

III. BODIES CREATED TO SUPERVISE THE IMPLEMENTATION OF TREATIES (“TREATY BODIES”)

Eight treaty bodies of the United Nations are presented here. In addition, the Committee on Enforced Disappearances is also included although the International Convention for the Protection of Persons from Enforced Disappearances is not yet in force. Each section consists of an introductory text including a bibliography, followed by charts illustrating the states reports procedure as well as the individual communications procedure with model communications, if available.

III.1 THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (CESCR)

This Committee is charged with monitoring the implementation by States parties of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which entered into force on 3 January 1976. It is composed of 18 members elected by ECOSOC by secret ballot from a list of persons nominated by States parties to the CESCR for a term of four years. They serve in their personal capacity as experts in the field of human rights and may be re-elected if renominated. Due consideration is to be given to equitable geographical distribution as well as to the representation of different forms of social and legal systems. The Committee normally meets twice a year in Geneva for two three-week sessions in May and November; its meetings are open to the public. Prior to each of the Committee’s sessions, a one-week pre-session working group meets composed of five members which prepares concise lists of issues concerning the States reports to be examined by the Committee. Those lists are given directly to the representatives of the States concerned with the understanding that they are neither exhaustive nor to be interpreted as limiting or prejudging the type and range of questions to be discussed.

The Committee submits an annual report on its activities to ECOSOC; it contains, inter alia, the concluding observations of the Committee relating to each State party’s report in order to assist ECOSOC to fulfill its responsibilities under Articles 21 and 22 of the Covenant (see references).

Article 2, para. 1, of the Covenant imposes a duty on all States parties 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”. This principle of “progressive realization” acknowledges that some of the rights may be difficult to achieve in a short period of time, for instance, due to financial resource constraints, but requires States parties to act as best they can within their means available.

Articles 16 and 17: Reports by States parties

The Committee examines reports by States parties concerning steps they have taken to implement human rights set forth in the ICESCR (see chart 7). It contains economic (Articles 6-9), social (Articles 10-12) and cultural rights (Articles 13-15). As of 11 January 2010, there were 160 States party to the

Covenant (for details see annex VI.3). States parties are requested to submit a comprehensive report within two years of the entry into force of the Covenant for the State party concerned, and thereafter at five-year intervals (rule 58 of the rule of procedures). Since 2000, the Committee has reduced this period in light of the timelines of submission of reports and the quality of information as well as of the quality of the constructive dialogue with the State party concerned. The due date of the next periodic report is indicated in the concluding observations. Since 2004, the Committee has also accepted combined reports more commonly. These state reports are public documents; its examination takes place at public meetings at which representatives of the government introduce the report and answer to questions by Committee members. In general, the Committee devotes three meetings of three hours each to its examination of States parties' reports. The Committee seeks to determine through a constructive dialogue whether the norms contained in the Covenant are being adequately applied and how the State party might improve its implementation of the Covenant. On the final day of the session, the Committee adopts in closed session concluding observations summarizing its main concerns and making appropriate suggestions and recommendations to the State party. The concluding observations, once formally adopted, are generally made public on the final day of the session. They are forwarded as soon as possible to the State party concerned and included in the report of the Committee.

In order to structure the reporting process and the dialogue with each State party's representatives and to improve the effectiveness of the monitoring system as a whole, the Committee has adopted detailed reporting guidelines in 1991 (for an updated version see E/2009/22; E/C.12/2008/3, annex VIII). The Committee strongly urges all States parties to report to it in accordance with the guidelines to the greatest extent possible.

In December 1999, the Committee decided that it would in its concluding observations request the State party to inform the Committee in its next periodic report about steps taken to implement the recommendations. The Committee may also ask the State party to provide more information or to respond to any pressing specific issue prior to the date of the next report to be submitted. If the Committee considers that it is unable to obtain the required information, it may request that the State party concerned accepts a mission consisting of one or two members of the Committee. This procedure has already been applied with positive results.

The Committee is confronted with serious organizational problems related to persistent non-reporting by States parties. In May 2006, the Committee decided to review three lists of States parties whose reports are overdue: States parties with reports that were due (a) within the past 8 years, (b) from 8 to 12 years ago, and (c) more than 12 years ago. Three letters will be sent step-by-step to the States parties. If no responses are received, the third letter will confirm that the Committee will consider the implementation of the Covenant in light of all available information. In order to increase the reporting morale, the Committee agreed that it would consider the situation in at least one non-reporting State party at each of its sessions.

NGO Participation

While only members of the Committee and representatives of the relevant State party may take part in the discussion of the State report, NGOs may submit relevant information in writing at anytime prior to the consideration of a given State party's report. NGOs may also present their concerns to the members of the Committee during the pre-sessional working group concerning States whose reports are due to be considered at the forthcoming session. Such information should: (a) focus specifically on the ICESCR; (b) be of direct relevance to matters under consideration by the Committee; (c) be credible; and (d) not be abusive.

There are three possibilities for NGOs to contribute to the work of the pre-sessional working group: prior to the meeting of the working group, relevant information may be submitted (a) to the country rapporteur concerned or (b) to the Secretariat for distribution to the full working group; (c) oral statements may be made by NGO representatives in person during the first morning of the pre-sessional working group meeting. NGOs with a consultative status are also encouraged to submit to the Committee written information or reports that might contribute to the full and universal recognition and realization of the rights set forth in the ICESCR.

In order to strengthen the co-operation with NGOs the Committee decided to invite them to the second meeting of its working group. It instructed the Secretariat to inform the NGOs about this possibility. Copies of the reports under examination in this session shall be sent to the national NGOs relating to the States concerned.

In 2000, the Committee published an annex which serves to provide detailed guidelines for NGOs active in the field of economic, social and cultural rights – local, national and international, those in consultative status with ECOSOC and those without such a status (E/2001/22; E/C.12/2000/21, annex V). The main activities of the Committee that are open to NGO participation are: (a) consideration of State party reports; (b) days of general discussion; and (c) drafting of general comments. Interested NGOs are well advised to read those guidelines carefully. Further information is available from the Secretariat of the Committee at the following address:

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UNOG - OHCHR
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Other Activities of the Committee

At each session, the Committee devotes one day, usually the Monday of the third week, to a general discussion of a particular right or a particular aspect of the Covenant. The purpose is threefold: (1) to assist the Committee in

developing in greater depth its understanding of the relevant issues; (2) to enable the Committee to encourage inputs into its work from all interested parties; and (3) to lay the basis for a future general comment. Most recently, the following issues have been the focus of discussion: a draft optional protocol to the Covenant (13th, 14th and 15th session); revision of the general guidelines for reporting (16th session); the normative content of the right to food (17th session); globalization and its impact on the enjoyment of economic, social and cultural rights (18th session); the right to education (19th session); 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 or she is the author (24th session); the equality between men and women in the enjoyment of economic, social and cultural rights (28th session); the right to work (31st session); the right to social security (36th session); the right to take part in cultural life (40th session); and non-discrimination and economic, social and cultural rights (41st session).

From its third session, the Committee decided to prepare general comments based on the various articles and provisions of the ICESCR in order to assist the States parties in fulfilling their reporting obligations. So far, the Committee has adopted 21 general comments relating to, for instance, the nature of States parties' obligations (Article 2, para. 1, of the Covenant), the right to adequate food and the right to adequate housing (Article 11, para. 1), the right to the highest attainable standard of health (Article 12), the right to education (Article 13), plans of action for primary education (Article 14) and the right to water (Articles 11 and 12), the equal right of men and women to the enjoyment of all economic, social and cultural rights (Article 3), the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author (Article 15, para.1 (c)), the right to work (Article 6), the right to social security (Article 9), non-discrimination in economic, social and cultural rights (Article 2, para. 2), and the right of everyone to take part in cultural life (Article 15, para. 1(a) of the Covenant).

The Committee also adopts statements in order to classify and confirm its position vis-à-vis major international development issues that bear upon the implementation of the Covenant. As at 21 November 2008, the Committee had adopted 17 statements (for a list see <http://www2.ohchr.org/English/bodies/cescr/statements.htm>).

In order to strengthen cooperation with other treaty bodies of the UN System, the Committee held meetings with members of the International Labour Organization Committee of Experts on the Application of Conventions and Recommendations (see section IV.2). The UNESCO Committee on Conventions and Recommendations (CR)/ CESCR Joint Expert Group on the Monitoring of the Right to Education held its ninth and tenth meeting on 25 November 2008 and 8 May 2009 (section IV.1).

Optional Protocol to the ICESCR

The elaboration of a optional protocol to the ICESCR granting the right of individuals or groups to submit communications concerning non-compliance with the Covenant was recommended by the World Conference on Human

Rights in 1993. The general principle of permitting complaints to be submitted under an international procedure in relation to economic, social and cultural rights is neither new nor innovative, given the precedents that exist in UNESCO (see IV.1) and ILO (see IV.2) as well as in the complaints procedure by the Human Rights Council (see section II). If the principle of the indivisibility, interdependence and interrelatedness of the civil and political and economic, social and cultural rights is to be upheld in the work of the United Nations, it is essential that such a complaints procedure be established under the CESCR in order to redress the imbalance that currently exist. The Committee concluded its work at the end of 1996; in 1997, the Commission on Human Rights started to discuss a draft optional protocol.

On 18 June 2008 the Human Rights Council adopted the Optional Protocol to the Covenant and recommended that the General Assembly adopts and opens it for signature, ratification and accession. The Optional Protocol was finally adopted by the General Assembly on 10 December 2008. It was opened for signature on 24 September 2009, and has been signed by 31 States as of 11 January 2010. It will enter into force when ratified by 10 States parties.

Article 1, para. 2, of the Optional Protocol states that “no communication shall be received by the Committee if it concerns a State party to the Covenant which is not a party to the present Protocol”.

According to Article 2, communications may be submitted by or on behalf of individuals or groups of individuals claiming to be victims of a violation of any of the economic, social and cultural rights set fourth in the Covenant by that State party. The Optional Protocol also states that the Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted. This shall not be the rule where the application of such remedies is unreasonably prolonged (Article 3, para. 1, of the Optional Protocol).

The Committee shall declare a communication inadmissible if

- it is not submitted within one year after the exhaustion of domestic remedies;
- the facts that are the subject of the communication occurred prior to the entry into force of the Optional Protocol for the State party concerned;
- 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;
- it is manifestly ill-founded, not sufficiently substantiated or exclusively based on reports disseminated by mass media;
- it is anonymous or not in writing.

References

ARAMBULO, Kitty: Strengthening the Supervision of the International Covenant on Economic, Social and Cultural Rights: Theoretical and Procedural Aspects. Antwerpen / Groningen / Oxford: Intersentia-Hart, 1999, 449.

- BEITER, Klaus Dieter: *The Protection of the Right to Education by International Law. Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights*. Leiden/Boston: Martinus Nijhoff, 2006, XLVII, 719.
- CRAVEN, Matthew C. R.: *The International Covenant on Economic, Social and Cultural Rights: A Perspective on Its Development*. Oxford: Clarendon, 1995, 413.
- DANDAN, Virginia: *The Committee on Economic, Social and Cultural Rights and Non-Governmental Organizations*. In: BAYEFSKY, Anne F. (Ed): *The UN Human Rights Treaty System in the 21st Century*. The Hague / London / New York: Kluwer Law International, 2000, 227–230.
- DOWELL-JONES, Mary: *Contextualizing the International Covenant on Economic, Social and Cultural Rights. Assessing the Economic Deficit*. Leiden/Boston: Martinus Nijhoff, 2004, VIII, 214.
- EIDE, Asbjørn: *Economic, Social and Cultural Rights*. In: SYMONIDES, Janusz (Ed): *Human Rights: Concepts and Standards*. Aldershot / Burlington, VT: Dartmouth; Ashgate, 2000, 109–174.
- EIDE, Asbjørn; KRAUSE, Catarina; ROSAS, Allan (Ed): *Economic, Social and Cultural Rights. A Text Book*. Dordrecht: Nijhoff, 2001, XVI, 785 (second edition).
- EIDE, Asbjørn, et al. (Ed): *Economic, Social and Cultural Rights. A Text Book*. Dordrecht: Nijhoff, 1995, 506.
- FELICE, William F.: *The Global New Deal. Economic and Social Rights in World Politics*. Lanhan: Rowman & Littlefield, 2003, XVI, 275.
- HERTEL, Shareen; MINKLER, Lanse (Ed): *Economic Rights. Conceptual, Measurement, and Policy Issues*. Cambridge/New York: Cambridge University Press, XIII, 403.
- HOLMSTRÖM, Leif (Ed): *Concluding Observations of the UN Committee on Economic, Social and Cultural Rights. Eighth to Twenty-seventh sessions (1993-2001)*. The Hague/London/New York: Martinus Nijhoff, 2003, XVI, 716.
- LECKIE, Scott: *The Committee on Economic, Social and Cultural Rights: Catalyst for Change in a System Needing Reform*. In: ALSTON, Philip; CRAWFORD, James (Ed) : *The Future of UN Human Rights Monitoring*. Cambridge: Cambridge University Press, 2000, 129–144.
- LECKIE, Scott: *Another Step Towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights*. In: *Human Rights Quarterly* 20/1: 81–124, 1998.
- LEEUWEN, Fleur van: *Woman's Rights are Human Rights. The Practice of the United Nations; Human Rights Committee and the Committee on Economic, Social and Cultural Rights*. Antwerp: Intersentia, 2010, XXI, 318.
- SSENYONJO, Manisuli: *State Reservations to the ICESCR: A Critique of Selected Reservations*. In: *Netherlands Quarterly of Human Rights* 26/3: 315-358, September 2008.

UNITED NATIONS / ECONOMIC AND SOCIAL COUNCIL: Committee on Economic, Social and Cultural Rights. Report on the Fortieth and Forty-first Sessions (28 April–16 May 2008, 3–21 November 2008). New York and Geneva: UN, 2009, 158 (E/2009/22; E/C.12/2008/3) (also available in other official languages of the UN).

Chapter IV contains the consideration of 9 reports submitted by States parties under Articles 16 and 17 of the ICESCR. In annex VIII the guidelines on treaty-specific document are reproduced.

UNITED NATIONS / ECONOMIC AND SOCIAL COUNCIL: Committee on Economic, Social and Cultural Rights. Report on the Thirty-eighth and Thirty-ninth Sessions (16 May 2007, 5-23 November 2007). New York and Geneva: UN, 2008, 170 (E/2008/22; E/C.12/2007/3) (also available in other official languages of the UN).

Chapter IV contains the concluding remarks on the ten reports submitted by the States parties.

UNITED NATIONS / ECONOMIC AND SOCIAL COUNCIL: Committee on Economic, Social and Cultural Rights. Report on the Thirty-sixth and Thirty-seventh Sessions. New York and Geneva: UN, 2007, 153 (E/2007/22; E/C.12/2006/1) (also available in other official languages of the UN).

In chapter IV one finds the concluding remarks on the consideration of ten reports submitted by the States parties. The annex contains the status of submission of reports.

VANDENHOLE, Wouter: Completing the UN Complaint Mechanisms for Human Rights Violations Step by Step: Towards a Complaints Procedure Complementing the International Covenant on Economic, Social and Cultural Rights. In: Netherlands Quarterly of Human Rights 21/3: 423–462, September 2003.

WELLING, Judith V.: International Indicators and Economic, Social, and Cultural Rights. In: Human Rights Quarterly 30/4: 933-958, November 2008.

E-Resources

General:

<http://www2.ohchr.org/english/bodies/cescr/index.htm>

General Comments:

<http://www2.ohchr.org/english/bodies/cescr/comments.htm>

States reports:

<http://www2.ohchr.org/english/bodies/cescr/sessions.htm>