals (MDG)** targets related to gender issues and equality? How is our country doing in meeting the targets?
- What kinds of **complaints** are coming through our Commission's doors and what are they telling us about the issues that we should be treating as priorities?

First, it is vital that an NHRI specifically include women’s ESC rights issues within the strategic planning framework if it is going to be able to identify activities in the area that warrant its attention.

This may seem self-evident, but it is not. The hidden nature of certain kinds of rights violations means that they may not be apparent unless one looks for them. It is equally vital to ask at every point of the strategic planning process whether the issue/proposal in question has a gender perspective and whether the proposed activities deal with identified gender issues.

This applies to all program activities, whether they are related to specific women’s ESC rights, or are of a more general nature. The same questions should be asked when monitoring progress in achieving these rights. This is part of how gender is both “mainstreamed”, so that it informs all the organization’s activities and how it is given a specific focus at the program level. More about gender mainstreaming can be found in Section 2: Institutional Capacity.

Second, developing strategic initiatives and priorities should reflect what is actually happening to women in the country.

Third, because it is difficult to “get at” women’s ESC rights, and because ESC work is progressive and long-term, making headway requires vision and organizational discipline to stay the course over a three to five year period – at least.

Fourth, there should be meaningful and transparent participation of stakeholders with expertise in women’s ESC rights, including women at the grassroots level. Successful planning processes should therefore begin by engaging the community at an early stage, through consultations and outreach, by seeking information on national priorities for women, and through meetings and focus groups with civil society. NHRIs can thus better identify and address women’s ESC rights and better engage women themselves in identifying the issues that are important to them. Planning can also highlight particular challenges faced by women on thematic lines. This engagement is necessary to ensure the quality of the plan, to reflect the community’s interest in it, and to allow for coordination and cooperation among stakeholders. Stakeholders should accept the plan as credible and understand why the institution has selected an area of activity and rejected others.

The development of a strategic plan is not an end in itself. Rather, it is a “road map” that is only useful if it translates into a concrete plan of action that is monitored regularly, and adjusted as necessary, to ensure that the map is being followed and bringing the institution to the desired destination. Again, this Handbook cannot provide detailed guidance on action planning or monitoring. However, clearly both must involve the application of a gender perspective as discussed above.

Priorities and Planning for ESC Rights

Choosing priorities, and implementing them through planning, helps to ensure internal discipline over the years and to retain focus on women’s ESC rights, which has a fundamental impact on *which women’s rights are protected and how well they are protected*.

Outcomes of international meetings and **declarations** can serve as starting points in identifying program choices for women's ESC rights. The MDGs and the **Beijing Declaration and Platform for Action**, for example, outline specific targets that can inform the planning process.

This is especially true for those objectives that are linked to minimum core obligations. For example, the right to an adequate standard of living includes a minimum core obligation of access to adequate food. To meet this obligation, the following actions may be necessary:¹²⁶

- ▶ Develop policies and programs to promote equitable distribution of food within the household
- ▶ Formulate and implement, when necessary, specific economic, social, agricultural and related policies in support of female-headed households
- ▶ Develop and implement anti-poverty programs, including employment schemes that improve access to food for women living in poverty, including through the use of appropriate pricing and distribution mechanisms
- ▶ Promote...household and national food security... [to improve] the nutritional status of girls and women ... including a reduction of severe and moderate malnutrition among children under the age of five ... giving special attention to the gender gap in nutrition, and a reduction in iron deficiency anaemia in girls and women by one third of the 1990 levels by the year 2000.

The MDGs have regional and country targets that can be the basis of even more specialized planning. NHRIs can use these targets in their planning and work to support progressive **implementation**.¹²⁷ Some regional targets as well as potential NHRI activities in this regard are set out below and on the next page.

Possible NHRI Activities

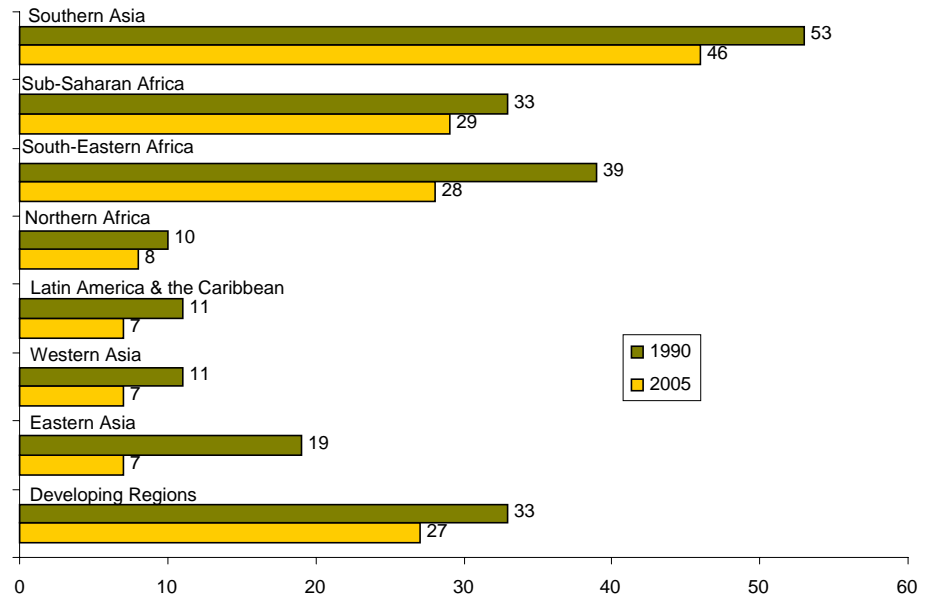
NHRI programming can:

- Collect data on food security and the nutritional status of girls
- Provide progressive reports on the relative status of girls, especially in rural areas
- Accept complaints from local communities where essential food needs are not being met
- Work with government officials to support the development of progressive plans to improve child nutrition, giving special attention to the gender gap

In order to engage in these activities, the NHRI must have planned for this objective, developed the program, and dedicated internal human and other resources.

Target: Halve, between 1990 and 2015, the proportion of people who suffer from hunger.

Proportion of children under age five who are underweight, 1990 and 2005 (Percentage)



Source: United Nations. The Millennium Development Goals Report 2007. www.un.org/millenniumgoals/pdf/mdg2007.pdf

An example of how an East African NHRI used fact seeking, engaging community leadership and **non-governmental organizations (NGOs)** in the planning process is set out below, with a focus on aspects that highlight women's issues.

Example: Strategic Planning for Women's Rights: East Africa

In a developing country in sub-Saharan East Africa, a new human rights commission began its strategic planning process by:

- Conducting interviews with key authorities, including Government, cabinet members, local leaders dealing with women and children
- Meeting with law enforcement authorities and prison officials
- Holding national consultations with the public and local leaders, including civil society

Through this process the following *pervasive issues*, linked to cultural traditions and practices, were identified regarding women and girls:

- **Violence against women**, including domestic violence (reportedly affecting as many as 70% of the women in the country)
- Unfair division of labour in the home, relegating women to servile positions (in one region, women serve meals to their husbands while literally crawling on their knees)
- Denial of access to education for girls, and discriminatory school curricula
- Denial of inheritance rights for girls
- Arranged and imposed, often early forced marriages
- Abductions and rapes, including those that include forced marriages
- **Female genital mutilation**
- **Discrimination against women** in work, including stereotyped job assignments
- Prostitution due to lack of alternative employment
- **Trafficking** of women

For the first year of operation, the following *strategic priorities* were identified regarding the rights of women and girls:

- Collaboration to investigate trafficking of women and children
- Review and development of education curricula for primary and secondary schools, as well as for teacher training colleges
- Public education programs on the rights of women and domestic violence
- **Investigation** and recommendations on domestic worker rights, in collaboration with the International Labour Organization (ILO)

Resources on gender mainstreaming and planning, and on integrating gender analysis into the planning process can be found at:

- ▶ UNESCO and Gender Mainstreaming http://portal.unesco.org/en/ev.php-URL_ID=8216&URL_DO=DO_TOPIC&URL_SECTION=201.html
- ▶ ILO Action Plan on Gender Equality and Gender Mainstreaming <http://www.ilo.org/public/english/bureau/gender/newsite2002/about/action.htm>

- ▶ Gender Mainstreaming (Rural issues) (RUAF Foundation)
<http://www.ruaf.org/taxonomy/term/30>
- ▶ World Bank, Gender Mainstreaming in National Policy Planning and Resource Management Cycle
<http://siteresources.worldbank.org/PGLP/Resources/12.pdf>
- ▶ Commonwealth Secretariat, The Gender Management System Series
http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7B69C5278C-137D-4517-A0F0-39493D0B8918%7D_Selected%20Resources.pdf

Section 2

Institutional Capacity

If the design and delivery of programs are to respond to the needs of women, then women must be involved in the development of such programs, which cannot function without appropriate management and administrative systems.

A. Human Resource Planning

NHRIs should “walk the talk”, ensuring that their own internal operations are based on the principles of equality and non-discrimination. The **Paris Principles** emphasize the importance of plurality, and this of course extends to gender equality in NHRIs at the senior levels. This is a credibility issue for NHRIs – if they are not upholding women’s equality and working to advance women’s rights internally, they will lose trust from key allies – community and civil society.

As a first step to strengthening the NHRI’s own credibility and its capacity to advance the ESC rights of women, NHRIs must ensure that their own house is in order. NHRIs should ensure that staff have the appropriate and necessary skills and knowledge to deal effectively with ESC rights, including those required for research and analysis, data collection, training, conciliation, and investigation.

Here are some questions that NHRIs should ask themselves as they embark on this internal reflection:

- ▶ Are there women in senior positions in the NHRI ranks?
- ▶ Are there women-positive policies, like maternity leave and alternative work arrangements for working women with families?
- ▶ Are there **temporary special measures** in place to support the professional development of women who have potential in the organization?
- ▶ Are steps being taken to ensure that temporary special measures do not generate hostility or resentment among male staff?
- ▶ Do hiring and training take into account the skills that staff need to investigate ESC rights and women’s equality issues?

These answers affect the NHRI's internal morale and the external credibility. Some of the strategies used by NHRIs include:

- ▶ Recommending the appointment of commissioners and appointing senior officials who are women
- ▶ Gender balance among staff at all levels
- ▶ Having management and internal structures that promote gender equality
- ▶ Internal written policies on employment equity, equal opportunity, harassment (including **sexual harassment**)
- ▶ Making public the proportion of men and women at the NHRI, as well as the internal policies (including those on employment equity and equal opportunity)
- ▶ Training for commissioners and staff on equality and ESC rights
- ▶ Developing temporary special measures such as internal professional development opportunities for qualified women

The following example is drawn from an NHRI in Southeast Asia.

Example: Professional Development Training for Women in NHRIs¹²⁸

An NHRI with no women in senior ranks was having difficulty attracting suitable women candidates. A human resources advisor proposed a "Women in Development Program." Women would be recruited into core, non-administrative roles, and selected using modified selection criteria. Once selected, these women would be placed on probation while undergoing a training and development program (also open to their male counterparts). Women who would be deemed competent after the training, based on their performance during the program and subsequent on-the-job assessments, would fill the position on a permanent basis.

The NHRI was advised to advertise the "Women in Development Program" with modified selection criteria, which would increase the likelihood that women would apply.

B. Gender Mainstreaming v. Specialized Approaches

Gender mainstreaming has been a priority for many years for multilateral organizations, Governments and civil society. On the one hand, it ensures gender perspectives across all aspects of the work of an NHRI – from complaints handling to monitoring and promotional activities. However, experience at both the international and national levels indicates that without a dedicated focus on women's issues, in addition to mainstreaming, gender issues tend to be minimized or ignored. There is some evidence of under-investment in ongoing analytical and policy-oriented initiatives that are aimed at developing and strengthening equality for women. Gender mainstreaming requires that a gender analysis be conducted on all activities. Similarly, evaluation of the specific effect of the program on women's ESC rights should be integrated into the planning of the program itself.

Gender mainstreaming is not necessarily a global solution to the under-investment in women's ESC rights and some experts are critical of how gender mainstreaming has worked in practice:

If gender mainstreaming was applied and understood as a strategy to address gender inequality ... and achieve fundamental transformation by eliminating gender biases and power imbalances between men and women, it would certainly merit further investment. But one must look long and hard to find examples of gender mainstreaming being implemented – or even conceptualized – in this way. Gender mainstreaming, as practiced, is more often used as a strategy for obscuring and under-valuing the significance of gender inequality.¹²⁹

This does not mean, however, that gender mainstreaming is not useful, just that the practice has been problematic. Experience suggests that mainstreaming may be more effective if combined with specific interventions for women. A dual approach in the protection and promotion of gender equality and the protection of women's ESC rights can be achieved through: (1) mainstreaming gender perspective into all policies and programs dealing with ESC rights, and (2) implementing specific interventions to benefit women.

C. Organizational Structure and Development

How can an organization develop its structure to enhance its ability to address women's equality and ESC issues?

Ideas that have been tested in NHRIs around the world are discussed in this section, ranging from gender mainstreaming as applied to committees, for example, to more specialized official and staff functions, to dedicated structures.

Mainstreaming: Internal Complaints Committee

Most NHRIs have internal complaints committees that are responsible for reviewing cases on a regular basis, identifying cases that appear to raise the same issues repeatedly and therefore are able to identify systemic problems, including cases of ESC rights and women's equality.

Focal Points

The term **focal point** is not universally accepted, but many organizations and NHRIs use it simply to indicate a point of responsibility within the organization or a liaison for an external initiative. That is how the term is being used here.

If systemic issues involving ESC rights are not being adequately identified and addressed through the complaints process or otherwise, focal points can support the process. A range of strategies can be used, alone or in combination, ranging from a "single person" focal point to special departments, units and cross-departmental committees.

First, a commissioner can be appointed as head of women's issues or gender issues in the commission, which can have the effect of creating an internal and visible

authority structure for women's equality issues. Activities undertaken by such individuals and their teams can include:

- ▶ Strategic collaboration with Government or other stakeholders on identified ESC issues affecting women
- ▶ Independent reporting on women's equality and ESC rights
- ▶ Targeted community outreach and communications on ESC issues affecting women
- ▶ Leading "women's parliaments" and consultative forums at the grassroots level to solicit the views of women in the community and to engage local leaders of NGOs or village-level leadership, about women's ESC rights
- ▶ The official might also ensure, on an ongoing basis, that important planning and policy initiatives apply a gender perspective consistently. In other words, this could be seen as "quality assurance" that gender mainstreaming is actually taking place in the organization

Example: Australia's Sex Discrimination Commissioner¹³⁰

The Australian Human Rights and Equal Opportunity Commission is a national independent statutory Government body.

The Sex Discrimination Commissioner has responsibilities relating to issues of discrimination on the basis of sex. She is specifically responsible for issues in relation to federal awards and equal pay under the Workplace Relations Act 1996. The Sex Discrimination Commissioner undertakes research, policy and educative work designed to promote greater equality between men and women. Recent projects have concentrated on paid maternity leave for women workers, career options for women in the finance industry, and eliminating sexual harassment from the workplace. The Commissioner has a broad educational role to highlight the rights of individuals, as well as the responsibility of all members of the community.

The Sex Discrimination Commissioner is responsible for administering the federal Sex Discrimination Act 1984. The Act gives effect to Australia's obligations under the CEDAW and parts of ILO Convention 156 regarding family responsibilities.

The Commissioner's responsibilities are to:

- Promote equality between men and women
- Eliminate **discrimination** on the basis of sex, marital status or pregnancy and, with respect to dismissals, family responsibilities
- Eliminate sexual harassment

Recent research and education projects have included researching the effect or consequences of pregnancy and potential pregnancy in the workplace through a National Inquiry, raising awareness of the Sex Discrimination Act amongst young women, and eliminating sexual harassment from the workplace.

Special Units and Departments

In some NHRIs, there may be difficulties handling gender issues, and a mainstreamed approach may not be adequate. It may be also be that a commissioner who has specific responsibilities in this area needs the support of additional human and other resources.

The special circumstances of girls and women may be such that a specialized structure is both necessary and appropriate.

Under the direction of a senior official, some NHRIs have created specialized departments, units, or centres for activities related to women's ESC rights.

Program responsibilities include:

- ▶ Investigating complaints raising ESC issues and women's equality rights
- ▶ Undertaking research and data collection
- ▶ Promotional activities relating to women (and possibly children as well)
- ▶ Developing and implementing mechanisms to ensure that all planning, programming and evaluating activities incorporate an equality focus

NHRIs often specify that within these activities, special consideration should be given to the needs of disadvantaged persons within these groups.

It is important that if this approach is taken, the separate structures do not become ghettos or that other units are discharged of the general responsibility for women's rights issues. Three examples of such specialized units within NHRIs are provided below.

The first example, from the Philippines, illustrates how a specialized program centre can undertake all of the activities listed above across several themes.

The second example, from Afghanistan, is illustrative of attempts in post-conflict States to establish specialized units.

The third example, from South Africa, demonstrate how a unit with a broader mandate can also specifically address the special circumstances of women and girls.

Example: Philippines Human Rights Commission – The Women's Rights Program Centre¹³¹

"The Center is a special unit that investigates human rights violations against women and initiates legal action or provides assistance in cases involving discrimination, non-recognition, women's rights as human rights, multiple burdens, unequal access to land, violence against women, politics and governance, justice and peace and order, employment, health and education."

Example: Afghanistan Independent Human Rights Commission – Women's Rights Unit¹³²**Goal**

To promote and ensure women's rights, and monitor the situation of women in Afghanistan and also to make an effort to eliminate/reduce the discriminatory attitudes towards women in Afghan society.

Objectives

- Bring changes in the situation of women by promoting human rights values in Afghan society
- Raise awareness by convening workshops and seminars as well as using mass media and other communication resources
- Develop a national strategy for the betterment of women's rights in the country based on international human rights principles and standards

Example: South African Human Rights Commission (SAHRC) – Equality Unit¹³³

Section 9 (4) of the Republic of South Africa Constitution Act of 1996 mandated Parliament to enact legislation within three years to prohibit or prevent unfair discrimination. Parliament enacted the Promotion of Equality and Prevention of Unfair Discrimination Act No. 2 of 2000 (PEPUDA) and an Equality Unit was established within the SAHRC. The Equality Unit has a broader mandate than gender alone, but it does specifically address sex and gender discrimination:

Vision

The Equality Unit is committed to the achievement of social justice through the promotion of human rights and in particular the right to equality as set out in section 9 of the constitution and by promoting awareness of the PEPUDA, that seeks to ensure that the inequalities of the past on the basis of gender, disability and race are eradicated.

Mission

To promote the achievement of **substantive equality** in the Republic by:

- Establishing a conceptual basis upon which the promotion of equality in South Africa should be measured
- Monitoring and assessing the observance of the right to equality – including the implementation of PEPUDA
- In collaboration with the Legal Department, investigating complaints around inequality
- Conducting research on equality issues and making recommendations on **remedies** of unfair discrimination
- Establishing working relationships with all the relevant stakeholders committed to the promotion of equality
- Investigating complaints in connection with equality claims

D. Knowledge Management

This Handbook is premised on the idea that the promotion and protection of women’s equality through ESC rights present unique and specific challenges to NHRIs. The capacity to identify progress depends on access to good socioeconomic data, including accurate and timely **sex-disaggregated data** and the ability to capture internal information about case management within the NHRI.

Activities related to research and data collection, as well as the development of effective information systems to manage the data, is known as “knowledge management”.

Information Systems

Many NHRIs in developing countries, or in States in transition, still gather case statistics manually or use spreadsheets (Excel, for instance). Others have progressed to off-the-shelf databases to capture, generate and report on caseload profiles and to generate reports.

As caseloads grow in size and complexity, and as regular reports are required, NHRIs need more capacity to understand their own caseloads, and to report on what is happening with complaints in their systems. Simple relational databases can help to identify patterns, trends and systemic issues.

Basic data storage, data manipulation, retrieval and analysis are greatly facilitated by good information systems, and there are many effective ones on the market. Internal knowledge management capacity is especially important for an NHRI’s ability to generate and analyze sex-disaggregated data. With a good system, internal case statistics can disaggregate (or isolate) data involving women’s issues, including those that capture information on specific ESC rights. At a minimum, therefore, complaint management processes should be supported by information technology that enables the disaggregation of data about women’s ESC rights in order to facilitate, standardize and improve the case management system. This will contribute positively to the:

- ▶ Quality and efficiency of program delivery in women’s ESC rights
- ▶ Quality and efficiency of the management of information gathering on women’s ESC rights
- ▶ Reliability of statistical information used to report to Parliament and the public
- ▶ Capacity to disaggregate data for the purposes of tracking progress on specific groups or issues in women’s ESC rights
- ▶ Ability to carry out trend and case analysis
- ▶ Ability to conduct performance monitoring and undertake programme evaluation in women’s ESC rights

Knowledge Management and Strategic Planning

There is an important link between knowledge management and strategic planning. Although a snapshot of an NHRI's current caseload does not necessarily determine strategic areas of intervention, effective knowledge management can, over time, identify trends and support strategic approaches by focusing resources on the cases that seem to make the most difference to women's equality.

Other types of knowledge management activities that require long-term planning include:

- ▶ Internal research programs that include women's ESC issues (either within the organization as a whole or in specialized units or centres)
- ▶ Internal archives or documentation centres that systematically collect and classify data on women in relation to ESC rights and equality
- ▶ Organizational evaluation programs to assess the progress of women's ESC rights and the impact of programs in relation to specific targets. Targets relating to both an NHRI's internal processes and its planned outputs should be assessed matching those targets to international targets where applicable

Data Collection: For What? From Whom?

The capacity to identify progress in the area of women's rights and ESC rights at the broader country level depends on the existence of good socioeconomic data, and access to such data.

In developed countries, NHRIs generally have access to high quality data through national statistical agencies, although relatively few NHRIs avail themselves of such data systematically. This may be in part because of the tendency to focus on specific cases rather than on policy research and trends analysis from other agencies. Also, the link between human rights and human development is sometimes less explicit in developed countries.

In developing countries and countries in transition, however, the obstacles are much greater. Reliable statistical agencies do not always exist. Sometimes the data *do* exist, but are lodged in various Government departments and are, for all intents and purposes, practically inaccessible.

The best solution in these contexts is to rely on the international community. Through UN agencies, the World Bank, the World Health Organization (WHO), and the Organization for Security and Cooperation in Europe (OSCE), NHRIs can access pertinent information (especially data in relation to the MDGs). They can use international indices already in existence (such as the Human Development Index) to compare progress and set benchmarks. NHRIs can compare this data with their own internal statistical information to help them assess whether their own caseloads reflect the national situation.

E. Training

Setting up and developing an NHRI is difficult work, and it is often preceded by intensive training on a range of human rights issues. Often, however, women's issues are "squeezed into" a few moments of general courses or sometimes they are not covered at all. The result is that general training rarely focuses on women's ESC rights except in very broad terms. Follow-up or specialized training is not always well integrated into actual practice nor is it well integrated with local issues.

NHRIs should ensure that training on gender issues and on ESC rights is undertaken by staff at all levels, ensuring capacity to understand and analyze the issues. Gender sensitivity training for all NHRI staff should also be part of the training, not only for ensuring respect for women's ESC rights within the organization, but also for ensuring understanding of particular issues regarding sexual harassment and sex discrimination.

Training should be coordinated to develop expertise in treaty obligations, national law, and strategies for engaging women in local leadership and communities.

Training sessions should be delivered on site, wherever possible, to avoid disruption of work. They should move in sequence from the general to the particular, although there is no set pattern or particular order. Training sessions should not be delivered one right after the other but rather over a longer period, to facilitate learning, and help staff to integrate the new ideas and practices with their work. Refresher sessions should be added as needed.

As part of the overall strategic objective of building collaboration with civil society and NGOs in particular, NHRIs and supporting donors have, in the last several years, made it a practice to invite NGO workers and community leaders to NHRI staff training sessions. This is done, of course, on an "as appropriate" basis. A particular effort needs to be made to ensure that women's organizations are included and, where possible, funded to attend the sessions. Some useful training resources are listed below.

Training Resources

- ▶ *Circle of Rights: Economic, Social and Cultural Rights Activism – A Training Resource* (International Human Rights Internship Program and Asian Forum for Human Rights and Development, 2000); <http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module4.htm>
- ▶ UN training materials, special issue papers and reference materials, including the Office of the United Nations High Commissioner for Human Rights Professional Training Series consists of handbooks and manuals intended to increase awareness of international standards; <http://www.unhcr.ch/html/menu6/2/training.htm>
- ▶ Two UN guides have also been developed for Indigenous Peoples and Minorities on how these groups can use UN human rights procedures and those established by regional mechanisms. Special issue papers explore a range of human rights issues such as reproductive and sexual health; business; HIV / AIDS; human

trafficking; disability; poverty reduction and sustainable development; and the environment; <http://www.unhchr.ch/html/menu6/2/training.htm>

- ▶ Equitas has developed a number of handbooks and manuals for its International Human Rights Training Program (IHRTP) and other training materials for ESC rights and national institutions; <http://www.equitas.org/>
- ▶ General resources on training, integrating training into practice/learning, and evaluating training available from the World Bank; <http://www.worldbank.org/ieg/training/>

Section 3

Coordination and Cooperation

Women's ESC equality rights are complex, and complex problems frequently have complex solutions. Multiple parties, sectors and States need to be involved to find solutions. NHRI require the active and ongoing engagement of others, including: the international community, regional institutions, Government bodies and institutions with parallel or complementary mandates (Commissions on women's issues, for example). While some activities, by their nature, cannot be carried out jointly – investigations, for example – other activities, by their nature, usually require cooperation. Among others, projects in the areas of research, or **human rights education**, or advice to Government, are particularly well-suited to cooperative approaches. However, cooperation requires that NHRIs have planned for the activities and have the staffing levels and resources to sit on external committees and engage in cooperative projects.

ESC rights require engagement with many sectors of society and organizations, and they tend to focus less on individual responsibility. Some writers have observed that in **civil and political rights** cases, it is often possible to identify a single rights violation, a single violator, and a remedy to address the violation. It is difficult, if not impossible, to find a single violation or violator of ESC rights, because of their complex and structural nature.¹³⁴

NHRIs should include cooperation and collaboration as specific objectives in their long-term planning so that:

- ▶ The various agencies involved do not duplicate efforts
- ▶ There are no gaps in programs
- ▶ Consistent and clear messages are presented to the public

Some NHRIs, for example, have created National Promotion and Education Committees that include representatives from NGOs, Government and community leadership for the specific purpose of encouraging and facilitating cooperation and collaboration.

NHRIs should exercise their functions collaboratively in association with other democratic mechanisms that also have responsibilities for human rights protection

and promotion, including Government, the judiciary, the legislature, the police and military, NGOs and civil society. NHRIs can help create structures for regular interaction and consultation among these stakeholders as well as other stakeholders, including academic institutions and the media. NHRIs should ensure that the roles and mandates of all stakeholders are clearly defined and understood. Some of the specific roles are discussed below.

A. Donors

Effective donor coordination in developing countries is critical for the success of the planning process, as well as in the technical capacity projects that support many of the strategies addressed here.

For a number of reasons, NHRI-related capacity building in developing countries is often sporadic, with multiple, unrelated or even duplicated training being offered by different donors, often over similar time periods.

This can occur because of pressure on donors to deliver aid dollars or lack of coordination among donors and/or NHRIs. At the same time, NHRIs are understandably reluctant to refuse a training program or donor dollars. The result can be a chaotic jumble of training sessions where the learning is not well internalized by staff and not evaluated.

Sometimes, multiple efforts and even simultaneous efforts at strategic planning leave NHRI staff exhausted and confused about what to do next or how to work with plans. Some NHRIs specifically build donor coordination into their strategic planning objectives as part of their overall coordination objectives.

B. Engaging Civil Society

NHRIs should also recognize the fundamental role played by civil society and the private sector, and establish and maintain close contact and good relationships with these sectors. Because of the important responsibilities of **non-state actors** in human rights, NHRIs should create better linkages with employers and corporate citizens and with civil society more widely, including religious groups and local leaders.

The Paris Principles require pluralism in the work of NHRIs, that is, the engagement of various sectors of society.

They require NHRIs to develop relationships with NGOs devoted to human rights protection and promotion, economic and social development, combating racism, and to protecting particularly vulnerable groups.¹³⁵

This requirement may be met by ensuring that the NHRI is set up in a way that facilitates dialogue, consultation and cooperation. Paris Principles specifically require NHRI relationships with NGOs devoted to promoting and protecting human rights.

This means that the involvement of NGOs in strategic planning can provide advantages to NHRIs. Given the understanding of local issues that NGOs bring to

the table, and their grassroots involvement and experience, their cooperation can improve mutual understanding of and support for the strategic priorities of NHRIs.

Ultimately, the strength of cooperation and collaboration between NHRIs and the NGO sector starts with the planning process, and can be continued by including them in selected training sessions and in monitoring activities.

NHRIs should pay attention to gender balance when they consult with NGOs, not only be sure to include women's NGOs, but also to encourage gender balance in NGOs they work with. The organizations might include:

- ▶ Women's human rights NGOs
- ▶ **Community service organizations** involved in providing services to women victims of domestic violence
- ▶ Women's health groups, including reproductive health, sexual violence, mental health, etc.
- ▶ Women's groups working in prisons
- ▶ Groups working with women agricultural and migrant workers
- ▶ Regional and local women's associations
- ▶ Anti-poverty and legal aid groups
- ▶ Women's legal and lawyers' associations
- ▶ Self-help and entrepreneurship groups supporting women

Engaging African NGOs in NHRI Strategic Planning

NGOs and other members of civil society in Uganda and Rwanda, including women's organizations, have been systematically involved in those countries' NHRI strategic planning.

NGOs have participated in consultations for the identification and definition of priorities, and in the design of action plans as partners in certain aspects of program delivery. While final decision making always rests with the Commissions, true collaboration in the identification and design of priorities and programs is more effective in the long term. It is very important that this process includes women's organizations and that it extend to rural areas.

Establishing and maintaining close contacts with NGOs is vital for an NHRI. NGOs at the grassroots level have access to broad networks; they can also encourage community-level support for the work of NHRIs and information-sharing and monitoring about human rights situations on the ground.

Partnering with NGOs, as well as with media and State officials on specific persistent social problems, or to follow up and monitor Government actions on women's issues. As the example from India on the next page demonstrates, issues affecting women can result in concerted and coordinated action.

Certain NGOs specialize in a particular area relating to ESC rights of women (e.g., the right to food, or housing rights, reproductive health rights, etc.) – a resource which the NHRI may be able to tap into.

As well, the reporting processes under human rights **Treaty bodies** are strategic opportunities for building partnerships and collaborative links among stakeholders.

Collaborative Strategies to Stop Harassment of Women on Railways, India

In 2001, the magazine 'Outlook' highlighted the problem of harassment of women passengers in India. After detailed discussions with railway officials and representatives of NGOs, the Commission decided to monitor compliance of the directions issued by the authorities concerned in respect of the safety of women passengers.

Source: <http://nhrc.nic.in/hrissues.htm#n104>

C. International Cooperation

The Paris Principles recognize the importance of cooperation and collaboration with a wide range of organizations and groups in order to ensure the effectiveness of NHRIs. NHRIs around the world cooperate and collaborate with a variety of stakeholders, including the United Nations, as well as other international and regional institutions, and with NHRIs in other countries.¹³⁶

The **International Coordinating Committee of National Institutions (ICC)** encourages coordination of joint activities and cooperation among NHRIs. The ICC also serves as liaison with the United Nations and other international organizations, and assists Governments to establish institutions in conformity with the Paris Principles. Events, conferences and meetings dealing with women's ESC rights, either at the regional or local levels, are an excellent strategy to enhance cooperation across institutions.

In addition, international cooperation can considerably facilitate the work of NHRIs in connection with *treaty monitoring and reporting*, topics that will be dealt with in greater detail in later sections.

Regional groupings of NHRIs also provide the opportunity for concerted action on selected topics that affects girls and women.

Example: Regional Coordination and the Asia Pacific Forum of National Human Rights Institutions (APF) Trafficking Focal Point Network¹³⁷

The Trafficking Focal Point Network is a regional network established in 1999.

Network members are members, commissioners or senior staff from NHRIs in the Asia Pacific region, and include Australia, India, Indonesia, Malaysia, Mongolia, Nepal, New Zealand, the Republic of Korea, and Thailand. Members share information, undertake research and develop cooperative projects. Resource materials are shared and used in training programs and good practices are identified, documented and distributed among the network.

Network members have also been involved in a number of successful interventions in cases of trafficking. The work of the network has helped improve the capacity of APF members to support regional Governments in their efforts to prevent, suppress and punish trafficking. A workshop was held in Sydney, Australia in 2005, entitled the APF Regional Workshop on Trafficking and National Human Rights Institutions: Cooperating to End Impunity for Traffickers and Secure Justice for Victims.¹³⁸

Example: NHRI Cooperation with Special Rapporteurs¹³⁹

There is a growing movement through the ICC and regional NHRI networks to enhance and strengthen cooperation between Special Procedures and mandate holders, and NHRIs. The APF's position paper on Special Procedures was adopted by the ICC during the institution-building phase of the **Human Rights Council** in 2007.

NHRIs and regional bodies can invite **Special Rapporteurs** to their country or region to develop or enhance cooperation between NHRIs and Special Rapporteurs. In 2001, for example, the Independent Expert on the Right to Development was invited to attend and address the Asia Pacific Forum ESC Rights Workshop held in Hong Kong.

APF had recognized that NHRIs had very little understanding of the processes or role of Special Rapporteurs (and, indeed, vice versa), and has used its regional platform to encourage a deeper understanding between NHRIs and Special Rapporteurs.

General Resources

Organizations and associations that can offer support, resources and information on coordination and available programs include:

- ▶ Asia Pacific Forum of National Human Rights Institutions
<http://www.asiapacificforum.net>
- ▶ Commonwealth Secretariat <http://www.thecommonwealth.org>
- ▶ Equitas: International Centre for Human Rights Education
<http://www.equitas.org>
- ▶ National Human Rights Institutions Forum <http://www.nhri.net> (includes links to regional forms)
- ▶ Network of African National Human Rights Institutions
http://www.nhri.net/pdf/Project_proposal_Establishment_Network_of_African_NHRIs.pdf

- ▶ Office of the High Commissioner for Human Rights <http://www.ohchr.org>
- ▶ Raoul Wallenberg Institute <http://www.rwi.lu.se>

D. Cooperation with Government and Independent Agencies

As Governments multiply their institutions to address one issue or another, the sheer number of independent institutions, or specialized bodies, can make issue-based governance bewildering and complex.

The Paris Principles state that NHRIs should consult with other bodies responsible for human rights protection and promotion (e.g., **ombudsman** offices, mediators and similar institutions).¹⁴⁰ This would also include Government departments that have specific responsibilities, say for women or children, or other established commissions, such as gender or women's commissions, which also have mandates to protect and/or promote the rights of women.

There is nonetheless a question that often arises as to overlapping **jurisdiction** with other independent institutions, including specialized commissions such as audit bodies, ombudsman offices and the like.

One strategy is to adopt the precedent for organizations (ombudsman, human rights commissions, etc.) to work together as peers, in a complementary and mutually supportive way. On women's issues, cooperation by NHRIs can extend to parliamentary women's groups, gender commissions, children's or women's ombudsmen, as well as Government departments.

The following case studies, based on real cases, highlight some of these issues.

Example: Inter-Agency Cooperation to Access Public Assistance Funds for Women: South Africa¹⁴¹

In South Africa, the Public Protector was asked to examine allegations about several problems in family law cases where complainants were unable to access the maintenance system in the courts. It appeared, based on the complaints, that the women were especially affected.

It was decided that a systemic investigation was required to identify the root of the problems, and to make recommendations to the South African Department of Justice and Constitutional Development.

However, another institution, the Commission on Gender Equality had already done research and published a report on the very subject. The 2004 report, "Implementation of the Maintenance Act in the Magistrates' Courts" not only identified the various maintenance problems experienced by women all over South Africa, it also made recommendations to the Government department in question.

The Public Protector decided not to write its own separate report, but rather worked with the Commission on Gender Equality to monitor the implementation of the recommendations.

Example: Cooperation and Collaboration in Lobbying the Government: Malaysia¹⁴²

In 2005, the National Human Rights Commission of Malaysia, SUHAKAM, in collaboration with the UNDP, organized a High-Level Policy Dialogue on "A Human Rights Perspective on MDGs and Beyond." The session focused on adopting **human rights principles** in the development and implementation of country-specific MDG targets and **indicators** for Malaysia, and a specific objective to strengthen the bonds of partnership and relationship among the Government, UNDP, NGOs, and other organizations. Two Millennium Development Goals (MDGs) were selected that have a direct bearing on women's ESC rights:

- Goal 3: To Promote gender equality and empower women
- Goal 5: Improve maternal health

One objective was to facilitate the development of country-specific MDG targets and indicators for Malaysia. Among the issues discussed were the poverty level of female-headed households, the low female labour force participation, the lower-level employment of women, and maternal health. It was recommended that disaggregated data be collected on these issues, especially for vulnerable groups such as single mothers.

Key Recommendations:

- That working arrangements be made more flexible, particularly for women, to encourage female labour force participation, including allowing home-based jobs and providing child nurseries within or close to the workplace.
- That care should be taken to ensure that the implementation of home-based jobs is done in a manner that does not reinforce the stereotyped roles of men and women
- That the Government improve the country's maternity benefits to encourage more women to participate in the country's labour force.
- That reproductive health should be added to the country-specific target to improve maternal health with particular focus on vulnerability to disease
- That issues relating to pregnant teenagers being forced to drop out of schools by school administrations be addressed.

Example: Collaboration on Eradicating Child Prostitution: India

The Indian Human Rights Commission worked with the Department of Women and Child Development, the Government of India, the National Commission for Women (NCW) and UNICEF to deal with the problem of child prostitution.

To better coordinate efforts, the Commission constituted a Core Group on Child Prostitution involving the above-mentioned groups. It also launched a massive media campaign on the issue of child prostitution, with the help of State Governments, UNICEF, the NCW and NGOs. The NHRC also worked with the NCW and the Department of Women and Child Development on the issue of child marriage.

Example: Joint Public Campaigns to Combat Female Genital Mutilation: Tanzania¹⁴³

The Commission on Human Rights and Good Governance in Tanzania investigates cases of alleged abuse against women and children. Relevant issues include: sexual and **gender-based violence**, discrimination against women and girls and female genital mutilation (FGM). These issues require not only the Tanzanian commission's attention, but also require the intervention of Government and local leadership at all levels. Public campaigns by both the Commission and several Governments denouncing violence and prohibiting harmful traditional countrywide practices have been undertaken.

Example: Promoting the Integration of Economic, Social and Cultural Rights into the Educational Curriculum: Northern Ireland¹⁴⁴

The Northern Ireland Human Rights Commission has developed a productive working relationship with the Department of Education. It is contributing to the development of the human rights elements of the school curriculum by commenting on draft proposals in that regard. In addition, the Commission has entered into a partnership with the Department of Education and the five Education and Library Boards in Northern Ireland to promote teaching in post-primary schools on the proposed Bill of Rights. This work supplements an extensive consultation process undertaken with children and young people outside the formal education sector on the Bill of Rights proposals.

The Department has also jointly published with the Commission advice for school managers on the Human Rights Act 1998, introducing the European Convention on Human Rights into educational policies and practice. Education, in particular, under Article 2 of Protocol 1 to the European Convention, has been prioritized by the Commission in its Strategic Plan for 2003-2006, and has been a key feature of its work.

The Commission facilitated a visit, and then a formal mission, to Northern Ireland by the Special Rapporteur of the United Nations Commission on Human Rights on the Right to Education, Katarina Tomasevski.

Conclusion

According to the UN Handbook for NHRIs on ESC rights: "To deal with [women's] economic, social and cultural rights, a national human rights institution will need to consider whether or how its mandate includes those rights and whether and how its mandate extends to all types of perpetrators of violations of [women's] economic, social and cultural rights."¹⁴⁵

Improving women's ESC rights requires both appropriate internal organizational policies and planning to ensure success and credibility. NHRIs around the world use a variety of creative strategies to protect and promote women's ESC rights.

These strategies include: strategic planning, institutional capacity building, human resources strategies, organizational structure and training programs, as well as the development of knowledge management and information systems that are capable of capturing, presenting and analyzing disaggregated data on women's ESC rights. This Module has emphasized the importance of internal capacity building and cooperation in the long term.

Module 5

The Protection Mandate – Complaints Handling, Investigation and Monitoring

5



Photo courtesy Pamela Teitelbaum

Overview of Module 5

Module 5 of the Handbook examines **investigation** and **monitoring** by **national human rights institutions (NHRIs)** in relation to women's **equality** and **economic, social and cultural (ESC) rights**.

The **Paris Principles** provide that NHRIs should promote and protect **human rights**. The *protection* aspect of the mandate depends on the power of the NHRI to investigate and monitor human rights and, in most cases, to accept and investigate individual **complaints**.

In the context of ESC rights, broad social and governance contexts that give rise to rights violations are not always easily attributable to single incidents or particular perpetrators. The classic investigative techniques that are well suited to most **civil and political rights** cases may not necessarily lend themselves as well to ESC complaints and women's equality issues.

Although generalizations are difficult to make, it is often true that systemic approaches, grouped complaints and research-based approaches to establishing a fact base may be better suited to these complaints.

The strategies that are discussed in this Module reflect the approach taken elsewhere in this Handbook – namely that *a mix* of **gender mainstreaming** and directed or targeted approaches is required to address women's ESC rights.

- ▶ **Section 1 – The Paris Principles and Investigations**, examines the general mandate of NHRIs to investigate human rights violations and complaints under the Paris Principles.
- ▶ **Section 2 – Investigating Women's ESC Rights Violations**, reviews how NHRIs investigate ESC issues and human rights complaints involving women's equality. It covers early intervention strategies such as counselling, identifying patterns and systemic issues, special considerations for interviewing women complainants and witnesses, case management strategies, operations manuals and access to justice issues related to **remedies**.
- ▶ **Section 3 – Public Inquiries**, examines **public inquiries** as a key strategy for protecting women's rights.
- ▶ Section 4 – Monitoring, focuses on monitoring human rights.
- ▶ Section 5 – Alternative Dispute Resolution, briefly reviews **alternative dispute resolution** processes.

Section 1

The Paris Principles and Investigations¹⁴⁶

The Paris Principles, under the section entitled “Methods of operation”, state that *all national institutions* should have the authority to consider any issue within their **jurisdiction**, on their own initiative, on the proposal of a member, or when requested to do so by any petitioner.

The Principles also state that NHRIs should have the authority to hear any person or obtain any information or document necessary to carry out their work.

The Paris Principles do not, however, require that NHRIs investigate individual complaints. There are some accredited NHRIs that do not have this authority. In some jurisdictions, there is no national institution at all: for example in Europe and in two Canadian jurisdictions, commissions no longer receive complaints. Instead, parties file their complaints directly with a tribunal.¹⁴⁷

However, these institutions are the exception. Most NHRIs have “**quasi-jurisdictional**” status, that is, in terms of their investigative powers:

- ▶ They have the general authority to protect human rights and the specific authority to submit reports, recommendations or opinions on any situation of human rights as well as to consider any question falling within its competence.
- ▶ They have the legislative authority to receive and deal with individual complaints, and may consider “complaints and petitions concerning individual situations” from any petitioner.
- ▶ Any petitioner may be an individual, his or her representative, a third party, a **non-governmental organization (NGO)**, a trade union or any other representative organization. For women, especially those who are vulnerable or who exert less power in their communities, this representative capacity can offer critical support in order to bring forward a complaint.

Section 2

Investigating Women’s ESC Rights Violations

In general, the broad power to take up and investigate human rights violations is a core responsibility of NHRIs.

Section 232(e) of the **Beijing Platform of Action** urges Governments to:

Strengthen and encourage the development of programmes to protect the human rights of women in the national institutions on human rights... such as human rights commissions or ombudspersons, [and to accord] appropriate status, resources and access to the Government to assist individuals, in particular women, and ensure that these institutions pay adequate attention to problems involving the violation of the human rights of women.

Even if an NHRI's **enabling legislation** grants the basic power to investigate human rights matters, and to receive individual complaints, ESC rights cases do not always present themselves in neat or clear categories: few complaints are filed with a label saying “this is a women’s ESC rights complaint.”

Human rights violations are often the product of broad social, economic, and governance contexts and not easily attributable to single incidents, causes, or particular perpetrators. As a result, case handling strategies and classic investigative techniques that are well suited to many civil and political rights cases (establishing event timelines, chain of evidence, simple cause-and-effect assumptions), while still relevant, may not necessarily be sufficient for ESC complaints involving women’s equality. NHRIs also need the capacity to: network with human rights advocates, intervene early and effectively to counsel complainants; identify issues and patterns of human rights violations; and develop strategies for witness/victim interview techniques.

A. Early Intervention and Counselling

Several NHRIs use early information sessions and counselling for all parties in an effort to convey information about rights and obligations.

These early services have the added advantage for NHRIs of providing an “**early warning system**” to identify human rights issues and trends as they emerge, and to highlight discriminatory practices, including those affecting women. In some countries, counselling and support services may be particularly appealing for persons who experience stereotyping and **discrimination**, but who will not file a formal complaint. In some countries, for reasons of confidentiality and cultural norms, this may be a more appealing option for women.

Example: Counselling Services in South Korea¹⁴⁸

The National Human Rights Commission of the Republic of Korea offers counselling for clients who are subjected to discriminatory practices on the grounds of their disability, gender, and other reasons. The Human Rights Counselling Center provides a place for people to share their stories of injustice and receive information and support on various aspects of human rights violations. Counselling can range from general legal questions to information about human rights violations. Specific projects were supported to offer counselling to women with disabilities and women victims of conjugal violence.

According to the Commission, “discrimination against women and the disabled are still deeply embedded in the consciousness and social practices.” As a result of the information the Commission obtained about discriminatory practices through counselling, the Commission has proposed policies to remedy discriminatory practices that still need to be established and implemented.

B. Identifying Patterns and Systemic Issues

NHRIs never have enough resources. Even in wealthier countries, women’s ESC rights tend to receive limited attention. Therefore, it is critically important to focus scarce resources on the strategic cases pertaining to women’s ESC rights. These

should be cases that have been selected through the **strategic planning** process, and that appear to reflect current and serious issues for women.

Information systems are a powerful tool to support NHRIs in identifying which cases to investigate and in creating a “fact base” for a specific type of case. Databases in particular have become indispensable for identifying patterns and addressing issues at a systemic level. Internal case statistics can be disaggregated to better address women’s issues: as noted in Module 4, Section 2, although a snapshot of an NHRI’s current caseload does not necessarily determine strategic areas of intervention for the future, good data can help to understand what is happening generally. Information about the case load can become a primary data source for NHRIs, especially when the national country data is not easily available. Over time, an NHRI’s information system can generate data that can, in turn, serve as a decision-making tool. (See the section on Knowledge Management in Module 4, Section 2.)

Internal case management committees are a useful organizational mechanism in NHRIs. They can identify cases coming in, or under investigation that raise systemic issues or patterns of human rights violations. They are also a key strategy to mainstream gender issues in NHRIs.

Most NHRIs have such committees, which track progress on cases ensuring that priority cases are brought to the attention of senior staff. They can also ensure that women’s ESC cases are properly identified, flagged and resourced.

These committees ensure, based on the data collection and monitoring referred to earlier, that proper resources are allocated to cases that raise systemic issues and that individual cases with shared features are grouped together or pooled, as appropriate.

Example: Grouping or Pooling Cases on Women’s Issues

Statistical breakdowns of complaints can show a “clustering” of certain types of cases and reveal patterns of human rights violations. Rather than dealing with each on a case by case basis, and using up valuable resources, NHRIs can:

- Group or pool cases in a single investigation
- Remove underlying or structural barriers to equality

This can create “economies of scale”, helping to solve a large number of complaints with fewer human resources or it can point the way to human rights issues that are especially serious. This approach can also facilitate collaboration with other national institutions with partly overlapping mandates.

For example, if an NHRI’s case management data shows that it has several cases involving the rights of women in employment (e.g., women being fired from their jobs while they were pregnant) those complaints might be grouped and investigated together since they involve a similar policy issue. Moreover, the complaints might illustrate the need for better worker-protection legislation, which the institution could champion, and a broad public education program for employers about protections for women.

continued

Grouping example continued

An additional example in the area of women prisoners is the Canadian Human Rights Commission's work in the treatment of women inmates in federal institutional and community correctional services. Of particular concern was the treatment of incarcerated Aboriginal women and women with cognitive and mental disabilities.

The Canadian Human Rights Commission agreed to conduct a broad-based review of the treatment of federally sentenced women on the basis of **gender**, race and disability, rather than dealing with individual complaints. In December 2003, the Commission released the report, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*. It identified systemic barriers to full equality and puts forward 19 recommendations for action related to risk and need assessment; safe and humane custody and supervision; rehabilitation and reintegration programming; and mechanisms for redress.¹⁴⁹

As part of a systemic approach, NHRIs need fact bases and data to understand where a country is in relation to its **minimum core obligations**, and/or the **Millennium Development Goals (MDGs)**. This information can serve as a critical starting point for investigations into ESC rights violations or women's equality rights.

Example: Using the Millennium Development Goals – Cambodia

As noted in Module 2, Section 2, the MDGs allow NHRIs to identify baseline information about goals, including gender equality. In the example cited earlier in the section on the MDGs, Cambodia has developed the following specific objectives to reduce violence against women.¹⁵⁰

Overall Target: Reduce significantly all forms of violence against women and children by:

- Specific Target 1: Ensuring that 100% of victims in cases of domestic violence are counselled by qualified personnel by 2015
- Specific Target 2: Ensuring that 100% of the population is aware that **violence against women** is wrongful behaviour and a criminal act by 2015
- Specific Target 3: Collecting annual statistics to monitor violence against women by 2005

In a hypothetical scenario where women complain about the lack of progress, either because the law was not brought into effect, or because no resources are dedicated to supporting women who are victims of violence, these goals and the development of data through annual statistics (Specific Target 3 above) can be used to build a case that a Government has not lived up to its targets, and this could support a human rights complaint. On the other hand, if there was genuine progress by the Government on all these targets within the timelines, a complaint would be less likely to succeed.

Once a major systemic issue has been identified, the NHRI requires the internal capacity to manage it. Institutions use strategies like the creation of special "issue-based" teams that are mobilized to handle complex files.

Example: Special Response Teams to Address Systemic Issues

The Office of the Ontario Ombudsman has developed a set of criteria for identifying systemic cases and a special procedure for managing them. The following criteria were developed and are adapted here to focus on issues affecting women and women's ESC rights:

- The case presents a serious and sensitive issue of high public interest for women and involves women's ESC rights
- There are broad systemic implications for women's ESC rights
- The facts are complex and/or are not agreed upon
- There is no likelihood of an informal resolution to the complaint

Once these criteria are met, a specialized team is struck within the institution, consisting of experienced investigators who conduct complex, issue-driven investigations according to structured investigation plans.

It is helpful in such cases to use cross-disciplinary teams, e.g., policy research, legal, investigation and communications support, that are dedicated to the issue.

C. Interviewing Women in Human Rights Investigations

Women who step forward to file complaints or act as witnesses are vulnerable. NHRIs should be aware of the fact that this vulnerability may translate into exposure to reprisal, and that interviewing techniques may re-traumatize a victim. The following advice, based primarily on material developed by the United Nations, was developed in the context of violence against women, and cases involving refugees. While some of these comments have general application and may be adapted to other circumstances, special interview considerations are especially relevant to interviewing such women.

Guidelines for Interviewing Women in Human Rights Investigations

The following excerpt from field operations manuals set out relevant considerations that may be useful for NHRIs:

Preparation

- ▶ Conducting investigations into violations of women's rights requires that NHRI officers familiarize themselves with the domestic and international legal framework.
- ▶ Interviewers should inform themselves of possible risks to the safety of interviewees and their families.
- ▶ Women complainants may feel uncomfortable speaking to a male NHRI officer, especially if they are complaining about a human rights violation involving **sexual violence**. As much as possible, complaints by women involving **sexual harassment** and sexual violence should be handled by women officers.

- ▶ Personal comfort should be considered: officers should have drinking water and some tissues at hand.

Interview Setting and Confidentiality

- ▶ The interview should take place in a confidential and quiet setting, where the complainant, victim or witness (“interviewee”) feels comfortable and safe.
- ▶ The interviewee should be assured of confidentiality not only for herself but also her family. At the same time, interviewers should not offer to provide security and personal safety if they cannot actually follow up on this guarantee.
- ▶ File and interview notes should be kept in locked and secure locations.
- ▶ Interviews with perpetrators and other witnesses should not be back-to-back so as to avoid individuals meeting each other in waiting rooms.
- ▶ Witness identity and details should not be disclosed with other witnesses.
- ▶ The location should not lead others to assume that she is complaining about a perpetrator or has been a victim of conjugal or sexual violence.
- ▶ Care should be taken not to draw attention to the interviewee.
- ▶ If a victim is unable or unwilling to discuss the matter, staff should ask discreet and indirect questions. If she is still unwilling to share her problem, the staff member should not force the issue, but assure the person that staff are always available to assist if she is ready.

Interview Techniques

- ▶ Establish a basic rapport with the interviewee. The interviewer should take the time to introduce him/herself and the interpreter, explain clearly what his or her role is and the exact purpose of the interview.
- ▶ The interviewee should be informed that she does not have to be interviewed, can refuse to answer any questions that she does not feel comfortable with, and can stop the interview at any time.
- ▶ The interviewer should remain neutral, compassionate, sensitive and objective during the interview.
- ▶ The interviewer should be aware of gender differences in communication, especially regarding non-verbal communication. This is particularly important in the context of cross-cultural communication (e.g., women may avoid eye contact with the interviewer due to cultural factors).

Recording Information

- ▶ With an assurance of absolute confidentiality, notes should be taken discreetly during the interview. The interviewee should know that the conversation is being documented and why.

Irrelevance of Previous Sexual History Except in Relation to Past Sexual Attacks

- ▶ The previous sexual history of a victim of sexual assault is irrelevant except in relation to any previous sexual attacks.
- ▶ Knowledge of any previous sexual (or other) attacks is relevant to both protection of the victim and her psychosocial well-being. Regarding protection, knowledge of a previous attack may suggest that the victim has been specifically targeted rather than chosen at random and may thus need urgent protection measures.

Re-traumatization

- ▶ Interviewers should be extremely careful not to re-traumatize victims.
- ▶ This occurs when a "triggering" event causes the victim to be overwhelmed by memory and feelings from the previous trauma. As such, questioning should be done gently and discreetly and at the victim's own pace.

Using Interpreters

- ▶ The interpreter should be the same gender as the interviewee where possible.
- ▶ The interviewer and the interpreter should be aware of linguistic and cultural issues in interpreting. For example, words such as "rape" or "assault" may have different meanings or connotations in the victim's language.
- ▶ In some community services, staff use not only language interpreters but also cultural interpreters to ensure that the interviewee's context is properly understood and communicated. This may be especially useful when dealing with women from a minority group.

Concluding Interview

- ▶ At the conclusion of the interview, the confidentiality should be reiterated. Any follow-up actions should be explained.
- ▶ Ensure that follow-up counselling as well as medical and legal assistance are made available.
- ▶ The interviewee should also be given the opportunity to ask any questions.

Resources on Interview Techniques

This section was based on the following resources:

- ▶ Callamard, A. (2001). Investigating Women's Rights Violations in Armed Conflict. London: Amnesty International and Rights & Democracy.
http://www.dd-rd.ca/site/_PDF/publications/women/ArmedConflicts.pdf
- ▶ United Nations High Commissioner for Refugees (1995). Interviewing Applicants for Refugee Status.
<http://www.unhcr.org/publ/PUBL/3ae6bd670.pdf>

- ▶ United Nations High Commissioner for Refugees (1995). Sexual Violence Against Refugees: Guidelines on Prevention and Response. (Section 3.6: Conducting an Interview). <http://www.icva.ch/doc00000837.html#20>

D. Operations Manuals

Operations manuals can help NHRIs establish and systematize case handling procedures. Operations manuals serve to establish and make concrete a stable set of rules and procedures about how cases are handled.

Manuals typically provide step-by-step advice on dealing with cases, highlighting important areas of consideration, and they generally deal with all stages of complaint investigation, including complaint screening, handling and resolution, as well as complaint tracking and using flow charts to promote clarity.

The manuals should be easy to read, with material that is easily accessible. Links should be made between relevant sections, and they should be structured so that they can be easily maintained and kept current.

It is also important that NHRIs develop service standards about case management. NGOs frequently complain that NHRIs do not provide information on the status of cases. This suggests the importance of developing protocols and timelines that explain:

- ▶ What the step-by-step procedure is
- ▶ How long it takes to find out that a complaint is received/ acknowledged/ going to be investigated
- ▶ General timelines for investigations
- ▶ Which cases have priority

Other issues that should be included in the operations manual of an NHRI that have particular bearing in this context are:

- ▶ A reference section on women's equality and ESC rights that apply in the country
- ▶ Particular considerations regarding safety and confidentiality when interviewing women complainants and witnesses, especially in cases of alleged violence against women (see the section on "Interviewing Women" above)
- ▶ Reference material on key issues facing women in the country using, where applicable, MDGs, minimum core obligations and socioeconomic statistics on the status of women
- ▶ Special procedures to identify and handle urgent and systemic cases
- ▶ A list of women's NGOs, **community service organizations (CSOs)** and associations
- ▶ The NHRIs service standards for case management

The information about how NHRIs work, including and service standards should also be communicated to external stakeholders and the public generally. This is, of course, quite different from providing substantive information on particular cases, which NHRIs should never disclose before an investigation is completed.

In the case of women’s ESC rights, the publishing of this information can be especially important since women’s NGOs do not generally have the same resources or capacity as other NGOs to make their views heard or to attend meetings held by NHRIs.

E. Access to Justice

Where there is a right, there must be a remedy.

NHRIs may investigate cases, but in order to make proposed remedies enforceable, an order is generally required from a tribunal or court. NHRIs in many countries have enabling legislation that permits them to intervene before the courts and to support the applicant. This may be especially significant where women do not have the means to bring forward cases themselves.

NHRIs can also intervene in public interest litigation on women’s ESC rights and can strengthen them, intervening before the courts on specific issues.

Women face particular barriers in developing countries in getting to the courts, and NHRIs can facilitate access. The **Committee on the Elimination of Discrimination against Women** has raised specific concerns about how accessible the courts are for women. In particular, NHRIs have a role in ensuring that women have the means and the information to obtain remedies through the court system.

In cases with criminal implications, this requires the cooperation of the Attorney General or public prosecutor, as shown in the following Indian case.

Example: Release of Bonded Labourers: Cooperation with Attorney General¹⁵¹

The Indian National Human Rights Commission noticed a press report which appeared in the *Indian Express* entitled “84 Bonded Labourers Freed, Narrate Shocking Tales of Torture, Molestation.” In the press report, it was stated that 84 bonded labourers alleged that they were beaten and the women workers, raped and molested. None of the workers were paid their wages.

The Human Rights Commission obtained Police reports and inquired as to whether the labourers had actually been released. The Commission noted that it was not clear whether a District Magistrate had been seized of the file to issue the necessary release certificates.

The District Labour Officer was ordered to ensure successful prosecution of the offender, in collaboration with the concerned Public Prosecutor and/or the District Attorney in order to take the case to its conclusion.

Section 3

Public Inquiries

Many NHRIs have a mandate to undertake public inquiries on their own initiative into human rights situations or issues. These powers can highlight the issues women face in the realization of their ESC rights. Public inquiries are mechanisms through which an NHRI can examine systemic or general human rights issues in depth and from all perspectives.

Typically, public inquiries involve the establishment of a panel with defined terms of reference, and a mandate to hold hearings to which witnesses can be summoned to testify. In its proceedings, an inquiry acts somewhat like a court, but with less formality. The ultimate purpose is to make comprehensive, sound recommendations for dealing with the issue under review. In addition, however, the inquiry is useful in monitoring Government activity in a defined area, and promoting public discussion and examination of an important issue, potentially bringing a hidden issue into the public domain.

The extent of the powers available to a commission for this type of inquiry will be set out in its enabling law but should include the authority to summon witnesses and compel their appearance, as well as to receive oral and written testimony under oath.

In 2007, the Asia Pacific Forum hosted NHRIs from across the Asia Pacific region to pool experiences and expertise on running national public inquiries as part of a pilot training program.¹⁵² Public inquiries were identified as effective tools for addressing systemic discrimination and violations of human rights. According to expert Brian Burdekin, who facilitated several of the sessions,

It's a strategy that allows a human rights commission to do three things simultaneously: investigate an issue, monitor Government performance and educate the community.

Public inquiries have been held into a wide range of human rights issues, including:

- ▶ Starvation deaths and the right to health (India)
- ▶ Mental illness and homeless children (Australia)
- ▶ Torture (Mongolia)
- ▶ Accessible public transport (New Zealand)

Formal seminars and group exercises provided participants with practical 'how to' strategies on:

- ▶ Setting up a public inquiry, including choosing the inquiry subject, establishing terms of reference, developing an appropriate methodology, identifying stakeholders and undertaking sufficient planning and preparation
- ▶ Resourcing a national inquiry, including the involvement of commissioners and staff, financial resources and community resources

- ▶ Educating and informing the community, including strategies for working with journalists and the media
- ▶ Planning follow-up activities and advocating for the inquiry recommendations

The initial mandate of a public inquiry is quite important, as it sets the parameters of why and how the inquiry will be set up and operated. Here is a sample mandate of a public inquiry on racial profiling, based on a 2003 public inquiry in Canada.¹⁵³

Example: Racial Profiling: A Mandate for a Public Inquiry – Ontario, Canada

The Ontario Human Rights Commission (OHRC) was concerned about the issue of racial profiling in Ontario: who engages in it, who is targeted, whether it is a legitimate practice and what can be done to prevent it. Despite some public discussion on the issue, two issues were absent: the real effect on people of racial profiling and the perception that it was occurring. Through a racial profiling inquiry, the OHRC hoped to fill this void by illustrating the human cost of profiling. On December 9, 2002, the eve of International Human Rights Day, the Commission announced that it would conduct and inquire into the effects of racial profiling on individuals, families, communities and society as a whole. The Commission emphasized that racial profiling is a human rights issue by stating that it is wrong and contrary to the principles of the Ontario Human Rights Code.

What the inquiry did:

- Responded to community concerns about the impact of profiling
- Looked at the effects of profiling
- Measured the human impact of this practice
- Considered profiling in a number of contexts including housing, services, education and private security
- Took measures to ensure that participants do not reveal names or other information that could identify specific individuals
- Respected the privacy of all individuals

What the inquiry did NOT do:

- Did not investigate individual allegations of racial profiling
- Did not focus on one type of profiling or target a particular system in society, e.g. police
- Did not focus on numbers or statistics
- Did not set out to prove or disprove the existence of profiling; it is not another study
- Did not accept anonymous submissions

In the following example, the Australian NHRI launched a national inquiry into women and work.

Example: National Inquiry into Pregnancy and Work – Australian Human Rights and Equal Opportunity Commission¹⁵⁴

In 1998, the Australian Human Rights and Equal Opportunity Commission was requested by the Attorney General to undertake a National Inquiry into pregnancy and workplace discrimination. The Inquiry involved extensive research and consultations with employers, employees, unions, health professionals, employer associations, Government agencies, community groups and students in metropolitan, regional and rural areas.

The report entitled *Pregnant and Productive: It's a right not a privilege to work while pregnant* details the findings of the Inquiry and 46 recommendations. Launched in 1999, the report revealed the existence of widespread and systemic discrimination on the grounds of pregnancy and potential pregnancy in Australian workplaces.

Key findings:

- Many instances of pregnancy discrimination go unreported
- Pregnancy discrimination takes many forms, some blatant, some covert, some detrimental to the health of the mother and the unborn child
- A high level of ignorance and misinformation amongst employees and employers
- Casual workers are particularly vulnerable (not entitled to benefits)
- Women with the potential to become pregnant are denied employment, training and promotional opportunities
- Pregnant women suffer harassment and victimization from colleagues
- Partners had been denied leave to attend significant medical appointments or even the birth of the child
- Employers misuse occupational, health and safety regulations to remove pregnant employees
- Women conceal pregnancy because they fear discrimination at work

Media and community interest generated by the Inquiry and the launch of the report far exceeded expectations. Analysis of media coverage found radio and television broadcasts in the two days following the report launch reached 4.5 million people (a conservative estimate) across Australia. Coverage in print and online media was also extensive with 21 articles published about the Report in the first 48 hours. There was also extensive follow-up across the Internet plus interest from neighbouring Asian and Pacific countries, the United Kingdom and Scandinavia. Interest from other overseas print and radio media followed.

Section 4 Monitoring

Virtually all national institutions monitor human rights, either regarding the human rights situation in the country generally, or important issues, or both. Some have programs to monitor the situation of vulnerable groups, such as prison detainees. In its General Comment No. 10, the Committee on ESC rights emphasizes that NHRIs should monitor **States Parties'** compliance with their obligations in the protection and promotion of ESC rights.¹⁵⁵

What is monitoring? Monitoring means to observe, collect, catalogue, analyze data and report on a situation or event. It can have as its objective: education about human rights, the documentation of human rights abuses, preventative measures or **advocacy**. An institution should verify that its presentation of events or situations is factually correct. A monitoring report is essentially an account of what has been observed either directly by the institution or as reported by others. Generally, monitoring carried out by an NHRI should be:

- ▶ Managed (planned, resourced, controlled and evaluated)
- ▶ An ongoing, regular activity
- ▶ Cyclical (usually)
- ▶ Pro-active, while responding to priorities
- ▶ Focused on results

Monitoring State performance with regard to the ESC rights of women is strongly linked to the obligation of the **progressive realization** of ESC rights. The only way to determine progress is to evaluate and analyze progress over time. This underscores the importance of long-term tracking, baseline data, targets and **indicators**.

"Progressively" means that although the **benchmark** or target can be reached over time, there has to be measurable progress and effort. The NHRI can examine Government resources to determine whether the Government is devoting the "maximum of its available resources" to meeting its obligations. (See the section on Gendering National Budgets in the next Module.)

When women complain about violations of ESC rights because of the denial of the right to employment, fair working conditions, health services or housing, for example, they rely on NHRIs to provide basic information about the country situation and what efforts have, or have not, been made, to support the achievement of country commitments such as MDGs.

NHRIs can also monitor the implementation of the Beijing Platform for Action, as well as the **implementation** of the **International Covenant on Economic, Social and Cultural Rights (ICESCR)** and the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** (if **ratified** by the State), relevant MDGs and of course, minimum core obligations.¹⁵⁶

When monitoring the full realization of women's ESC rights, it is useful for NHRIs to consider:

- ▶ Recognition of women's ESC rights both in law and policy as well as the social barriers to recognition of these rights (e.g. attitudes, etc.)
- ▶ Intersectional approaches to address the situation of disadvantaged groups of women
- ▶ Whether or not women actively claim and exercise their ESC rights. This is an indicator of overall empowerment and levels of information, as well as an indicator of the existence of effective mechanisms for redress for women affected by ESC rights violations

Numerous tools have been developed to measure the extent to which specific ESC rights are being fulfilled. CEDAW and the ICESCR can be used to frame and monitor the implementation of the MDGs, trade agreements and outcome documents of world conferences. Indeed, the CEDAW Committee has made recommendations to some countries regarding the explicit link between monitoring progress on CEDAW and the MDGs.

Monitoring women's ESC rights can be complex for several reasons. First, ESC rights are often general in nature, and so it is important to establish relevant ESC rights standards and content. As noted earlier, MDGs, or country-specific targets can help to provide this content.

Investigations should be supported by data on development and well being, which can later be used before the courts if the matter is referred onwards to a judicial decision maker.

The second difficulty is that women's ESC rights complaints often involve patterns of system-wide or systemic discrimination. This is why it is so important for NHRIs to have access to sound research, **sex-disaggregated data** and multi-disciplinary approaches to fact-finding and research in the context of a longer-term monitoring effort. Lawyers, sociologists and other social scientists work together to determine not only the fact base related to a given complaint, but also the broader context that surrounds a particular fact pattern.

Monitoring should include the three dimensions of Government **obligations to respect, protect and fulfill** its ESC rights obligations.

NHRIs work with many officials, donor agencies and NGOs in bringing together this data. As a result, monitoring and assessing the impact of a Government's policies and plans may necessitate a review and analysis of complex data, such as statistics related to mortality or morbidity, levels of education, or numbers of unemployed, whether produced by the Government or by independent institutions and organizations. This in turn will require skills in the area of collection and analysis of primary and secondary data. The following two examples show indicators and tools that can support a NHRI's monitoring in gender-related areas.

Example: Monitoring and UN Gender Indicators and Tools¹⁵⁷

In 2001, the Inter-Agency Network on Women and Gender Equality, working with the Economic Commission for Latin America and the Caribbean, began developing an inventory of activities, by type and actor, in order to make gender indicators available for policy making, looking at indicators from the user's perspective.

Tools include technical guides to produce gender indicators, information on the primary sources of information used in the building of indicators, and principal means of dissemination – like statistical databases and publications. The information on gender indicators is organized along the main gender issues.

Example: Monitoring Health Rights of Women: HeRWAI¹⁵⁸

In 2006, a practical manual was developed by Aim for Human Rights entitled *The Health Rights of Women Assessment Instrument*. HeRWAI assists organizations to analyze what really happens with policies that influence women's health rights. In this way, they get powerful arguments to lobby for concrete actions which improve the situation of women.

HeRWAI is based on CEDAW and the ICESCR.

Using these and other tools like them, NHRIs can monitor a range of situations, from thematic issues like children's rights, to judicial decisions and general country monitoring. The following two examples illustrate the range of initiatives that an NHRI can undertake in relation to women's equality and ESC rights.

Example: Monitoring Women's Detention Centres and Children's Homes in Sri Lanka¹⁵⁹

The Monitoring and Review Division of the NHRI of Sri Lanka carried out several surprise visits to State Women's Detention Centres and Children's Homes in 2006.

The purpose of these visits was to monitor the conditions in these custodial institutions, and to make recommendations to change policy regarding women's ESC rights, as well as to raise the awareness of Centre inmates and staff through a series of workshops. Specific women's rights addressed included the rights to education, health, food and housing. Immediate results from the monitoring activity included an improvement of the quality of food provided to women inmates, the establishment of medical facilities within certain Centres, and the provision of schooling and vocational training for children in Children's Detention Centres.

Effective monitoring on women's issues can be used to support NHRI work in making recommendations to the Government.

Example: Monitoring Economic and Social Rights in Afghanistan¹⁶⁰

Through monitoring, the Afghanistan Independent Human Rights Commission was able to assess the status of women's ESC and other rights through data that was collected through systematic monitoring of the human rights situation (Human Rights Field Monitoring).

The basis of the analysis was information collected on key indicators for economic and social rights, from almost 8,000 interviews conducted between April and December 2005. Using this information, the Afghanistan Independent Human Rights Commission drew preliminary conclusions and made recommendations to the Government and the international community towards improving the protection and realization of economic and social rights in Afghanistan. Among the recommendations was that the Government should prioritize reproductive (pre-natal and post-natal) and child health care, according to their obligations under international treaties to which Afghanistan is a party.

What approach should an NHRI use in order to undertake monitoring projects? An innovative multidisciplinary and systematic approach has been developed by the Center for Economic and Social Rights (CESR). While the Center is an NGO, the proposed approach is also appropriate for NHRIs largely because of its focus on statistical data, context and the complex environment of economic and social rights. The following excerpts are especially relevant for women's rights.

Example: A New Approach to Monitoring and Advocating for Economic and Social Rights¹⁶¹

The contribution that social scientists can offer to the human rights movement goes well beyond significantly increasing the ability of the human rights community to use statistical data. The wealth of research ... about education, health, forms of inequality, and other human development issues— a whole field that most human rights NGOs are largely unaware of— can significantly enhance the quality of the monitoring capabilities of the human rights movement.

CESR is exploring a three-pronged approach: 1) integrating a socio-economic analysis by development economists and other social scientists; with 2) a legal analysis of international human rights standards and 3) gathering individual testimonies, a technique that has proven very powerful to human rights advocacy work. CESR is currently developing this multidisciplinary methodology.

These unique monitoring tools are aimed to serve as the backbone for our advocacy work to bring about concrete policy changes to improve social and economic rights in multiple contexts.

Using this multidisciplinary approach, CESR will monitor the multiple dimensions of Governments' obligations pertaining to economic and social rights, focusing on those rights violations that can be identified and critically assessed only through the use of socio-economic tools and quantitative methods. The most obvious cases are those related to the availability of resources. For example, CESR will compare the growth of a state's available resources (measured by per capita national income) with changes in socio-economic indicators (e.g., percentage of primary school enrolment or percentage of people with access to clean water), which can help identify potential violations related to the lack of progressive realization of economic and social rights according to maximum available resources.

Additional Resources on Monitoring

- ▶ With regard to monitoring generally: Office of the High Commissioner for Human Rights (2001), *Training Manual on Human Rights Monitoring*, Professional Training Series No. 7; <http://www.ohchr.org/EN/PublicationsResources/Pages/TrainingEducation.aspx>
- ▶ With regard to monitoring ESC rights: Office of the High Commissioner for Human Rights (2005), *Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions*, Professional Training Series No. 12; <http://www.ohchr.org/Documents/Publications/training12en.pdf>
- ▶ The United Nations **Treaty bodies** have developed Guidelines on the form and content of reporting and **General Comments**. Both of these specify data requirement for country reporting and are available from the Treaty Body Database; <http://www.unhchr.ch/tbs/doc.nsf>

Section 5

Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) is a general term that is used to describe several different types of procedures whose purpose is to resolve conflicts outside the courtroom. ADR is usually agreed to voluntarily by parties to a dispute, but may sometimes be imposed by a court or other decision maker.

ADR procedures that are relevant to the human rights context include mediation, conciliation, and traditional or customary community-based forums to resolve human rights issues and related conflicts.

ADR strategies can play an important role in resolving complaints and developing systemic approaches to resolving broader institutional issues. Experience in other jurisdictions suggests the following lessons:

- ▶ Unless the enabling law provides otherwise, ADR should be voluntary on the part of all parties
- ▶ Voluntary ADR has a higher success rate than mandatory processes
- ▶ ADR is most successful when they occur at or near the beginning of a complaint process. Shortly after a complaint is filed, for example, parties are offered a structured process to resolve their dispute in appropriate cases
- ▶ In cases involving abuse of power, major policy issues, sexual harassment or assault, ADR is generally not considered appropriate

On the other hand, cases of discrimination are frequently good candidates for some kind of ADR process. Even here, though, several basic considerations are especially relevant where women's equality rights are at play.

Power imbalances must be identified early and managed by the officer. For example, if a corporate respondent wishes to appear at a mediation session with several lawyers, whereas the complainant is not represented, it is appropriate to prevent lawyers from attending at least the early meetings.

Shuttle mediation (going back and forth between the parties without requiring them to meet) is a useful technique to minimize trauma, and to ensure that confidentiality is maintained, especially where there is a potential for reprisal.

Mediation is a structured attempt by the NHRI to help parties resolve a conflict, usually *before* the investigation is undertaken. The officer, or mediator, acts as a facilitator, not a decision-maker, helping the parties to tell their stories, identify their interests, and if possible, settle the matter. Mediators in the human rights context generally use an approach that takes into account not only the parties' interests (what they want out of the settlement) but also the parties' rights.

Early mediation in NHRIs is successful when it is voluntary (both parties have chosen the process) because parties are apparently more open to negotiation and not enough time has gone by for their positions to become entrenched.

Conciliation tends to take place *at the end* of the investigation process, after findings are made. This necessarily means that greater emphasis is placed on the parties' rights and their respective chances of success.

ADR can be an effective way to bring parties together on a voluntary basis, especially where court systems are not viable or functional options for women. Because women are not always comfortable acting as formal complainants, especially in cultures where the nature of a complaint may raise cultural issues, ADR offers a particularly interesting range of options to women seeking to address their concerns in a relatively non-confrontational way. In rural and traditional settings, a variation of ADR is a *community-based process* where NHRIs tap into traditional customary ways of solving conflicts in the community as a strategy for resolving human rights complaints.

Finally, since not all violations of women's ESC rights are recognized by law, using ADR can bring an initial level of redress for women who might not otherwise have any avenue to pursue.

Conclusion

The investigation of women's human rights issues and strategies to handle complaints on ESC rights raise special considerations for NHRIs.

Early intervention strategies, such as counselling, can defuse complaints or simply provide an avenue for outreach, support and general information. These may be useful in cultural contexts where women are less likely to file formal complaints, or where there is stigma attached to a human rights violation.

Because NHRIs have scarce resources and because of the systemic nature of many women’s equality rights violations, NHRIs should emphasize cases that have an impact on as many women as possible, or that represent serious human rights violations. Several techniques, such as *pooling or grouping cases*, are available to capture and collect data and information, which in turn permit the identification of widespread and systemic ESC rights violations.

When *interviewing women* complainants and witnesses during investigations, NHRIs have a responsibility to protect women and to ensure their safety, without fear of reprisal. Information about NHRI processes, interview techniques and other relevant strategies are usually included in *operations manuals*.

Public inquiries are good ways to bring systemic issues to the attention of the public at large. They offer minimal risks to women who would otherwise be complainants, since the NHRI is bringing forward the issue itself. The very fact that an NHRI decides to publicize an issue and conduct a broad investigation will provide a public and significant boost to an issue at hand.

Most NHRIs use *monitoring* to measure progress over time; this requires information about a situation at a given point in time (the “baseline”) and the identification of certain factors (indicators) which will demonstrate whether there have been positive changes. Monitoring also involves setting goals (benchmarks) to work towards. The approach may be used to track change relative to all categories of rights, but it is particularly useful in tracking achievements relating to ESC rights. This is because many of these rights are meant to be realized progressively.

Alternative dispute resolution strategies can play a major role in resolving complaints and developing systemic approaches to resolving broader institutional issues. Again, because of cultural or social issues regarding women in a complainant role, less confrontational strategies such as mediation, or using community-based resolution, can offer effective solutions to human rights issues.

Module 6

The Promotion Mandate – Advice, Advocacy and Education

6



Photo courtesy Frédéric Hareau

Overview of Module 6

National human rights institutions (NHRIs) have the mandate to promote **human rights** in order to conform to the requirements of the **Paris Principles**. Almost all NHRIs have promotion in their mandates, carrying out a range of activities, from developing and disseminating publications, to running training and education sessions, to public awareness campaigns.

These activities, while important, miss a central aspect of the promotional role for NHRIs when it comes to women's issues, namely that NHRIs must take a proactive leadership role in engaging social actors and the public in promoting women's rights and women's **economic, social and cultural (ESC) rights** in particular. Given how deeply embedded inequality is in legal, social, political and business cultures, supporting broad culture change for human rights is probably one of the most important, yet complex, aspects of an NHRI mandate. NHRIs must speak out about issues that no one else may be talking about on the public stage.

Just as widespread efforts engaging all sectors are a necessary foundation for effective enforcement initiatives on the protection side of the mandate, multiple actors and sectors must engage in the promotion work for women's ESC rights in order to effect change on the needed scale.

Module 6 of this Handbook consists of two sections.

- ▶ **Section 1 – Advice and Assistance to Government** discusses, in general terms, the role of national institutions in the types of advice and assistance offered to Government, including: advocating for the identification and resourcing of activities that advance gender equality in national budgets; the encouragement of convention **ratification** in relation to women's ESC rights; proposals to enact or amend legislation to comply with women's ESC rights and **Treaty body** reporting. The role of the NHRI in developing national actions plans and gender-focused plans is also discussed.
- ▶ **Section 2 – Human Rights Education**, briefly examines how NHRIs can use **human rights education** to address women's ESC rights. Human rights education is defined by the World Programme of Action for Human Rights Education as “education, training and public information efforts aimed at building a universal culture of human rights.” Educational activities in both the informal and formal sectors should target **discrimination** and harassment. These include public awareness campaigns on key areas related to women's ESC rights, and on country targets and priorities, notably those that are in relation to the **Millennium Development Goals (MDGs)**.

Section 1

Advice and Assistance to Government

Governments have broad responsibilities in the area of ESC rights. They generally control school curricula, provide health services and social infrastructure, and are by far the largest national employers and providers of services. They control policing, security and the armed forces. It is not surprising that in cases involving challenges to these social programs, Governments are not only valuable partners, but also very often respondents in human rights **complaints**. This is why the importance of providing advice and assistance to Government cannot be overstated.

Once a State signs on to ESC-related treaties, it is required to guarantee women's ESC rights by ensuring the enactment of domestic laws, such as national constitutions and human rights laws. States are also obliged to regulate the conduct of third parties, such as employers, landlords, and service providers and to design and implement policies and programs to give long-term and full effect to women's ESC rights. This can include special measures and **temporary special measures** to accelerate women's equal enjoyment of their rights, conducting gender audits, and examining gender-specific allocation of State resources.¹⁶²

In the following sections, these different dimensions of advice and assistance will be reviewed, starting with the “governance dimension”, namely advice on laws, policies and programs.

A. Advice on Laws, Policies and Programs

Under the Paris Principles, NHRIs should “submit to the Government, parliament and any other competent body, on an advisory basis, opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights.”¹⁶³ It may do so either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral.

Although the advisory mandates of NHRIs differ from institution to institution, many NHRIs choose all or some of the following activities:

- ▶ Encouraging ratification of international human rights instruments on women's ESC rights
- ▶ Assisting in the development of new legislation, if requested or on its own initiative, in matters relating to women's ESC rights
- ▶ Promoting amendments to existing national laws to harmonize them with international standards
- ▶ Submitting recommendations, proposals and reports on policies, programs and administrative practices relating to women's ESC rights, either to the head of State or directly to the attention of the relevant Government ministry, department or official

Providing Legal and Policy Advice

Unless the enabling law specifies otherwise, NHRIs have a wide number of avenues open in terms of providing legal and policy advice. NHRIs can provide advice to Parliament itself, and to parliamentary committees, the executive, and cabinet, the office of the prime minister or president, or individual ministers on women's ESC issues. Advice to Parliament and to parliamentary committees has been identified as especially important for NHRIs, since it ensures that top-level elected officials are made aware of the issues being raised. This represents an important source of alternative pressure on the Government itself.

The choice of the recipient of the advice should be based on potential impact. Is there a statutory direction in the NHRI enabling law regarding who should get advice? Which authority or combination of authorities is best placed and most likely to act on that advice? Where is the debate happening, and at which level of Government? These are judgment calls that should be made by senior NHRI officials.

Even if there is a domestic law in place, NHRIs should also pay attention to other types of instruments of governance, such as guidelines, regulations, policies and administrative practices, since these often have as much – if not more – impact on the actual practice of human rights than the formal legal framework. Very few major social policies are delivered through laws alone. As a general rule, Governments use **“policy instrument mixes”** that include not only laws but also administrative arrangements, guidelines and rules, public education policies and programs to effect governance objectives. NHRIs must therefore pay attention to this broader policy “mix” in order to affect any kind of meaningful change.¹⁶⁴

Therefore, in addition to reviewing legislation, NHRIs should provide general policy advice to Government and comment on existing or proposed administrative arrangements, including those regarding women's ESC rights issues. In the case of existing arrangements, the NHRI may be aware of difficulties in **implementation** as a result of their program work, for example, in **investigation** or **monitoring**, or through women's groups. Whatever the source of the concern, such opinions should generally be provided first to the Government so that they have the opportunity to respond, and then can be conveyed to the public through press conferences or dissemination of press releases, or the publication and submission of reports. There may be cases where direct media contact is more appropriate, but in the area of ESC rights with its resource implications, States should generally be given reasonable time to review NHRI concerns and address them.

A national institution can also advise the Government of other measures which could or should be undertaken in order to fulfill **State obligations** to ensure full realization of women's ESC rights. Such measures may include:

- ▶ Implementation of **affirmative action** programs or temporary special measures
- ▶ Development and implementation of public education initiatives
- ▶ Establishment of departmental **focal point** or programs to advance women's issues

- Inclusion of women’s ESC rights issues within policy initiatives or plans

In other parts of this Handbook, we have identified the work of the Asia Pacific Forum and its NHRI “focal points” on human **trafficking**. The New Zealand Human Rights Commission’s engagement in this area provides an excellent example of the type of promotional work that can lead to substantial change, including legal and policy change.

Example: Trafficking in Persons: New Zealand’s Focal Point on Women¹⁶⁵

The New Zealand Human Rights Commission has been working to combat trafficking in persons through the following activities:

- Regularly consulting with different Government agencies and community groups on trafficking and trafficking-related issues
- Awareness raising among the public, health professionals and police
- **Advocacy** and policy-making initiatives

One particular problem was the trafficking in women from Thailand, which was facilitated by the visa-free status between Thailand and New Zealand. As a result of the Commission’s efforts, the Minister of Immigration suspended the visa-free status between New Zealand and Thailand, in part because of the abuse of the system by traffickers and those working illegally in New Zealand.

B. Gendering National Budgets¹⁶⁶

NHRIs should advocate for the identification and resourcing of activities that advance women and gender equality in national budgets. NHRIs can raise awareness about prioritizing critical women’s ESC rights issues in the context of national budgets and public expenditure, based on the principles set out in the **Convention on the Elimination of Discrimination against Women (CEDAW)**, the **Convention on the Rights of the Child (CRC)** and the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, among others.

CEDAW makes no specific reference to public expenditure or revenues, but it does impose a general obligation on **States Parties** to take “all appropriate measures”, “to take steps ... to the maximum of available resources” to eliminate **discrimination against women**, ensure the enjoyment of ESC rights, and to ensure “the full development and advancement of women” (Articles 2, 3). Similar provisions exist in the ICESCR.

As well, Article 3 of CEDAW imposes a requirement to ensure gender equality in relation to all human rights, including in their economic dimensions; and should be read in the light of the guidance on the requirements of international human rights law regarding resource allocation that has been provided by the ICESCR. The Committee has noted:

[E]ven in times of severe resource constraints whether caused by a process of adjustment, economic recession, or by other factors the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes.¹⁶⁷

The **CEDAW Committee** has, in the past, recommended that a State ensure that its NHRI itself be properly funded, as the following example illustrates.

Example: Funding of the Commission on Human Rights (Mexico) – Concluding Comments of the CEDAW Committee¹⁶⁸

The Committee recommends that the State Party ensure that the National Commission on Human Rights is provided with the necessary financial resources and personnel well trained in gender equality issues to effectively fulfill its function in regard to monitoring and evaluating the General Act on Equality between Women and Men.

If a State fails to allocate appropriate resources to women’s ESC rights, it will be unable to comply with its obligations. Because of the obligation on States Parties to “*achieve progressively* the full realization of the rights recognized,” States cannot wait indefinitely to take steps to ensure women are enjoying their ESC rights.

Because States are required to use the maximum available resources to work towards achieving ESC rights, NHRIs can advocate for existing resources to be allocated efficiently and effectively with a view towards the achievement of women’s ESC rights, without negatively affecting other human rights and the rights of other discriminated groups.

Montreal Principle No. 18 also reiterates that States should ensure that resources are distributed in a manner that provides substantively equal enjoyment of ESC rights by women. This requires a two-fold analysis of Government budget allocations:

- ▶ An overall assessment of the budget to ascertain whether maximum available resources have been spent in economic, social and cultural areas of relevance to women
- ▶ Within particular economic, social and cultural budgetary ‘envelopes’ such as health, housing, education, income assistance, and employment, an assessment must be made as to whether budgetary allocations reflect the maximum available resources and whether those allocations have been made in a way that addresses the needs of women

Several examples of recommendations and observations relating to gender, budgets and ESC rights offered by UN **Treaty bodies** are set out here, and are drawn from Diane Elson’s very helpful work on this topic:¹⁶⁹

- ▶ CEDAW Committee: General Recommendation No. 24 (20th session, 1999) 30. *States parties should allocate adequate budgetary, human and administrative resources to ensure that women's health receives a share of the overall health budget comparable with that for men's health, taking into account their different health needs.*
- ▶ CEDAW Committee: Concluding Observations (Luxembourg, 2000) *The Committee “welcome[s] the [Women’s] Ministry's interest in, and support for, proposals to*

conduct a gender analysis of the entire State budget. This will contribute to a better understanding of the way in which women and men benefit from governmental expenditures in all areas.”

- ▶ CEDAW Committee: Concluding Observations (Fiji, 2002)
In 2002, when reviewing Fiji’s report, the Committee “commend[ed] the efforts of the State party to strengthen gender mainstreaming and monitoring through the gender budget initiative, and a gender audit project.”
- ▶ CEDAW Committee: Concluding Observations (Austria, 2002)
*The Committee has, on at least one occasion, asked a State to conduct a gender analysis of its budget and to report on the results. In its **concluding comments** concerning Austria in 2000, the Committee “request[ed] the Government to ensure, on a regular basis, the evaluation and assessment of the gender impact of the federal budget as well as governmental policies and programs affecting women.”*

It is, of course, impossible for NHRIs to impose budget allocations on the State. However, in light of the above examples, an NHRI can monitor progress and make recommendations to create budgets for specific women’s programs, and can ensure that there is no retrogression or roll-back on previous commitments or budget cuts to established programs.

As well, since it is not possible to sum up the total comparative impact of a budget in a single **indicator**, or even to focus on expenditures in order to assess the achievement of **substantive equality**, a step-by-step approach is suggested, in which a full range of dimensions of the budget are examined separately.

The key dimensions are:

1. Public expenditure, NHRIs can monitor:

- ▶ The extent to which priority is given to gender equality in public expenditures
- ▶ The presence of discrimination against women and girls in public expenditures
- ▶ The extent to which public expenditure is adequate for the realization of gender equality
- ▶ Reform efforts to achieving gender equality through budgeting

2. Public revenue, especially taxation:

- ▶ For example, CEDAW implies that women should be equally free to choose how to live their lives; and the tax system should not favour one set of choices above another
- ▶ The income tax system should be neutral regarding different types of families, taking into account the value of unpaid as well as paid work, and irrespective of the marital status and sex of the partners

3. Macroeconomics of the budget (secondary impacts on inflation, jobs and economic growth)

- ▶ Macroeconomic policy should support women’s right to paid work on equal terms with men, (CEDAW Article 11); the work should conform to the International Labour Organization (ILO) definition of “decent work”
- ▶ Women should not suffer disproportionately if as a result of a budget deficit, public expenditures are cut (CEDAW Article 2)
- ▶ Macroeconomic policy should ensure the full development and full employments of women

4. Budget decision-making processes: Budget-making should reflect women’s participation in the process. Political and local leadership should communicate how current budget decisions are made, and how they affect women. Ways to ensure this include:

- ▶ Increasing the financial knowledge of women
- ▶ Reforming budget decision-making processes so they are more transparent and participatory
- ▶ Increase the presence of women in:
 - National parliaments, and in parliamentary committees that scrutinize budgets
 - Local councils, and in council committees responsible for budgets
 - Participatory planning and budget processes

Finally, men and women, as citizens, must have:

- ▶ A right to information, including **sex-disaggregated data** about public spending
- ▶ A right to demand a formal investigation or seek legal redress for misappropriation of funds and poor delivery of services

C. **Advocacy for International Standards**

Activities NHRIs can undertake in this regard are outlined below.

Advocating for the Ratification of International Instruments

As a first step, it is useful for NHRIs to “map” or “audit” the international instruments that need to be ratified by a country, including the recently approved Optional Protocol to the ICESCR, and to advocate for their ratification. As part of this same process, NHRIs should advocate for the removal of reservations, if any.

Second, NHRIs can support **non-governmental organization (NGO)** campaigns for the ratification of these **treaties**, or removal of **reservations**, and use these opportunities to develop their own capacity, to cooperate with NGOs, and to raise awareness on women’s ESC rights.

Third, NHRIs should encourage their Governments to nominate ESC and equality experts to international human rights Treaty bodies.

Fourth, NHRIs should publish reports, either through special reporting mechanisms or in annual reports, on the importance of ratification of relevant instruments, drawing particular attention to the human rights situation affecting women in the country.

Linked to this work is the ratification, in particular, of the **Optional Protocol** to CEDAW (OP-CEDAW). NHRIs can lead national initiatives for its ratification, which is an important step for greater protection of women's rights and for their incorporation into national laws and practice.

Advocating for the Removal of Reservations to International Instruments

Removing reservations to international conventions takes on special significance for CEDAW. Many States have ratified CEDAW, but an exceptionally large number have expressed reservations, most problematically in relation to Article 2 of CEDAW which sets out the basic principle of non-discrimination.

These reservations open the door to the serious criticism that the reserving States have ratified the convention while seeking to escape from its most basic tenets, circumventing meaningful compliance with the **convention**. While there are many reasons expressed for the reservations, the most problematic ones are expressed for religious reasons. Other nations make **objections** to such reservations. The following example is a typical objection, expressed in the context of Denmark's objection to the reservations of Saudi Arabia in relation to CEDAW. The reservation was in relation to the fact that Saudi Arabia would not recognize a right in CEDAW that is incompatible with Sharia law. Denmark objected because, as it points out, the general reservation is essentially incompatible with women's rights.

Example: Denmark's Objection to the Reservations of Saudi Arabia in Relation to CEDAW¹⁷⁰

10 August 2001

With regard to the reservations made by Saudi Arabia upon ratification:

The Government of Denmark has examined the reservations made by the Government of Saudi Arabia upon ratification of the Convention on the Elimination of All Forms of Discrimination against Women as to any interpretation of the provisions of the Convention that is incompatible with the norms of Islamic law.

The Government of Denmark finds that the general reservation with reference to the provisions of Islamic law is of unlimited scope and undefined character. Consequently, the Government of Denmark considers the said reservations as being incompatible with the object and purpose of the Convention and accordingly inadmissible and without effect under international law.

The Government of Denmark furthermore notes that the reservation to paragraph 2 of Article 9 of the Convention aims to exclude one obligation of non-discrimination which is the aim of the Convention and therefore renders this reservation contrary to the essence of the Convention.

continued

Denmark example continued

The Government of Denmark therefore objects to the aforesaid reservations made by the Government of the Kingdom of Saudi Arabia to the Convention on Elimination of All Forms of Discrimination against Women.

These objections shall not preclude the entry into force of the Convention in its entirety between Saudi Arabia and Denmark.

The Government of Denmark recommends the Government of Saudi Arabia to reconsider its reservations to the Convention on the Elimination of All Forms of Discrimination against Women.

NHRIs should advocate for the removal of reservations to conventions that are relevant to women's ESC rights, notably under CEDAW, and may even encourage their own countries to file objections against other nations that have made fundamental reservations to CEDAW.

The second serious source of reservations is the reluctance of States to allow CEDAW to interfere in "personal matters" of its citizens. Given the fact that many areas of women's rights depend on and reside in the "personal sphere" this is a major issue of concern and should be addressed as a priority by NHRIs working in countries that have expressed reservations.

For further resources: NHRIs in the Asia Pacific Region should be aware of the APF Advisory Council of Jurists (ACJ) and its role of providing advice on international law to APF Members. The ACJ has made a number of substantive recommendations to institutions in relation to women, ESC rights, particularly on ACJ references in relation to trafficking, human rights education, torture and the environment. All reports and recommendations can be found at: <http://www.asiapacificforum.net/acj/references>.

More generally the site of the United Nations Office of the High Commissioner for Human Rights (OHCHR) provides a great deal of information on its web site: <http://www.ohchr.org>

Advocating for Implementation of International Standards

After ratification or **accession** to a treaty, an NHRI has two primary objectives. These are to ensure that:

- ▶ National laws are enacted, as needed, to give effect to the treaty
- ▶ Existing laws that are incompatible with the new international obligations are amended accordingly

Activities related to these objectives include:

- ▶ Informing the Government as to the precise nature of the obligations under the ICESCR, CEDAW, OP-CEDAW, the CRC and other applicable instruments that encompass women's ESC rights

- ▶ Providing advice on laws that should be enacted (that is, is a national law needed to give effect to the ratified treaty? Or does it apply automatically?) (See Module 3, Section 3 “Bringing Human Rights Home”).
- ▶ Disseminating applicable **General Comments** in order to ensure that they are considered in the development and implementation of national law and policy

NHRIs can lead initiatives to map out the existing **remedies** for human rights abuses at the national level, as part of the country’s preparation for implementing OP-CEDAW. The reason is simple: domestic remedies need to be exhausted before proceeding under OP-CEDAW. NHRIs need to know what exists domestically before communications can be brought forward at the international level, and of course Governments need to know as well.

This is why research, data and knowledge management generally are so important for NHRIs. Once the data is available on, for example, the country’s status with respect to MDG’s affecting women, it becomes easier to conduct the “rights gap” analysis in relation to particular laws or social programs and to recommend changes in the wake of the ratification of new instruments.

NHRIs, because of their expertise in human rights, may be able to identify issues which may have escaped the attention of legislatures or other Government bodies, and recommend changes and amendments to policies, approaches and laws.

Regarding amendments to existing laws, NHRIs can take the following steps:

- ▶ Identify all laws, policies and practices that are to be reviewed
- ▶ Identify the responsible areas of Government
- ▶ Identify all existing national and international standards that apply to the rights at issue
- ▶ Identify any gaps in the protection offered
- ▶ Assess the degree to which the laws, policies and practices are ensuring the rights at issue
- ▶ Identify the ways in which the laws, policies or practices might be improved and who has the responsibility for this
- ▶ Identify expectations of the proposed changes and indicators of success (to assist in subsequent reviews)
- ▶ Prepare a report with recommendations
- ▶ Issue the report
- ▶ Lobby to ensure that the report is reviewed and recommendations adopted
- ▶ Report publicly on the degree to which recommendations have been adopted

The types of legislation relating to women's ESC rights which NHRIs should target include:

- ▶ Access to education and health services
- ▶ Child care
- ▶ Conditions of marriage, divorce and child custody
- ▶ Discrimination and harassment in the workplace
- ▶ Family
- ▶ Housing
- ▶ Labour standards
- ▶ Laws relating to access to financial services
- ▶ Laws relating to **harmful traditional practices**
- ▶ Laws relating to **violence against women**
- ▶ Nationality and citizenship
- ▶ Pregnancy and maternity
- ▶ Property and inheritance
- ▶ **Sex discrimination**
- ▶ Social services and welfare
- ▶ Special measures to promote the advancement of women

The following example from Malaysia shows the role that an NHRI can play in initiating a broad debate on the effective implementation of CEDAW and related standards, including the development of appropriate legislation, policies and programs to support the rights of women.

Example: SUHAKAM's Role in Promoting CEDAW – Malaysia¹⁷¹

In 2004, the National Human Rights Commission of Malaysia (SUHAKAM) organized two Forums on CEDAW following ratification.

The Forums began with a general overview of CEDAW. This was followed by presentations by Government representatives on steps taken by the Government to implement CEDAW at the State level, and by NGO representatives on their perspective on CEDAW.

Participants at the Forums discussed:

- Pertinent developments on women's human rights
- The Sarawak Women's Development Action Plan 2003 which aimed to promote and protect gender equality in Sarawak, and concentrated on seven key areas - family, health, religion, culture and art, sports, education and training, the economy and employment and women and the law

continued

SUHAKAM example continued

- Functions of relevant State agencies and departments, including the Department of Women's Affairs, and its seven committees
- The work of leading local women's rights NGOs

The Forums drew out *areas of common concern* that still needed to be addressed in order that women's rights (including their ESC rights) were fully realized. These included:

- Lack of awareness on CEDAW and women's rights
- Scepticism on the usefulness of CEDAW
- Low participation of women at the decision-making level and at senior positions
- Lack of institutional support for victims of domestic violence
- Stereotyping the role of men and women
- Lack of a comprehensive system to collate and maintain **gender-disaggregated data** at the State level
- Issues with regard to marriage and its dissolution under native customary law, aboriginal custom and Sharia law
- Poor implementation of the low cost housing and micro credit schemes for women, in particular single mothers
- Poor implementation of laws such as the Domestic Violence Act 1994 and the Child Act 2001
- Laws that discriminate against women, for example laws against trafficking and prostitution, provisions of the Immigration Act 1959/63 and Immigration Regulations
- Lack of shelters for survivors of rape and domestic violence
- Insufficient schools, hostels and teachers in rural areas
- **Sexual harassment**

Based on the above, SUHAKAM made several general recommendations aimed at improving the state of women's human rights throughout Malaysia, including:

- Establishing adequate, well-funded and safe shelter homes for victims of domestic violence in Sabah and Sarawak
- Establishing a network linking State Government agencies and NGOs in Sabah and Sarawak to facilitate cooperation and strengthen existing work relations
- Establishing a comprehensive system for collation of gender-disaggregated data at the State level and to ensure that this data is accessible to the general public
- Increasing programs aimed at promoting awareness of women's rights and of CEDAW
- Reviewing the laws and policies, such as native customary law or aboriginal custom, to ensure that they protect the rights of women. This may require the establishment of Native Courts, Special Family Courts and a Legal Aid system
- Establishing laws, policies and action plans that ensure a working environment that accommodates working parents, including providing affordable and accessible child-care centres, and introducing the concepts of a home office, parental leave in addition to maternity leave, as well as active promotion of family-friendly benefits and entitlements.

Maximizing Effectiveness of NHRI Advocacy Efforts Aimed at Implementation of International Standards

Proposals for legislative reform usually start in a line Ministry and by the time the policy work reaches the Ministry of Justice or Attorney General which usually has the responsibility to prepare the draft law, all the hard thinking as to the content of the legislation is already completed. Entering into discussions at this late stage may be too late as positions may have become fixed. Therefore, the sooner NHRIs get involved, the easier it is to influence positive outcomes.

NHRIs should develop and maintain regular and substantive contact, at the staff level, with those who are responsible for preparing initial drafts of legislation, regulations, policy and procedures, as well as with more influential officials. Establishing these working relationships helps ensure that the national institution is aware of planned initiatives early in their life cycle and is positioned to influence change.

NHRIs must be aware and take advantage of opportunities as they present themselves. A Parliamentary Committee may examine draft legislation, and may require input or consultation. Institutions should seek to put their views of proposed legislation on the record at this stage and, where necessary, use publicity and lobbying to influence positive change.

Engagement of NHRIs at the International Level

NHRIs can contribute to the progressive interpretation and expansion of standards on women's ESC rights at the international level by bringing local human rights expertise and experiences to the global discussions.

Specifically, NHRIs can:

- ▶ Advocate for and contribute to the development and adoption of general comments, general recommendations and other guidelines on women's ESC rights ¹⁷²
- ▶ Join the global campaigns on women's ESC rights
- ▶ Attend international conferences and use these venues to raise awareness on women's ESC rights issues

NHRIs can also submit reports to the expert committees and accredited NHRI can speak in UN fora.

D. Proactive Use of General Comments and Recommendations

Core human rights conventions have Treaty bodies or Committees that will provide both General Comments and, in the country context, General Recommendations with respect to the state of realization of rights. Besides holding States accountable to their obligations, Committees are also responsible for developing legal interpretations of the terms contained in their conventions.

Individual States Parties to UN Treaty bodies are scrutinized through a constructive dialogue between Government officials and each Committee. As a result of this process, concluding observations and recommendations are issued by the applicable Committee aimed at acknowledging progress while identifying areas of concern and recommendations on the rights contained in the conventions.

Concluding comments are aimed at assisting Governments to develop policies, laws and programs that are more conducive to substantive equality, human development, peace and other human rights goals.

General Comments and General Recommendations clarify and elaborate on the content of the rights and obligations contained in the international **covenants**. They can assist NHRIs in their advocacy and in identifying areas of programming to protect and promote women’s ESC rights in a variety of ways to reach different ends.

For example, General Comments and General Recommendations can be used to provide guidance when NHRIs:

- ▶ Measure progress of Government compliance vis-à-vis a particular State obligation under the Treaty. (This will be useful when NHRIs participate in the reporting process to the UN Treaty bodies.)
- ▶ Develop content for a public awareness or training program
- ▶ Use the material as supporting evidence in human rights complaints
- ▶ Launch a public inquiry on an identified issue of State compliance
- ▶ Support the Government in the development of gender focal points across Government which will provide systemic support for the progress of women’s economic, cultural and social rights.
- ▶ Determine what areas to monitor. i.e., choosing to monitor a Committee finding for purposes of measuring progress against a noted area of concern

E. Assistance in Preparing National Plans

In the 1993 **Vienna Declaration and Programme of Action**, the World Conference on Human Rights recommended that each State consider drawing up a national action plan for States to improve the promotion and protection of human rights.¹⁷³ The **Beijing Platform of Action** also calls on all Governments to establish a national action plan on gender equality.¹⁷⁴

In developing national action plans, States set their human rights priorities and identify appropriate mechanisms through which the plan will be implemented and monitored. Because of their expertise and experience, NHRIs assist Government in the development and drafting of national human rights action plans, as well as in their implementation.

Although the plans are State responsibilities, NHRIs can make a significant contribution to their development, adoption, implementation and monitoring. In particular, NHRIs can ensure that the plan takes women’s ESC rights into account.

NHRIs are sometimes called upon to take a lead role in coordinating the implementation of the plan. Where this happens, it should be clearly recognized that commitments in the plan impose obligations on *Governments* to take appropriate action. Responsibility for ensuring achievement of the plan's objectives cannot be transferred to others. It should also be clear that the NHRI must have the resources to carry out this lead coordination role without sacrificing other statutory responsibilities.

NHRIs should participate in national coordinating committees and in wider consultative activities related to national action plans. NHRIs can facilitate and coordinate dialogue between the Government, relevant NGOs, and other civil society organizations. Participation and consultation will ensure transparency and broad support by bringing in a variety of insights and perspectives. Broad participation will also support effective implementation. In some instances, the work of a national institution can be powerful enough to inspire the development of a national human rights plan by a State, as was the case in New Zealand in 2005.¹⁷⁵

Where national plans have been developed in countries that have NHRIs, these institutions have usually been closely involved in the planning process. In South Africa, for example, the impetus for drafting a plan came from the human rights commission in that country. Indonesia also followed a similar pattern.

A national human rights action plan should reflect internationally agreed to guidelines and should be in line with international best practice. According to the Office of the High Commissioner for Human Rights in its *Handbook on National Human Rights Plans of Action*, a national action plan should:¹⁷⁶

- ▶ Review a country's human rights needs
- ▶ Fully address the importance of ESC rights and the indivisibility of human rights
- ▶ Raise awareness of human rights issues among Government officials, security authorities, civil society organizations and the general public
- ▶ Mobilize a broad spectrum of society in a cooperative atmosphere
- ▶ Propose realistic activities
- ▶ Set achievable targets
- ▶ Promote linkages with other national programs, particularly in the areas of development and education
- ▶ Generate commitment to action
- ▶ Allocate responsibility for the implementation of each activity to an appropriate authority to ensure accountability for implementation
- ▶ Include provisions for monitoring implementation and for evaluation at the conclusion of the period of the plan.

NHRIs can ensure commitments to take legislative and administrative measures to entrench the recognition and observance of ESC rights, the elimination of discrimination, and a commitment to effective means of redress for violations of such rights as part of the plans. A strong gender perspective in the plan also ensures

that such plans are informed by and consistent with a comprehensive strategy for achieving equality.

Key elements of national human rights action plans for protecting and promoting women's ESC rights include:

- ▶ Commitment to take legislative and administrative measures to entrench the recognition and observance of women's ESC rights
- ▶ Commitment to effective means of redress for violations of women's ESC rights
- ▶ **Benchmarks** (from applicable platforms of action and Principles) for the realization of ESC rights in line with the country's human rights obligations, and specific programs to achieve related targets in areas such as the rights to:
 - an adequate standard of living, including nutrition and housing
 - health
 - education
 - social security
 - take part in cultural life
 - work
 - just and favourable conditions of work
 - form and join trade unions
- ▶ Commitment to equity and non-discrimination in social policy, including adequate health, education and social security systems
- ▶ Mechanisms to monitor regularly the observance or non-observance of women's ESC rights
- ▶ **Public inquiries** into systemic problems in the areas of women's ESC rights
- ▶ Programs of awareness of women's ESC rights both for relevant officials and workers and for the general public
- ▶ Promotion of research and debate on women's ESC rights
- ▶ Adaptation of the constitution and national laws to reflect CEDAW and the ICESCR and adoption of legal mechanisms and guarantees to ensure enforcement
- ▶ Commitment of resources and political will to put in place policies and programs that deliver basic services in areas such as health, education, housing and social welfare, particularly to vulnerable groups, including women
- ▶ Establishment of a Committee or other monitoring mechanism to monitor implementation
- ▶ If not yet ratified, a commitment to ratify the ICESCR and CEDAW and the OP-CEDAW, as well as plan for the implementation of their provisions domestically

Plans should also focus on promoting legislation, redress, monitoring and greater awareness and understanding of women's ESC rights. Awareness-raising programs

should aim at alerting officials, parliamentarians, community workers, academics, the media and the general public to the fact that action in these areas is part of the effort to improve observance of women's ESC rights.

In addition, it is critical that Plans provide *a timetable for implementation*, with allocation of responsibility for each activity and provisions for monitoring implementation and evaluation.

Key outcomes of a national human rights plan include:

- ▶ Increased awareness of ESC rights, e.g. rights to health, housing and education and the right to development
- ▶ Establishing **rights-based approaches** to these issues, centring on the needs of people rather than the institutions, service delivery and the bureaucracy
- ▶ Developing benchmarks which can later be used to track progress in other contexts, for example reporting under the ICESCR and CEDAW, or more generally for well-being and other social indices

The following examples offer highlights of national action plans from several countries, with a focus on aspects dealing with women's ESC rights.

Example: NHRI Assumes Lead Role in National Human Rights Action Plan – The Philippines¹⁷⁷

The Philippines Commission on Human Rights had the central role in coordinating the Philippines Human Rights Plan 1996 – 2002.

A task force comprising representatives of the Government and NGOs was established to prepare the plan, with a structured process of consultation and review across the country. The task force established a special committee to review financing requirements for proposed activities under the plan and to identify sources of funds. The plan contained measures for legislative, administrative and other actions to address the issues affecting the human rights of the vulnerable groups which the task force identified.

In regard to women, the plan noted the following priority human rights issues:

- Discriminatory legislation
- Violence against women
- Failure to recognize women's rights, for instance in relation to health, reproductive rights, stereotyping, sexism and limited educational and employment opportunities

Legislative measures included:

- Amendment of legislation that was not responsive to the needs of women victims of violence
- Redefinition of concepts of trafficking in persons, rape and domestic violence
- Legislation to eliminate discrimination

continued

Philippines example continued

Administrative measures included:

- Encouraging measures to promote the participation of women in politics and governance
- Organization of support groups and projects to assist women victims of violence
- Action on sexual harassment
- Arrangements to protect migrant workers
- Incorporation of a gender perspective at all levels of education and in the health system

Example: National Action Plan on Gender Equity and Women Empowerment – Nepal¹⁷⁸

In September 2003, the Nepal National Human Rights Commission submitted recommendations and opinions on the National Action Plan on Gender Equity and Women Empowerment to the Ministry of Women, Children and Social Welfare. The Plan covers the following issues as they relate to women: poverty; education and training; health; the economy; power structure and policy making; the institutional structure to further women's development; human rights; communications; women and the environment; and children.

The Commission made suggestions for implementation and for designating a body responsible for implementation, coordination, monitoring and evaluation.

Suggestions included:

- Providing loans without collateral for poor women
- Making arrangements for the education of disabled girl students
- Introducing programs to formulate laws required for controlling incidents of witchcraft and other violence
- Programs for women who lost their husbands in the armed insurgency
- Providing full-fledged rights to property
- Consulting with concerned parties relating to the drafting of legislation aimed at increasing women's political participation
- Introducing programs to disseminate true stories of women and their rights in the mass media

The strategy of NHRIs contributing to national plans is now well established. For many countries around the world, there are examples of more targeted national plans dedicated entirely to specific gender issues, such as those of indigenous women's groups. The following examples illustrate the wide range and variety of available options.¹⁷⁹

- ▶ Plans and programs for defence of rights of indigenous women (Guatemala)
- ▶ Basic Plan for Gender Equality (Japan)
- ▶ Action Plan on the Implementation of the Strategy for Gender Equality (Kazakhstan)

- ▶ National Plan to Promote Gender Equality in Society (Moldova)
- ▶ Action Plan for Integrating Women into Development (Morocco)
- ▶ Action Plan to Combat Violence against Women (Norway)
- ▶ Plan for Equality of Opportunities between Women and Men (Spain)
- ▶ A national plan of action to improve the situation of women and enhance their role in society (Ukraine)

F. Reports by States Parties

Once a country becomes a State Party to CEDAW, the ICESCR, CRC or any other convention related to human rights, the State commits itself to legally binding obligations.¹⁸⁰ Each State Party also accepts to take part in a periodic review process, also commonly known as the **reporting procedure**.

The importance of the reporting procedure is that it enables the CEDAW Committee and the Committee on Economic, Social and Cultural Rights (CESCR), for example, to oversee and monitor how well rights are being respected, protected and fulfilled. Regarding ESC rights, reporting permits the assessment of **progressive realization** of the rights at the national level.

For example, General Comment No. 28 of the Human Rights Committee for the **International Covenant on Civil and Political Rights (ICCPR)** provides for women's equality and women's rights, and contains particular provisions regarding the obligations of States to monitor these rights.

3. [...] The State party must not only adopt measures of protection, but also positive measures in all areas so as to achieve the effective and equal empowerment of women. States parties must provide information regarding the actual role of women in society so that the Committee may ascertain what measures, in addition to legislative provisions, have been or should be taken to give effect to these obligations, what progress has been made, what difficulties are encountered and what steps are being taken to overcome them.

Through the preparation of State Party reports, Governments are encouraged to include data and details on the steps taken, in laws, policies and programs to ensure the realization of women's ESC rights at the national level.

States Parties are also encouraged to “indicate factors and difficulties affecting the degree of fulfilment of obligations” under each treaty.¹⁸¹

In the most general sense, the reports submitted by States to the expert Treaty bodies are meant to describe how well the State has done in implementing the treaty in question. (See the UN Manual on Human Rights Reporting for a more complete description of the reports required under these above-mentioned treaties, as well as their contents, and the form and responsibilities of the Treaty bodies.)¹⁸²

The reports will, among other things, describe the mechanisms the State has put into place to promote the implementation of treaty rights and to redress problems that occur. As we have seen, NHRIs are one such mechanism and therefore reports will

describe the institution, its roles and responsibilities and its major accomplishments for the period in question.

NHRIs Involvement in State Reports

At a minimum, therefore, a national institution will usually be involved in either drafting or reviewing and commenting on the report insofar as it refers to the institution itself.

Increasingly, reports of States Parties to the various committees are going beyond merely reporting on the institution and its work by including information on the activities of national institutions as these relate to the specific area covered. For example, a report under the Committee on the Rights of the Child may include results of an institution's examination of the degree to which the girl's right to education is being respected. A national institution will want to ensure that its work is being properly presented. It will therefore, at a minimum, review State reports to ensure that representations made concerning the institution's work or findings are accurately portrayed.

Some institutions may go beyond this and contribute to State reports. This will vary according to a number of factors, including the functions of the institution and the willingness of the Government to seek its assistance. In many cases, a national institution will be able to:

- ▶ Offer information, data or statistics directly to the Government department charged with preparing the report
- ▶ Review draft reports in order to ensure their accuracy and completeness
- ▶ Act as a coordinating point through which information from various ministries, departments and organizations is channelled. In this latter case, a national institution itself may be entrusted with the responsibility of compiling a draft report, which would then be submitted to the relevant authorities for review

A national institution should take care if it is asked to perform this function since the obligation of reporting is a State responsibility and the report that is presented to the Expert Committee is a State report.

Treaty bodies have long sought to include, when examining country reports submitted by any country, the views expressed by others active in the human rights areas. Typically this has been accomplished through the review of existing materials that national and international NGOs may have developed with reference to the human rights condition in that country, or by receiving direct submissions from those sources at the time a country report is being considered. More and more, however, Treaty bodies are looking to national institutions as an additional independent source of information to use in their assessment and analysis. Annual and Special Reports prepared by institutions, research studies, the results of public inquiries all can be reviewed by Treaty bodies. As these sources of information are increasingly available publicly, this is being done as a matter of course.

In addition, however, an institution could submit a report directly to the Treaty body in question. It might choose to do so, for example, if the country report contains, in the view of the institution, an inaccurate or misleading statement about the current situation and other efforts to have the report changed have failed.

Treaty bodies will make comments on a State's performance based on their review and assessment of the national situation and will propose actions for the State to take. These comments and suggestions are meant to assist the State in meeting its international or regional obligations. An institution should carefully review these comments and recommendations and may wish to provide advice to the Government on what can be done to respond positively to them. An institution may also consider the comments when it is designing and implementing its program activities. For example, a comment by a Treaty body noting a certain deficiency and proposing corrective action may result in the NHRI deciding to monitor that particular issue within its overall monitoring program.

Inter-Agency Cooperation

As NHRIs build up expertise, Governments and others could be encouraged to view their NHRI as a place where they would seek specialist advice and assistance. While this has to be balanced with the capacity limitations, NHRIs do participate in inter-agency deliberations and discussions relating to the coordination of the preparation of the Government reports to the **Human Rights Council**, the CEDAW Committee, and the ESC rights and CRC committees, among others.

Due to their independence, NHRIs should not be primarily responsible for coordinating State reports, but their expertise and input adds value to discussions throughout the process of drafting the Government report and may offer alternative perspectives.

In this regard, NHRIs should:

- ▶ Make recommendations to ensure that the information on women's ESC rights is reliable, realistically presented and also, considered as an integral part of the human rights situation of the country
- ▶ Encourage consultations and open dialogue with **civil society**, especially as regards women's groups, in the process of preparing the report
- ▶ Provide technical assistance to Government bodies preparing the report to ensure a better understanding of women's ESC rights
- ▶ Share and supplement data and information that should be included in the Government report

Since these reports are the primary responsibility of Governments, NHRIs should exercise caution. They should, at all times, stress their independence while continuing to cooperate with other public institutions to the extent possible.

If NHRIs do not participate in working groups and/or workshops conducted by Government bodies responsible for drafting the State Party reports, they should be afforded the opportunity to comment on draft reports of Government. In this

regard, national institutions can work to strengthen the gender analysis in the reports, by ensuring that such reports reflect issues and questions relating to women. In this process, NHRIs should involve NGOs, women’s research institutions, and other relevant members of civil society.

NHRI Submissions as Part of the State Party Reports

Since NHRIs are independent Government bodies, when the information submitted by NHRIs is included in Government reports, their independence should be stressed. In some cases, submissions by NHRIs are included as a separate chapter of the Government report. In other cases, NHRIs submit reports that are annexed to the State Party report and considered as “stand alone” information.

The following resources may be of particular use to NHRIs:

- ▶ Assessing the Status of Women: A Guide to Reporting under the International Convention on the Elimination of All Forms of Discrimination against Women (UN, Division for the Advancement of Women, Economic and Social Affairs, 2000); <http://iwrap.igc.org/publications/assessing/assessing-english%201.pdf>
- ▶ Universal Human Rights Index, for a comprehensive database that includes CEDAW country reports and referenced by ground, rights and persons affected; <http://www.universalhumanrightsindex.org>

A fuller discussion of **alternative**, **parallel** and **shadow reports** is provided in the subsection below.

Representation of NHRIs at the Review Sessions

NHRIs may be invited to be part of Government delegations to the CEDAW Committee and the Committee on ESC rights. While it is beneficial to engage in the constructive dialogue that occurs during the reporting process, it is important for NHRIs to act as independent bodies with expertise. For example, the practice in the Australian Human Rights and Equal Opportunity Commission is not to be part of the Government delegation but to be designated as adviser to the delegation, respecting the independence of the Commission. In this approach, it is important that Committee members know of the presence of the national institution representative so that they can address questions to that representative directly if they so wish.

The benefit of being part of the Government delegation is that the national institution may have several opportunities to officially engage with the Committee. However, it is inappropriate for the institution to answer questions or apologize on behalf of the Government. NHRIs should try to contribute information directly related to their areas of competence.

Example: Hong Kong Equal Opportunities Commission Attends 2006 CEDAW Session¹⁸³

In 2006, members of the Hong Kong Equal Opportunities Commission (EOC) attended the meeting of the CEDAW 36th Session, 7-25 August 2006, at the United Nations Headquarters in New York (EOC Paper No. 18/2006). Both the members themselves and observers considered the intervention to be a success.

25. Members noted the report on the CEDAW hearing contained in EOC Paper No. 18/2006 at which representatives of the EOC Office attended in August 2006. In addition to submitting an NGO report on the progress of women in Hong Kong prior to the meeting, Members noted that C/EOC also spoke at the NGO session and highlighted further on EOC's report as well as the concluding comments from CEDAW on Hong Kong following the session.

G. Alternative/Parallel/Shadow Reports by NHRIs

Some NHRIs choose to stress their independence from both the Government and NGOs. They submit reports directly to the CEDAW Committee or to the Committee on ESC rights, other bodies regarding women's ESC rights. Both Committees generally welcome the input sent by NHRIs and will review the information submitted. The information contained in the independent report should also be shared at the national level with the Government and civil society.

Submitting alternative reports, also referred to as parallel or shadow reports, under a particular treaty assists the Treaty body in its task of assessing Government progress in implementing treaty rights and understanding the underlying conditions causing violations of women's ESC rights. For example, shadow reports frequently provide useful independent information and data on State failures to protect and promote women's ESC rights. Shadow reports should include data disaggregated by sex, information on temporary special measures, law reforms, measures to address stereotypical attitudes, etc. Shadow reports should also propose recommendations that the Committee can be urged to make in its Concluding Observations. They can also suggest issues and questions that the Committee might raise with the Government delegation.

In other cases, NHRIs attend the review process independently, and are not part of the Government delegation. Here, the best way to address the Treaty body is through statements, made before or after the NGOs on the first day of the session. After that point, it is advisable that representatives of NHRIs be available to engage in informal discussions with members of the Committee.

On the next page is an example of NHRI involvement in Shadow reports.

Example: NHRI Role in Ireland

An NHRI may also contribute to the reporting process under international human rights instruments (with due respect for the independence of the national institution). An example is provided by the Irish NHRI, which attended a CEDAW session in July 2005 and provided a shadow or alternative report to the Committee, highlighting areas of women's rights which the Irish Government had not given much attention to. They expressed their concerns during the session and an informal consultation between the NHRI and CEDAW took place concerning relevant issues in Ireland. Some of the Irish NHRI comments were taken up in the CEDAW concluding observations.¹⁸⁴

UN General Assembly (GA) Resolution 60/251 offers an explicit mandate for the participation of NHRIs as observers in the UN Human Rights Council. The Council is required to:

work in close cooperation in the field of human rights with [...] national human rights institutions (Art. 5 (h)); The participation of and consultation with observers, including [...] national human rights institutions [...] shall be based on arrangements and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities (Art. 11).

NHRIs that are fully accredited by the **International Coordinating Committee (ICC) of NHRIs** are permitted to participate in the Council based on the existing arrangements that were observed by the **Commission on Human Rights**.¹⁸⁵ The terms and conditions of NHRI participation, seating, interventions and preparation of documents are set out in some detail in the ICC document: ICC Position Papers – *National Human Rights Institutions and the UN Human Rights Council: Volume II. National Human Rights Institutions and the Special Procedures and Universal Periodic Review Mechanism*. In particular, NHRIs have a role to play in relation to the:

- ▶ Special Procedures of the Commission on Human Rights, in particular the thematic and country mechanisms, which the Council is to “assume, review and, where necessary, improve and rationalize in order to maintain a system of special procedures, expert advice and a complaint procedure” (UNGA resolution 60/251, para. 6)
- ▶ New procedure for universal periodic review of the performance of all **member States** of their human rights obligations (UNGA resolution 60/251, para. 5(e))
- ▶ Exercise by the Council of its mandate “to address situations of violations of human rights, including gross and systematic violations” (UNGA resolution 60/251, para. 5(f))

The input of NHRIs may be sought directly and through the ICC or the regional coordinating bodies into the Human Rights Council's activities in order to take advantage of the role of NHRIs as a bridge between the international and national levels.

H. Universal Periodic Review¹⁸⁶

The Universal Periodical Review (UPR) mechanism of the UN Human Rights Council is a fundamental tool to measure the extent to which each State has fulfilled its human rights obligations and commitments. The Council aims to build efficient, logical, and clear human rights objectives, to develop supervising procedures and to provide reflections on a State's capacity building requirements. The UPR must look at best practices but also at challenges and obstacles that a State might face.

Section 2

Human Rights Education

International treaties oblige States to undertake human rights education. The ICESCR (Article 13), the CRC (Article 29) and CEDAW (Articles 7 and 10) all provide that human rights education is a State obligation, as do the Declarations and Programmes of Actions from the world conferences held in Vienna, Austria, in 1993.

Since NHRIs also have a responsibility to ensure that international obligations are met, they too should ensure that the education provisions of these international treaties and international declarations and programs of action are put into effect.

In its General Comment No. 10 on the role of NHRIs and ESC rights, the Committee on ESC rights states that NHRIs could conduct promotional, educational and information programs designed to enhance awareness and understanding of ESC rights, both within the general public and among particular groups.

NHRIs can promote public awareness of the issues around the realization of women's ESC rights by:

- ▶ Developing and disseminating public campaigns using the media (radio, television, print, internet, etc.)
- ▶ Issuing public statements on issues related to women's ESC rights
- ▶ Publishing research studies on these issues
- ▶ Conducting national workshops and hearings on issues relating to women's ESC rights
- ▶ Developing a comprehensive and current web site that can serve as a clearing house for NHRI information and initiatives

The Philippines Commission for Human Rights, for example, has a wide-ranging program in the area of human rights education, which shared the 1994 UNESCO prize for human rights education. The President of the Philippines declared 1998-2007 a Human Rights Education Decade. Within this framework, the Philippines Commission has put in place an ambitious program of education and inter-agency cooperation.¹⁸⁷

A. Public Campaigns

Public campaigns on ESC rights for women are important strategies for several reasons: they identify and publicize issues that would not otherwise be well known; they are progressive and can extend over several years, creating a general awareness of and recognition by the general public for both the issue and the underlying right.

One serious question about education and awareness raising campaigns is that they are often general in nature and “soft” in approach and as a result have little effect. The most effective human rights education, and therefore the most effective public awareness raising campaigns, will focus on specific violations and their particular impact on people and families, on what needs to be done.

Example: Ontario Human Rights Commission, Canada

Ontario’s Human Rights Commission in Canada received complaints and public expressions of concern regarding women who had been refused service or asked to leave public areas while breastfeeding children. In one case, a woman was ordered to leave a restaurant premises. The Commission sent the case to a tribunal, where it was settled in favour of the complainant.

Realizing that this was a broader social problem linked to lack of understanding and awareness of women’s and mothers’ rights, the Commission launched a province-wide campaign in partnership with the Infant Feeding Action Coalition Canada and the Toronto Public Health Unit to mark World Breastfeeding Week.

The campaign extended over several months, and featured advertisements and posters placed on municipal transit vehicles across the province as well as posters in workplaces and public institutions.

The advertising campaign was also linked to the Commission’s work to protect women from discrimination in services and employment during pregnancy and breastfeeding. It affirmed the work of other international organizations, such as UNICEF and the World Health Organization that have repeatedly promoted the health and social benefits of breastfeeding to both the mother and the child. Practically speaking, women should not only have the right to breastfeed their children in public, but should also be given rights at the workplace to take appropriate breaks to feed breastfeeding children.

This issue speaks directly to maternal health, infant health and the employment of women, and is directly pertinent to ESC rights. By placing the children front and centre in the campaign, much of the public division over the topic was defused.

The Commission revised its own *Policy on Discrimination Because of Pregnancy* to include the right to breastfeed in public and in the work environment, added a plain language guide, and stated that an employer has an obligation to accommodate women who choose to breastfeed. Public education sessions with employers, unions and the general public complemented the campaign.

B. Workshops, Training and Conferences

NHRIs can develop and conduct training sessions, national workshops and conferences on women's ESC rights for specific target groups. These should include sensitization on CEDAW and the ICESCR and the centrality of women's rights to the promotion and protection of ESC rights.

Training can also include issues around: general gender sensitivity; State obligations under the ICESCR and CEDAW; and the development of national level action plans and other strategies which aim to protect and promote women's ESC rights. Many of these issues are already being undertaken by NGOs, and successful collaboration between NGOs and NHRIs can lead to much richer and more productive sessions that also build community trust and support from civil society.

Target groups for training and sensitization sessions (at local, provincial/district and national levels) may include:

- ▶ Government officials
- ▶ NGOs and civil society organizations
- ▶ Police and law enforcement officials
- ▶ Community leaders
- ▶ Teachers
- ▶ Media
- ▶ Judges and lawyers
- ▶ Prison officials

Training should be participatory in nature and sensitive to local and national issues affecting women and ESC rights.

“Scaling up” a successful local event or strategy to a national level is a strategy that is often used at the programmatic level and is especially useful for training sessions. For example, a local or pilot project at the community level on domestic violence, if successful, can be their expanded to be used country-wide.

C. Publications and Media

NHRIs can use the media and publications to promote women's ESC rights. Many institutions use *radio and television programming*. In some cases, state-controlled media may be willing to offer free or subsidized airtime. Radio in particular is an easy and relatively cost-effective way of reaching a large audience, especially when the audience may have limited literacy. In addition, NHRIs can obtain free media space (print, radio and TV) simply by producing good stories and having media savvy people to be interviewed. The value of space provided for news stories will be many times what the NHRIs themselves can afford to buy.

Popular programming is an effective way to view culture as an asset, rather than viewing it as a difficulty, in communicating the importance of change and education. Phone-in radio and/or television programs are quite popular in some countries and can be used both as a way of gauging public opinion on topical issues and presenting a human rights analysis of them. Television is a popular medium and some institutions are able to produce short advertising clips for use on television. This is usually quite expensive, however, and may be only realistic where the station airs free or subsidized public service announcements or where donors or partners will cover the cost.

In the print media, *newspaper inserts* are useful and cost-effective. In countries where literacy rates are low, inserts may be effective in reaching elites. On the other hand, in countries where literacy levels are high and where newsprint enjoys wide circulation, they reach a much wider audience. Often, such inserts address a common theme or commemorate an international day. For example, an institution might develop an insert on International Women’s Day in collaboration with UN agencies in the country, interested ministries and women’s NGOs. It may also choose to develop a series of inserts on selected issues.

Guest editorials or *opinion pieces* to be published in newspapers can be an effective way to present a reasoned position on a current controversial issue, or women’s ESC rights, that may not otherwise get publicity because few other public figures may be addressing these issues.

Finally, NHRIs should invest in and develop *policy and legal documents*, as well as *plain language guides* on issues involving women’s ESC rights. These might be launched around commemorative days, for example, during national or international days commemorating women, or when the institution is releasing its Annual Report.

Typically, publications programs also involve the following key elements:

- ▶ Developing and distributing specialized human rights publications, such as the rights of migrant women workers, the rights of women related to pregnancy and employment, violence against women, and publications on vulnerable women in racial, ethnic or other minority communities
- ▶ Developing and maintaining a mechanism to become a depository of human rights information and making that information available to the public, ensuring that document classifications include gender issues
- ▶ Public outreach efforts to women’s NGOs and other groups

Core Human Rights Material

NHRIs typically develop a variety of human rights material, including:

- ▶ Brochures or other easily accessible material describing the role and responsibilities of the institution in relation to women’s ESC rights
- ▶ Simple booklets explaining key women’s rights principles and how the institution is charged with promoting and protecting them

- ▶ Specialized publications on specific rights issues which should be issued separately and targeted to specialized audiences
- ▶ Newsletters in print and/or electronic form publicizing the NHRI activities and issues

Annual Report

Annual Reports from NHRIs are used to enhance the institution's accountability by informing audiences of the institution's work and its use of resources.

Many institutions use annual reports to go beyond administrative reporting, using the reports as education and advocacy tools. This can be done, for example, by including substantive comments on the human rights situation in the country, including women's ESC rights; the results of complaints or inquiries involving women's issues; and publishing sex-disaggregated data.

D. Community-Based Initiatives

Community-based initiatives are promotional activities that directly involve the local community or smaller sub-sectors. They assist the community to develop a better general awareness of human rights principles through popular means.

Examples of community-based initiatives that are especially effective for women include:

- ▶ Song, dance, theatre or drawing competitions on women's rights. They are a particularly attractive way to promote awareness among younger individuals when more formal education or training initiatives might not be effective or appropriate
- ▶ Exhibitions and special events to mark anniversaries such as Human Rights Day (10 December), International Women's Day (March 8), International AIDS Day (1 December)
- ▶ Rights awards for women or women's groups within the community who have made a significant contribution to the realization of ESC rights
- ▶ Sports events and exchanges
- ▶ Micro-loan initiatives at the community level
- ▶ Support and service groups for women
- ▶ Informal education for girl children
- ▶ Local health campaigns on issues related to sexual and reproductive health
- ▶ Mobile "human rights clinics" by NHRI officials who move from community to community on a scheduled basis
- ▶ Education sessions with community NGOs

E. NHRIs as Clearing Houses for Human Rights Information

NHRIs are responsible for acting as clearing houses for human rights materials in the country, at least regarding their own human rights documents, and for collecting and making available a wide variety of human rights material produced regularly by the UN and other international, regional and national organizations.

Many of these are produced in multiple languages and have been popularized to make them more accessible to the general population. They include:

- ▶ International human rights instruments and standards relating to women’s ESC rights (including information on ratifications and reservations by the State in question)
- ▶ Copies of reports of the State to Treaty bodies and concluding observations made by Treaty bodies on those reports that are relevant to women’s issues
- ▶ Informational and training materials developed on women’s rights internationally, regionally and nationally
- ▶ National laws on women’s rights and ESC rights, including relevant administrative and judicial decisions which have interpreted or applied that legislation
- ▶ Information on domestic mechanisms for protection of human rights and women’s rights (including other national institutions, parliamentary commissions, ministerial committees and NGOs)
- ▶ Information on the structure and functioning of implementation mechanisms which exist at the international level
- ▶ Studies and reports on human rights carried out by the institution as well as by Government ministries, NGOs and international organizations

Much of this information can be obtained from the UN, Government departments and NGOs.

A number of NHRIs have created research or documentation centres to ensure that human rights materials are maintained and made available to staff, clients and researchers. However, the fastest-growing strategy to become a clearing house of information is through the creation of an NHRI web site, which is an increasingly accessible way to collect, classify and disseminate information, preferably in the country’s principal languages.

F. NHRI Engagement in Public School Curricula

Education starts with children and since attitudes about women’s roles in society are formed and shaped in early years, the ability to influence curriculum for the next generation in a way that supports women’s equality is crucial. NHRIs can have a fundamental role in this work.

The World Programme for Human Rights Education was proclaimed by the General Assembly in 2004. The first phase of the World Programme focuses on primary and secondary school systems.

The Plan of Action for this first phase was adopted by all UN Member States in July 2005.¹⁸⁸ The updated description of the first phase is set out below.

Example: A Plan of Action for Human Rights Education in the Primary and Secondary School Systems 2005-2009¹⁸⁹

Unlike the limited time frame of the United Nations Decade for Human Rights Education (1995-2004), the World Programme is structured around an ongoing series of phases, the first of which covers the period 2005-2009 and focuses on the primary and secondary school systems. Developed by a broad group of education and human rights practitioners from all continents, the Plan of Action for the first phases proposes a concrete strategy and practical ideas for implementing human rights education nationally. Its key elements are highlighted below.

- A rights-based approach
- Child-centred and participatory
- Inclusive and non-discriminatory

The Plan of Action underscores that human rights education in the school system should promote a rights-based approach to education by ensuring that all the components and processes of education—including curricula, materials, methods and training – are conducive to learning about human rights. It also ensures that the human rights of all members of the school community are respected.

Conclusion

In the context of women's ESC rights, human rights promotion helps to develop and enhance a culture of human rights so that women are valued as human beings with dignity and equality, where every individual in a society shares these values as reflected in the international and national human rights legal framework. A successful human rights promotion program, therefore, is one that moves individuals beyond knowledge to a cultural shift in human rights, required for women's equality. It further serves to create an environment where the protection aspect of women's ESC rights is a fundamental operating principle, which is adhered to and respected.

Promoting education in human rights is a key responsibility of NHRIs. Particular activities will depend on resources and the internal culture of the organization. Most institutions develop and distribute publications on human rights, including annual reports and specialized publications on women's ESC rights, both generally and specifically.

Public awareness campaigns, specialized training to key officials and strategic use of the media should be integrated with the protection aspect of the mandate to heighten awareness and promote women's rights.

Institutions must develop the knowledge, skills and abilities as well as the tools and technical approaches that will allow them to be successful. This is essential if NHRIs

are to create a strong culture of human rights and to ensure that international human rights norms are accepted and implemented on the ground.

Notes

About this Handbook

- ¹ Office of the United Nations High Commissioner for Human Rights (OHCHR), *Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions*, Professional Training Series No. 12 (New York and Geneva, 2005). <http://www.ohchr.org/Documents/Publications/training12en.pdf>
- ² Equitas, *National Human Rights Institutions At Work: Asia-Pacific Regional Workshop on Women's Economic, Social and Cultural Rights* (2006) at <http://www.equitas.org/english/ed-manuals/ed-manuals.php>
- ³ <http://www.thecommonwealth.org/Internal/156283/publications/>
- ⁴ <http://www.britishcouncil.org/governance-publications-resources-publications.htm>; <http://www.iwraw-ap.org/aboutus/tools.htm>
- ⁵ See generally, Committee on Economic, Social and Cultural Rights, “Substantive issues arising in the implementation of the international Covenant and Social and Cultural Rights”, General Comment No. 10 (1998).

Module 1 Positioning the Issues

- ⁶ United Nations Centre for Human Rights, *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights*, Professional Training Series No. 4. (New York and Geneva, 1995). <http://www.ohchr.org/Documents/Publications/training4en.pdf>
- ⁷ Adapted from principle 9 of the Montreal Principles which can be found at: <http://cesr.org/filestore2/download/697/MontrealPrinciples.doc>

Module 2 Equality, Development and Rights – Making the Connections

- ⁸ Social security is sometimes referred to as social assistance, or more broadly, social protection. See The Economic and Social Council General Comment No. 19 – *The right to social security*, art. 9 (E/C.12/GC/19) 23 November 2007. <http://www.hrlrc.org.au/files/YVDF67HWP3/FINAL%20CESCR%20GC%2019%20-%20final-edited%2018%2012%2007%20clean.doc>
- ⁹ Centre for Economic and Social Rights web site: <http://cesr.org/basic>.
- ¹⁰ See generally, UN Division for the Advancement of Women, *Promoting women's enjoyment of their economic and social rights, Report of the Expert Group Meeting, Abo/Turku, Finland, 1-4 December 1997*, (EGM/WESR/1997/Report), para. 18; Day, S. and Brodsky, G. “Beyond the Social and Economic Rights Debate: Substantive Equality Speaks to Poverty,” *Canadian Journal of Women and the Law* 14, 1 (2002), pp. 185-220; Farha, L. “Is There a Woman in the House? Re/conceiving the Human Right to Housing,” *Canadian Journal of Women and the Law* 14, 1 (2002), pp. 118-36; Frostell, K. and Scheinin, M. “Women” in Eide, A., Krause, C., & Rosas, A. (eds.), *Economic, social and cultural rights: a textbook* (Dordrecht: Martinus Nijhoff, 2001).

-
- ¹¹ This section is drawn in part from the plain language guide to the Montreal Principles by the Centre for Equality Rights in Accommodation (CERA). *Guide to the Montréal Principles on Women's Economic, Social and Cultural Rights*. (Toronto, 2005).
<http://www.equalityrights.org/cera/docs/MPs%20Guide%20web%20E.pdf>
- ¹² OHCHR, *Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions*, pp. 2-3.
- ¹³ Sawh, N. *Negotiation on the Ground: Realizing Economic, Social and Cultural Rights in South Africa, Nigeria and Peru* (2007). Master's Thesis. Unpublished.
- ¹⁴ *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*. See Module 3 for a more extensive discussion of these Principles.
- ¹⁵ *Beijing Platform for Action*, paras. 230(e) and 232 (e).
- ¹⁶ *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* (1997). See Module 3 for a more extensive discussion of these Principles.
- ¹⁷ <http://www.ccsr.org/>
- ¹⁸ *Women and the right to adequate housing and to land and property*, Sub-Commission resolution 1997/19.
http://ap.ohchr.org/Documents/E/SUBCOM/resolutions/E-CN_4-SUB_2-RES-1997-19.doc
- ¹⁹ Commonwealth Secretariat (London, 2001), pp. 33-34, 36.
<http://www.thecommonwealth.org/Internal/156283/publications/>
- ²⁰ Asia Pacific Forum and the Hong Kong Equal Opportunities Commission. *Report on the Regional Workshop on the Role of National Human Rights Institutions and Other Mechanisms in Promoting and Protecting Economic, Social and Cultural Rights* (2001), p.19.
- ²¹ See Module 3 for a more extensive discussion of these Principles.
- ²² Office of the High Commissioner for Human Rights, National institutions for the promotion and protection of human rights. Human Rights Resolution 2005/74.
<http://www.ishr.ch/handbook/Annexes/NGO/2005-74.pdf>
- ²³ General Comment No. 16 (2005) *The equal right of men and women to the enjoyment of all economic, social and cultural rights* (art. 3 ICESCR. E/C.12/2005/4)
- ²⁴ *Ayton-Sbenker, D. The Challenge of Human Rights and Cultural Diversity*, UN Background Note (1995).
<http://www.un.org/rights/dpi1627e.htm>
- ²⁵ For an overview of developments in this area from a group of experts working with UNESCO, see the "Observatoire de la diversité et des droits culturels" which has published a very interesting series on this issue, culminating in the 2007 version of the "Fribourg Declaration." All the materials are available online at <http://www.unifr.ch/iiedh/droits-culturels/odc-pres.htm>
- ²⁶ Available at: <http://unesdoc.unesco.org/images/0012/001271/127160m.pdf>
- ²⁷ Available at: <http://www.unesco.org/culture/en/diversity/convention>
- ²⁸ Adapted from: <http://www.amnestyusa.org/women/pdf/economicrights.pdf>
- ²⁹ CCPR Human Rights Committee, General Comment No. 28: Equality of rights between men and women (Article 3) (29/03/2000. CCPR/C/21/Rev.1/Add.10, General Comment No. 28).

-
- ³⁰ The 2007 version of the “Fribourg Declaration.” All the materials are available online at <http://www.unifr.ch/iiedh/droits-culturels/odc-pres.htm>
- ³¹ The generous contribution of the Kenya National Commission on Human Rights is acknowledged in the development and drafting of this case study. The version appearing here was adapted from the original.
- ³² Uganda Human Rights Commission, “Chapter 4: Planning for the Vulnerable Persons: Analysis of the Current Policies and Programmes”. *Annual Report 2004*. http://www.uhrc.ug/uploads/chapter_4.pdf
- ³³ Eliadis, P., Hill, M., & Howlett, M. eds., *Designing Government: from Instruments to Governance* (McGill-Queen’s University Press, 2005).
- ³⁴ UN Millennium Development Goals <http://www.un.org/millenniumgoals/>
- ³⁵ Including skilled birth attendance, family planning and obstetrical expertise. A 2007 report shows that the deaths are virtually all in developing countries. See *Maternal Mortality in 2005*. (WHO, UNICEF, UNFPA, The World Bank: 2007)
- ³⁶ The Committee on Economic, Social and Cultural Rights has indicated that the right to social security includes the right to maternity benefits. The more general right to work (ICESCR, art. 6) can be said to require States to develop employment policies and benefits – like maternity benefits – that safeguard to right to work. Finally the obligation to establish “just and favourable conditions of work” (art. 7) is open-ended and intended as an illustration. The examples given – fair wages etc. - are just examples – and this favours an understanding of maternity benefit as part of ESC rights.
- ³⁷ Adapted from the GTZ’s Promotion of Women’s Rights project: <http://www.gtz.de/en/presse/15685.htm>
- ³⁸ UNIFEM (2007), Facts & Figures on Violence against Women. http://www.unifem.org/campaigns/vaw/facts_figures.php
- ³⁹ <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>
- ⁴⁰ General Comment No. 16 – *The equal right of men and women to the enjoyment of all economic, social and cultural rights* (art. 3 ICESCR. E/C.12/2005/4)
- ⁴¹ National Human Rights Commission, Nepal. *Strategic Plan 2004-2008*, p. 1. http://www.nhrcnepal.org//publication/doc/books/Strategic_Plan_2004-2008.pdf
- ⁴² See generally CEDAW, art. 1 General Comment on Non-Discrimination, General Comment No. 18, UN GAOR, Human Rights Committee, 37th Session (CCPR/C/21/Rev.1/Add.1 (1989)); General Comment on Gender-related dimensions of racial discrimination, General Comment No. 25, UN CERD, 56th Session, Annex V (A/55/18(2000)); Montreal Principles, principle 6.
- ⁴³ Montreal Principles, principle 8.
- ⁴⁴ The text that follows on CEDAW art. 1 is taken from the OP-CEDAW resource guide developed by the International Women’s Rights Action Watch Asia-Pacific (IWRAW), *Our Rights Are Not Optional! Advocating for the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) through its Optional Protocol. A Resource Guide*, pp 5-6. <http://www.iwraw-ap.org/aboutus/tools.htm>
- ⁴⁵ Montreal Principles, principle 9.
- ⁴⁶ See Committee on Economic, Social and Cultural Rights, General Comment No. 3 – The nature of States Parties obligations, p. 10.

[http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+3.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+3.En?OpenDocument)

See also the *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* (1997). Module 3 contains a more extensive discussion of the Maastricht Guidelines. For a detailed discussion of minimum core obligations, see A. Chapman and S. Russell, eds., *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* (Antwerp: Intersentia, 2002).

- ⁴⁷ The text in this section is drawn primarily from General Recommendation No. 25 of the CEDAW Committee on Temporary Special Measures (2004), and from Ontario Human Rights Commission, *An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims*, available at: http://www.ohrc.on.ca/en/resources/discussion_consultation/DissIntersectionalityFtns?page=DissIntersectionalityFtns-AN.html
- ⁴⁸ Montreal Principles, principle 10.
- ⁴⁹ Ibid.
- ⁵⁰ The term “racialized” is a well-recognized term that is used primarily in the North American anti-racism movement to denote persons who are members of racial minorities that experience negative social construction of their racial identities. It is intended to recognize that “race” is itself an arbitrary concept with no genetic basis. See Ontario Human Rights Commission Policy on Racial Discrimination. <http://www.ohrc.on.ca>
- ⁵¹ See, for example, the UN Convention on The Rights of Persons with Disabilities which is discussed in Module 3, which makes specific reference to the combined effects of gender and disability.
- ⁵² General Recommendation No. 25, on art. 4, para. 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures. [http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20\(English\).pdf](http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf)
- ⁵³ Ibid.
- ⁵⁴ OHCHR, *Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions*, Professional Training Series No. 12 (New York and Geneva, 2005), p. 28.
- ⁵⁵ Article 2 imposes the obligation of progressive measures. See Module 3, section 2 for further discussion. See also Committee on Economic, Social and Cultural Rights, General Comment No. 3 – The nature of States Parties obligations, para. 9. [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+3.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+3.En?OpenDocument)
- ⁵⁶ Ibid.
- ⁵⁷ *Principles relating to the Status of National Institutions*. General Assembly Resolution 48/134, 20 December 1993. <http://www.unhchr.ch/html/menu6/2/fs19.htm#annex>.
- ⁵⁸ This section was drawn from Dwyer, J. “Roles and Responsibilities in Implementing HR: Similarities and Differences In Approaches to Access to Justice” In *L'accès direct à un tribunal spécialisé en matière de droit de l'égalité: l'urgence d'agir au Québec* (Montreal: Éditions Yvon Blais, 2008).
- ⁵⁹ Civil society organizations have made similar observations, notably the International Council on Human Rights Policy. See the discussion in OHCHR, *Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions*, p. viii, fn. 4.
- ⁶⁰ OHCHR, “Human Rights Questions: Implementation of Human Rights Instruments”, Report of the Fifth Meeting of Persons Chairing the Human Rights Treaty (A/49/537 (1994)), para. 19.

- ⁶¹ OHCHR, *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions*, Professional Training Series No. 4 (New York and Geneva, 1995), section 48.
- ⁶² Committee on Economic, Social and Cultural Rights, General Comment No. 10 – The role of national human rights institutions in the protection of economic, social and cultural rights (E/C.12/1998/25). [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/af81bf2fed39cec1802566d50052f53b?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/af81bf2fed39cec1802566d50052f53b?Opendocument)
- ⁶³ The United Nations Commission on Human Rights in its *Resolution on National Institutions for the Promotion and Protection of Human Rights* reiterated this statement and called upon all States to ensure that all human rights are appropriately reflected in the mandate of their national human rights institutions when established. UN Commission on Human Rights, Resolution 2002/83, 58th Session, 18 March – 26 April 2002.
- ⁶⁴ Statement by Mr. Gianni Magazzeni, Coordinator, National Institutions Unit, OHCHR, Commonwealth Conference on National Human Rights Institutions, 26-28 February 2007. http://www.thecommonwealth.org/Shared_ASP_Files/UploadedFiles/D79C1923-5EC5-4B5C-B422-F8111E9D8102_MrMagazzenipresentation.pdf
- ⁶⁵ See also Committee on Economic, Social and Cultural Rights, General Comment No. 16 – *The equal right of men and women to the enjoyment of all economic, social and cultural rights* and Amnesty International, *Making Rights a Reality: Building Your Campaign – Stop Violence against Women* (June 2004), p. 4.
- ⁶⁶ Amnesty International, *Making Rights a Reality: Violence against Women in Armed Conflict* (London, 2005), p. 3. <http://www.amnesty.org/en/library/asset/ACT77/050/2005/en/dom-ACT770502005en.pdf>

Module 3 The Legal Framework

- ⁶⁷ National Human Rights Institutions at Work: Asia-Pacific Regional Workshop on Women’s Economic, Social and Cultural Rights (2006).
- ⁶⁸ Treaties, conventions, covenants, and optional protocols are names for international agreements and are of the same legal status in international law. See the Glossary in the Appendix for definitions of these and related terms.
- ⁶⁹ Office of the President, *No. 54 of 1994: Human Rights Commission Act, 1994*. <http://www.justice.gov.za/legislation/acts/acts/1994/1994-54.pdf>
- ⁷⁰ Committee on Economic, Social and Cultural Rights, General Comment No. 9 (1998) – Domestic application of the Covenant, (E/C.12/1998/24), para. 4. [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/4ceb75c5492497d9802566d500516036?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/4ceb75c5492497d9802566d500516036?Opendocument)
- ⁷¹ Ibid., para. 6.
- ⁷² The balance of the section is drawn and adapted from: *Justiciability of Economic, Social and Cultural Rights* (Center for Economic, Social and Cultural Rights). <http://cesr.org/justiciability>
- ⁷³ Ibid.
- ⁷⁴ Adapted from AWID. <http://www.awid.org/publications/ESCR-english.pdf>
- ⁷⁵ Women’s Budget Initiative. (July 2002). *Rights, Roles and Resources: An Analysis of Women’s Housing Rights – Implications of the Grootboom Case*. Report by Manjoo, R., Paulus, E., & Pillay, K. Cape Town, South Africa. <http://www.idasa.org.za/gboutputfiles.asp?writecontent=y&rid=680>

-
- 76 See OHCHR, [Fact Sheet No. 2 \(Rev. 1\), The International Bill of Human Rights](http://www.unhchr.ch/html/menu6/2/fs2.htm).
<http://www.unhchr.ch/html/menu6/2/fs2.htm>
- 77 Several more international conventions protect women's ESC rights, at both the international and regional level, and these are set out in tabular form in Appendices 2 and 3.
- 78 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (A/RES/54/4) <http://www.un.org/womenwatch/daw/cedaw/protocol/text.htm>
- 79 This paragraph is based on "Economic, Social and Cultural Rights of Women" (Module 4), in *Circle of Rights: Economic, Social and Cultural Rights Activism: A Training Resource* (International Human Rights Internship Program and Asian Forum for Human Rights and Development, 2000).
<http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module4.htm>
- 80 <http://www2.ohchr.org/english/law/disabilities-convention.htm>
- 81 CCPR Human Rights Committee, General Comment No. 28: Equality of rights between men and women (Article 3) (29/03/2000. CCPR/C/21/Rev.1/Add.10, General Comment No. 28).
- 82 OHCHR, *Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions*, pp. 9-28.
- 83 This section is drawn from the Committee on Economic, Social and Cultural Rights, General Comment No. 16 – *The equal right of men and women to the enjoyment of all economic, social and cultural rights* and Dwyer, J. "Roles and Responsibilities in Implementing HR: Similarities and Differences In Approaches to Access to Justice" In *L'accès direct à un tribunal spécialisé en matière de droit de l'égalité: l'urgence d'agir au Québec* (Montreal: Éditions Yvon Blais, 2008).
- 84 Committee on Economic, Social and Cultural Rights, General Comment No. 16 – *The equal right of men and women to the enjoyment of all economic, social and cultural rights*.
- 85 Committee on Economic, Social and Cultural Rights, General Comment No. 3 – The nature of States Parties Obligations, art. 2(1).
[http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+3.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+3.En?OpenDocument)
- 86 *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, UN Doc. E/C.12/2000/13, Guideline No. 10.
- 87 General Comment No. 16 – *The equal right of men and women to the enjoyment of all economic, social and cultural rights*.
- 88 See Habitat International Coalition, *UN Human Rights Council Approves Optional Protocol to the ICESCR* <http://www.hic-net.org/news.asp?PID=700> and International Coalition for an OP-ICESCR, <http://www.opicescr-coalition.org/introduction.htm>
- 89 It is expected to be presented to the United Nations General Assembly for adoption in the fall of 2008. The International Coordinating Committee, various national institution networks and individual institutions made statements to the Open Ended Working Group tasked with drafting the Optional Protocol. For further information on the Working Group on the Optional Protocol, see <http://www2.ohchr.org/english/issues/escr/group5.htm>
- 90 Adapted from the Office of the United Nations High Commissioner for Human Rights' website.
<http://www2.ohchr.org/english/bodies/cescr/comments.htm>
- 91 Commonwealth Secretariat, *Handbook on Ratification of Human Rights Instruments* (London: Human Rights Unit, 2006), p. 47.
http://www.thecommonwealth.org/Shared_ASP_Files/UploadedFiles/20AFBD50-7AF7-492D-B68B-CDA734583FAD_RatificationHandbook.pdf
- 92 Malanczuk, P. *Akehurst's Modern Introduction to International Law*, 7th revised ed. (New York: Routledge, 1997) p. 66.

- ⁹³ Katz, A. “An Act of Transformation: The incorporation of the Rome Statute of the ICC into national law in South Africa,” *African Security Review* 12 (4) (2003), p. 26. However, some Anglophone countries in Africa do not follow this tradition. Article 144 of the Namibian Constitution of 1990 provides that “unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia.”
- ⁹⁴ Commonwealth Secretariat, *Handbook on Ratification of Human Rights Instruments*, pp. 47-48.
- ⁹⁵ Malanczuk, P. *Akehurst's Modern Introduction to International Law*, 7th revised ed. (New York: Routledge, 1997) pp. 67-68.
- ⁹⁶ Article 25 of the Basic Law for the Federal Republic of Germany states that, “the general rules of international law shall be an integral part of federal law. They shall take precedence over the laws and directly create rights and duties for the inhabitants of the federal territory.”
- ⁹⁷ Paragraph 17 states, “At the national level States Parties shall use all appropriate means, including legislative, administrative, judicial, economic, social and educational measures, consistent with the nature of the rights in order to fulfil their obligations under the Covenant.”
- ⁹⁸ Paragraph 26 states, “The direct incorporation or application of international instruments recognizing economic, social and cultural rights within the domestic legal order can significantly enhance the scope and effectiveness of remedial measures and should be encouraged in all cases.”
- ⁹⁹ Paragraph 4 states, “There are a number of other provisions in the International Covenant on Economic, Social and Cultural Rights, including Articles 3 (the right to equality), 7 (a) (i) (non-discrimination in wages and conditions at work), 8 (right to form unions), 10 (3) (special measures to protect children), 13 (2) (a), (3) and (4) (education) and 15 (3) (freedom to undertake scientific research and creative activity) which would seem to be capable of immediate application by judicial and other organs in many national legal systems. Any suggestion that the provisions indicated are inherently non-self-executing would seem to be difficult to sustain.”
- ¹⁰⁰ Convention on the Elimination of All Forms of Discrimination against Women, adopted 18 Dec. 1979, G.A. Res. 34/180, U.N. GAOR 34th Sess., Supp. No. 46 at art. 3, (A/34/36 (1980)), (entered into force 3 Sept. 1981), reprinted in 19 I.L.M. 33 (1980).
- ¹⁰¹ Regardless of the government system in place, General Comment No. 9 strongly suggests at paragraph 8 that States formally adopt or incorporate the ICESCR in national law.
- ¹⁰² At page 83 of the OHCHR Handbook for National Human Rights Institutions on Economic, Social and Cultural Rights, NHRIs are urged to assist in the implementation of international obligations. “Another starting point for a national human rights institution could be to promote the ratification and domestic implementation of international human rights instruments, such as the International Covenant on Economic, Social and Cultural Rights, that the State has not already ratified. Most States have ratified most human rights treaties, but implementation is generally lacking. The failure to integrate international standards into domestic legislation would provide a pertinent focus for promotional activities. The Covenant itself requires that “all appropriate means, including particularly the adoption of legislative measures,” should be taken to satisfy the State’s obligations to “take steps” to achieve the realization of economic, social and cultural rights (art. 2.1).”
- ¹⁰³ See also *R v Secretary of State for the Home Department ex p. Brind* [1991] AC 696, p. 747; *Attorney General of Botswana v Dow* 1994 (6) BCLR 1, p. 29-30.
- ¹⁰⁴ *Baker v Minister of Citizenship and Immigration* 174 DLR (4th) 1999; *Ashby v Minister of Immigration* [1981] 1 NZLR 222; *Tavita v Minister of Immigration* [1994] 2 NZLR 257 (New Zealand Supreme Court of Appeal); *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273 but see *Re Minister for Immigration and Multicultural Affairs; ex parte Lam* [2003] HCA 6; (2003) 195 ALR 502 (High Court of Australia); *R v Secretary of State for the Home Department Ex parte Ahmed* [1998] INLR 570; *R v Uxbridge Magistrates' Court, Ex Parte Adimi* 3 WLR [2000] 451 (UK House of Lords).

- ¹⁰⁵ Adapted from United Nations, Inter-Agency Standing Committee Task Force on Humanitarian Action and Human Rights, *Frequently Asked Questions on International Humanitarian, Human Rights and Refugee Law: Frequently asked questions in the context of armed conflict* (2004). [http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/637K8G/\\$File/FAQs.pdf](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/637K8G/$File/FAQs.pdf).
- ¹⁰⁶ *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*. Adapted from OHCHR, *Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions*, p. 7.
- ¹⁰⁷ Ibid, p. 8.
- ¹⁰⁸ <http://cesr.org/filestore2/download/697/MontrealPrinciples.doc>
- ¹⁰⁹ See for example, ICESCR art. 11(1) and (2); CEDAW art. 14(2)(h); UDHR art. 25; Universal Declaration on Eradication of Hunger and Malnutrition (UDEHM) art. 1; Declaration on the Right to Development (DRD) art. 8(1); Committee on Economic, Social and Cultural Rights, General Comment No. 15 ("The right to water"); Additional Protocol to the American Convention on Economic, Social and Cultural Rights (San Salvador Protocol) art. 12; Rome Declaration on Food Security; Istanbul Declaration and Program of Action on Human Settlements.
- ¹¹⁰ See for example, ICESCR art. 10(2) and 12; ICCPR art. 6(4) and 18(4); Declaration on the Elimination of Discrimination against Women (DEDAW) art. 9(e); CEDAW art. 10(h), 11(2) (a) and 12; UDHR art. 25; Declaration on Population and Development para. 7; Beijing Declaration and Program of Action paras. 89, 94 and 96; CRC art. 24, 3(2); American Convention on Human Rights (ACHR) art. 4(5); San Salvador Protocol art. 10; Inter-American Convention on the Protection, Punishment and Eradication of Violence Against Women (ICPPEVAW) art. 4(b); American Declaration on the Rights and Duties of Man (ADRDM) art. xi; Declaration on Social Progress and Development (DSPD) art. 11(b); DRD art. 8(1); Maternity Protection Convention (MPC) art. 3; African Charter on Human and Peoples' Rights (African Charter) art. 16; Committee on the Elimination of Discrimination Against Women, General Comment No. 24.
- ¹¹¹ See for example, ICESCR art. 11(1); CEDAW art. 13(b), 14(2)(e) and (g), 15(2) and 16(h); DEDAW art. 6(1)(a); DRD art. 8(1); CERD art. 5(d)(v) and 5(d)(vi); UDHR art. 17; ACHR art. 21; African Charter, art. 14; Beijing Declaration and Program of Action, para. 61(b), 62, and 63.
- ¹¹² See for example, ICESCR art. 9 and 10(2); CERD art. 5(e)(iv); DEDAW art. 10(1)(c); CEDAW art. 11(1)(e), 11(2)(a), and 14(2)(c); MPC art. 4 and 6; UDHR art. 22, 23(1) and 25(1); San Salvador Protocol art. 9(2) and 15 (3)(a); ADRDM art. xvi; ICCPEVAW, art. 8; CRC art. 28.
- ¹¹³ See for example, ICESCR art. 6 and 13; CEDAW art. 10 and 14(2) (d); DEDAW art. 9; UDEHM art. 4; CERD art. 5(e) (v); UDHR art. 26; ACHR art. 17(1); ICPPEVAW art. 6(b); San Salvador Protocol art. 13(1) (2) and (3); CRC art. 28; Convention Against Discrimination in Education art. 1; ADRDM art. xii; Beijing Declaration and Program of Action para. 69.
- ¹¹⁴ See for example, ICESCR art. 6 (1), 6(2) and 7; CEDAW art. 11(1)(c), (f); CERD art. 5(e); ICCPR art. 8(3)(a); DEDAW art. 10(1)(a); Abolition of Forced Labour Convention (AFLC) art. 1; DSPD art. 6; UDHR art. 4 and 23; Declaration on the Elimination of Violence against Women (DEVAW) art. 3; ACHR art. 6(2); African Charter art. 5 and 15; ADRDM, art. xiv; San Salvador Protocol art. 6 and 7; Convention for the Protection of Human Rights and Fundamental Freedoms (CPRHFF) art. 4(2); MPC art. 8; Equal Remuneration Convention (ERC) art. 1; Convention on Employment Policy art. 1 (1) and (2); ILO Declaration on Fundamental Principles and Rights at Work; ICPPEVAW, art. 2(b).
- ¹¹⁵ See for example, ICESCR art. 8; ICCPR art. 22; CERD art. 5(e) (ii); DSPD art. 10; San Salvador Protocol art. 8; ILO Convention on Freedom of Association and Protection of the Right to Organize.
- ¹¹⁶ See for example, ICESCR art. 8 and 10 (3); ICCPR art. 8; Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery art. 1(b); CRC art. 32; ILO Convention on Worst Forms of Child Labour; UDHR art. 4; ACHR art. 6.

- ¹¹⁷ See for example, ICESCR art. 10(1); CEDAW art. 16(1)(b); DEDAW art. 6(2)(a); ICCPR art. 23(3); Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage (Marriage Convention) art. 1; CERD art. 5(d)(iv); UDHR art. 16(2); ACHR art. 17(3).
- ¹¹⁸ See for example, ICESCR art. 12(2) (b); African Charter art. 24.
- ¹¹⁹ See for example, ICESCR art. 15(1)(a); CRC art. 29(1)(c); CEDAW art. 13(c); ICCPR art. 27; DEVAW art. 3; CERD art. 5(e)(vi); UDHR art. 27; ACHR art. 26; African Charter art. 17(2) and 22(1); ICPPEVAW art. 5; San Salvador Protocol art. 14(1)(a) and (b).
- ¹²⁰ See for example, ICESCR art. 15(1) (c); San Salvador Protocol art. 14(c).
- ¹²¹ See for example, CEDAW art. 9; DEDAW art. 5; Convention on the Nationality of Married Women (CNMW) art. 1; Convention Relating to the Status of Refugees (CSR) art. 2; UDHR art. 15; ACHR art. 20; CERD art. 5(d) (iii).
- ¹²² See for example, CEDAW art. 6; DEDAW art. 8; DEVAW art. 2(b); CRC art. 34 and 35; ICPPEVAW art. 2(b); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime.
- ¹²³ *Principles relating to the Status of National Institutions*, Adopted by United Nations General Assembly Resolution 48/134 of 20 December 1993 (“Paris Principles”).
- ¹²⁴ *The Role of National Human Rights Institutions in implementing Economic, Social and Cultural Rights*, Mr. Morten Kjoerum, Director General, The Danish Centre for Human Rights, paper presented at the EU-China Dialogue on Human Rights, Beijing, 30-31 May 2002.
- ¹²⁵ Paris Principles, principle 1.

Module 4 Organizing NHRIs to Achieve Women’s ESC Rights

- ¹²⁶ Beijing Declaration and Platform for Action Fourth World Conference on Women (1995). http://www.unesco.org/education/information/nfsunesco/pdf/BEIJIN_E.PDF.
- ¹²⁷ United Nations. *The Millennium Development Goals Report 2007*. www.un.org/millenniumgoals/pdf/mdg2007.pdf
- ¹²⁸ Adapted from Global Justice Solutions (2007). Used with permission. <http://www.global-justice.biz>
- ¹²⁹ J. Sandler, “Whither Gender Mainstreaming?” in AWID, *Spotlight 3* (Nov. 2004) pp. 3-5. http://www.awid.org/publications/OccasionalPapers/spotlight3_en.pdf.
- ¹³⁰ Adapted from the Australian Human Rights and Equal Opportunity Commission. <http://www.humanrights.gov.au>.
- ¹³¹ Commission on Human Rights of the Philippines, Special Programs. http://www.chr.gov.ph/MAIN%20PAGES/services/special_progs1.htm
- ¹³² Afghanistan Independent Human Rights Commission, Women Rights Unit. http://www.aihrc.org.af/wom_rig.htm
- ¹³³ Adapted from http://www.sahrc.org.za/sahrc_cms/publish/cat_index_57.shtml
- ¹³⁴ See generally, Roth, K., “Economic, Social and Cultural Rights. Practical Issues Faced by an International Human Rights Organization,” *Human Rights Quarterly*, 26(1) (2004), pp. 63-73.
- ¹³⁵ Paris Principles, Methods of operation (g).

- ¹³⁶ Ibid.
- ¹³⁷ The Asia Pacific Forum is a regional network of NHRIs established in 1996 to support existing regional NHRIs, to work with governments and NGOs to establish new NHRIs in accordance with the Paris Principles, and to promote staff exchanges, information and hold regular meetings to discuss human rights issues of common or regional concern.
- ¹³⁸ Further information is available at <http://www.asiapacificforum.net/services/training/regional-workshops/trafficking>.
- ¹³⁹ ICC Position Papers National Human Rights Institutions and the UN Human Rights Council – Volume IV: Engagement of National Human Rights Institutions with the Special Procedures (1 March 2007). http://www.nhri.net/2007/Annex_E-ICC_Position_Volume_IV.pdf
- ¹⁴⁰ Paris Principles, Methods of operation (f).
- ¹⁴¹ Adapted from the Public Protector of the Republic of South Africa. <http://www.publicprotector.org/>
- ¹⁴² Adapted from “SUHAKAM Report on the Human Rights Approach to the Millennium Development Goals – Goal 3: Promote Gender Equality and Empower Women.” See s. 7 (pp. 28-30).
- ¹⁴³ The United Republic of Tanzania, Country Report on the Implementation of the Beijing Platform for Action and the Outcome Document of the Twenty-Third Special Session of the General Assembly-Beijing +10, pp. 8-9. http://www.mcdgc.go.tz/reports/country_report_beijing_19.pdf
- ¹⁴⁴ OHCHR, *Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions*, p. 86.
- ¹⁴⁵ Ibid. p. 34.

Module 5 The Protection Mandate – Complaints Handling, Investigation and Monitoring

- ¹⁴⁶ Section 1 is drawn from Dwyer, J. “Roles and Responsibilities in Implementing HR: Similarities and Differences In Approaches to Access to Justice” In *L'accès direct à un tribunal spécialisé en matière de droit de l'égalité: l'urgence d'agir au Québec* (Montreal: Éditions Yvon Blais, 2008).
- ¹⁴⁷ For further information on the trend of moving to direct access to tribunals, see Eliadis, P., “Human Rights Tribunals and Direct Access to Adjudication: A New Generation of Human Rights Protection?” in *L'accès à un tribunal spécialisé en matière de droit à l'égalité: l'urgence d'agir au Québec* (Montreal: Éditions Yvon Blais, 2008).
- ¹⁴⁸ Adapted from the Annual Report of the National Human Rights Commission of the Republic of Korea (2005).
- ¹⁴⁹ Canadian Human Rights Commission, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*, 2003. http://www.chrc-ccdp.ca/legislation_policies/consultation_report-en.asp
- ¹⁵⁰ Adapted from <http://www.mop.gov.kh/Default.aspx?tabid=156>
- ¹⁵¹ Case of Smt. Thenmozhi, reported in the Newsletter of the National Human Rights Commission, New Delhi, India (December 2004).
- ¹⁵² See Asia Pacific Forum <http://www.asiapacificforum.net/news/national-inquiries-india-hosts-new-apf-training-program.html>
A DVD entitled *Going Public: Strategies for an Effective National Inquiry* was prepared in connection with this project, and is also available at the Asia Pacific web site. <http://www.asiapacificforum.net>

- 153 Ontario Human Rights Commission, *Paying the Price: The Human Cost Of Racial Profiling Inquiry Report*, 2003. http://www.ohrc.on.ca/en/resources/discussion_consultation/RacialProfileReportEN/pdf
- 154 Human Rights and Equal Opportunities Commission, *Pregnant and Productive: It's a right not a privilege to work while pregnant*, 1999. http://www.hreoc.gov.au/sex_discrimination/publication/pregnancy/report.html
- 155 Committee on Economic, Social and Cultural Rights, General Comment No. 10 – The role of national human rights institutions in the protection of economic, social and cultural rights. (E/C.12/1998/25).
- 156 This section was adapted from: “Monitoring And Assessing The Enjoyment Of ESC Rights” (Module 19), in *Circle of Rights: Economic, Social, & Cultural Rights Activism: A Training Resource*. <http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module19.htm>
- 157 Adapted from United Nations, Gender Statistics. http://www.eclac.cl/mujer/proyectos/perfiles_en/inventory.htm
- 158 Adapted from Aim for human rights. <http://www.aimforhumanrights.org/themes/women-s-human-rights/health-rights-of-women/>
- 159 Aurora, S., “Promoting and Protecting the Economic, Social and Cultural Rights of Women: NHRI Actions and Strategies,” in HURIGHTS, *Asia-Pacific News* 48 (June 2007). <http://www.hurights.or.jp/asia-pacific/048/06.html>
- 160 Afghanistan Independent Human Rights Commission, *Economic and Social Rights in Afghanistan*, 2006. http://www.aihrc.org.af/rep_economic_social_may_2006.pdf
- 161 Adapted from the Center for Economic and Social Rights. <http://cesr.org/about/methodology>

Module 6 The Promotion Mandate – Advice, Advocacy and Education

- 162 Montreal Principles, principle 16.
- 163 Paris Principles, paras. 25-27.
- 164 See generally Eliadis, P., Hill, M. & Howlett, M. eds., *Designing Government: from Instruments to Governance* (Montreal: McGill-Queen's University Press, 2005).
- 165 Adapted from <http://www.humantrafficking.org/organizations/182>
- 166 This section is adapted from Elson, D. *Monitoring Government Budgets for Compliance with CEDAW: Report Highlights and Key Conclusions* (presentation at a CSW side panel organized by UNIFEM entitled Government Accountability to Gender Equality through Budgets) (2005). http://www.iwraw-ap.org/resources/pdf/MonitoringGovernmentBudgetsComplianceCEDAW_summary_eng.pdf
- 167 Committee on Economic, Social and Cultural Rights, General Comment No. 3 – The nature of States Parties Obligations, para 12. [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+3.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+3.En?OpenDocument)
- 168 Committee on the Elimination of Discrimination against Women, 36th session August 2006, Concluding comments of the Committee on the Elimination of Discrimination against Women, Mexico.
- 169 Elson, D. *Monitoring Government Budgets for Compliance with CEDAW: Report Highlights and Key Conclusions*. http://www.iwraw-ap.org/resources/pdf/MonitoringGovernmentBudgetsComplianceCEDAW_summary_eng.pdf

-
- ¹⁷⁰ United Nations Division for the Advancement of Women, Declarations, Reservations and Objections to CEDAW, <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>
- ¹⁷¹ Human Rights Commission of Malaysia (SUHAKAM), http://www.suhakam.org.my/docs/document_resource/cedawSabah.pdf
- ¹⁷² Concluding Statement and Recommendations from the Regional Workshop on the Role of National Human Rights Institutions and Other Mechanisms in Promoting and Protecting Economic, Social and Cultural Rights, Hong Kong, 11-13 July 2001.
- ¹⁷³ Vienna Declaration and Programme of Action (adopted 25 June 1993), part II, para. 71. [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En)
- ¹⁷⁴ The Beijing Platform of Action, para. 297. <http://www.un.org/womenwatch/daw/beijing/platform/index.html>
- ¹⁷⁵ Statement by Mr. Gianni Magazzeni, Coordinator, National Institutions Unit, Office of the United Nations High Commissioner for Human Rights, Commonwealth Conference on National Human Rights Institutions, 26-28 February 2007. http://www.thecommonwealth.org/Shared_ASP_Files/UploadedFiles/D79C1923-5EC5-4B5C-B422-F8111E9D8102_MrMagazzenispresentation.pdf
- ¹⁷⁶ This section has been adapted from Office of the United Nations High Commissioner for Human Rights, *Handbook on National Human Rights Plans of Action*, Professional Training Series No. 10 (New York and Geneva, 2002). <http://www.ohchr.org/Documents/Publications/training10en.pdf>
- ¹⁷⁷ Ibid, pp. 28-30.
- ¹⁷⁸ Nepal National Human Rights Commission Annual Report 2004. http://www.nhrcnepal.org/publication/doc/reports/Annual_Report_English_2004.pdf
- ¹⁷⁹ These are taken from United Nations, Universal Human Rights Index. <http://www.universalhumanrightsindex.org>
- ¹⁸⁰ Depending on the State law, a ratified treaty may not automatically be part of domestic law. Please see the section on Justiciability in Module 3 for a detailed discussion of the transformation of obligations contained in ratified instruments into domestic law.
- ¹⁸¹ ICESCR, art. 17.2.
- ¹⁸² United Nations, *Manual on Human Rights Reporting under Six Major International Human Rights Instruments* (Geneva, United Nations, 1997). http://www.unhchr.ch/pdf/manual_hrr.pdf
- ¹⁸³ From the Minutes of the Sixty-Third Meeting of The Equal Opportunities Commission held on 14 September 2006. <http://www.eoc.org.hk/eoc/upload/2006121510461155725.pdf>
- ¹⁸⁴ Statement by Mr. Gianni Magazzeni, Coordinator, National Institutions Unit, Office of the United Nations High Commissioner for Human Rights, Commonwealth Conference on National Human Rights Institutions, 26-28 February 2007, p. 4. http://www.thecommonwealth.org/Shared_ASP_Files/UploadedFiles/D79C1923-5EC5-4B5C-B422-F8111E9D8102_MrMagazzenispresentation.pdf
- ¹⁸⁵ See United Nations Commission on Human Rights, resolution 2005/74.
- ¹⁸⁶ This section is adapted from The International Coordinating Committee of National Human Rights Institutions (ICC), *ICC Position Papers: National Human Rights Institutions and the UN Human Rights Council – Volume II: National Human Rights Institutions and the Special Procedures and Uniform Periodic Review Mechanism* (Sept. 2006). http://www.nhri.net/2007/Annex_C-ICC_Position_Volume_II.pdf

¹⁸⁷ OHCHR, *Handbook on National Human Rights Plans of Action*, Professional Training Series No. 10 (New York and Geneva, 2002), p. 30.

¹⁸⁸ UN document A/59/525/Rev.1.

¹⁸⁹ Further details can be obtained from <http://www2.ohchr.org/english/issues/education/training/planaction.htm>

Appendices

This part contains six appendices on the issue of economic, social and cultural rights of women:

- ▶ Appendix 1: Glossary of Key Terms
- ▶ Appendix 2: Economic, Social & Cultural Rights for Women – International Instruments Table
- ▶ Appendix 3: Economic, Social & Cultural Rights for Women – Regional Instruments Table
- ▶ Appendix 4: Selected Key Documents on the Economic, Social and Cultural Rights of Women
- ▶ Appendix 5: Key International Instruments and UN Treaty Bodies for Women’s Economic, Social and Cultural Rights
- ▶ Appendix 6: Selected Resources

Appendix 1: Glossary of Key Terms

Appendix 1 contains a glossary of key terms relating to the economic, social and cultural rights of women and other related issues raised in this Handbook.

Underlined words indicate terms defined in the glossary.

A

Accession

The act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force.

Adoption

The formal act by which the form and content of a proposed treaty text are established. As a general rule, the adoption of the text of a treaty takes place through the expression of the consent of the States participating in the treaty-making process. Treaties that are negotiated within an international organization will usually be adopted by a resolution of a representative organ of the organization whose membership more or less corresponds to the potential participation in the treaty in question. A treaty can also be adopted by an international conference which has specifically been convened for setting up the treaty, by a vote of two thirds of the States present and voting, unless, by the same majority, they have decided to apply a different rule.

Advocacy

The effort to change public perceptions and influence policy decisions and funding priorities. Advocates educate about an issue *and* suggest a specific solution. Advocacy involves making a case in favour of a particular issue, using skillful persuasion and strategic action. Simply put, advocacy means actively supporting a cause and trying to get others to support it as well.

Affirmative action

Action taken by a government or private institution to increase the representation of women and minorities in areas of education, work, or promotion on the basis of age, disability, ethnic origin, familial status, gender, language, marital status, political or other opinion, race, religion or belief, sex or sexual orientation; permitted for some conditions under the Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and other international and regional documents. Affirmative action is also sometimes referred to as affirmative discrimination.

Alternative report

Report prepared by a non-state actor, usually a non-governmental organization (NGO) or a national human rights institution (NHRI), to a committee. Such a report is termed an alternative report where no government report is available. If the NGO or NHRI submits its report where a government report exists, it is called a shadow report.

Alternative dispute resolution

A generic term referring to strategies for settling disputes outside the courts, such as mediation, arbitration and conciliation.

B**Beijing Declaration and Platform for Action**

Consensus document emerging from the 1995 Fourth World Conference on Women held in Beijing, reviewing and re-affirming women's human rights in all aspects of life; signed by representatives at the Conference and morally, but not legally, binding.

Benchmark

Reference point or standard against which performance or achievements can be assessed. Note: A benchmark refers to the performance that has been achieved in the recent past by other comparable organizations, or what can be reasonably inferred to have been achieved in the circumstances.

C**Charter**

Term used for particularly formal and solemn instruments, such as the constituent treaty of an international organization. The term itself has an emotive content that goes back to the Magna Carta of 1215. Well-known recent examples are the Charter of the United Nations of 1945 and the Charter of the Organization of American States of 1952.

Charter of the United Nations

The United Nations Charter is the treaty that forms and establishes the international organization called the United Nations. This document is a constituent agreement between states signed at the United Nations Conference on International Organization in San Francisco in 1945.

Charter-based body

A body that derives its mandate from a charter. Similar to a Treaty body (a treaty-based body), which derives its mandate from a treaty. A charter-based body within the United Nations derives its mandate directly from the UN Charter. The Human Rights Council is an example of a charter-based body within the UN system, but there are also charter-based bodies outside the UN, e.g. the Inter-American Commission on Human Rights (IACHR).

Civil and political rights

The rights of all human beings to liberty and equality; sometimes referred to as first generation rights. Civil rights include freedom to worship, to think and express oneself, to vote, to take part in political life, and to have access to information. Civil and political rights are defended in a number of international instruments including the International Covenant on Civil and Political Rights.

Civil society

Civil society refers to all groups outside government such as community groups, non-governmental organizations, labour unions, indigenous peoples' organizations, charitable organizations, faith-based organizations, professional associations and foundations. Civil society expresses the interests of social groups and raises awareness of key issues in order to influence policy and decision-making. In recent decades, such organizations have been successful in shaping global policy through advocacy campaigns and mobilization of people and resources.

Claim

Allegation made by an individual or State pursuing a remedy for an injury caused by an offender (usually but not always the State).

Claimant

One who brings a claim.

Codes of ethics

Normative statements of rules of conduct and principles.

Codification of international law

Process of reducing customary international law to written form.

Collective rights

The rights of groups to protect their interests and identities.

Commission on Human Rights

Former subsidiary body of the Economic and Social Council (ECOSOC) of the United Nations to deal with human rights; one of the first and most important international human rights bodies. Replaced by the Human Rights Council in 2006.

Commission on the Status of Women (CSW)

The Commission on the Status of Women was established by the Economic and Social Council (ECOSOC) in 1946 to prepare recommendations and reports on promoting women's rights in political, economic, civil, social and educational fields. The CSW is a global policy-making body dedicated to gender equality and advancement of women. The CSW also monitors implementation of the Beijing Platform for Action.

Committee

See charter-based body and Treaty body.

Committee on the Elimination of all Forms of Discrimination against Women (CEDAW Committee)

The treaty monitoring body created by the Convention on the Elimination of All Forms of Discrimination against Women to monitor State compliance with that convention.

Communication

Term for complaint or claim in the UN human rights system.

Community service organization (CSO)

Non-profit organization or association which provides or coordinates the delivery of services in the public interest.

Complaints committee

A common strategy for gender mainstreaming in the area of women's ESC rights that most NHRIs have established. They do not facilitate the resolution of cases per se, but are mandated to track the progress of cases, ensure that priority cases are brought to the attention of senior staff, and ensure that women's ESC cases are properly identified, flagged and resourced.

Complaint

A complaint or claim sets out the formal basis of an allegation of human rights violations to an authorized body such as an NHRI, a tribunal or a court. A complaint may be in writing or verbal. It sets out a brief summary of what happened and argues why relief should be granted. In a human rights case, the complaint (also called a petition, or communication) alleges that a respondent or

defendant (usually the government, but can also extend to an individual or institution) violated the claimant's human rights. The respondent(s) are called on to answer to human rights standards and to provide appropriate remedy and redress.

Complaints mechanism

A complementary mechanism to ensure that the rights of all citizens are fully protected. The particular focus of an NHRI and its ability to develop expertise in human rights imply that the complaints function of the national institution should be able to offer something which the legal system or other institutionalized processes cannot. The structure and functioning of the complaints mechanism should be such as to allow the national institution to guarantee accessible, rapid and inexpensive resolution of a matter.

Concluding comments/observations

The final statement issued by a human rights Treaty body at the conclusion of its examination of a State Party's report, in which the Treaty body comments on the State Party's record of implementation of the treaty.

Context/Contextualizing women's rights

Women's experiences show that inequality is deeply rooted in history, tradition and religion. These forces combine to create a context of social beliefs, legal regimes, and economic structures that subordinate women to men in many countries, cultures and communities around the world. Women's equality therefore *must be understood within* the context in which women live.

Convention

The general meaning of "convention" is an international agreement. "Conventional law", is a term used to distinguish it from the other sources of international law, such as customary law or the general principles of international law. The generic term "convention" thus is synonymous with the generic term "treaty". Unlike declarations, Conventions are legally binding for governments that have signed them. When the UN General Assembly adopts a convention, it creates international norms and standards. Once a convention is adopted by the UN General Assembly, Member States can then ratify the convention, promising to uphold it. Governments that violate the standards set forth in a convention can then be censured by the UN.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

CEDAW is sometimes called the "international bill of rights for women." Adopted in 1979, consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. The Optional Protocol to CEDAW, adopted in 1999, created a mechanism for access to justice for women at the international level by giving them the right to present their claims for review by the CEDAW Committee.

Convention on the Elimination of All Forms of Racial Discrimination (CERD)

CERD forbids any "distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing of human rights and fundamental freedoms in political, economic, social, cultural or any other field of public life." It was adopted by the UN General Assembly in 1965.

Convention on the Rights of the Child (CRC)

Also known as the Children's Convention, the CRC sets forth a full spectrum of civil, cultural, economic, social, and political rights for children. It was adopted in 1989.

Convention on the Rights of People with Disabilities (CRPD)

Convention adopted in 2006 which determines what discrimination on the basis of disability constitutes, and recognizes the importance of multiple effects of discrimination for women with disabilities (Article 6(1)).

Corporate social responsibility

The way firms integrate social, environmental and economic concerns into their values, culture, decision-making, strategy and operations in a transparent and accountable manner and thereby establish better practices within the firm, create wealth and improve society. As of yet, it does not entail legal liability. The main international initiatives are the UN Global Compact and the Business Leaders Initiative on Human Rights, in addition to various mechanisms at the national level.

Covenant

Binding agreement among States, used synonymously with convention and treaty. The major international human rights covenants, both passed in 1966, are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Culture

According to the Declaration on Cultural Diversity (2001), culture or cultural heritage is “practices, representations and expressions, and knowledge and skills which are transmitted from generation to generation and which provide communities and groups with a sense of identity and continuity.” Article 5 of the Women's Convention calls for the modification of “the social and cultural patterns of conduct of men and women, with a view toward achieving elimination of prejudices.”

Customary international law

Customary international law is law that develops when States follow certain norms and practices in their behaviour in a consistent manner out of a belief or conviction that they are required to do so. To qualify as customary law, one must establish not only consistent State practice or course of action, but must demonstrate that the State acted out a conviction that it was required to act in such a manner. For example, the Universal Declaration of Human Rights became binding because States and individuals treated it as binding. Now, in the conscience of most States, it is regarded as a binding instrument, even though such declarations are not usually binding.

D**Declaration**

The term applies to various international instruments, including binding or non-binding international or universal aspirations made by parties to the declaration. Some declarations may have maintained provisions that were not binding when first adopted, but with the passage of time, developed into customary international law, and thereby eventually became binding in character. The Universal Declaration of Human Rights offers such an example.

Declaration on the Rights of Indigenous Peoples

Declaration adopted by the United Nations General Assembly in December 2007, stating that that indigenous peoples and individuals are free and equal to all other peoples and that indigenous peoples have the right to freely pursue their economic, social and cultural development.

Denunciation or Withdrawal from a treaty

When a State declares that it is no longer bound by a treaty it has previously ratified. A state may denounce a treaty or withdraw from it after giving the appropriate body notice of its intention to do so, according to the Vienna Convention on the Law of Treaties (1969). An evolving view is that human rights treaties (including ICCPR, ICESCR and CEDAW) do not allow denunciation if they “do not contain clauses expressly permitting denunciation”, according to Craig Scott’s article “Toward the Institutional Integration of the Core Human Rights Treaties” in I. Merali and V. Oosterveld, *Giving Meaning to Economic, Social and Cultural Rights* (Philadelphia: University of Pennsylvania Press, 2001), pp. 7-38.

Discrimination

Unfair treatment of a person or group on the basis of prejudice. See racial discrimination, discrimination against women, gender discrimination.

Discrimination against women

Defined in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field” (article 1).

Domestic violence

Violence among members of a family or household; in these cases, one person gains power through use of physical, sexual, psychological, and economic coercion. Any person in a household could be the target of domestic violence but it is most frequently experienced by women.

E

Early intervention/warning system

Practices used by NHRIs and Ombudsman offices to encourage parties to a potential dispute to consider their position or to resolve the matter at an early stage. Examples include information sessions and counselling for all parties. These early services help NHRIs identify human rights issues and trends as they emerge, and to highlight discriminatory practices.

Economic and Social Council (ECOSOC)

ECOSOC was established under the UN Charter as the principal organ to coordinate economic, social, and related work of the 14 UN specialized agencies, functional commissions and five regional commissions. It is responsible for promoting higher standards of living, full employment, and economic and social progress; identifying solutions to international economic, social and health problems; facilitating international cultural and educational cooperation; and encouraging universal respect for human rights and fundamental freedoms.

Economic, social and cultural rights

Economic, social and cultural rights (ESC rights) are the fundamental human rights that support and enhance human existence and dignity by assuring equality and preventing discrimination. ESC rights concern the necessities of life, including the right to enjoy one's cultural identity and the benefits of development. Examples include the right to work; the right to an adequate standard of living, including food, clothing, and housing; the right to physical and mental health; the right to social security; the right to a healthy environment; and the right to education. These rights are deeply intertwined with civil and political rights. For example, the right to speak freely means little without a basic education. Similarly, the right to work is diminished if you are not allowed to meet and assemble with co-workers to discuss work conditions.

Enabling legislation

The legal basis on which an entity depends for its existence, and which confers its lawful authority to act. NHRIs are creatures of statute and depend on enabling legislation for both their existence and legitimacy.

Entry into force

The day on which a treaty becomes effective; the point at which enough parties have signed on to an agreement to make it effective.

Environmental rights

These rights recognize that people have the right to live in a safe and healthy environment. Together with the right to development, they are sometimes referred to as third generation rights. They draw on the first- and second-generation rights, but they are not specifically enshrined in any international human rights Treaty body.

Equality

The notion that all human beings are entitled to the same human rights without distinction. The equality principle is embodied in article 2 of the Universal Declaration of Human Rights. Equality does not necessarily mean treating people the same but rather taking whatever steps are necessary to promote a more just society for all. A distinction is often drawn between the interconnected concepts of formal and substantive equality. Formal equality assumes that equality is obtained if a law or a policy treats everyone, e.g. men and women, in the same way, or in a neutral manner. Substantive equality is concerned with the effects of laws and policies and with ensuring that they alleviate, rather than propagate, the inherent disadvantage experienced by traditionally discriminated groups, such as women. See also Montreal Principles.

Exhaustion of domestic remedies

Exhaustion of domestic remedies requires use of all available procedures to seek protection from future human rights violations and to obtain justice for past abuses. Local remedies can range from making a case in court to lodging a complaint with local police. A complaint to an international body should include proof that domestic remedies have been exhausted, including information about any legal proceedings that took place in the country. There are limited exceptions to the requirement that domestic remedies be exhausted. International law recognizes that domestic remedies may be unavailable, ineffective (i.e. a sham proceeding) or unreasonably delayed. In these cases, it is not necessary to first address the national mechanisms if it can be convincingly demonstrated that there are, in effect, no local remedies available.

F**Female genital mutilation (FGM)**

See [harmful traditional practices](#).

Feminization of poverty

The term “feminization of poverty” originated in the US in the late 1970s; female-headed households account for a growing proportion of those below the poverty line. A large majority of these women are divorced or never-married mothers. The burden of supporting a family is difficult for single mothers because of low salaries relating to the lack of previous work experience and low educational attainment and is often exacerbated by meagre or unavailable child support. See Valentine M. Moghadam’s article “The ‘Feminization of Poverty’ and Women’s Human Rights” at http://portal.unesco.org/shs/en/files/8282/11313736811Feminization_of_Poverty.pdf/Feminization+of+Poverty.pdf.

Flexibility clause

While United Nations treaties allow reservations to be made by signing parties, International Labour Organization (ILO) conventions do not allow reservations. Instead, ILO Conventions contain clauses which take into account the particular economic and social systems, and levels of development of the ILO member states. These clauses are referred to as flexibility clauses because they allow for a certain degree of flexibility in the labour standards adopted. States are said to invoke flexibility clauses by making declarations specifying the standards that will apply to them.

Focal point

The term “focal point” is not universally accepted, but many organizations and [NHRIs](#) use it simply to indicate a point of responsibility within the organization or a liaison for an external initiative. It can refer both to an official in a [NHRI](#) who is given formal responsibility for a specific issue in order to create an internal and visible authority structure for the work, but also to special departments, units and cross-departmental committees.

Formal equality

See [equality](#).

G**Gender**

The culturally specific set of characteristics that identify the social behaviour, roles and status of women and men and the relationship between them. Gender, therefore, refers not simply to women or men but to the relationship between them and to the way it is socially constructed. Because it is a relational term, gender must include women and men. Like the concepts of class, race and ethnicity, gender is an analytical tool for understanding social processes. In this way, gender differs from [sex](#), because the latter refers to the biological differences between women and men.

Gender-based violence

Violence that affects women disproportionately, such as rape, sexual assault, female genital mutilation, dowry burning or violence against women for failing to conform to restrictive social norms; the [Vienna Declaration](#) specifically recognized gender-based violence as a human rights concern. See also [harmful traditional practices](#).

Gender-disaggregated data/Sex-disaggregated data

The gathering and use of quantitative and qualitative data separately for men and women in carrying out a gender analysis of policies and programs, research, strategic planning, implementation and monitoring.

Gender discrimination/Sex discrimination

Discrimination based on socially constructed ideas and perceptions of men and women. The term “sex discrimination” is used in the international instruments, although General Comments and academic literature suggest that the term “gender” better reflects the social and cultural aspects of discrimination against women.

Gender mainstreaming

Gender mainstreaming involves ensuring that gender perspectives and attention to the goal of gender equality are central to all activities – policy development, research, advocacy/dialogue, legislation, resource allocation, as well as planning, implementation and monitoring of programs and projects. However, the experience at both the international and national levels is that, unless there is a dedicated focus on women’s issues, mainstreaming initiatives will be minimized or ignored.

Gender neutral

Assessment of a problem without the insertion of a gender-sensitive analysis. The myth of gender neutrality in human rights eliminates recognition that treating people identically despite unequal situations perpetuates rather than eradicates injustices.

Gender-related Development Index (GDI)

An index developed by the United Nations Development Programme that measures average achievement in the three basic dimensions that are captured in the Human Development Index—a long and healthy life, knowledge and a decent standard of living—but adjusted to account for inequalities between men and women.

General Assembly

See United Nations General Assembly.

General Comment/General Recommendation

A general statement issued by a Treaty body to clarify and elaborate on the content of the rights and obligations contained in the relevant treaty.

General principles of law

Principles that appear nearly universally in States’ domestic law and, thus, over time become binding on all states; one of the main sources of international law.

Good governance

A general ideal of the State’s decision-making process and how public affairs are conducted and public resources managed. It is generally agreed that good governance has eight major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive, and it follows the rule of law. In practice, good governance assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society.

H

Harmful traditional practices

Refer to traditional cultural practices that are detrimental to women's well-being. They include: female genital mutilation; physical mutilation (e.g. foot-binding); forced feeding of women; early marriage; the various taboos or practices which prevent women from controlling their own fertility; nutritional taboos and traditional birth practices; preference for sons and its implications for the status of girl children; female infanticide; early pregnancy; and dowry price. Despite their harmful nature and their violation of international human rights laws, such practices persist because they are not questioned and take on an aura of morality in the eyes of those practising them.

High Commissioner for Human Rights

United Nations officer charged with the promotion and protection of human rights worldwide. See also Office of the High Commissioner for Human Rights.

Hostile work environment/Sexual harassment

Unwelcome conduct that is so severe or pervasive as to change the conditions of the claimant's employment and create an intimidating, hostile, or offensive work environment. Hostile work environment harassment does not require an impact on an economic benefit. It may involve co-workers or third parties, not just supervisors. This type of sexual harassment is not limited to sexual advances; it can include hostile or offensive behaviour based on the person's gender.

Human rights

Human rights are the fundamental rights and freedoms which, it is generally agreed, everybody has from the moment of birth, simply because they are human beings. They are not privileges which need to be won and they apply equally to everybody, regardless of age, sex, race, ethnicity, wealth or social standing. Because they are rights, they cannot be taken away from anyone by the government (although they can be limited and sometimes suspended during states of emergency). These rights are based on a number of human rights principles. Human rights become enforceable as they become codified as conventions, covenants or treaties, or as they become recognized as customary international law.

Human rights community

A community based on human rights, where respect for the fundamental dignity of each individual is recognized as essential to the functioning and advancement of society. It works to uphold each article of the Universal Declaration of Human Rights.

Human Rights Council

Body of the United Nations responsible for the promotion and protection of human rights and fundamental freedoms. The council also addresses violations of human rights and makes recommendations regarding said violations.

Human rights education

Education, training and information aiming at building a universal culture of human rights through the sharing of knowledge, imparting of skills and moulding of attitudes directed to: a) the strengthening of respect for human rights and fundamental freedoms; b) the full development of the human personality and the sense of its dignity; c) the promotion of understanding, tolerance, gender equality and friendship among all nations, indigenous peoples and racial, national, ethnic, religious and linguistic groups; d) the enabling of all persons to participate effectively in a free and democratic

society governed by the rule of law; e) the building and maintenance of peace; and f) the promotion of people-centred sustainable development and social justice.

Human rights instruments

This term refers to any and all of the legal documents that together embody the ideals, principles and norms of human rights.

Human rights of women

See women's human rights.

Human rights principles

Human rights are related to one's human dignity; they are universal, inalienable (cannot be taken away under any circumstances), indivisible (none of the rights are more important than others), interdependent and interconnected (denial of one human right has an impact on one's ability to exercise other human rights); governments are obligated to enforce such rights in a manner that promotes equality and non-discrimination.

Human rights systems

The various groupings of human rights laws, courts, investigatory bodies and other organizations at the national, regional and international levels, which may provide appropriate enforcement mechanisms, such as court-like complaint procedures and audit-like reporting procedures.

Human rights Treaty bodies

They are seven committees of independent experts that observe implementation of the core international human rights treaties (Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture; Convention on the Rights of the Child; Convention on the Protection of the Rights of Migrant Workers and Members of Their Families). They are articulated in accordance with the provisions of the treaty that they monitor.

Human security for women

An issue introduced by women's advocacy groups as a right through the recognition of full citizenship rights for women, including the right to life and security. The groups pushed to extend citizenship – and therefore human rights protection – into the “private” realm in order to get at pervasive violence against women in its many forms.

I

Implementation

For a Party to an international agreement, process of adopting all relevant policies, laws and regulations, and undertaking all necessary actions to meet its obligations under the agreement.

Indicator

A quantitative or qualitative variable that provides a simple and reliable means to measure achievement, to reflect the changes connected to an intervention, or to help assess the performance of a development actor.

Individual complaint mechanism

This mechanism allows the individual to issue a complaint without the need to use the State as an intermediate. Thus, it covers isolated instances of alleged human rights violations. It is available under the Optional Protocol to the International Covenant on Civil and Political Rights, Convention on the Elimination of All Forms of Racial Discrimination, Convention against Torture and the Migrant Workers Convention to individuals or groups of individuals who believe that their human rights or fundamental freedoms have been violated.

Instruments

A general term for formal legal documents. In the International Labour Organization, this term includes conventions, recommendations and Protocols.

Intergovernmental organization

This term refers to those organizations that operate across two or more States and whose members are themselves States. These organizations include the United Nations, the Organization of American States, and the African Union.

International Bill of Rights

The combination of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (and its Optional Protocol) and the International Covenant on Economic, Social and Cultural Rights.

International Coordinating Committee of National Institutions (ICC)

A representative body of NHRIs established for the purpose of creating and strengthening NHRIs which are in conformity with the Paris Principles.

International Covenant on Civil and Political Rights (ICCPR)

ICCPR addresses the State's traditional responsibilities for administering justice and maintaining the rule of law. While this Covenant focuses on civil and political rights, Article 3 deals specifically with the equality of men and women, and thus creates a link with the rights set out in the International Covenant on Economic, Social and Cultural Rights. The ICCPR was adopted in 1966 and forms part of the International Bill of Rights together with its optional protocols.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

The principal codification of economic, social and cultural rights is found in the ICESCR. Adopted in 1966, it sets out rights relating to work in just and favourable conditions; to social protection; to an adequate standard of living including clothing, food and housing; to the highest attainable standards of physical and mental health; to education and to the enjoyment of the benefits of cultural freedom and scientific progress. The ICESCR is part of the International Bill of Rights.

International human rights audit

A quality assurance procedure that NHRIs can perform to bring national legislative practice up to international standards of human rights. If the government is not yet a party to an important international instrument, the NHRI can organize efforts for the ratification of this instrument.

International human rights law

International human rights law is formed by the codification of legal provisions governing human rights in various international human rights instruments. The Universal Declaration of Human Rights is generally agreed to mark the beginning of the modern International Human Rights Law era.

Intersectionality

Concept which argues that individuals can encounter distinct forms of discrimination due to the intersection of several factors. Article 10 of the Montreal Principles observes that women can experience discrimination when the factor of sex intersects with “race, language, ethnicity, culture, religion, disability, or socio-economic class.”

Investigation

Upon receipt of a complaint, the measures undertaken to assess the liability of the claim, e.g. through fact-finding.

J**Jurisdiction**

The authority of courts or court-like bodies to hear and decide claims; can refer to the courts’ ability to hear particular subjects and/or to review cases brought by certain types of claimants; jurisdiction can also refer to a geographic area of authority.

Justiciability

A justiciable case is one that can be brought before the courts and in which a remedy can be sought and obtained. Justiciability is a key feature of a right. The justiciability of economic, social and cultural rights has been a contentious issue for years.

L**Legal rights**

Rights that are laid down in law and can be defended and brought before courts of law.

Legally binding

A legal exchange of promises or agreement between parties that the law will enforce.

Limburg Principles

Guiding principles that were formulated by a group of international legal experts in 1986 as a means of assisting in the development and application of ESC rights.

Lobbying

Supporting or opposing a measure by working to influence a legislator’s vote.

M**Maastricht Guidelines**

Ten years after the Limburg Principles, a group of experts met in Maastricht in 1997 and elaborated further guidelines to these principles as regards the nature and scope of violations of ESC rights and appropriate responses and remedies.

Member States

Countries that are members of a particular international or regional body.

Millennium Development Goals (MDGs)

The MDGs represent a global partnership that has grown from the commitments and targets established at the world summits of the 1990s. Responding to the world's main development challenges and to the calls of civil society, the MDGs promote poverty reduction, education, maternal health, gender equality, and aim at combating child mortality, AIDS and other diseases. Set for the year 2015, the MDGs are an agreed set of goals that can be achieved if all actors work together and do their part.

Mini-report

A mini-report contains information on specific human rights problems that deserve scrutiny. Mini-reports are usually prepared when the committee has asked the state for information on particular issues and a non-governmental organization (NGO) wishes to provide alternative information on those issues or when an NGO does not have the resources for a full shadow report.

Minimum core obligations

The duty, under the International Covenant on Economic, Social and Cultural Rights (ICESCR), of ratifying States to ensure the very minimum essential levels of rights recognized therein. The deprivation of the essentials of life – food, essential primary health care, basic shelter and housing, and the most basic forms of education – is by itself and on its face an infringement of the ICESCR.

Monitoring

Monitoring means observing, collecting, cataloguing and analyzing data, and reporting on a situation or event. It can have as its objective: human rights education, the documentation of human rights abuses, preventative measures or advocacy. A monitoring report is essentially an account of what has been observed either directly by the NHRI or as reported by others.

Monitoring and reporting procedure

See reporting procedure.

Montreal Principles on Women's Economic, Social and Cultural Rights (Montreal Principles)

These principles aim to guide the understanding and implementation of the guarantees of non-discrimination and the equal exercise of economic, social and cultural rights, found in articles 3 and 2(2) of the International Covenant on Economic, Social and Cultural Rights, so that women can benefit from these rights fully and equally. The Montreal Principles were adopted in December 2002 by a civil society expert group in Montreal, Canada.

Multiple grounds of discrimination

See intersectionality.

N

National human rights institution (NHRI)

A government body established under the Constitution or by law, whose functions are specifically designed to promote and protect human rights. The Paris Principles broadly group NHRIs into three categories: human rights commissions, ombudsmen, and specialized national institutions designed to protect the rights of a particular vulnerable group (such as ethnic minorities, indigenous populations, refugees, women or children). In particular, the Paris Principles emphasize that NHRIs should be

given “as broad a mandate as possible” and that they should be independent from the executive branch.

Non-binding

When a document is non-binding, it carries no formal legal obligations, e.g. a declaration. It may, however, carry moral obligations or attain the force of law as international customary law.

Non-governmental organizations (NGOs)

Organizations formed by and of people outside of Government. Non-profit, human rights, humanitarian aid and grassroots organizations can all be NGOs. NGOs monitor the proceedings of human rights bodies such as the Human Rights Council and are the “watchdogs of the human rights that fall within their mandate. Some are large and international (e.g. the Red Cross, Amnesty International, the Girl Scouts); others may be small and local (e.g. an organization to advocate for people with disabilities in a particular city; a coalition to promote women’s rights in one refugee camp). NGOs play a major role in influencing United Nations policy, and many of them have official consultative status at the UN.

Non-retrogression, Principle of

See retrogressive measures.

Non-State actors

Actors excluding Government and public authorities. They include non-governmental organizations, multi-nationals, financial institutions, private and publicly held companies, religious institutions, private employers, private or corporate landlords, individuals and private service providers.

Non-treaty based mechanisms

Provisions for the enforcement of human rights that are not directly derived from a specific human rights treaty, convention or covenant. For example, the specialized agencies of the United Nations often provide forms of complaint and/or monitoring procedures.

O

Objection

Within the UN human rights system, States Parties are entitled to make objections to reservations made by other States Parties to a treaty, e.g. if they think the reservation is incompatible with the overall purpose of the treaty.

Obligations to respect, protect and fulfill

The three levels of obligations imposed on States Parties by the International Covenant on Economic, Social and Cultural Rights and its subsequent General Comment No. 16. They are to be viewed together and as a whole, and they are not independent and sequential, i.e. it is not the case that once you have *respected* rights; the next step is to *protect* them and then finally to *fulfill* them.

Office of the High Commissioner of Human Rights (OHCHR)

A department of the United Nations Secretariat, mandated to promote and protect the enjoyment and full realization, by all people, of all rights established in the Charter of the United Nations and in international human rights laws and treaties. It is led by the High Commissioner for Human Rights. Its mandate includes preventing human rights violations, securing respect for all human rights,

promoting international cooperation to protect human rights, coordinating related activities throughout the United Nations, and strengthening and streamlining the United Nations system in the field of human rights. In addition to its mandated responsibilities, the Office leads efforts to integrate a human rights approach within all work carried out by United Nations agencies.

Ombudsman

An Ombudsman can be any third party who deals with conflicts on a confidential basis and gives disputants information on how to resolve the problem at issue. In human rights terms, the Ombudsman is an Officer, independent of the government and political parties. The Ombudsman's job is to ensure the accountability of government through effective overseeing of the administration of government services in his or her jurisdiction.

Optional protocol

Very often, human rights treaties are followed by “optional protocols” which may either provide for procedures with regard to the treaty or address a substantive area related to the treaty. Optional protocols to human rights treaties are treaties in their own right, and are open to signature, accession or ratification by countries who are party to the main treaty. A party to the main treaty can opt but is not required to sign, accede or ratify the optional protocol.

P

Parallel report

See alternative report; shadow report.

Paris Principles

The *Principles relating to the Status of National Institutions* provide international minimum standards on the status and roles of NHRIs. In 1991, the UN Commission on Human Rights held an international workshop of human rights institutions, UN member states and specialized agencies, and non-governmental organizations (NGOs). The purpose was to review the cooperation between national and international institutions, and to explore ways to increase their effectiveness. The resulting “Paris Principles” were subsequently endorsed by the UN General Assembly in December 1993.

Petition

See complaint.

Policy instrument mixes

“Mixes” of different parts of the governance structures in order to achieve policy goals. They include not only laws but also administrative arrangements, guidelines and rules, public education policies and programs.

Principles

Guidelines that play a role of legal interpretation, even though they are not legally binding in the same way as a law. Nonetheless, they help in explaining what rights mean, and how they have evolved over the years. For example, the Limburg Principles have assisted in the development and application of economic, social and cultural rights.

Procedural requirements

Technical requirements that must be met to bring forward a claim.

Progressive realization

Progressive realization recognizes that States cannot realize all economic, social and cultural (ESC) rights in a short period of time. States may therefore work towards ESC rights over time, to the extent permitted by their economies. At the same time, States Parties should move as expeditiously as possible towards the realization of rights (Limburg Principles, 21).

Protocol

See optional protocol.

Public inquiry

A mechanism which enables an NHRI to examine systemic or general human rights issues in depth and from all perspectives. Typically, public inquiries involve the establishment of a panel with defined terms of reference, and a mandate to hold hearings to which witnesses can be summoned to testify.

Q**Quasi-jurisdictional institutions**

Institutions that are not usually real courts, although their structure and their investigatory and decision-making powers make them similar, if not equal. Their main duty is to receive complaints and render final decisions that are binding upon the parties. In this way, they resolve cases of discrimination, generally relating to individuals but sometimes involving more than one person. Most NHRIs are quasi-jurisdictional institutions. This term is used almost exclusively in the international context, and primarily in UN bodies.

R**Racial discrimination**

Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Rapporteurs

See Special Rapporteurs.

Ratification

The act by which a State formally agrees to be legally bound by a treaty's provisions. It usually requires the approval of the State's legislative body (or bodies, in the case of federal States). A State that ratifies a treaty is called a "State Party" to that treaty. An agreement that is ratified is applicable and legally binding on the State Party. Some treaties do not enter into force until they have been ratified by a certain number of the States that have signed it. The number of ratifications required is specified in the text of the treaty.

Remedy

In legal terms, the means by which a right is enforced or the violation of a right is prevented, redressed or compensated.

Reporting procedure

This mechanism is available under the Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Racial Discrimination, Commission on the Elimination of Discrimination against Women, Commission Against Torture, Commission on the Rights of the Child and the Committee on Migrant Workers. A state that has ratified or acceded to one of these treaties is required to submit a report on its fulfillment of its obligations under the treaty. The aim of the reporting mechanism is to make States Parties accountable in the area of human rights and monitor their progress. In general, reports are submitted to the Secretary General of the UN, who transmits them to the relevant treaty body.

Reservation

A reservation is a declaration made by a State by which it purports to exclude or alter the legal effect of certain provisions of the treaty in their application to that State. A reservation enables a State to accept a multilateral treaty as a whole by giving it the possibility not to apply certain provisions with which it does not want to comply. Reservations can be made when the treaty is signed, ratified, accepted, approved or acceded to. Reservations must not be incompatible with the object and the purpose of the treaty. Furthermore, a treaty might prohibit reservations or only allow for certain reservations to be made.

Resolution

Within the United Nations system, a resolution (or UN resolution) is a formal text adopted by a United Nations body. Although any UN body can issue resolutions, in practice most resolutions are issued by the Security Council or the General Assembly.

Responsibility to respect, protect and fulfill

See obligations to respect, protect and fulfill.

Retrogressive measure

An act that leads, directly or indirectly, to backward steps being taken with respect to the rights recognized in the International Covenant on Economic, Social and Cultural Rights. Done deliberately, the acting State Party is in violation of article 23 of the Covenant.

Right to development

Right recognizing that people are entitled to cultural, political and economic development. Sometimes referred to as third-generation rights together with environmental rights. See also rights-based approach.

Rights-based approach (to development)

A rights-based approach to development is a conceptual framework for human development that “integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development” (according to the Office of the High Commissioner for Human Rights, <http://www.unhcr.ch/development/approaches.html>).

S

Sex

Sex refers to the biological differences between men and women. In contrast, gender is the culturally specific set of characteristics that identify the social behaviour of women and men and the relationship between them.

Sex-disaggregated data

See gender-disaggregated data.

Sexual assault/violence

Includes rape and other forms of physical attack of a sexual nature. See also violence against women.

Sex discrimination

See gender discrimination; see also discrimination against women.

Sexual harassment

Unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.

Shadow report

A comprehensive critique of the State report submitted under the reporting mechanism. Shadow reports are usually prepared by non-governmental organizations and NHRIs who have not had an opportunity to participate in the state reporting process. See also mini-report and alternative report.

Signatory States

States that have signed a particular treaty, convention or covenant.

Signature

The signature of an international instrument is the first step toward a State toward becoming a Party to an international instrument. The next step is ratification. After signing an international instrument, States are given a period of time before becoming fully bound by the text of the document. According to article 18 of the Vienna Convention on the Law of Treaties, signatories to international treaties commit themselves to refrain from acts which would defeat the object and purpose of the signed document.

Sources of international law

Primary sources listed in article 38 of the Statute of the International Court of Justice are (1) treaty; (2) customary international law; (3) general principles of law; (4) judicial decisions.

Special Rapporteurs

Experts who are assigned to particular thematic issues or country situations. Their functions vary according to their particular mandate. In general, they collect information on alleged violations of human rights and formulate policy recommendations. In some cases, they visit individual countries.

Special Rapporteur on Violence against Women

Official appointed by the General Assembly in 1994 to investigate and make reports on cases of violence against women worldwide.

State obligations

The duties and responsibilities assumed by a State once it has become a party to an international treaty. In terms of economic, social and cultural rights, state obligations are usually seen as three-fold, i.e. as obligations to respect, protect and fulfill.

States Parties

States that have ratified or acceded to a treaty.

State responsibility

Liability of a State for breaching an international obligation, usually entailing the duties of cessation, non-repetition and full reparation.

State-to-State complaint

A procedure available under many of the human rights treaties (although usually on an optional basis) under which States Parties to the relevant treaty can complain to the Treaty body that another state part is not fulfilling its obligations under the treaty.

Strategic planning

The identification of which priority areas an organization is to select and direct its resources, given the external situation and its internal capacities.

Structural Adjustment Programs (SAPs)

Policies of international financial institutions such as the International Monetary Fund that place tight restrictions on the country's economy with the goal of increasing exports and decreasing deficits and encourage governments to adopt stabilization or austerity measures which entail cutting government spending on "non-essential" services; often have an adverse impact on women.

Substantive equality

See equality.

T**Temporary special measures**

Measures taken to advance women's integration into education, the economy, politics and employment, such as affirmative action, preferential treatment and quota systems. Such a program can be used to remedy effects of past discrimination against women. Another reason is the obligation under International Covenant on the Economic, Social and Cultural Rights to work for substantive equality for women.

Trafficking

Involves the recruitment and transportation of persons, using deception, coercion and threats in order to place and keep them in a situation of forced labour, slavery or servitude. Persons are trafficked into a variety of sectors of the informal economy, including prostitution, domestic work, agriculture, the garment industry or street begging.

Transformation

A legal concept referring to the manner in which a ratified international declaration, covenant or convention becomes part of domestic law.

Treaty

Formal agreement between States that defines and modifies their mutual duties and obligations; used synonymously with convention and covenant. When conventions are adopted by the United Nations General Assembly, they create legally binding international obligations for the Member States who have signed the treaty. When a national government ratifies a treaty, the content of that treaty should be incorporated into its domestic legal order, subject to transformation.

Treaty-based mechanisms

UN treaties dealing with human rights have established three mechanisms for dealing with violations of human rights and fundamental freedoms: the individual complaint mechanism, the State-to-State complaint mechanism and the reporting mechanism (reporting procedure).

Treaty body

A group of experts set up according to the terms of a treaty to monitor each State Party's progress in fulfilling its obligations under that treaty. Also called a committee, a treaty-based body or a treaty-monitoring body.

U

United Nations Conference on Human Rights

World Conference on human rights held in Vienna in 1993; produced the Vienna Declaration and Platform for Action. Women's human rights advocates used the conference to push for recognition of women's human rights.

United Nations Conference on Women

UN Conference with the platform for action that includes empowering women worldwide, and “advancing the goals of equality, development and peace for all women everywhere in the interest of all humanity.” The first United Nations World Conference on Women took place in Mexico in 1975; subsequently, the UN proclaimed 1975-1985 the Decade for Women and conferences on women took place in Copenhagen in 1980 and Nairobi in 1985; the latest conference was in Beijing in 1995, producing the Beijing Declaration and Platform for Action.

United Nations Division for the Advancement of Women (DAW)

UN body responsible for assisting the Commission on the Status of Women, the main policy-making body for women, and the Committee on the Elimination of All Forms of Discrimination against Women. Grounded in the vision of equality of the United Nations Charter, the Division for the Advancement of Women (DAW) advocates the improvement of the status of women around the world and the achievement of their equality with men. Aiming to ensure the participation of women as equal partners with men in all aspects of human endeavour, DAW promotes women as equal participants and beneficiaries of sustainable development, peace and security, governance and human rights. As part of its mandate, it strives to stimulate the mainstreaming of gender perspectives both within and outside the United Nations system.

United Nations General Assembly

One of the principal organs of the UN, consisting of all Member States. The General Assembly issues declarations and adopts conventions on human rights issues. The actions of the General Assembly are governed by the Charter of the United Nations.

Universal Declaration of Human Rights (UDHR)

Primary UN document adopted in 1948 establishing human rights standards and norms. Although the declaration was intended to be non-binding, through time its various provisions have become so respected by States that it can now be said to be customary international law.

Universal Periodic Review (UPR) mechanism

The Universal Periodical Review (UPR) mechanism of the Human Rights Council is a fundamental tool to measure the extent to which each State has fulfilled its human rights obligations and commitments. The UPR is to look at best practices but also at challenges and obstacles that a State might face, based on information provided by the State concerned; reports of Treaty bodies, special procedures, and other United Nations documents deemed relevant by the Office of the High Commissioner for Human Rights; and information from other relevant stakeholders, including non-governmental organizations and NHRIs.

V

Vienna Declaration and Platform for Action

Consensus document arising from the 1993 United Nations Conference on Human Rights in Vienna; states that human rights are universal, indivisible, interconnected and interrelated; affirms that the human rights of women are an inalienable, integral and indivisible part of universal human rights; recognizes violence against women as a human rights violation. It also underlined the need for assisting States in the task of building and strengthening national institutions and legal systems in the field of human rights.

Violence against women

Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. Violence against women includes, but is not be limited to, the following: a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, and non-spousal violence related to exploitation; b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

W

Women's "Bill of Rights" or Convention

See Convention on the Elimination of All Forms of Discrimination against Women.

Women's Human Rights

Political strategy to underscore that women's rights are human rights, i.e. rights to which women are entitled simply for being human. This strategy adds both a focus on women into the human rights movement and an emphasis on human rights principles into the women's rights movement; the main international document stating women's human rights is the Convention on the Elimination of All Forms of Discrimination against Women.

Women's human rights advocacy

Generally consists of organized activities aimed at influencing policies and decision-making at national and international levels to assure recognition and respect for women's human rights and to assure that the treatment of women is consistent with international human rights standards.

Women's human security

See human security for women.

Working groups

Groups of experts who concentrate on particular themes in human rights or on ways of strengthening and clarifying existing human rights mechanisms. Like the Special Rapporteurs, their functions vary according to their mandate.

Sources for compiling the Glossary of Terms

- ▶ Bayefsky, A. (undated). How to Complain about Human Rights Treaty Violations – Glossary. http://www.bayefsky.com/complain/2_glossary.php
- ▶ Canadian Human Rights Foundation (2000). *A UN Road Map: A Guide for Asian NGOs to the International Human Rights System and other Mechanisms*. Montreal: Canadian Human Rights Foundation. <http://www.equitas.org/english/ed-manuals/un-road-map/Appendix-A.pdf>
- ▶ Committee on Economic, Social and Cultural Rights (2005). *General Comment No. 16 – The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the covenant)*. Geneva: United Nations. [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.2005.4.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.2005.4.En?Opendocument)
- ▶ Convention on the Elimination of All Forms of Discrimination against Women. <http://www2.ohchr.org/english/law/cedaw.htm>
- ▶ Council of Europe (2002). *Compass – A Manual on Human Rights Education with Young People*. Strasbourg: Council of Europe. <http://www.eycb.coe.int/Compass/en/contents.html>
- ▶ CPR International Institute for Conflict Prevention & Resolution (2005). An ADR Primer. <http://www.cpradr.org/Glossary.asp>
- ▶ FAO (2008). Cooperation with Civil Society – What is Civil Society? http://www.fao.org/tc/NGO/index_en.asp
- ▶ Flowers, N. (ed.) (1998). *Human Rights Here and Now: Celebrating the Universal Declaration of Human Rights*. Minneapolis, MN: Human Rights Resource Center.
- ▶ Fullinwider, R. (2005). Affirmative Action. In Zalta, E.N. (ed.) *The Stanford Encyclopedia of Philosophy (Spring 2005 Edition)*. <http://plato.stanford.edu/archives/spr2005/entries/affirmative-action>
- ▶ Garner, B.A. (ed.) (2004). *Black's Law Dictionary, 8th Ed.* St. Paul, MN: Thomson/West.
- ▶ ILO (1996). *Equality in Employment and Occupation: Practical Difficulties and Principal Obstacles to the Application of the Convention (no. 111)*. Geneva: International Labour Organization. [http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=35&chapter=25&query=\(%23do cno%3D251996G*\)+%40ref&highlight=&querytype=bool&context=0](http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=35&chapter=25&query=(%23do cno%3D251996G*)+%40ref&highlight=&querytype=bool&context=0)
- ▶ Industry Canada (2006). *Corporate Social Responsibility: An Implementation Guide for Canadian Business*. Ottawa: Industry Canada. [http://www.ic.gc.ca/epic/site/csr-rse.nsf/vwapj/CSR_mar2006.pdf/\\$FILE/CSR_mar2006.pdf](http://www.ic.gc.ca/epic/site/csr-rse.nsf/vwapj/CSR_mar2006.pdf/$FILE/CSR_mar2006.pdf)

- ▶ International Budget Project (undated). Human Rights Glossary.
<http://www.internationalbudget.org/themes/ESC/HRGLOSSARY.pdf>
- ▶ International Committee of the Red Cross (2004). What Is International Humanitarian Law?
[http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/humanitarian-law-factsheet/\\$File/What_is_IHL.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/humanitarian-law-factsheet/$File/What_is_IHL.pdf)
- ▶ International Co-ordinating Committee of National Human Rights Institutions (2006). General Segment Statement by the International Co-ordinating Committee of National Human Rights Institutions (ICC) at the First Session of the Human Rights Council.
http://www.nhri.net/pdf/HRC1ICC_EN.pdf
- ▶ International Coordinating Committee of National Human Rights Institutions (2006). ICC Position Papers, National Human Rights Institutions and the UN Human Rights Council – Volume II: National Human Rights Institutions and the Special Procedures and Universal Periodic Review Mechanism.
<http://www.nhri.net/pdf/ICC%20Position%20Volume%20II.pdf>
- ▶ International Women’s Rights Action Watch Asia Pacific (2007). Guidelines on How to Write a Shadow/Alternative Report.
http://www.iwraw-ap.org/using_cedaw/sreport_guidelines.htm
- ▶ Kusek, J. Z. & Rift, R. C. (2004). *Ten Steps to a Results-Based Monitoring and Evaluation System: A Handbook for Development Practitioners*. Washington, D.C.: The World Bank.
http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2004/08/27/000160016_20040827154900/Rendered/PDF/296720PAPER0100steps.pdf
- ▶ Langley, W.E. (1999). *Encyclopedia of Human Rights Issues since 1945*. Westport, CT: Greenwood Press.
- ▶ Mertus, J. (undated). A Glossary of Human Rights Terms.
<http://academic3.american.edu/~mertus/HR%20Glossary.htm>
- ▶ Minnesota Advocates for Human Rights (2007). Exhaustion of Domestic Remedies.
http://www.stopvaw.org/Exhaustion_of_Domestic_Remedies.html
- ▶ Moghadam, V.M. (2005). “The ‘Feminization of Poverty’ and Women’s Human Rights”. *SHS Papers in Women’s Studies/Gender Research* 2. Paris: UNESCO.
http://portal.unesco.org/shs/en/files/8282/11313736811Feminization_of_Poverty.pdf/Feminization+of+Poverty.pdf
- ▶ Office of the High Commissioner for Human Rights (1995). *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights*. Professional Training Series No. 4. New York and Geneva: United Nations. <http://www.ohchr.org/Documents/Publications/training4en.pdf>
- ▶ Office of the High Commissioner for Human Rights (2008). Human Rights Bodies.
<http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>

- ▶ Office of the High Commissioner for Human Rights (2008). Universal Periodic Review. <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>
- ▶ Office of the High Commissioner for Human Rights (2008). What We Do. <http://www.ohchr.org/EN/AboutUs/Pages/WhatWeDo.aspx>
- ▶ Office of the High Commissioner for Human Rights (undated). *Fact Sheet No. 23, Harmful Traditional Practices Affecting the Health of Women and Children*. Geneva: United Nations. <http://www.unhchr.ch/html/menu6/2/fs23.htm>
- ▶ Office of the High Commissioner for Human Rights (undated). *Human Rights: A Basic Handbook for UN Staff*. Geneva: United Nations. <http://www.ohchr.org/Documents/Publications/HRhandbooken.pdf>
- ▶ Office of the High Commissioner for Human Rights (undated). *Human Rights Education Series No. 2: Human Rights Education and Human Rights Treaties*. Geneva: United Nations. <http://www.ohchr.org/Documents/Publications/HRTreaties2en.pdf>
- ▶ Office of the High Commissioner for Human Rights (undated). Rights-Based Approaches. <http://www.unhchr.ch/development/approaches.html>
- ▶ Office of the Special Adviser on Gender Issues and Advancement of Women (undated). Gender Mainstreaming. <http://www.un.org/womenwatch/osagi/gendermainstreaming.htm>
- ▶ Ombudsman of British Columbia (undated). About the Ombudsman. http://www.ombudsman.bc.ca/about_ombudsman/about_ombudsman.htm
- ▶ Scott, C. (2001). “Toward the Institutional Integration of the Core Human Rights ‘Treaties’”. In Merali, I. & Oosterveld, V. (eds.). *Giving Meaning to Economic, Social and Cultural Rights*. Philadelphia, PA: University of Pennsylvania Press.
- ▶ Shannon, A. (1998). *Advocating for Adolescent Reproductive Health in Sub-Saharan Africa*. Washington, D.C: Advocates for Youth. <http://www.advocatesforyouth.org/publications/advocate.pdf>
- ▶ Shiman, D. (1999). *Economic and Social Justice: A Human Rights Perspective*. Minneapolis, MN: Human Rights Resource Center. <http://www1.umn.edu/humanrts/edumat/hreduseries/tb1b/Section3/hrglossary.html>
- ▶ South African Human Rights Commission (undated). *Workshop Manual – Building a Culture of Human Rights*. Johannesburg: South African Human Rights Commission. http://www.sahrc.org.za/sahrc_cms/publish/cat_index_45.shtml
- ▶ Status of Women Canada (2004). *An Integrated Approach to Gender-Based Analysis*. Ottawa: Status of Women Canada. http://www.swc-cfc.gc.ca/pubs/gbainfokit/gbainfokit_e.html

- ▶ Statute of the International Court of Justice.
<http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0>
- ▶ UN Division for the Advancement of Women (undated). What is an Optional Protocol?
<http://www.un.org/womenwatch/daw/cedaw/protocol/whatis.htm>
- ▶ UN Economic and Social Commission for Asia and the Pacific (undated). What is Good Governance?
<http://www.unescap.org/pdd/prs/projectactivities/ongoing/gg/governance.asp>
- ▶ UN General Assembly (2006). *Resolution 60/251. Human Rights Council*.
http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf
- ▶ UN Millennium Development Goals
<http://www.un.org/millenniumgoals/>
- ▶ UN Treaty Collection (1999). *Treaty Reference Guide*. New York: United Nations.
<http://untreaty.un.org/English/guide.pdf>
- ▶ UNDP Kazakhstan (2005). *Gender Equality and the Status of Women in Kazakhstan*. Almaty: United Nations Development Programme Kazakhstan.
<http://www.iknowpolitics.org/en/node/27>
- ▶ UNEP (undated). Manual on Compliance with and Enforcement of Multilateral Environmental Agreements – List of Acronyms and Glossary Terms.
<http://www.unep.org/dec/onlinemanual/Resources/Glossary/tabid/69/Default.aspx?letter=I>
- ▶ UNIFEM (2007). *Violence against Women – Facts and Figures*. New York: United Nations Development Fund for Women.
http://www.unifem.org/attachments/gender_issues/violence_against_women/facts_figures_violence_against_women_2007.pdf

Appendix 2: Economic, Social & Cultural Rights for Women – International Instruments Table

Appendix 2 lists the international instruments related to women’s economic, social and cultural rights and provides a reference to the specific articles of each treaty concerning 11 key areas of these rights. The category “General” in the table below refers to articles that either determine who the rights-holders are or speak about rights in general terms.

The table is divided into four main parts: United Nations Conventions, which is further divided into the International Bill of Rights, Other Core Conventions, and Other Conventions; United Nations Declarations; International Labour Organization Conventions; and Principles. In each section, instruments are organized according to the date they entered into force (in the case of declarations, the date they were adopted). If an instrument has optional protocols considered relevant, these are listed directly after the instrument in question. Key instruments for women’s economic, social and cultural rights are in bold.

Rights	General	Employment	Housing	Food	Health & Reproduction	Education	Water	Culture & Science	Violence & Trafficking	Marriage & Family	Property	Social Assistance
INTERNATIONAL INSTRUMENTS												
International Bill of Rights												
Universal Declaration of Human Rights (adopted: December 10, 1948)‡	2, 22	23	25(1)	25(1)	25(1)(2)	26		27		16	17	
International Covenant on Civil and Political Rights (entry into force: March 23, 1976)	2(1), 3	22(1)								23		
International Covenant on Economic, Social and Cultural Rights (entry into force: January 3, 1976)‡	2(2), 3	7, 8	11(1)	11(2)	12	13, 14		15		10(1)		9,10(2)
OTHER CORE CONVENTIONS												
International Convention on the Elimination of All Forms of Racial Discrimination (entry into force: January 4, 1969)	Preamble, 2, 3, 4, 5, 6, 7	5(e)(i), 5(e)(ii)	5(e)(iii)		5(e)(iv)	5(e)(v)		5(e)(vi)	5(b)	5(d)(iv)	5(d)(v), 5(d)(vi)	
Convention on the Elimination of All Forms of Discrimination against Women (entry into force: September 3, 1981)	2, 3	11(1)(a-d), 11(2)(a)(d), 14(2)(e)	14(2)(h)		11(1)(f), 12, 14(2)(b)	10, 14(2)(d)	14(2)(h)	5, 13(c)	6	11(2)(a), 16	14(2)(g), 16(1)(h)	11(1)(e), 11(2)(b)(c), 13(a), 14(2)(c)

Rights	General	Employment	Housing	Food	Health & Reproduction	Education	Water	Culture & Science	Violence & Trafficking	Marriage & Family	Property	Social Assistance
International Instruments												
Optional Protocol to the Convention on the Elimination of Discrimination against Women (CEDAW) (entry into force: December 22, 2000)	Preamble											
Convention on the Rights of the Child (1) (adopted: November 20, 1989)	2, 6, 13(1), 14(1), 15(1), 16, 27(1), 36, 37, 40	32(1)	27(3)	27(3)	24(1), 24(2), 24(3), 32(1)	28(1)		31	19, 11(1), 34	9(1), 9(3), 9(4), 10, 14(2), 18		26(1)
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (entry into force: February 12, 2002)	Preamble								1, 2, 3(3), 4(1), 4(2), 7(1)			
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (entry into force: January 18, 2002)									Preamble, 1, 3(1), 8, 9			
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted: December 18, 1990)	7, 8, 9, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 29, 33, 37, 38, 39, 40, 41, 42(3), 58, 59, 60, 61, 62, 63, 71, 82, 83	11(1), 11(2), 25, 26, 40, 43(1)(f), 43(2), 49, 51, 52, 53, 54, 55	43(1)(d), 45(1)(c)		28, 43(1)(e)	30, 43(1)(a), 43(1)(b), 43(1)(c), 45(1)(a), 45(1)(b)		17(1), 31, 40, 43(1)(g), 43(2), 45(1)(d)	10, 16(1), 16(2)	44, 45(1)	15, 32, 47, 48	27, 43(1)(e)
Convention on the Rights of Persons with Disabilities (not yet in force)	Preamble, 1, 3, 4(1), 5, 6, 7, 8(1), 9, 10, 13, 14, 17, 18, 19, 20, 21, 22, 29	27	28(1), 28(2)(d)	28(1)	25	24	28(2)(a)	30	15, 16	23		28(1), 28(2)(b), 28(2)(c), 28(2)(e)
OTHER CONVENTIONS												
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution									16, 20			16

Rights	General	Employment	Housing	Food	Health & Reproduction	Education	Water	Culture & Science	Violence & Trafficking	Marriage & Family	Property	Social Assistance
International Instruments												
of Others (entry into force: July 25, 1951)												
Convention relating to the Status of Refugees (entry into force: April 22, 1954)	3, 4, 7, 12(2), 15, 16, 25(1), 26, 27, 28, 29(1), 31(1), 32, 33(1)	15, 17, 18, 19(1), 24	21			22		14			13, 14, 29(1), 30	20, 23
Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (entry into force: April 30, 1957)										1(c), 2		
Convention on the Nationality of Married Women (entered into force 11 August 1958)										1, 2, 3		
Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (entry into force: December 9, 1964)										Preamble, 1, 2		
Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (entry into force: December 25, 2003)									6, 9			
Convention on the Protection and Promotion of the Diversity of Cultural Expressions (adopted 20 October 2005)	2(1), 2(3),							2(5), 7			2(5)	14(d)
UNITED NATIONS DECLARATIONS												
Declaration on Social Progress and Development (adopted: December 11, 1969)	1	11(b)			11(b)							

Rights	General	Employment	Housing	Food	Health & Reproduction	Education	Water	Culture & Science	Violence & Trafficking	Marriage & Family	Property	Social Assistance
International Instruments												
Universal Declaration on the Eradication of Hunger and Malnutrition (adopted: December 17, 1973)				4								
Declaration on the Protection of Women and Children in Emergency and Armed Conflict (adopted: December 14, 1974)			6	6	6							
Declaration on the Participation of Women in Promoting International Peace and Cooperation (adopted: December 3, 1982)	1, 2, 3, 6											
Declaration on the Right to Development (adopted: December 4, 1986)	6, 8(1)											
General Recommendations made by the Committee on the Elimination of Discrimination against Women (1986-1999)		13, 16			14, 15, 19, 24				12, 19	21	21	16
Vienna Declaration (adopted: June 25, 1993)	18				18	18			18			18
Vienna Programme of Action (adopted: June 25, 1993)					41	41			38			
Declaration on the Elimination of Violence against Women (adopted: December 20, 1993)		3(g)			3(f)	4(j)			4(g), 4(k)			
Beijing Declaration (adopted: February 23, 1996)		26			17, 27, 30	27, 30		35			35	
Beijing Platform for Action (adopted: February 23, 1996)	58(a-c)	58(h)(l), 165(a-c)(g)(r), 166(a)(b)(d)(i)(j)(l), 178-180, 282	58(m), 147(f), 256(k)	58(e)(f)(j)(n)(w), 147(f), 166(e), 281(a)	58(d), 106-111, 147(f), 281	58(d), 80-88, 147(f)(g)(l)(m), 173(b)(f), 233(g), 256(h), 276(b)(c), 277-280	147(f), 167(d), 256(k)(l)	276(d)	124-130, 230(n), 232(g)(h), 283	147(k), 274(e), 275(b), 285	61(b), 165(e)(f), 166(c), 274(d)	58(g)(o), 147(f)

Rights	General	Employment	Housing	Food	Health & Reproduction	Education	Water	Culture & Science	Violence & Trafficking	Marriage & Family	Property	Social Assistance
International Instruments												
Millennium Development Goals (September 8, 2000)					5, 6	2, 3			25			
Declaration of Commitment on HIV/AIDS (adopted: August 2, 2001)					59							
Declaration on the Rights of Indigenous Peoples (adopted: September 13, 2007)		21	21		21	21	21		22			21
Fribourg Declaration on Cultural Rights (2007)	1					6		3, 4, 5, 7, 8, 9				
INTERNATIONAL LABOUR ORGANIZATION CONVENTIONS												
Convention (no.100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (entry into force: May 23, 1953)	1(b)	2										
Convention (no.102) concerning Minimum Standards of Social Security (entry into force: April 27, 1955)												Part VIII (Articles 46-52)
Discrimination (Employment and Occupation) Convention (no. 111) (entry into force: June 15, 1960)		2, 3										
Worst Forms of Child Labour Convention (no. 182) (entry into force: November 15, 1999)		1, 2				2(c)						
PRINCIPLES												
Limburg Principles (June 2-6, 1986)	45											
Maastricht Guidelines (January 22-26, 1997)	11, 12											
Montreal Principles (December 7-10, 2002)		1(f)	1(a)	1(a)	1(b)	1(e)	1(a)	1(k)(l)	1(n)	1(i)	1(c)	1(d)

‡Applicable ESC provisions are not gender specific but have been included because they apply to both women and men.

BOLD = Key Instruments for Women's ESC Rights

Appendix 3: Economic, Social & Cultural Rights for Women – Regional Instruments Table

Appendix 3 lists various regional conventions, instruments and declarations which codify the economic, social and cultural rights of women. References are provided to the specific articles of each treaty which deal with 11 key areas of these rights. The category “General” in the table below refers to articles that either determine who the rights-holders are or speak about rights in general terms.

In each geographic section, instruments are organized according to the date they entered into force or opened for signature. If an instrument has optional protocols considered relevant, these are listed directly after the instrument in question.

Regional Instruments	Rights	General	Employment	Housing	Food	Health & Reproduction	Education	Water	Culture & Science	Violence & Trafficking	Marriage & Family	Property	Social Assistance
EUROPE													
Convention for the Protection of Human Rights and Fundamental Freedoms (entry into force: September 3, 1953)		14											
European Code of Social Security (entry into force: March 17, 1968)													Part VIII (Articles 46-52)
European Social Charter (revised) (entry into force: July 1, 1999)		Part V, Article E	4(3), 8(2)(3)(4)(5), 20										8(1)
European Convention on the Exercise of Children's Rights (entry into force: July 1, 2000)		3, 4, 5, 6, 7, 10											
Council of Europe Convention on Action against Trafficking in Human Beings (open for signature: May 16, 2005)		3	16(5)				16(5)			5(2)(3), 6, 12(1)(3)(4), 17			
AMERICAS													
OAS Convention on the Nationality of Women (entry into force: August 29, 1934)		1											
American Declaration on the Rights and Duties of Man (entry into force: April 1948)		1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26,	14, 16			7, 11	12		13		5, 6	23	16

Rights	General	Employment	Housing	Food	Health & Reproduction	Education	Water	Culture & Science	Violence & Trafficking	Marriage & Family	Property	Social Assistance
Regional Instruments												
	27											
Inter-American Convention on the Granting of Civil Rights to Women (entry into force: March 17, 1949)	1											
Inter-American Convention on the Granting of Political Rights to Women (entry into force: April 22, 1949)	1											
American Convention on Human Rights (entry into force: July 18, 1978)‡	1, 26									17	21	
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (entry into force: March 5, 1995)									5, 6(b)			
- Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (entry into force: November 16, 1999)	3	6(2)										9(2)
AFRICA												
African Charter on Human and Peoples' Rights (entry into force: October 21, 1986)‡	2, 22	15			16	17				18	14	
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (entry into force: November 25, 2005)	2(2)	13	16	15	14	12		2(2), 17	4(2)(g)	6, 7	21	
African Charter on the Rights and Welfare of the Child (entry into force: November 29, 1999)	3, 4, 5, 6, 7, 8, 9, 10, 13, 17, 20(2), 21, 23, 25, 30	13(2), 15	20(2)		13(1), 14, 20(2), 21, 28,30	11		12, 13(2), 21	16, 21, 22, 27, 28, 29	18, 19		20(2)

‡Applicable ESC provisions are not gender specific but have been included because they apply to both women and men.

Appendix 4: Selected Key Documents on the Economic, Social and Cultural Rights of Women

Appendix 4 contains the following key documents relating to the economic, social and cultural rights of women.

- ▶ 4.1 Summary of the Convention on the Elimination of All Forms of Discrimination against Women
- ▶ 4.2 Convention on the Elimination of All Forms of Discrimination against Women (1979)
- ▶ 4.3 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999)
- ▶ 4.4 Summary of the International Covenant on Economic, Social and Cultural Rights
- ▶ 4.5 International Covenant on Economic, Social and Cultural Rights (1966)
- ▶ 4.6 CESCR General Comment No. 10 – The Role of National Human Rights Institutions in the Protection of Economic, Social and Cultural Rights
- ▶ 4.7 CESCR General Comment No. 16 – The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (art. 3 of the covenant)

Appendix 4.1 Summary of the Convention on the Elimination of All Forms of Discrimination against Women

Overview

The Convention on the Elimination of All Forms of Discrimination Against Women is perhaps best described as an international bill of rights for women as it sets out in detail both what is to be regarded as discrimination against women and the measures that have to be taken in order to eliminate this discrimination. Women's rights are conceptualized as human rights and a "non-discrimination" model is adopted, so that women's rights are seen to be violated if women are denied the same rights as men.

The Convention was adopted by the General Assembly of the United Nations on 18 December 1979. It entered into force on 3 September 1981. As of February 15, 2008, 185 States have become parties to the Convention. The Convention has one Optional Protocol. As of November 27, 2007, 90 States are signatories to the Optional Protocol.

The preamble recalls that the elimination of discrimination against women and the promotion of equality between women and men are central principles of the United Nations Charter and constitute binding obligation under it. It further states that discrimination against women violates the principles of equality and obstructs women's participation, on equal terms with men, in the political, social, economic and cultural life of their countries.

Monitoring Mechanism

Article 17 of the Convention on the Elimination of All Forms of Discrimination against Women establishes the Committee on the Elimination of Discrimination against Women to oversee the implementation of its provisions. The Committee is composed of 23 experts and has since its inception, with only one exception, been composed entirely of women.

Under article 18 of the Convention, States parties are required to submit reports every four years to the Secretary-General of the United Nations on legislative, judicial and other measures that they have taken in accordance with the provisions of the Convention. These reports are for consideration by the Committee. The Committee has developed two sets of general guidelines for reporting in an effort to provide practical technical assistance to States parties.

Provisions

The provisions of the Convention are divided into six parts. The first four deal with substantive rights.

Part I

Articles 1- 6 include the definition of discrimination against women. In addition, they also include legal, administrative and other measures that should be taken by State parties under the Convention.

Part II

Articles 7 - 9 contain obligations of States regarding the protection of women's rights in political and public life.

Part III

Articles 10 -14 contain provisions regarding elimination of discrimination against women in the field of education, employment, health, and economic, social and cultural life. This part also includes obligation of States regarding special problems of rural women.

Part IV

Articles 15 -16 contains provisions regarding affording equality of women with men before the law, in the exercise of their legal rights, and in marriage and family law.

Part V

Articles 17 - 22 deals with the establishment of a Committee on the Elimination of Discrimination against Women to monitor the progress of the implementation of the Convention by State parties.

Part VI

Articles 23 - 30 deals with other procedural issues including provision for making reservation while ratifying or acceding to the Convention.

ARTICLE 1: Definition of Discrimination against Women

Article 1 defines what constitutes “discrimination against women”. The Convention defines discrimination against women broadly. Under the Convention any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of hampering the enjoyment by women of their human rights. The rights enshrined in the Convention applies to all women, irrespective of their marital status. It prohibits discrimination in “political, economic, social, cultural, civil or any other” fields. More important, it covers discrimination in public and private (“or any other”) actions. The Convention prohibits intentional and unintentional discrimination.

ARTICLE 2: Obligations of State Parties to the Convention

This article requires that State parties take appropriate constitutional, legal and administrative measures to guarantee equality. They also have an obligation to provide remedies and sanctions for public and private acts of discrimination and to repeal discriminatory laws. The States parties must take measures to eliminate practices that either risks threatening or actually threatens the enjoyments of the rights contained in the Convention.

ARTICLE 3: Obligation to Take Measures for Ensuring Equality between Men and Women

Article 3 provides for equality between men and women which is a precondition for women’s full enjoyment of human rights. The obligations of States parties include development of appropriate programmes and measures to advance the status of women so that they can enjoy human rights on a basis of equality with men.

ARTICLE 4: Obligation to Take Positive Measures

Article 4 recognizes that State parties besides removing discriminatory practices should also take positive action to promote equality. Thus, it acknowledges that to ensure de facto equality, it may be necessary to take measures that discriminate in a positive way. The article also specifies that the adoption of special measures aiming at the protection of maternity shall not be considered discriminatory.

The Committee in its General Recommendation No.5 stated that States parties make more use of temporary special measures such as “positive action, preferential treatment or quota systems to advance women’s integration into education, economy, politics and employment.”

ARTICLE 5: Obligation to Take Measures for Elimination of Prejudices and Stereotyping of Sex Roles

The purpose of article 5 is to ensure that States parties take steps to modify social and cultural patterns of conduct elimination of prejudices based on the inferiority or superiority of either of the sexes and stereotyping of sex roles.

Article 5(b) recognizes that maternity has a social function. It states that men and women have a common responsibility in the upbringing of their children. The interest of the child should be fundamental in all actions taken by parents.

The Committee in its General Recommendation No. 3 stated that “The Committee based on the reports submitted by State parties has stated that the reports show existence of varying degrees of stereotyped conceptions of women.” The Committee has urged “all States parties effectively to adopt education and public information programmes, which will help eliminate prejudices and current practices that hinder the full operation of principle of the social equality of women.”

ARTICLE 6: Suppression of All Forms of Trafficking and Exploitation of Women

This article obligates State parties to take measures to suppress all forms of trafficking in women. It also calls action against those who profit from the exploitation of women, including the exploitation of girls.

The Committee in its General Recommendation No. 19 dealing with violence against women has stated that poverty and unemployment increase opportunities for trafficking in women. The Committee has also stated that, “in addition to established forms of trafficking there are new forms of sexual exploitation, such as sex tourism, the recruitment of domestic labour from developing countries to work in developed countries, and organized marriages between women from developing countries and foreign nationals. These practices are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity.”

Optional Protocol

Under the Optional Protocol to the Convention, the Committee on the Elimination of Discrimination against Women is authorized to receive complaints from individuals claiming to be victims of violations of rights contained in the Convention. The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women includes the following communication and inquiry procedures.

The Communications Procedure

Gives individuals and groups of women the right to complain to the Committee on the Elimination of Discrimination against Women about violations of the Convention. This procedure is known as “the communications procedure.” United Nations communications procedures provide the right to petition or the right to complain about violations of rights. Under all procedures, the complaint must be in writing.

The Inquiry Procedure

It enables the Committee to conduct inquiries into grave or systematic abuse of women's human rights in countries that have become party to the Optional Protocol. Known as an inquiry procedure, this capacity is found in article 8 of the Optional Protocol.

The optional protocol includes an inquiry procedure, as well as a complaints procedure. An inquiry procedure enables the Committee to conduct inquiries into serious and systematic abuses of women's human rights in countries that become States parties to the Optional Protocol. It is modelled on an existing human rights inquiry procedure, article 20 of the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The inquiry procedure:

- ▶ Allows investigation of substantial abuses of women's human rights by an international body of experts
- ▶ Is useful where individual communications fail to reflect the systemic nature of widespread violations of women's rights
- ▶ Allows widespread violations to be investigated where individuals or groups may be unable to make communications (for practical reasons or because of fear of reprisals)
- ▶ Gives the Committee an opportunity to make recommendations regarding the structural causes of violations
- ▶ Allows the Committee to address a broad range of issues in a particular country.

Appendix 4.2 Convention on the Elimination of All Forms of Discrimination against Women (Full Text)

G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981.

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article I

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II**Article 7**

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III**Article 10**

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- (g) The same Opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

- (a) To participate in the elaboration and implementation of development planning at all levels;
- (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
- (c) To benefit directly from social security programmes;
- (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
- (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
- (f) To participate in all community activities;
- (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV**Article 15**

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.
6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.
7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.
8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.
9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:
 - (a) Within one year after the entry into force for the State concerned;
 - (b) Thereafter at least every four years and further whenever the Committee so requests.
2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.
2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general Recommendations based on the examination of reports and information received from the States Parties. Such suggestions and General Recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.
2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI**Article 23**

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- (a) In the legislation of a State Party; or
- (b) In any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

1. The present Convention shall be open for signature by all States.
2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.
3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

Appendix 4.3 Optional Protocol to the Convention on the Elimination of Discrimination against Women

Adopted by General Assembly resolution A/54/4 on 6 October 1999 and opened for signature on 10 December 1999, Human Rights Day entry into force 22 December 2000

The States Parties to the present Protocol,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Also noting that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Recalling that the International Covenants on Human Rights Resolution 2200 A (XXI), annex. And other international human rights instruments prohibit discrimination on the basis of sex,

Also recalling the Convention on the Elimination of All Forms of Discrimination against Women (“the Convention”), in which the States Parties thereto condemn discrimination against women in all its forms and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women,

Reaffirming their determination to ensure the full and equal enjoyment by women of all human rights and fundamental freedoms and to take effective action to prevent violations of these rights and freedoms,

Have agreed as follows:

Article 1

A State Party to the present Protocol (“State Party”) recognizes the competence of the Committee on the Elimination of Discrimination against Women (“the Committee”) to receive and consider communications submitted in accordance with article 2.

Article 2

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

Article 3

Communications shall be in writing and shall not be anonymous. No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to the present Protocol.

Article 4

1. The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.

2. The Committee shall declare a communication inadmissible where:

- (a) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
- (b) It is incompatible with the provisions of the Convention;
- (c) It is manifestly ill-founded or not sufficiently substantiated;
- (d) It is an abuse of the right to submit a communication;
- (e) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

Article 5

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.
2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

Article 6

1. Unless the Committee considers a communication inadmissible without reference to the State Party concerned, and provided that the individual or individuals consent to the disclosure of their identity to that State Party, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State Party concerned.
2. Within six months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party.

Article 7

1. The Committee shall consider communications received under the present Protocol in the light of all information made available to it by or on behalf of individuals or groups of individuals and by the State Party concerned, provided that this information is transmitted to the parties concerned.
2. The Committee shall hold closed meetings when examining communications under the present Protocol.
3. After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned.
4. The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.
5. The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under article 18 of the Convention.

Article 8

1. If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.
2. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.
3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.
4. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.
5. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

Article 9

1. The Committee may invite the State Party concerned to include in its report under article 18 of the Convention details of any measures taken in response to an inquiry conducted under article 8 of the present Protocol.
2. The Committee may, if necessary, after the end of the period of six months referred to in article 8.4, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

Article 10

1. Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 8 and 9.
2. Any State Party having made a declaration in accordance with paragraph 1 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General.

Article 11

A State Party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to ill treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.

Article 12

The Committee shall include in its annual report under article 21 of the Convention a summary of its activities under the present Protocol.

Article 13

Each State Party undertakes to make widely known and to give publicity to the Convention and the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular, on matters involving that State Party.

Article 14

The Committee shall develop its own rules of procedure to be followed when exercising the functions conferred on it by the present Protocol.

Article 15

1. The present Protocol shall be open for signature by any State that has signed, ratified or acceded to the Convention.
2. The present Protocol shall be subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 16

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 17

No reservations to the present Protocol shall be permitted.

Article 18

1. Any State Party may propose an amendment to the present Protocol and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify her or him whether they favour a conference of States Parties for the purpose of considering and voting on the proposal. In the event that at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 19

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect six months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 or any inquiry initiated under article 8 before the effective date of denunciation.

Article 20

The Secretary-General of the United Nations shall inform all States of:

- (a) Signatures, ratifications and accessions under the present Protocol;
- (b) The date of entry into force of the present Protocol and of any amendment under article 18;
- (c) Any denunciation under article 19.

Article 21

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

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 25 of the Convention.

Appendix 4.4 Summary of the International Covenant on Economic, Social and Cultural Rights

Overview

The Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by UN General Assembly on December 16, 1966 and entered into force on January 3, 1976. As of April 18, 2008, 115 States have become parties to the Covenant (5 States are remaining signatories).

Unlike civil and political rights, economic, social and cultural rights are often viewed with “suspicion, caution and skepticism,” and at times even “treated with an air of triviality.” In the human rights field, economic, social and cultural rights are most often accorded secondary status by governments and NGOs.

However, the economic, social and cultural rights are an indivisible part of human rights. First, ESC rights have intrinsic value. They create the condition for enhancing a person’s capability by eradicating deprivation. They expand the freedom to lead a life that we value. The potentialities of the human person may be expressed through civil and political rights but the unfolding of these potentialities requires adequate social and economic circumstances.

The concept of human dignity is the foundation for civil and political and economic, social and cultural rights. These rights can neither be given nor taken away. Human dignity is denied when civil and political rights and economic, social and cultural rights are not guaranteed. Two common elements mediate both sets of rights - security and equality. Security of the person includes socio-economic security and equality before law encompasses equality of opportunities.

The development of international human rights law has shown the indivisibility of the civil, political and economic, social and cultural rights. For example, the Convention on the Elimination of All Forms of Discriminations against Women and the Convention on the Rights of the Child incorporate protection of both sets of rights.

Violations of Economic, Social and Cultural Rights

The notion of violation applied vigorously to civil and political rights is normally not used regarding economic, social and cultural rights. The Committee on Economic, Social and Cultural Rights has developed the concept of “minimum core obligations.” The Committee developed this concept mainly to refute the argument that lack of resources hinders fulfillment of obligations. The Committee has stated that every State has a minimum core obligation to satisfy minimum essential levels of each of the right of the Covenant. The Committee has clarified that a State party “in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is prima facie, failing to discharge its obligations under the Covenant.”

Thus, it can be construed that failure to fulfill minimum core obligations will be a violation of the rights enshrined in the Covenant. However, the notion of violation of economic, social and cultural rights needs to be further developed. A group of distinguished experts in international law have developed principles known as the Limburg Principles. These principles provide some basic framework to develop the notion of violation of economic, social and cultural rights. According to the Limburg Principles, “A failure by a State party to comply with an obligation contained in the Covenant is, under international law, a violation of the Covenant.”

In determining what amounts to a failure to comply, it must be borne in mind that the Covenant affords to a State party a margin of discretion in selecting the means for carrying out its objects, and that factors beyond its reasonable control may adversely affect its capacity to implement particular rights.

A State party will be in violation of the Covenant, *inter alia*, if:

- ▶ It fails to take a step which it is required to take by the Covenant
- ▶ It fails to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfillment of a right
- ▶ It fails to implement without delay a right which it is required by the Covenant to provide immediately
- ▶ It wilfully fails to meet a generally accepted international minimum standard of achievement, which is within its powers to meet
- ▶ It applies a limitation to a right recognized in the Covenant other than in accordance with the Covenant
- ▶ It deliberately retards or halts the progressive realization of a right, unless it is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or force majeure
- ▶ It fails to submit reports as required under the Covenant

Monitoring Mechanism

The Committee on Economic, Social and Cultural Rights was established in 1985 and is comprised of 18 members who are independent and serve in their personal capacity, not as representatives of Governments.

The primary function of the Committee is to monitor the implementation of the Covenant by States parties. Under articles 16 and 17 of the Covenant, States parties undertake to submit periodic reports to the Committee—within two years of the entry into force of the Covenant for a particular State party, and thereafter once every five years—outlining the legislative, judicial, policy and other measures which they have taken to ensure the enjoyment of the rights contained in the Covenant. States parties are also requested to provide detailed data on the degree to which the rights are implemented and areas where particular difficulties have been faced in this respect.

The Committee has assisted the reporting process by providing States parties with a detailed 22-page set of reporting guidelines specifying the types of information the Committee requires in order to monitor compliance with the Covenant effectively (available at the UN's web site: www.unhchr.ch).

The Committee can also assist Governments in fulfilling their obligations under the Covenant by issuing specific legislative, policy and other suggestions and recommendations such that economic, social and cultural rights are more effectively secured.

The Committee decided in 1988 to prepare “General Comments” on the rights and provisions contained in the Covenant with a view to assisting States parties in fulfilling their reporting obligations and to provide greater interpretative clarity as to the intent, meaning and content of the Covenant. The General Comments can be found on the UN's web site (www.unhchr.ch).

The Committee was the first treaty body to provide NGOs with the opportunity to submit written statements and make oral submissions dealing with issues relating to the enjoyment or non-enjoyment of the rights contained in the ICESCR in specific countries.

Provisions

Articles 2(2) and 3: Non-discrimination

Article 2 (2) and Article 3 deal with the non-discrimination aspect. Article 2 (2) is similar to other instruments in stating that the rights should be enjoyed without discrimination on the grounds of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Article 3, on the other hand is more specific. It provides for the “equal right of men and women to the enjoyment of rights...set forth in the Covenant.”

The concept of 'progressive realization' is not applicable to the non-discrimination clause and the obligation to ensure equal rights of men and women. The obligation is to ensure it immediately and not progressively.

The obligation to ensure the equal rights of men and women includes affirmative action to eliminate conditions that contribute to discrimination.

The Committee has followed the practice that discrimination is not restricted to those grounds identified under the Covenant and includes discrimination based on age, health status, or disability. The non-discriminatory clause of the Covenant covers discriminatory acts of both public authorities and private individuals.

Article 4: Limitations

Article 4, of the Covenant deals with the limitation clause. The ICESCR does not recognize any particular right to be non-derogable in the manner it is done under the ICCPR. However, Article 4, states that limitations imposed on the enjoyment of rights should be “determined by law” and should be done solely for the purpose of “promoting the general welfare in a democratic society.”

Article 2 (1): Obligation of States

Article 2 (1) of the Covenant deals with the obligation of States parties under the Covenant. According to the Committee on Economic, Social and Cultural Rights, “Article 2 is of particular importance to a full understanding of the Covenant and must be seen as having a dynamic relationship with all of the other provisions of the Covenant. It describes the nature of the general legal obligations undertaken by States parties to the Covenant.”

Article 2 (1) of the Covenant states that,

“Each State party to the present Covenant undertakes to take steps, individually and through international assistance and co - operation, especially economic and technical, to the maximum of available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

Thus, obligations of States parties are expressed through the use of terms “undertakes to take steps,” “to the maximum available resources,” “achieving progressively the full realization,” and “by all appropriate means including particularly the adoption of legislative measures.”

In contrast, these terms are not used in the civil and political rights Covenant. The Article 2 (1) of the Covenant on Civil and Political Rights states that, “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals... the rights recognized in the present Covenant...” It is normally argued that the Covenant on Economic, Social and Cultural Rights does not belong to the same genre as that of the civil and political rights. Hence, it is important to understand the meaning of terms used in Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) to comprehend the obligations under the Covenant.

Obligation of Conduct and Obligation of Result

The Committee on Economic, Social and Cultural Rights has made it clear that the obligations of States parties include both obligation of conduct and obligation of result. The International Law Commission has formulated these two categories and the Committee has referred to it to elaborate on the obligations of States parties under the Covenant.

Obligation of conduct means that, a State has to undertake a specific step. For example, prohibiting forced labour is an act of conduct. Obligation of result means attaining a particular outcome through active implementation of policies and programs. However, conduct and result cannot be separated. The concept of obligation of conduct and result provides an effective tool for monitoring the implementation of economic, social and cultural rights. It also shows that realization of economic, social and cultural rights is a dynamic process involving both immediate and long-term intervention.

Meaning of “Undertakes to Take Steps”

The use of the term “Each State Party . . . undertakes to take steps,” in Article 2 (1) of the ICESCR is normally construed as implying progressive implementation of the Covenant. However, it should be noted that a similar term is used in Article 2 (2) of the ICCPR and in Article 2 (1) of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Thus, the term cannot be construed to imply progressive implementation. In fact, the Committee on Economic, Social and Cultural Rights has clarified that, “while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant’s entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.”

Meaning of “By All Appropriate Means, Including Particularly the Adoption of Legislative Measures”

The Committee on Economic, Social and Cultural Rights has recognized that States must decide the appropriate means and it may depend on the right that is being implemented. However, the Committee has stated that, “States parties reports should indicate not only the measures that have been taken but also the basis on which they are considered to be the most ‘appropriate’ under the circumstances.”

It is clear from the interpretation given by the Committee that the term “all appropriate means” is linked to both conduct and result. A State party cannot avoid its obligations by merely saying that its policies are aimed at economic development and poverty or illiteracy will be eradicated eventually.

As for the term “adoption of legislative measures,” the Committee has stated that it by no means exhausts the obligation of State parties. A mere existence of laws is not sufficient to prove that a

State party is carrying out its obligation under the Covenant. For example, while considering the Canadian report, a member of the Committee commented that, “When reports focused too narrowly on legal aspects, the suspicion naturally arose that there might be some gap between law and practice.”

In addition to laws, the Committee has also stressed the need for “provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justifiable.”

Meaning of “Achieving Progressively”

It is normally assumed that due to the resources required for the realization of economic, social and cultural rights, they are incapable of immediate implementation. On the other hand, the Committee has stated that, “The fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the *raison d'être*, of the Covenant that is to establish clear obligations for States parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal.”

The Committee has made it clear that “progressive realization” is not an escape clause. Such an interpretation provides activists an important conceptual perspective against the notion of “gradualism” in economic policies. It means that ensuring social welfare is a gradual long - term process where the growth of the economy will percolate to everyone. However, most often growth becomes an end in itself whether it is socially desirable or not. The position of the Committee seems to be that the process of economic growth should be combined with the realization of human rights.

The Committee has also concluded that “progressive realization” includes not only continuous improvement but also the obligation to ensure that there are no regressive developments. The Committee has stated that, “any deliberately retrogressive measures . . . would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum of available resources.”

Meaning of “To the Maximum of Its Available Resources”

The notion that economic resources are essential for the implementation of economic, social and cultural rights has been the major justification for considering it secondary to civil and political rights. The Committee has acknowledged the importance of resources in fulfilling the rights but does not consider that resource availability as an escape clause. For example, it has stated that “in cases where significant numbers of people live in poverty and hunger, it is for the State to show that its failure to provide for the persons concerned was beyond its control.”

The Committee developed the idea of “minimum core obligations” to refute the argument that lack of resources hinders fulfillment of obligations. The Committee has observed that every State has a minimum core obligation to satisfy minimum essential levels of each of the right of the Covenant. It has clarified that a State party “in which a significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is *prima facie*, failing to discharge its obligations under the Covenant.... In order for a

State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.”

The Committee has made it clear that, “even where the available resources are demonstrably inadequate, the obligations remain for a State party to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances.” In addition, the Committee has also stated that, “even in times of severe resource constraints . . . vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programs.”

Optional Protocol

The Optional Protocol to the ICESCR was approved by the United Nations Human Rights Council on June 18, 2008 . It will provide a mechanism for the submission of individual complaints to the Committee on Economic, Social and Cultural Rights if complainants are unable to obtain redress at the national level.

Rights under the Covenant

- ▶ Article 6: The right to work
- ▶ Article 7: Just and favourable conditions of work
- ▶ Article 8: The right to form and join trade unions
- ▶ Article 9: The right to social security
- ▶ Article 10: Protection of the family
- ▶ Article 11: The right to an adequate standard of living (food, housing)
- ▶ Article 12: The right to health
- ▶ Article 13: The right to education

Appendix 4.5 International Covenant on Economic, Social and Cultural Rights

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

PREAMBLE

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

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

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

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

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

Agree upon the following articles:

PART I

Article 1

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

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its

available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

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

Article 4

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

Article 5

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

PART III

Article 6

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

Article 7

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

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

Article 8

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

- (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
- (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

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

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

Article 9

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

Article 10

The States Parties to the present Covenant recognize that:

- 1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is

responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

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

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

Article 11

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

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

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

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

Article 12

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

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

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

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

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

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

Article 13

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

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

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

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

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

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

Article 15

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

- (a) To take part in cultural life;
- (b) To enjoy the benefits of scientific progress and its applications;

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

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.
2.
 - (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;
 - (b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts thereof, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts thereof, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.
2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.
3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities.

These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

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

Article 20

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

Article 21

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

Article 22

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

Article 23

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

Article 24

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

Article 25

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

PART V**Article 26**

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

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

Article 28

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

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

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

- (a) Signatures, ratifications and accessions under article 26;
- (b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

Appendix 4.6 CESCR General Comment 10 – The Role of National Human Rights Institutions in the Protection of Economic, Social and Cultural Rights

1. Article 2 (1) of the Covenant obligates each State party “to take steps ... with a view to achieving progressively the full realization of the [Covenant] rights ... by all appropriate means.” The Committee notes that one such means, through which important steps can be taken, is the work of national institutions for the promotion and protection of human rights. In recent years there has been a proliferation of these institutions and the trend has been strongly encouraged by the General Assembly and the Commission on Human Rights. The Office of the High Commissioner for Human Rights has established a major programme to assist and encourage States in relation to national institutions.
2. These institutions range from national human rights commissions through Ombudsman offices, public interest or other human rights “advocates”, to *defenseurs du peuple* and *defensores del pueblo*. In many cases, the institution has been established by the Government, enjoys an important degree of autonomy from the executive and the legislature, takes full account of international human rights standards which are applicable to the country concerned, and is mandated to perform various activities designed to promote and protect human rights. Such institutions have been established in States with widely differing legal cultures and regardless of their economic situation.
3. The Committee notes that national institutions have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights. Unfortunately, this role has too often either not been accorded to the institution or has been neglected or given a low priority by it. It is therefore essential that full attention be given to economic, social and cultural rights in all of the relevant activities of these institutions. The following list is indicative of the types of activities that can be, and in some instances already have been, undertaken by national institutions in relation to these rights:
 - (a) The promotion of educational and information programmes designed to enhance awareness and understanding of economic, social and cultural rights, both within the population at large and among particular groups such as the public service, the judiciary, the private sector and the labour movement;
 - (b) The scrutinizing of existing laws and administrative acts, as well as draft bills and other proposals, to ensure that they are consistent with the requirements of the International Covenant on Economic, Social and Cultural Rights;
 - (c) Providing technical advice, or undertaking surveys in relation to economic, social and cultural rights, including at the request of the public authorities or other appropriate agencies;
 - (d) The identification of national level benchmarks against which the realization of Covenant obligations can be measured;
 - (e) Conducting research and inquiries designed to ascertain the extent to which particular economic, social and cultural rights are being realized, either within the State as a whole or in areas or in relation to communities of particular vulnerability;
 - (f) Monitoring compliance with specific rights recognized under the Covenant and providing reports thereon to the public authorities and civil society; and

(g) Examining complaints alleging infringements of applicable economic, social and cultural rights standards within the State.

4. The Committee calls upon States parties to ensure that the mandates accorded to all national human rights institutions include appropriate attention to economic, social and cultural rights and requests States parties to include details of both the mandates and the principal relevant activities of such institutions in their reports submitted to the Committee.

Appendix 4.7 General Comment No. 16 (2005) – The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights

Introduction

1. The equal right of men and women to the enjoyment of all human rights is one of the fundamental principles recognized under international law and enshrined in the main international human rights instruments. The International Covenant on Economic, Social and Cultural Rights (ICESCR) protects human rights that are fundamental to the dignity of every person. In particular, article 3 of this Covenant provides for the equal right of men and women to the enjoyment of the rights it articulates. This provision is founded on Article 1, paragraph 3, of the United Nations Charter and article 2 of the Universal Declaration of Human Rights. Except for the reference to ICESCR, it is identical to article 3 of the International Covenant on Civil and Political Rights (ICCPR), which was drafted at the same time.
2. The *travaux préparatoires* state that article 3 was included in the Covenant, as well as in ICCPR, to indicate that beyond a prohibition of discrimination, “the same rights should be expressly recognized for men and women on an equal footing and suitable measures should be taken to ensure that women had the opportunity to exercise their rights Moreover, even if article 3 overlapped with article 2, paragraph 2, it was still necessary to reaffirm the equality rights between men and women. That fundamental principle, which was enshrined in the Charter of the United Nations, must be constantly emphasized, especially as there were still many prejudices preventing its full application”.¹ Unlike article 26 of ICCPR, articles 3 and 2, paragraph 2, of ICESCR are not stand-alone provisions, but should be read in conjunction with each specific right guaranteed under part III of the Covenant.
3. Article 2, paragraph 2, of ICESCR provides for a guarantee of non-discrimination on the basis of sex among other grounds. This provision, and the guarantee of equal enjoyment of rights by men and women in article 3, are integrally related and mutually reinforcing. Moreover, the elimination of discrimination is fundamental to the enjoyment of economic, social and cultural rights on a basis of equality.
4. The Committee on Economic, Social and Cultural Rights (CESCR) has taken particular note of factors negatively affecting the equal right of men and women to the enjoyment of economic, social and cultural rights in many of its general comments, including those on the right to adequate housing,² the right to adequate food,³ the right to education,⁴ the right to the highest attainable standard of health,⁵ and the right to water.⁶ The Committee also routinely requests information on the equal enjoyment by men and women of the rights guaranteed under the Covenant in its list of issues in relation to States parties’ reports and during its dialogue with States parties.
5. Women are often denied equal enjoyment of their human rights, in particular by virtue of the lesser status ascribed to them by tradition and custom, or as a result of overt or covert discrimination. Many women experience distinct forms of discrimination due to the intersection of sex with such factors as race, colour, language, religion, political and other opinion, national or social origin, property, birth, or other status, such as age, ethnicity, disability, marital, refugee or migrant status, resulting in compounded disadvantage.⁷

I. CONCEPTUAL FRAMEWORK

A. Equality

6. The essence of article 3 of ICESCR is that the rights set forth in the Covenant are to be enjoyed by men and women on a basis of equality, a concept that carries substantive meaning. While expressions of formal equality may be found in constitutional provisions, legislation and policies of Governments, article 3 also mandates the equal enjoyment of the rights in the Covenant for men and women in practice.

7. The enjoyment of human rights on the basis of equality between men and women must be understood comprehensively. Guarantees of non-discrimination and equality in international human rights treaties mandate both de facto and de jure equality. De jure (or formal) equality and de facto (or substantive) equality are different but interconnected concepts. Formal equality assumes that equality is achieved if a law or policy treats men and women in a neutral manner. Substantive equality is concerned, in addition, with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience.

8. Substantive equality for men and women will not be achieved simply through the enactment of laws or the adoption of policies that are, prima facie, gender-neutral. In implementing article 3, States parties should take into account that such laws, policies and practice can fail to address or even perpetuate inequality between men and women because they do not take account of existing economic, social and cultural inequalities, particularly those experienced by women.

9. According to article 3, States parties must respect the principle of equality in and before the law. The principle of equality in the law must be respected by the legislature when adopting laws, by ensuring that those laws further equal enjoyment of economic, social and cultural rights by men and women. The principle of equality before the law must be respected by administrative agencies, and courts and tribunals, and implies that those authorities must apply the law equally to men and women.

B. Non-discrimination

10. The principle of non-discrimination is the corollary of the principle of equality. Subject to what is stated in paragraph 15 below on temporary special measures, it prohibits differential treatment of a person or group of persons based on his/her or their particular status or situation, such as race, colour, sex, language, religion, political and other opinion, national or social origin, property, birth, or other status, such as age, ethnicity, disability, marital, refugee or migrant status.

11. Discrimination against women is “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”⁸ Discrimination on the basis of sex may be based on the differential treatment of women because of their biology, such as refusal to hire women because they could become pregnant; or stereotypical assumptions, such as tracking women into low-level jobs on the assumption that they are unwilling to commit as much time to their work as men.

12. Direct discrimination occurs when a difference in treatment relies directly and explicitly on distinctions based exclusively on sex and characteristics of men or of women, which cannot be justified objectively.

13. Indirect discrimination occurs when a law, policy or programme does not appear to be discriminatory, but has a discriminatory effect when implemented. This can occur, for example, when women are disadvantaged compared to men with respect to the enjoyment of a particular opportunity or benefit due to pre-existing inequalities. Applying a gender-neutral law may leave the existing inequality in place, or exacerbate it.

14. Gender affects the equal right of men and women to the enjoyment of their rights. Gender refers to cultural expectations and assumptions about the behaviour, attitudes, personality traits, and physical and intellectual capacities of men and women, based solely on their identity as men or women. Gender-based assumptions and expectations generally place women at a disadvantage with respect to substantive enjoyment of rights, such as freedom to act and to be recognized as autonomous, fully capable adults, to participate fully in economic, social and political development, and to make decisions concerning their circumstances and conditions. Gender-based assumptions about economic, social and cultural roles preclude the sharing of responsibility between men and women in all spheres that is necessary to equality.

C. Temporary special measures

15. The principles of equality and non-discrimination, by themselves, are not always sufficient to guarantee true equality. Temporary special measures may sometimes be needed in order to bring disadvantaged or marginalized persons or groups of persons to the same substantive level as others. Temporary special measures aim at realizing not only *de jure* or formal equality, but also *de facto* or substantive equality for men and women. However, the application of the principle of equality will sometimes require that States parties take measures in favour of women in order to attenuate or suppress conditions that perpetuate discrimination. As long as these measures are necessary to redress *de facto* discrimination and are terminated when *de facto* equality is achieved, such differentiation is legitimate.⁹

II. STATES PARTIES' OBLIGATIONS

A. General legal obligations

16. The equal right of men and women to the enjoyment of economic, social and cultural rights is a mandatory and immediate obligation of States parties.¹⁰

17. The equal right of men and women to the enjoyment of economic, social and cultural rights, like all human rights, imposes three levels of obligations on States parties - the obligation to respect, to protect and to fulfill. The obligation to fulfill further contains duties to provide, promote and facilitate.¹¹ Article 3 sets a non-derogable standard for compliance with the obligations of States parties as set out in articles 6 through 15 of ICESCR.

B. Specific legal obligations

1. Obligation to respect

18. The obligation to respect requires States parties to refrain from discriminatory actions that directly or indirectly result in the denial of the equal right of men and women to their enjoyment of

economic, social and cultural rights. Respecting the right obliges States parties not to adopt, and to repeal laws and rescind, policies, administrative measures and programmes that do not conform with the right protected by article 3. In particular, it is incumbent upon States parties to take into account the effect of apparently gender-neutral laws, policies and programs and to consider whether they could result in a negative impact on the ability of men and women to enjoy their human rights on a basis of equality.

2. Obligation to protect

19. The obligation to protect requires States parties to take steps aimed directly at the elimination of prejudices, customary and all other practices that perpetuate the notion of inferiority or superiority of either of the sexes, and stereotyped roles for men and women. States parties' obligation to protect under article 3 of ICESCR includes, inter alia, the respect and adoption of constitutional and legislative provisions on the equal right of men and women to enjoy all human rights and the prohibition of discrimination of any kind; the adoption of legislation to eliminate discrimination and to prevent third parties from interfering directly or indirectly with the enjoyment of this right; the adoption of administrative measures and programs, as well as the establishment of public institutions, agencies and programs to protect women against discrimination.

20. States parties have an obligation to monitor and regulate the conduct of non-State actors to ensure that they do not violate the equal right of men and women to enjoy economic, social and cultural rights. This obligation applies, for example, in cases where public services have been partially or fully privatized.

3. Obligation to fulfill

21. The obligation to fulfill requires States parties to take steps to ensure that in practice, men and women enjoy their economic, social and cultural rights on a basis of equality. Such steps should include:

- ▶ To make available and accessible appropriate remedies, such as compensation, reparation, restitution, rehabilitation, guarantees of non-repetition, declarations, public apologies, educational programmes and prevention programmes
- ▶ To establish appropriate venues for redress such as courts and tribunals or administrative mechanisms that are accessible to all on the basis of equality, including the poorest and most disadvantaged and marginalized men and women
- ▶ To develop monitoring mechanisms to ensure that the implementation of laws and policies aimed at promoting the equal enjoyment of economic, social and cultural rights by men and women do not have unintended adverse effects on disadvantaged or marginalized individuals or groups, particularly women and girls
- ▶ To design and implement policies and programmes to give long-term effect to the economic, social and cultural rights of both men and women on the basis of equality. These may include the adoption of temporary special measures to accelerate women's equal enjoyment of their rights, gender audits, and gender-specific allocation of resources
- ▶ To conduct human rights education and training programmes for judges and public officials

- ▶ To conduct awareness-raising and training programmes on equality for workers involved in the realization of economic, social and cultural rights at the grass-roots level
- ▶ To integrate, in formal and non-formal education, the principle of the equal right of men and women to the enjoyment of economic, social and cultural rights, and to promote equal participation of men and women, boys and girls, in schools and other education programmes
- ▶ To promote equal representation of men and women in public office and decision-making bodies
- ▶ To promote equal participation of men and women in development planning, decision-making and in the benefits of development and all programmes related to the realization of economic, social and cultural rights

C. Specific examples of States parties' obligations

22. Article 3 is a cross-cutting obligation and applies to all the rights contained in articles 6 to 15 of the Covenant. It requires addressing gender-based social and cultural prejudices, providing for equality in the allocation of resources, and promoting the sharing of responsibilities in the family, community and public life. The examples provided in the following paragraphs may be taken as guidance on the ways in which article 3 applies to other rights in the Covenant, but are not intended to be exhaustive.

23. Article 6, paragraph 1, of the Covenant requires States parties to safeguard the right of everyone to the opportunity to gain a living by work which is freely chosen or accepted and to take the necessary steps to achieve the full realization of this right. Implementing article 3, in relation to article 6, requires *inter alia*, that in law and in practice, men and women have equal access to jobs at all levels and all occupations and that vocational training and guidance programmes, in both the public and private sectors, provide men and women with the skills, information and knowledge necessary for them to benefit equally from the right to work.

24. Article 7 (a) of the Covenant requires States parties to recognize the right of everyone to enjoy just and favourable conditions of work and to ensure, among other things, fair wages and equal pay for work of equal value. Article 3, in relation to article 7 requires, *inter alia*, that the State party identify and eliminate the underlying causes of pay differentials, such as gender-biased job evaluation or the perception that productivity differences between men and women exist. Furthermore, the State party should monitor compliance by the private sector with national legislation on working conditions through an effectively functioning labour inspectorate. The State party should adopt legislation that prescribes equal consideration in promotion, non-wage compensation and equal opportunity and support for vocational or professional development in the workplace. Finally, the State party should reduce the constraints faced by men and women in reconciling professional and family responsibilities by promoting adequate policies for childcare and care of dependent family members.

25. Article 8, paragraph 1 (a), of the Covenant requires States parties to ensure the right of everyone to form and join trade unions of his or her choice. Article 3, in relation to article 8, requires allowing men and women to organize and join workers' associations that address their specific concerns. In this regard, particular attention should be given to domestic workers, rural women, women working in female-dominated industries and women working at home, who are often deprived of this right.

26. Article 9 of the Covenant requires that States parties recognize the right of everyone to social security, including social insurance, and to equal access to social services. Implementing article 3, in relation to article 9, requires, inter alia, equalizing the compulsory retirement age for both men and women; ensuring that women receive the equal benefit of public and private pension schemes; and guaranteeing adequate maternity leave for women, paternity leave for men, and parental leave for both men and women.

27. Article 10, paragraph 1, of the Covenant requires that States parties recognize that the widest possible protection and assistance should be accorded to the family, and that marriage must be entered into with the free consent of the intending spouses. Implementing article 3, in relation to article 10, requires States parties, inter alia, to provide victims of domestic violence, who are primarily female, with access to safe housing, remedies and redress for physical, mental and emotional damage; to ensure that men and women have an equal right to choose if, whom and when to marry - in particular, the legal age of marriage for men and women should be the same, and boys and girls should be protected equally from practices that promote child marriage, marriage by proxy, or coercion; and to ensure that women have equal rights to marital property and inheritance upon their husband's death. Gender-based violence is a form of discrimination that inhibits the ability to enjoy rights and freedoms, including economic, social and cultural rights, on a basis of equality. States parties must take appropriate measures to eliminate violence against men and women and act with due diligence to prevent, investigate, mediate, punish and redress acts of violence against them by private actors.

28. Article 11 of the Covenant requires States parties to recognize the right of everyone to an adequate standard of living for him/herself and his/her family, including adequate housing (para. 1) and adequate food (para. 2). Implementing article 3, in relation to article 11, paragraph 1, requires that women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so. Implementing article 3, in relation to article 11, paragraph 2, also requires States parties, inter alia, to ensure that women have access to or control over means of food production, and actively to address customary practices under which women are not allowed to eat until the men are fully fed, or are only allowed less nutritious food.¹²

29. Article 12 of the Covenant requires States parties to undertake steps towards the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The implementation of article 3, in relation to article 12, requires at a minimum the removal of legal and other obstacles that prevent men and women from accessing and benefiting from health care on a basis of equality. This includes, inter alia, addressing the ways in which gender roles affect access to determinants of health, such as water and food; the removal of legal restrictions on reproductive health provisions; the prohibition of female genital mutilation; and the provision of adequate training for health-care workers to deal with women's health issues.¹³

30. Article 13, paragraph 1, of the Covenant requires States parties to recognize the right of everyone to education and in paragraph 2 (a) stipulates that primary education shall be compulsory and available free to all. Implementing article 3, in relation to article 13, requires, inter alia, the adoption of legislation and policies to ensure the same admission criteria for boys and girls at all levels of education. States parties should ensure, in particular through information and awareness-raising campaigns, that families desist from giving preferential treatment to boys when sending their children to school, and that curricula promote equality and non-discrimination. States parties must create favourable conditions to ensure the safety of children, in particular girls, on their way to and from school.

31. Article 15, paragraph 1 (a) and (b), of the Covenant require States parties to recognize the right of everyone to take part in cultural life and to enjoy the benefits of scientific progress. Implementing article 3, in relation to article 15, paragraph 1 (a) and (b), requires, inter alia, overcoming institutional barriers and other obstacles, such as those based on cultural and religious traditions, which prevent women from fully participating in cultural life, science education and scientific research, and directing resources to scientific research relating to the health and economic needs of women on an equal basis with those of men.

III. IMPLEMENTATION AT THE NATIONAL LEVEL

A. Policies and strategies

32. The most appropriate ways and means of implementing the right under article 3 of the Covenant will vary from one State party to another. Every State party has a margin of discretion in adopting appropriate measures in complying with its primary and immediate obligation to ensure the equal right of men and women to the enjoyment of all their economic, social and cultural rights. Among other things, States parties must, integrate into national plans of action for human rights appropriate strategies to ensure the equal right of men and women to the enjoyment of economic, social and cultural rights.

33. These strategies should be based on the systematic identification of policies, programmes and activities relevant to the situation and context within the State, as derived from the normative content of article 3 of the Covenant and spelled out in relation to the levels and nature of States parties' obligations referred to in paragraphs 16 to 21 above. The strategies should give particular attention to the elimination of discrimination in the enjoyment of economic, social and cultural rights.

34. States parties should periodically review existing legislation, policies, strategies and programmes in relation to economic, social and cultural rights, and adopt any necessary changes to ensure that they are consonant with their obligations under article 3 of the Covenant.

35. The adoption of temporary special measures may be necessary to accelerate the equal enjoyment by women of all economic, social and cultural rights and to improve the de facto position of women.¹⁴ Temporary special measures should be distinguished from permanent policies and strategies undertaken to achieve equality of men and women.

36. States parties are encouraged to adopt temporary special measures to accelerate the achievement of equality between men and women in the enjoyment of the rights under the Covenant. Such measures are not to be considered discriminatory in themselves as they are grounded in the State's obligation to eliminate disadvantage caused by past and current discriminatory laws, traditions and practices. The nature, duration and application of such measures should be designed with reference to the specific issue and context, and should be adjusted as circumstances require. The results of such measures should be monitored with a view to being discontinued when the objectives for which they are undertaken have been achieved.

37. The right of individuals and groups of individuals to participate in decision-making processes that may affect their development must be an integral component of any policy, programme or activity developed to discharge governmental obligations under article 3 of the Covenant.

B. Remedies and accountability

38. National policies and strategies should provide for the establishment of effective mechanisms and institutions where they do not exist, including administrative authorities, ombudsmen and other national human rights institutions, courts and tribunals. These institutions should investigate and address alleged violations relating to article 3 and provide remedies for such violations. States parties, for their part, should ensure that such remedies are effectively implemented.

C. Indicators and benchmarks

39. National policies and strategies should identify appropriate indicators and benchmarks on the right to equal enjoyment by men and women of economic, social and cultural rights in order to effectively monitor the implementation by the State party of its obligations under the Covenant in this regard. Disaggregated statistics, provided within specific time frames, are necessary to measure the progressive realization of economic, social and cultural rights by men and women, where appropriate.

IV. VIOLATIONS

40. States parties must fulfill their immediate and primary obligation to ensure the equal right of men and women to the enjoyment of economic, social and cultural rights.

41. The principle of equality between men and women is fundamental to the enjoyment of each of the specific rights enumerated in the Covenant. Failure to ensure formal and substantive equality in the enjoyment of any of these rights constitutes a violation of that right. Elimination of *de jure* as well as *de facto* discrimination is required for the equal enjoyment of economic, social and cultural rights. Failure to adopt, implement and monitor effects of laws, policies and programmes to eliminate *de jure* and *de facto* discrimination with respect to each of the rights enumerated in articles 6 to 15 of the Covenant constitutes a violation of those rights.

42. Violations of the rights contained in the Covenant can occur through the direct action of, failure to act or omission by States parties, or through their institutions or agencies at the national and local levels. The adoption and undertaking of any retrogressive measures that affect the equal right of men and women to the enjoyment of the all the rights set forth in the Covenant constitutes a violation of article 3.

Notes

¹ Draft International Covenants on Human Rights Report of the Third Committee.

A/53/65 (17 December 1962), para. 85.

² Committee on Economic, Social and Cultural Rights (hereinafter CESCR), General Comment No. 4 (1991): The right to adequate housing (article 11, paragraph 1 of the Covenant) para. 6; General Comment No. 7 (1997): The right to adequate housing (article 11, paragraph 1 of the Covenant): Forced evictions, para. 10.

³ CESCR, General Comment No. 12 (1999): The right to adequate food (article 11 of the Covenant), para. 26.

⁴ CESCR, General Comment No. 11 (1999): Plans for primary education (article 14 of the Covenant), para. 3; General Comment No. 13 (1999): The right to education (article 13 of the Covenant), paras. 6 (b), 31 and 32.

⁵ CESCR, General Comment No. 14 (2000): The right to the highest attainable standard of health (article 12 of the Covenant), paras. 18-22.

⁶ CESCR, General Comment No. 15 (2000): The right to water (articles 11 and 12 of the Covenant), paras. 13 and 14.

⁷ Cf. Committee on the Elimination of Racial Discrimination, General Comment XXV (2000): Gender-related dimensions of racial discrimination.

⁸ As defined in article 1 of the Convention on the Elimination of All Forms of Discrimination against Women.

⁹ However, there is one exception to this general principle: reasons specific to an individual male candidate may tilt the balance in his favour, which is to be assessed objectively, taking into account all criteria pertaining to the individual candidates. This is a requirement of the principle of proportionality.

¹⁰ CESCR, General Comment No. 3 (1990): The nature of States parties obligations (art. 2, para. 2).

¹¹ According to CESCR General Comment Nos. 12 and 13, the obligation to fulfill incorporates an obligation to facilitate and an obligation to provide. In the present General Comment, the obligation to fulfill also incorporates an obligation to promote the elimination of all forms of discrimination against women.

¹² Other examples of obligations and possible violations of article 3 in relation to article 11 (1) and (2) are further discussed in CESCR General Comment No. 12, para. 26.

¹³ CESCR General Comment No. 14. paras. 18-21.

¹⁴ Reference is made in this regard to General Recommendation No. 25 on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women adopted by the Committee on the Elimination of Discrimination against Women (CEDAW), CESCR General Comment No. 13 and the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights.

Appendix 5: Key International Instruments and UN Treaty Bodies for Women's Economic, Social and Cultural Rights

Appendix 5 contains a list of international instruments and UN treaties, including relevant General Comments and Recommendations issued by the treaty bodies, which codify the economic, social and cultural rights of women.

Universal Declaration of Human Rights

- ▶ Universal Declaration of Human Rights (UDHR)
<http://www.udhr.org/UDHR/default.htm>

General Information on UN Treaty Bodies

- ▶ United Nations Treaty Collection
<http://untreaty.un.org/>

Main UN Treaty Bodies and Relevant General Comments

- ▶ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
CEDAW is frequently portrayed as the international bill of rights for women. It is the first legally binding international document prohibiting discrimination against women and obligating governments to take steps to advance the equality of women. It draws no distinction between public and private life and does not accept culture as an excuse for discrimination. Adopted 1979; entered into force 1981. (Also known as the Women's Convention.)
<http://www2.ohchr.org/english/law/cedaw.htm>
- ▶ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (adopted 1999; entered into force 2000)
<http://www2.ohchr.org/english/law/cedaw-one.htm>
- ▶ CEDAW General Recommendation No. 2 – Reporting guidelines (1987)
<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom2>
- ▶ CEDAW General Recommendation No. 3 – Education and public information programmes (1987)
<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom3>
- ▶ CEDAW General Recommendation No. 5 – Temporary special measures (1988)
<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom5>

- ▶ CEDAW General Recommendation No. 6 – Effective national machinery and publicity (1988)
<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom6>
- ▶ CEDAW General Recommendation No. 8 – Article 8 (dealing with according the ability to women on equal terms with men and without any discrimination the opportunities to represent their Government at the international level and to participate in the work of international organizations) (1988)
<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom8>
- ▶ CEDAW General Recommendation No. 9 – Statistical data (1989)
<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom9>
- ▶ CEDAW General Recommendation No. 11 – Technical advisory services for reporting (1989)
<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom11>
- ▶ CEDAW General Recommendation No. 12 – Violence against women (1989)
<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom12>
- ▶ CEDAW General Recommendation No. 13 – Equal remuneration for work of equal value (1989)
<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom13>
- ▶ CEDAW General Recommendation No. 14 – Female circumcision (1990)
<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom14>
- ▶ CEDAW General Recommendation No. 15 – Women and AIDS (1990)
<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom15>
- ▶ CEDAW General Recommendation No. 16 – Unpaid women workers in rural and urban family enterprises (1991)
<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom16>
- ▶ CEDAW General Recommendation No. 17 – Measurement and quantification of the unremunerated domestic activities of women and their recognition in the GNP (1991)
<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom17>
- ▶ CEDAW General Recommendation No. 18 – Disabled women (1991)
<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom18>
- ▶ CEDAW General Recommendation No. 19 – Violence against women (1992)
<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>
- ▶ CEDAW General Recommendation No. 20 – Reservations (1992)
<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom20>

- ▶ CEDAW General Recommendation No. 21 – Equality in marriage and family relations (1994)
<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21>
- ▶ CEDAW General Recommendation No. 24 – Article 12: Women and health
<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>
- ▶ CEDAW General Recommendation No. 25 – Temporary special measures (2004)
[http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20\(English\).pdf](http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf)
- ▶ CEDAW General Recommendation on Article 2 – The CEDAW Committee is currently preparing a General Recommendation on CEDAW Article 2 that will focus on domestic implementation of CEDAW
[http://www.unhchr.ch/tbs/doc.nsf/0/f8e7f5ff395dd8bac125727a002dfba4/\\$FILE/N0559391.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/f8e7f5ff395dd8bac125727a002dfba4/$FILE/N0559391.pdf)
- ▶ CEDAW Country Reports and Concluding Comments
<http://www.un.org/womenwatch/daw/cedaw/reports.htm>
- ▶ International Covenant on Economic, Social and Cultural Rights (ICESCR)
This covenant declares that all people have a broad range of economic, social and cultural rights. Adopted 1966; entered into force 1976
<http://www2.ohchr.org/english/law/cescr.htm>
- ▶ CESCR General Comment No. 3 – The nature of States parties obligations (1990)
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/94bdbaf59b43a424c12563ed0052b664?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?OpenDocument)
- ▶ CESCR General Comment No. 4 – The right to adequate housing (1991)
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/469f4d91a9378221c12563ed0053547e?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/469f4d91a9378221c12563ed0053547e?OpenDocument)
- ▶ CESCR General Comment No. 5 – Persons with disabilities (1994)
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/4b0c449a9ab4ff72c12563ed0054f17d?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/4b0c449a9ab4ff72c12563ed0054f17d?OpenDocument)
- ▶ CESCR General Comment No. 6 – The economic, social and cultural rights of older persons (1995)
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/482a0aced8049067c12563ed005acf9e?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/482a0aced8049067c12563ed005acf9e?OpenDocument)
- ▶ CESCR General Comment No. 7 – The right to adequate housing: forced evictions (art. 11 (1)) (1997)
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/959f71e476284596802564c3005d8d50?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/959f71e476284596802564c3005d8d50?OpenDocument)

- ▶ CESCR General Comment No. 8 – The relationship between economic sanctions and respect for economic, social and cultural rights (1997)
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/974080d2db3ec66d802565c5003b2f57?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/974080d2db3ec66d802565c5003b2f57?OpenDocument)
- ▶ CESCR General Comment No. 9 – The domestic application of the covenant (1998)
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/4ceb75c5492497d9802566d500516036?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/4ceb75c5492497d9802566d500516036?OpenDocument)
- ▶ CESCR General Comment No. 10 – The role of national human rights institutions in the protection of economic, social and cultural rights (1998)
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/af81bf2fed39cec1802566d50052f53b?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/af81bf2fed39cec1802566d50052f53b?OpenDocument)
- ▶ CESCR General Comment No. 11 – Plans of action for primary education (art. 14) (1999)
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/59c6f685a5a919b8802567a50049d460?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/59c6f685a5a919b8802567a50049d460?OpenDocument)
- ▶ CESCR General Comment No. 12 – The right to adequate food (art. 11) (1999)
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3d02758c707031d58025677f003b73b9?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3d02758c707031d58025677f003b73b9?OpenDocument)
- ▶ CESCR General Comment No. 13 – The right to education (art. 13) (1999)
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/ae1a0b126d068e868025683c003c8b3b?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/ae1a0b126d068e868025683c003c8b3b?OpenDocument)
- ▶ CESCR General Comment No. 14 – The right to the highest attainable standard of health (art. 12) (2000)
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/40d009901358b0e2c1256915005090be?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/40d009901358b0e2c1256915005090be?OpenDocument)
- ▶ CESCR General Comment No. 15 – The right to water (arts. 11 and 12) (2002)
<http://daccessdds.un.org/doc/UNDOC/GEN/G03/402/29/PDF/G0340229.pdf?OpenElement>
- ▶ CESCR General Comment No. 16 – The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the covenant) (2005)
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.2005.4.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.2005.4.En?OpenDocument)
- ▶ CESCR General Comment No. 17 – 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 (art. 15 (1) (c)) (2005)
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.GC.17.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.GC.17.En?OpenDocument)
- ▶ CESCR General Comment No. 18 – The right to work (2005)
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.GC.18.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.GC.18.En?OpenDocument)

- ▶ CESCR General Comment No. 19 – The right to social security (art. 9) (2007)
<http://daccessdds.un.org/doc/UNDOC/GEN/G08/403/97/PDF/G0840397.pdf?OpenElement>
- ▶ International Covenant on Civil and Political Rights (ICCPR)
This Covenant is articulated on the Universal Declaration of Human Rights. It defends the right to life and stipulates that no individual can be subjected to torture, enslavement, forced labour and arbitrary detention or be restricted from such freedoms as movement. Adopted 1966; entered into force 1976.
<http://www2.ohchr.org/english/law/ccpr.htm>
- ▶ CCPR General Comment No. 18 – Non-discrimination (1989)
<http://www.unhchr.ch/tbs/doc.nsf/0/3888b0541f8501c9c12563ed004b8d0e?OpenDocument>
- ▶ CCPR General Comment No. 28 – Equality of rights between men and women (2000)
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/14424a74d091ad7cc12563ed0046a8f2?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/14424a74d091ad7cc12563ed0046a8f2?OpenDocument)
- ▶ Convention on the Rights of the Child (CRC)
Convention setting forth a full spectrum of civil, cultural, economic, social and political rights for children. Adopted 1989; entered into force 1990. (Also known as the Children’s Convention.)
<http://www2.ohchr.org/english/law/crc.htm>
- ▶ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Adopted 2000; entered into force 2002.
<http://www2.ohchr.org/english/law/crc-sale.htm>
- ▶ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts. Adopted 2000; entered into force 2002.
<http://www2.ohchr.org/english/law/crc-conflict.htm>
- ▶ CRC General Comment No. 1 – The aims of education (2001)
[http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2001.1.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2001.1.En?OpenDocument)
- ▶ CRC General Comment No. 2 – The role of independent national human rights institutions in the protection and promotion of the rights of the child (2002)
[http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2002.2.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2002.2.En?OpenDocument)
- ▶ CRC General Comment No. 5 – General measures of implementation for the Convention on the Rights of the Child (2003)
[http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2003.5.En](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2003.5.En)
- ▶ International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
This Convention forbids any “distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing of human rights and fundamental freedoms in political, economic, social, cultural or any other field of public

life”. Adopted 1965; entered into force 1969.

<http://www2.ohchr.org/english/law/cerd.htm>

- ▶ CERD General Comment No. 25 – Gender related dimensions of racial discrimination (2000)
[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/76a293e49a88bd23802568bd00538d83?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/76a293e49a88bd23802568bd00538d83?OpenDocument)
- ▶ Convention on the Rights of Persons with Disabilities (CRPD)
This Convention confers to persons with disabilities “rights holders” and “subjects of law” with full participation in formulating and carrying out programs and policies affecting them. Adopted December 2006; not yet entered into force.
<http://www2.ohchr.org/english/law/disabilities-convention.htm>
- ▶ Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 5 - Persons with Disabilities (1994)
[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/4b0c449a9ab4ff72c12563ed0054f17d?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/4b0c449a9ab4ff72c12563ed0054f17d?OpenDocument)
- ▶ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)
This convention aims to foster respect for migrants’ human rights. It is meant to insure equality of treatment and the same working conditions for migrants and nationals. Adopted 1990; entered into force 2003.
<http://www2.ohchr.org/english/law/cmw.htm>
- ▶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
This convention aims to prevent torture worldwide, obligating States to take measures to prevent torture inside their borders, and prohibiting States to authorize people to return to their home country if they will be tortured. Adopted 1984; entered into force 1987.
<http://www2.ohchr.org/english/law/cat.htm>
- ▶ International Convention for the Protection of All Persons from Enforced Disappearance
This convention aims to protect people from enforced disappearance worldwide. Adopted 2006; not yet entered into force.
<http://www2.ohchr.org/english/law/disappearance-convention.htm>

Other Key Documents Relating to the Economic, Social and Cultural Rights of Women

- ▶ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
This convention prohibits forced prostitution and the sex-trafficking in women and girls. Adopted 1949; entered into force 1951
<http://www2.ohchr.org/english/law/trafficpersons.htm>

- ▶ **Convention Relating to the Status of Refugees**
This convention defines who is a refugee, and lists the rights of individuals who are granted asylum and the responsibilities of States that grant asylum. Adopted 1950; entered into force 1954.
<http://www2.ohchr.org/english/law/refugees.htm>
- ▶ **Equal Remuneration Convention (no. 100)**
This ILO Convention recognizes equal remuneration for men and women workers for work of equal value. Adopted 1951; entered into force 1953.
<http://www2.ohchr.org/english/law/equalremuneration.htm>
- ▶ **Social Security (Minimum Standards) Convention (no. 102)**
This ILO Convention determines minimum standards of social security. Adopted 1952; entered into force 1955.
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C102>
- ▶ **Convention on the Nationality of Married Women**
This convention assures the nationality rights of married women. Adopted 1957; entry into force 1958.
<http://www1.umn.edu/humanrts/instree/w1cnmw.html>
- ▶ **Discrimination (Employment and Occupation) Convention (no. 111)**
This ILO Convention aims to ensure non-discrimination with respect to employment and occupation. Adopted 1958; entered into force 1960.
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C111>
- ▶ **Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages**
This convention recognizes the right of women and girls to be free from forced marriage and child marriages. Adopted 1962; entered into force 1964.
<http://www2.ohchr.org/english/law/convention.htm>
- ▶ **Beijing Platform for Action**
This consensus document emerging from the 1995 Fourth World Conference on Women in Beijing, reviewing and re-affirming women's human rights in all aspects of life.
<http://www.un.org/womenwatch/daw/beijing/platform/institu.htm>
- ▶ **Worst Forms of Child Labour Convention (no. 182)**
This ILO Convention prohibits and advocates for immediate action for the elimination of the worst forms of child labour. Adopted 1999; entered into force 2000.
<http://www2.ohchr.org/english/law/childlabour.htm>
- ▶ **Convention on the Protection and Promotion of the Diversity of Cultural Expressions**
This UNESCO Convention seeks to strengthen the five inseparable links of the same chain: creation, production, distribution/dissemination, access and enjoyment of cultural expressions, as conveyed by cultural activities, goods and services. Adopted 2005.
<http://www.unesco.org/culture/en/diversity/convention>

- ▶ Declaration on the Rights of Indigenous Peoples
This Declaration is the first international treaty to recognize self-identification of indigenous and tribal peoples as a basic principle. It specifies the rights of indigenous peoples to their lands, traditions, languages, and to all human rights without discrimination. Adopted 2007; not yet entered into force.
<http://daccessdds.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>

- ▶ Fribourg Declaration on Cultural Rights
This declaration, developed by a group of international experts, concerns cultural rights, including the right to cultural heritage and access to and participation in cultural life. The Fribourg Declaration has appeared in numerous versions over the years, the latest of which dates from 2007.
<http://www.unifr.ch/iiedh/droits-culturels/odc-documentation/odc-declaration-fribourg/eng-declaration.pdf>

Appendix 6: Selected Resources

Appendix 6 is a compilation of written and electronic resources which we have found useful in preparing this Handbook. It is intended to give an overview of the resources existing concerning women's economic, social and cultural rights and different issues related to these rights. It also contains resources dedicated to specific geographic regions.

I. General

National Human Rights Institutions

- ▶ Amnesty International (2001). *National Human Rights Institutions: Amnesty International's Recommendations for Effective Protection and Promotion of Human Rights*.
<http://www.nhri.net/pdf/IO4000701.pdf>
- ▶ British Council (2003). *Inter-Relationship between Commonwealth Human Rights Commissions and Other National Human Rights Institutions*. Report by J. Hatchard. Manchester.
<http://www.britishcouncil.org/governance-report061003.doc>
- ▶ Commonwealth Secretariat (2001). *National Human Rights Institutions: Best Practice*. London: Commonwealth Secretariat.
http://www.thecommonwealth.org/Shared_ASP_Files/UploadedFiles/%7BBF05153F-7565-4A2F-8F2A-F002F05594EC%7D_HumanRightsBestPractice.pdf
- ▶ Commonwealth Secretariat (2006). *Handbook on Ratification of Human Rights Instruments*. London: Commonwealth Secretariat.
http://www.thecommonwealth.org/Shared_ASP_Files/UploadedFiles/20AFBD50-7AF7-492D-B68B-CDA734583FAD_RatificationHandbook.pdf
- ▶ Commonwealth Secretariat (2007). *Comparative Study on Mandates of National Human Rights Institutions in the Commonwealth*. London: Commonwealth Secretariat.
http://www.thecommonwealth.org/shared_asp_files/GFSR.asp?NodeID=173605
- ▶ Dwyer, J. (2008). "Roles and Responsibilities in Implementing HR: Similarities and Differences in Approaches to Access to Justice". In *L'accès direct à un tribunal spécialisé en matière de droit de l'égalité : l'urgence d'agir au Québec*. Montreal: Éditions Yvon Blais.
- ▶ Eliadis, P. (2008). "Human Rights Tribunals and Direct Access to Adjudication: A New Generation of Human Rights Protection?" In *L'accès direct à un tribunal spécialisé en matière de droit de l'égalité : l'urgence d'agir au Québec*. Montreal: Éditions Yvon Blais.
- ▶ International Coordinating Committee of National Human Rights Institutions (2006). *ICC Position Papers, National Human Rights Institutions and the UN Human Rights Council – Volume II: National Human Rights Institutions and the Special Procedures and Universal Periodic Review Mechanism*.
<http://www.nhri.net/pdf/ICC%20Position%20Volume%20II.pdf>

- ▶ International Human Rights Policy Council (2000/2004). *Performance & Legitimacy: National Human Rights Institutions. 2nd Edition*. Geneva: International Human Rights Policy Council. [http://www.ichrp.org/files/reports/17/102 -
National Human Rights Institutions 2004 - Main Report.pdf](http://www.ichrp.org/files/reports/17/102-_National_Human_Rights_Institutions_2004_-_Main_Report.pdf)
- ▶ International Human Rights Policy Council (2005). *Assessing the Effectiveness of National Human Rights Institutions*. Geneva: International Human Rights Policy Council. http://www.ichrp.org/files/reports/18/125_report.pdf
- ▶ National Human Rights Institutions Forum <http://www.nhri.net/>
- ▶ Office of the High Commissioner for Human Rights (1993). *Fact Sheet No. 19, National Institutions for the Promotion and Protection of Human Rights*. Geneva: United Nations. <http://www.unhchr.ch/html/menu6/2/fs19.htm>
- ▶ Office of the High Commissioner for Human Rights (2001). *Training Manual on Human Rights Monitoring*. Professional Training Series No. 7. New York and Geneva: United Nations. <http://www.ohchr.org/Documents/Publications/training7Introen.pdf>
- ▶ Office of the High Commissioner for Human Rights (2002). *Handbook on National Human Rights Plans of Action*. Professional Training Series No. 10. New York and Geneva: United Nations. <http://www.ohchr.org/Documents/Publications/training10en.pdf>
- ▶ Office of the High Commissioner for Human Rights & UNESCO (2006). *Plan of Action: World Programme for Human Rights Education – First Phase*. New York and Geneva: United Nations. <http://www.ohchr.org/Documents/Publications/PActionEducationen.pdf>
- ▶ Ontario Human Rights Commission (2001). *An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims*. Toronto: Ontario Human Rights Commission. http://www.ohrc.on.ca/en/resources/discussion_consultation/DissIntersectionalityFtnts/pdf
- ▶ United Nations Centre for Human Rights (1995). *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights*. Professional Training Series No. 4. New York and Geneva: United Nations. <http://www.ohchr.org/Documents/Publications/training4en.pdf>
- ▶ United Nations General Assembly (1993), Principles relating to the Status of National Institutions (The Paris Principles). <http://www2.ohchr.org/english/law/parisprinciples.htm>

Economic, Social and Cultural Rights

- ▶ Center for Economic & Social Rights (undated). A New Approach to Monitoring and Advocating for Economic and Social Rights.
<http://cesr.org/about/methodology>
- ▶ Center for Economic & Social Rights (undated). Justiciability of ESCR.
<http://cesr.org/justiciability>
- ▶ Chapman, A. & Russell, S. (eds.) (2002). *Core Obligations: Building a Framework for Economic, Social and Cultural Rights*. Antwerp: Intersentia.
- ▶ ESCR-Net. International Network for Economic, Social and Cultural Rights.
<http://www.escr-net.org/>
- ▶ International Human Rights Internship Program & Asian Forum for Human Rights and Development (2000). *Circle of Rights. Economic, Social & Cultural Rights Activism: A Training Resource*. Washington, D.C.: International Human Rights Internship Program and Asian Forum for Human Rights and Development.
<http://www1.umn.edu/humanrts/edumat/IHRIP/circle/toc.htm>
- ▶ King, J. (2003). *An Activist's Manual on the International Covenant on Economic, Social and Cultural Rights*. Colombo and Brooklyn: Law & Society Trust and Center for Economic & Social Rights.
<http://cesr.org/filestore2/download/771>
- ▶ Merali, I. & Oosterveld, V. (eds.) (2001). *Giving Meaning to Economic, Social and Cultural Rights*. Philadelphia: University of Pennsylvania Press.
- ▶ Office of the High Commissioner for Human Rights (2005). *Economic, Social and Cultural Rights. Handbook for National Human Rights Institutions*. Professional Training Series No. 12. New York and Geneva: United Nations.
<http://www.ohchr.org/Documents/Publications/training12en.pdf>
- ▶ Roth, K. (2004). "Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization." *Human Rights Quarterly* 26 (1), pp. 63-73.
- ▶ Shiman, D. (1999). *Economic and Social Justice: A Human Rights Perspective*. Minneapolis, MN: Human Rights Resource Center.
<http://www1.umn.edu/humanrts/edumat/hreduseries/tb1b/Section3/hrglossary.html>
- ▶ Various (1986). The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights.
[http://www.unhchr.ch/tbs/doc.nsf/0/6b748989d76d2bb8c125699700500e17/\\$FILE/G0044704.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/6b748989d76d2bb8c125699700500e17/$FILE/G0044704.pdf)

- ▶ Various (1997). The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights.
[http://www.unhchr.ch/tbs/doc.nsf/0/6b748989d76d2bb8c125699700500e17/\\$FILE/G0044704.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/6b748989d76d2bb8c125699700500e17/$FILE/G0044704.pdf)

Women's Economic, Social and Cultural Rights

- ▶ Amnesty International USA (2005). Economic, Social and Cultural Rights (ESCR) and Women: A Fact Sheet.
<http://www.amnestyusa.org/women/pdf/economicrights.pdf>
- ▶ Association for Women's Rights in Development (2006). *Achieving Women's Economic and Social Rights: Strategies and Lessons from Experience*. Report by S. Gokal, T. Principe, & A. Symington. Toronto <http://www.awid.org/publications/ESCR%20Report.pdf>
- ▶ Bauer, J. & Hélie, A. (2006). *Documenting Women's Rights Violations by Non-State Actors: Activist Strategies from Muslim Communities*. Montreal: Rights & Democracy and Women Living Under Muslim Laws.
<http://www.dd-rd.ca/site/PDF/publications/women/Non-State.pdf>
- ▶ Brodsky, G., & Day, S. (2002). "Beyond the Social and Economic Rights Debate: Substantive Equality Speaks to Poverty." *Canadian Journal of Women & Law*, 14, pp. 185- 220.
- ▶ Callamard, A. (1999). *A Methodology for Gender-Sensitive Research*. London: Amnesty International and Rights & Democracy.
http://www.dd-rd.ca/site/PDF/publications/women/research_methodology.pdf
- ▶ Centre for Equality Rights in Accommodation (CERA).
<http://www.equalityrights.org/cera/>
- ▶ Centre for Refugee Research (CRR)
<http://www.crr.unsw.edu.au/projects.html>
- ▶ Emerton, R., Adams, K., & Byrnes, A. (2005). *International Women's Human Rights: Leading International and National Cases*. London & Portland: Cavendish.
- ▶ Freeman, M.A. (2002). *Equality and Rights: Article 3 of the International Covenant on Economic, Social and Cultural Rights*. Background Paper submitted to the UN Economic and Social Council.
[http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7136d2b5b326a0bac1256bad0046695d/\\$FILE/G0240432.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7136d2b5b326a0bac1256bad0046695d/$FILE/G0240432.pdf).
- ▶ Frostell, K. & Scheinin, M. (1995/2000). "Women". In Eide, A., Krause, C., Rosas, A. & Scheinin, M. (eds.). *Economic, Social and Cultural Rights: A Textbook*. The Hague: Martinus Nijhoff Publishers.

- ▶ Hansen, Stephen A. (2000). *Thesaurus of Economic, Social and Cultural Rights: Terminology and Potential Violations*. Washington, D.C.: American Association for the Advancement of Science.
- ▶ International Committee of the Red Cross (2001). *Women Facing War: ICRC Study on the Impact of Armed Conflict on Women*. Report by C. Lindsey. Geneva.
[http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p0798/\\$File/ICRC_002_0798_WOMEN_FACING_WAR.PDF!Open](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p0798/$File/ICRC_002_0798_WOMEN_FACING_WAR.PDF!Open)
- ▶ International Women's Rights Action Watch (2004). *Equality and Women's Economic, Social and Cultural Rights: A Guide to Implementation and Monitoring Under the International Covenant on Economic, Social and Cultural Rights*. Minneapolis, MN: University of Minnesota.
<http://iwwraw.igc.org/CESCRMANUAL.pdf>
- ▶ International Women's Rights Action Watch Asia Pacific (2005). *Our Rights Are Not Optional: Advocating for the Implementation of Convention on the Elimination on All Forms of Discrimination against Women (CEDAW) through its Optional Protocol*. Kuala Lumpur: International Women's Rights Action Watch Asia Pacific.
http://www.iwwraw-ap.org/documents/resourceguide/cover_content.pdf
- ▶ Latin American and Caribbean Committee for the Defense of Women's Rights (2002). *Universal Declaration of Human Rights from a Gender Perspective*.
<http://www.cladem.org/english/regional/declaration/text.asp>
- ▶ Moghadam, V.M. (2005). "The 'Feminization of Poverty' and Women's Human Rights". *SHS Papers in Women's Studies/Gender Research 2*.
http://portal.unesco.org/shs/en/files/8282/11313736811Feminization_of_Poverty.pdf/Feminization+of+Poverty.pdf
- ▶ Office of the High Commissioner for Human Rights (undated). *Fact Sheet No. 23, Harmful Traditional Practices Affecting the Health of Women and Children*. Geneva: United Nations.
<http://www.unhchr.ch/html/menu6/2/fs23.htm>
- ▶ Otto, D. (2002). "Gender Comment': Why Does the UN Committee on Economic, Social and Cultural Rights Need a General Comment on Women? *Canadian Journal of Women & Law*, 14, 1-52.
- ▶ Phillips, B. (2007). *Thoughts on Dignity*. Discussion Paper No. 1 (May 2007). Programme on Women's Economics and Social Rights.
http://www.wunrn.com/news/2007/05_07/05_21_07/052807_pwescr.pdf
- ▶ Programme on Women's Economic, Social and Cultural Rights (PWESCR)
http://www.wunrn.com/organizations/human_rights_ngo/pwescr.htm
- ▶ Raoul Wallenberg Institute (2007). *Gender Justice Best Practices*. Lund: Raoul Wallenberg Institute and International Legal Assistance Consortium.
<http://www.rwi.lu.se/pdf/publications/reports/genderjustice.pdf>

- ▶ Sepulveda, M. (2005). *Non-Discrimination and Equality in the View of the UN Human Rights Treaty Bodies*. Antwerp: Intersentia.
- ▶ Thiele, B., Langford, M., & Squires, J. (2005). *The Road to a Remedy: Current Issues in the Litigation of Economic, Social and Cultural Rights*. Sydney: Australian Human Rights Centre.
- ▶ United Nations Division for the Advancement of Women (1997). *Promoting Women's Enjoyment of Their Economic and Social Rights*. Expert Group Meeting, Abo/Turku, Finland, 1-4 December 1997. Report.
<http://www.un.org/documents/ecosoc/cn6/1998/hrights/egmwesr1997-rep.htm>
- ▶ Women's Human Rights Net (WHRN)
<http://www.whrnet.org>

Montreal Principles

- ▶ Aurora, S. et al. (2004). "Montreal Principles on Women's Economic, Social and Cultural Rights". *Human Rights Quarterly*, 26, pp. 760–780.
- ▶ Brodsky, G. (2004). "Montreal Principles on Women's Economic, Social, and Cultural Rights". *Canadian Journal of Women & Law*, 16, pp. 400-405.
- ▶ Center for Economic and Social Rights (2002). *Montreal Principles on Women's Economic, Social and Cultural Rights*.
<http://cesr.org/filestore2/download/697/MontrealPrinciples.doc>
- ▶ Centre for Equality Rights in Accommodation (CERA) (2005). *Guide to the Montreal Principles on Women's Economic, Social and Cultural Rights*. Toronto: CERA.
<http://www.equalityrights.org/cera/docs/MPs%20Guide%20web%20E.pdf>

Gender Mainstreaming and Planning

- ▶ AWID (2004). "Gender Mainstreaming: Can It Work for Women's Rights?" *Spotlight 3*.
http://www.awid.org/publications/OccasionalPapers/spotlight3_en.pdf
- ▶ Commonwealth Secretariat (undated). *Gender Management Systems Series*.
http://www.thecommonwealth.org/Internal/33896/33903/gender_management_systems/
- ▶ ILO (undated). *ILO Action Plan on Gender Equality and Gender Mainstreaming*.
<http://www.ilo.org/public/english/bureau/gender/newsite2002/about/action.htm>
- ▶ RUAF Foundation (undated). *Gender Mainstreaming*.
<http://www.ruaf.org/taxonomy/term/30>

- ▶ UNESCO (undated). Gender Equality +: UNESCO's Experience in Promoting Gender Equality
http://portal.unesco.org/en/ev.php-URL_ID=3160&URL_DO=DO_TOPIC&URL_SECTION=201.html
- ▶ World Bank (undated). Gender Mainstreaming in National Policy Planning and Resource Management Cycle.
<http://siteresources.worldbank.org/PGLP/Resources/12.pdf>

Budgets and Women's Rights

- ▶ Budlender, D., Elson, D., Hewitt, G., & Mukhopadhyay, T. (2001). *Gender Budgets Make Cents: Understanding Gender Responsive Budgets*. London: The Commonwealth Secretariat.
<http://www.equalinrights.org/file.html?id=836>
- ▶ Budlender, D. & Hewitt, G. (2002). *Gender Budgets Make More Cents: Country Studies and Good Practices*. London: The Commonwealth Secretariat.
<http://www.equalinrights.org/file.html?id=837>
- ▶ Diokno, M.S.I. (1999). *A Rights-Based Approach Towards Budget Analysis*. Quezon City: International Human Rights Internship Program.
<http://www.equalinrights.org/file.html?id=357>
- ▶ Elson, D. (2006). *Budgeting for Women's Rights: Monitoring Government Budgets for Compliance with CEDAW*. New York: UNIFEM.
http://www.unifem.org/attachments/products/MonitoringGovernmentBudgetsComplianceCEDAW_eng.pdf
- ▶ Grown, C., Bahadur, C., Handbury, J., & Elson, D. (2006). *The Financial Requirements of Achieving Gender Equality and Women's Empowerment*. Washington, D.C: The World Bank.
<http://siteresources.worldbank.org/INTGENDER/Resources/GrownBahadurHandburyElsonFinancialRequirements.pdf>
- ▶ International Budget Project International Human Rights Internship Program. (2004). *Dignity Counts: A Guide to Using Budget Analysis to Advance Human Rights*. Mexico City: Fundar/International Budget Project/International Human Rights Internship Program.
http://www.iie.org/IHRIP/Dignity_Counts.pdf
- ▶ Norton, A., & Elson, D. (2002). *What's Behind the Budget? Politics, Rights and Accountability in the Budget Process*. London, UK: Overseas Development Institute.
http://www.crin.org/docs/resources/publications/hrbap/Whats_Behind_Budget_ODI.pdf
- ▶ Shultz, J. (2002). *Promises to Keep: Using Public Budgets as a Tool to Advance Economic, Social and Cultural Rights*. Workshop Report (Mexico 2002).
<http://www.internationalbudget.org/themes/ESC/FullReport.pdf>

- ▶ UNIFEM. (2002). *Gender Budget Initiatives: Strategies, Concepts and Experiences*. Brussels: UNIFEM. <http://www.equalinrights.org/file.html?id=358>

Statistics

- ▶ Millennium Development Goals Indicators
<http://unstats.un.org/unsd/mdg/Home.aspx>
- ▶ Statistics from the UNDP Human Development Reports
<http://hdr.undp.org/en/statistics/>
- ▶ UNICEF Statistics Website
<http://www.childinfo.org/>
- ▶ The World Bank's World Development Reports
<http://econ.worldbank.org/wdr>

II. Issues

Cultural Rights

- ▶ Ayton-Shenker, D. (1995). *The Challenges of Human Rights and Cultural Diversity*. Background Note. United Nations
<http://www.un.org/rights/dpi1627e.htm>

Development

- ▶ ActionAid (2008). *Hit or Miss? Women's Rights and the Millennium Development Goals*. London: ActionAid UK.
http://www.actionaid.org.uk/doc_lib/aamdg.pdf
- ▶ Office of the High Commissioner for Human Rights (undated). Human Rights in Development.
<http://www.unhchr.ch/development/>
- ▶ UNDP (2000). *Human Development Report 2000: Human Rights and Human Development*. New York and Oxford: Oxford University Press.
<http://hdr.undp.org/en/reports/global/hdr2000/>
- ▶ UNDP (2005). *International Cooperation at a Crossroads: Aid, Trade and Security in an Unequal World*. New York: UNDP.
<http://hdr.undp.org/en/reports/global/hdr2005/>

Disability

- ▶ Parker, S. (2006). “International Justice: the United Nations, Human Rights and Disability”. *Journal of Comparative Social Welfare*, 22, pp. 63-78.

Education

- ▶ Centre for Women’s Studies in Education – University of Toronto
http://www1.oise.utoronto.ca/cwse/humanrights_07.htm
- ▶ People’s Movement for Human Rights Education (undated). Women, Human Rights & Education. http://www.pdhre.org/rights/women_and_education.html
- ▶ UNICEF (undated). Basic Education and Gender Equality.
<http://www.unicef.org/girlseducation/index.php>.
- ▶ UNICEF (undated). Millennium Development Goals: 2. Achieve universal primary education.
<http://www.unicef.org/mdg/education.html>

Food and Water

- ▶ Action Against Hunger
<http://www.aahuk.org/>
- ▶ FIAN International (2006). *Identifying and Addressing Violations of the Human Right to Water: Applying the Human Rights Approach*. Report by M. Gorsbroth. Heidelberg.
<http://www.fian.org/resources/documents/others/identifying-and-addressing-violations-of-the-human-right-to-water/pdf>
- ▶ Food and Agriculture Organization of the United Nations (2008). *Women and the Right to Food: International Law and State Practice*. Rome: FAO.
http://www.fao.org/righttofood/publi08/01_GENDERpublication.pdf
- ▶ UN Special Rapporteur on the Right to Food
<http://www.righttofood.org/>
- ▶ World Food Programme (1998). *Women’s Right to Food: Implications for Programming*. Rome: World Food Programme.
<http://www.wfp.org/policies/policy/other/hunger/home.html>

Health

- ▶ Center for Reproductive Rights
<http://www.reproductiverights.org/>

- ▶ Humanist Committee on Human Rights (2006) *Health Rights of Women Assessment Instrument (HeRWAI)*. Utrecht: Humanist Committee on Human Rights.
http://www.aimforhumanrights.org/fileadmin/user_upload/pdf/HeRWAI_2006.pdf
- ▶ International Women's Health Coalition
<http://www.iwhc.org/>
- ▶ Rainbo – Health & Rights for African Women
<http://www.rainbo.org/index.html>
- ▶ United Nations Division for the Advancement of Women (2000). “Women and Health”. *Fact Sheet No. 3*.
<http://www.un.org/womenwatch/daw/followup/session/presskit/fs3.htm>
- ▶ World Health Organization (2007). *Maternal Mortality in 2005: Estimates Developed by WHO, UNICEF, UNFPA, and The World Bank*. Geneva: World Health Organization.
http://www.who.int/reproductive-health/publications/maternal_mortality_2005/mme_2005.pdf
- ▶ World Health Organization (undated). Reproductive Health home page.
<http://www.who.int/reproductive-health/>

Housing

- ▶ Catholic Commission for Justice, Development & Peace (2002). *Single Women and Homelessness – Which Way is Home?* Occasional Paper No. 11. By S. Casey. Melbourne, Australia.
<http://www.melbourne.catholic.org.au/ccjdp/pdf/op11-200203-singlewomenhomeless.pdf>
- ▶ Centre for Equality Rights in Accommodation (CERA)
<http://www.equalityrights.org/cera/>
- ▶ Centre on Housing Rights and Evictions (COHRE)
<http://www.cohre.org/>
- ▶ Farha, L. (2002). “Is There a Woman in the House? Re/conceiving the Human Right to Housing.” *Canadian Journal of Women & Law*, 14, pp. 118- 141.
- ▶ Habitat International Coalition – Housing and Land Rights Network
<http://www.hic-mena.org/>
- ▶ Habitat International Coalition (undated). *The Housing and Land Rights Monitoring “Toolkit”*. Cairo: Habitat International Coalition.
<http://toolkit.hlrn.org/English/start.htm>
- ▶ UN-HABITAT (2002). UN-HABITAT's Gender Policy
<http://ww2.unhabitat.org/pubs/genderpolicy/goal.htm>

- ▶ Women's Budget Initiative. (July 2002). *Rights, Roles and Resources: An Analysis of Women's Housing Rights – Implications of the Grootboom Case*. Report by R. Manjoo, E. Paulus, & K. Pillay. Cape Town, South Africa.
<http://www.idasa.org.za/gboutputfiles.asp?writecontent=y&rid=680>

Violence against Women

- ▶ British Council (2006). *Violence against Women: A Briefing Document on International Issues and Responses*. By L. Kelley & L. Regan. Manchester.
<http://www.britishcouncil.org/waw.pdf>
- ▶ Callamard, A. (1999). *Documenting Human Rights Violations by States Agents: Sexual Violence*. London: Amnesty International and Rights & Democracy.
<http://www.dd-rd.ca/site/PDF/publications/women/StatesAgents.pdf>
- ▶ Callamard, A. (2001). *Investigating Women's Rights Violations in Armed Conflicts*. London: Amnesty International and Rights & Democracy.
<http://www.dd-rd.ca/site/PDF/publications/women/ArmedConflicts.pdf>
- ▶ Dauer, S., & Gomez, M. (2006). Violence against Women and Economic, Social and Cultural Rights in Africa. *Human Rights Review*, 7, pp. 49-58.
- ▶ UNHCR (1995). *Interviewing Applicants for Refugee Status*. Geneva: UNHCR.
<http://www.unhcr.org/publ/PUBL/3ae6bd670.pdf>
- ▶ UNHCR (1995). *Sexual Violence against Refugees: Guidelines on Prevention and Response*. Geneva: UNHCR.
<http://www.icva.ch/doc00000837.html>
- ▶ UNIFEM (2007). *Violence against Women – Facts and Figures*. New York: UNIFEM.
http://www.unifem.org/attachments/gender_issues/violence_against_women/facts_figures_violence_against_women_2007.pdf

III. Regional and Country-Specific Resources

Africa

- ▶ Bennoune, K. (2005). “The International Covenant on Economic, Social and Cultural Rights as a Tool for Combating Discrimination against Women: General observations and a Case Study on Algeria”. *International Social Science Journal*, 184, pp. 351-369.
- ▶ Ngwakwe, J. (2002). “Realizing Women's Economic, Social and Cultural Rights: Challenges and Strategies in Nigeria”. *Canadian Journal of Women & Law*, 14, pp. 142-157.

- ▶ Ngwena, Charles & Cook, Rebecca (2005). “Four/ Rights Concerning Health”. In Heyns, C. H. & Brand, D. (eds). *Socio-Economics Rights in South Africa*. Pretoria: Pretoria University Law Press, pp. 107-151.
- ▶ Shannon, A. (1998). *Advocating for Adolescent Reproductive Health in Sub-Saharan Africa*. Washington, D.C: Advocates for Youth.
<http://www.advocatesforyouth.org/publications/advocate.pdf>
- ▶ Ssenyonjo, M. (2007). “Culture and the Human Rights of Women in Africa: Between Light and Shadow”. *Journal of African Law*, 51(1), pp. 39-67.

Asia

- ▶ Asia-Pacific Forum Advisory Council of Jurists (undated). References.
<http://www.asiapacificforum.net/acj/references>
- ▶ Asia-Pacific Forum for National Human Rights Institutions
<http://www.asiapacificforum.net>
- ▶ Asia-Pacific Forum on Women, Law and Development (APWLD)
<http://www.apwld.org>
- ▶ Burdekin, Brian. (2006). *National Human Rights Institutions in the Asia-Pacific Region*. Herndon: Brill Academic Pub.
- ▶ Canadian Human Rights Foundation (2004). *A UN Road Map, Second Edition: A Guide for Asian NGOs to the International Human Rights System and Other Mechanisms*. Montreal: Canadian Human Rights Foundation.
<http://www.equitas.org/downloads/UN-Road-Map-2ed.zip>
- ▶ Equitas (2006). *National Human Rights Institutions at Work: Asia-Pacific Regional Workshop on Women’s Economic, Social and Cultural Rights*. Montreal: Equitas.
http://www.equitas.org/english/ed-manuals/downloads/WS_Manual_WESCR_January06_EQUITAS_CHRP_Revised.pdf

Canada

- ▶ Bahdi, R. (2002). “Litigating Social and Economic Rights in Canada in Light of International Human Rights Law: What Difference Can It Make?” *Canadian Journal of Women & Law*, 14, pp. 158-184.

Central Asia

- ▶ UNDP Kazakhstan (2005). *Gender Equality and the Status of Women in Kazakhstan*. Almaty: UNDP Kazakhstan.
<http://www.iknowpolitics.org/en/node/27>

Europe

- ▶ Irish Human Rights Commission. (2005). Submission of the Irish Human Rights Commission to the UN Committee on the Elimination of Discrimination Against Women in respect of Ireland's Combined 4th and 5th Periodic Reports under the Convention on the Elimination of All Forms of Discrimination Against Women.
<http://www.ihrc.ie/fileupload/publications/CEDAWFinal.pdf>.

Latin America

- ▶ Gideon, J. (2006). "Accessing Economic and Social Rights under Neoliberalism: Gender and Rights in Chile". *Third World Quarterly*, 27(7), pp. 1269 -1283.
- ▶ Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM).
<http://www.cladem.org/>
- ▶ Piovesan, F. (2004). "Economic, Social and Cultural Rights: the Experience of the Brazilian Shadow Report". *La chronique des Amériques*, No. 30 (October 2004).
http://www.er.uqam.ca/nobel/ieim/IMG/pdf/Chro_0430_braz-shadow.pdf.

IV. Other Online Resources and Links

- ▶ HURIDOCS. Human Rights Information and Documentation Systems, International
<http://www.huridocs.org/>
- ▶ The United Nations Human Rights Treaties
<http://www.bayefsky.com/>
- ▶ University of Minnesota Human Rights Library
<http://www1.umn.edu/humanrts/>

Equality for Women: A Handbook for NHRIs on Economic, Social and Cultural Rights

There has been growing recognition of the importance of economic, social and cultural (ESC) rights as interdependent and indivisible from other human rights. The promotion and protection of women's equal enjoyment of ESC rights present unique and specific challenges. Women experience particular and severe forms of discrimination — including system-wide forms of discrimination. These forces combine to create a context of social beliefs, legal regimes, and economic structures that subordinate women to men in many countries, cultures and communities around the world.

This Handbook argues that National Human Rights Institutions (NHRIs) have a crucial role to play in ensuring equal enjoyment of ESC rights. It argues that they must take concrete steps to ensure that gender equality is at the forefront of their work on ESC rights. However, a commitment to gender equality is not enough to ensure effective protection and promotion of women's ESC rights. NHRIs must also ensure that they have the capacity to understand and apply the appropriate legal framework to different situations, develop effective internal systems, and identify the most effective strategies.

Prepared by Equitas together with leading experts in the field, this Handbook is designed for NHRIs and the institutions and organizations they work with to better enable NHRIs to fulfill their potential as champions of women's ESC rights.



Centre international
d'éducation aux droits humains
International Centre for
Human Rights Education



Asia Pacific Gender Mainstreaming Programme
Asia Regional Governance Programme



Canadian International
Development Agency

Agence canadienne de
développement international