

## **THEME PAPER - NATIONAL HUMAN RIGHTS INSTITUTIONS AND ECONOMIC AND SOCIAL RIGHTS<sup>1</sup>**

### **SUMMARY**

The combined population of the countries represented by Forum member institutions is approximately 1.3 billion. If the populations of those countries currently working on the establishment of national human rights institutions were added, the Forum would represent some 1.6 billion people.

These 1.6 billion people live in widely divergent economic circumstances spanning the traditional developmental spectrum from 'developing' to 'industrialised'. However, the overwhelming majority would be at the 'developing' end of the spectrum and a large proportion would be struggling to meet basic needs for work, food, safe drinking water, clothing, housing, health, social security and education. For the much smaller number of those living at the 'industrialised' end of the spectrum the proportion struggling to meet their basic living needs is lower. Nevertheless, even in industrialised countries a large number of people are concerned by major structural changes which threaten job security and impede access to universal health care, social security and higher education.

Article 22 of the Universal Declaration of Human Rights states that:

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.<sup>2</sup>

The International Covenant on Economic, Social and Cultural Rights (ICESCR) outlines the substantive measures required to fulfil the commitment contained in the Universal Declaration.<sup>3</sup> The rights guaranteed by ICESCR include:

- access to work
- just and favourable conditions of work
- the right to organise and to collective bargaining
- adequate food, safe drinking water, clothing and shelter
- health
- social security, and
- education.

Five of the six countries represented by Forum members have ratified ICESCR, the sixth has identified ratification as a high priority.

In one way or another, the enjoyment of economic and social rights is a real issue for this diverse group of people and for their governments. However, despite the human rights rhetoric of governments and their notional (or even constitutional) commitment to social justice, economic and social rights *per se* are rarely acknowledged in the economic and political debates which are shaping our day to day lives.

Twelve months ago, the world's attention was focussed on what became known as the 'Asian economic crisis'. Of the five countries directly affected by the crisis, two are represented by current Forum member institutions and two are among the group of countries who are establishing national institutions and have observer status at the Forum. However, the magnitude of the crisis means that it has, in a variety of ways, had an impact on the standard of living of citizens in all of the countries represented in the Forum. Despite the fact that predictions of a

global economic downturn have not come true, the legacy of the economic crisis continues to have a significant negative impact on economic and social rights within Forum member countries.

In the aftermath of the economic crisis, what role do national human rights institutions have in influencing public and private debates among corporate decision makers, international financial institutions and national governments to make them aware of, and responsive to, the fact that the policies which they implement have a human rights dimension?

The Forum and its member institutions are well placed to contribute to policy making and to bring to it a human rights perspective. If the ratification of international treaties like ICESCR is to have any meaning, governments, civil society and the business sector must start to explicitly acknowledge the existence of the rights set out in the Covenant and treat them as a legitimate consideration in policy development and implementation.

## **FOCUS ON ECONOMIC AND SOCIAL RIGHTS**

The fact that this paper is addressing economic and social rights in isolation reflects in part the history of the debates in the international community about the indivisibility of all human rights. The United Nations Charter and the Universal Declaration of Human Rights were based on the fundamental principle that all human rights – civil, cultural, economic, political and social – have to be seen as an indivisible whole. In theory, no one category of human rights is pre-eminent. In practice, however, a conceptual split emerged when work commenced on translating the Universal Declaration into a legally binding treaty and instead of a unified Covenant on Human Rights, we ended up with two separate legal instruments – the International Covenant on Civil and Political Rights (ICCPR) and ICESCR.

Despite the fact that the two Covenants are considered as the equal foundational elements of the International Bill of Rights, economic, social and cultural rights have not been accorded the same importance and focus as civil and political rights. This is due to a combination of practical and ideological factors. In practical terms, it is simply much easier to make declaratory commitments to economic and social rights than it is to make them a reality for individuals and communities. On an ideological level, certain governments still treat economic and social rights as ‘aspirations’ or ‘goals’ rather than human rights. There is also a continuing and pervasive misapprehension about the dichotomy between ‘negative’ and ‘positive’ rights. That is, civil and political rights are considered ‘negative rights’ requiring only the absence of action by government whereas economic and social rights are considered ‘positive rights’ requiring active, interventionist government and the use of actual financial resources. In fact, the promotion and protection of all human rights depends on properly financed and well-administered government policies and programs.

Following the same line of argument it is asserted that while civil and political rights are justiciable and enforceable by the courts, economic and social rights are, by their nature, more a matter of social policy rather than fundamental justice. Consequentially, it is argued, in this sphere the courts should defer to political decision makers to decide the pace and extent to which social rights are realised.

This paper will focus on the economic and social rights set out in ICESCR, i.e. the right to work, food, safe drinking water, clothing, housing, health, social security and education.

## **THE FORUM: A SNAPSHOT**

Forum members represent a diverse group of countries from South Asia, South-East Asia and Oceania. In the near future, the Forum will have members from the South Pacific as well as East and Central Asia. The Forum also encompasses over 20% of the earth’s population. The sheer size and diversity of this population and their equally diverse economic circumstances and political arrangements is crucial to any meaningful consideration by the Forum of economic and

social rights. How individual national institutions respond to the challenge of promoting and protecting the right to work, food, safe drinking water, clothing, housing, health, social security and education will depend very much on where they are operating on the spectrum of human development.

The empirical measurement of "human development" was pioneered by the United Nations Development Program's (UNDP). Since 1990 the UNDP *Human Development Report* has provided annual data on how nations of the world are faring in providing their citizens with a better quality of life, not just a higher standard of living. Four countries represented by Forum members have produced their own national (or sub-national) human development reports and the Human Development Centre in Pakistan has produced two regional human development reports covering South Asia. These reports collectively provide a detailed, systematic and coherent picture of the well-being of the people living in Forum member countries.

The Human Development Report's main criterion for classifying countries is the Human Development Index (HDI). The maximum value on the Index is 1.0. Countries are classified into three groups: high human development (with HDI values greater than 0.800); medium human development (with HDI values between 0.500 to 0.799) and low human development (with HDI values less than 0.500).

For those countries represented by Forum members, the highest HDI value is 0.939 and the lowest 0.351.<sup>4</sup> In terms of rank order, the six countries represented in the Forum are ranked 9, 15, 90, 96, 98 and 139 in the world table of HDI. The highest real Gross Domestic Product (GDP) per capita value is thirteen (13) times greater than the lowest. Infant mortality rates vary from 6 to 73 per 1000 live births. Adult literacy levels range from 38% to 94% amongst the developing countries while in the industrial countries up to 18% of people between the ages of 16 and 55 are functionally illiterate. In regional terms, East Asia has an average HDI value of 0.766, South Asia 0.452, South-East Asia and the Pacific 0.766 and the group of industrial countries 0.933.

A closer look at the data reveals stark contrasts, not just between countries but within countries as well. One constant of the economic growth which has occurred in the decades of the 80s and 90s is the growing gap between the richest and poorest groups. The 'wealth' gap is multi-dimensional with marked inequalities based on:

- employment status (those in work are working longer hours while the unemployed become more marginalised),
- remuneration (greater financial rewards for those at the top of the income scale but downward pressure on wages at the lower end),
- gender (women continue to earn and own less than men),
- geography (rural vs urban or inter-regional differences) and
- ethnicity (for example, certain minority groups, especially Indigenous peoples in industrial countries, enjoy far lower standards of living than the majority or dominant group).

At a broader level, there is a widening gap between public and private goods. At a time when absolute wealth and consumption levels are higher than at any time in history, governments everywhere argue that they can no longer fund public health services, public transport, public education or social security at existing levels and, as a consequence, cuts to welfare budgets and the privatisation of previously public assets proceeds apace.

The 1998 Human Development Report<sup>5</sup> analysed global consumption patterns and trends and argued that in order to reduce poverty and inequality, consumption must be:

*Shared:* ensuring basic needs for all  
*Strengthening:* building human capabilities  
*Socially responsible:* so the consumption of some does not compromise the well-being of others  
*Sustainable:* without mortgaging the choices of future generations.

Over the past 25 years, "consumption per capita has increased steadily in industrial countries (about 2.3% annually)...spectacularly in East Asia (6.1%) and at a rising rate in South Asia (2.0%)."<sup>6</sup> Despite rising consumption levels, the vast majority of people are unable to satisfy their basic needs:

"Of the 4.4 billion people in developing countries, nearly three-fifths lack basic sanitation. Almost a third have no access to clean water. A quarter do not have adequate housing. A fifth have no access to modern health services. A fifth of children do not attend school to grade 5. About a fifth do not have enough dietary energy and protein. Micronutrient deficiencies are even more widespread."

And poverty in industrial countries exists to the extent that, according to the UNDP's new Human Poverty Index<sup>8</sup>, between 7 and 17% of the population in those countries with the highest average income and consumption levels live in poverty. For those not living in poverty, the major structural changes made in the 80s and 90s in response to increasing globalisation have led to significant concerns about the security of employment, their access to universal health care, social security, higher education and to a secure post-retirement income.

This summary barely skims the surface of the wealth of data, analysis and comparisons contained in the Human Development Report but it does provide some concrete reference points for the Forum's consideration of this issue.

### **ICESCR: SETTING THE STANDARD**

The fundamental importance of work, food, safe drinking water, clothing, housing, health, social security and education has been explicitly recognised in international law and most countries have accepted a legal responsibility to afford their citizens these necessities of life. ICESCR is based on the recognition that the right to live a dignified life can never be attained unless the basic necessities of life are adequately and equitably available to everyone. Although ICESCR is the most important international instrument in this context, economic and social rights are recognised in other key human rights treaties including the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), the International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CROC). The Draft UN Declaration on the Rights of Indigenous Peoples has extensive provisions relating to economic and social rights, in particular to their collective nature.

The ICCPR also includes important relevant provisions relating to economic and social rights including *Article 6* which recognises the right to life. The United Nations' Human Rights Committee has stated that the right to life should not be interpreted narrowly. Rather than just placing an injunction on actions which would lead to the arbitrary deprivation of life, it places an obligation on the State to establish conditions consistent with respect for the right to life, i.e. States are required to take *positive* measures to protect the right to life by, for example, reducing infant mortality and increasing life expectancy. *Article 26* of the ICCPR, which deals with equality before the law, relates to substantive equality including in areas related to the enjoyment of economic and social rights.

In addition to these international standards, many countries have a Bill of Rights or some other constitutional guarantees in relation to economic and social rights.

The UN Committee on Economic, Social and Cultural Rights has elaborated what entitlements the rights contained in ICESCR imply and the legal nature of the obligations of States to realize them.<sup>9</sup> The key provisions of ICESCR are:

*The right to self-determination:* Article 1 of the Covenant is worded in precisely the same terminology as article 1 of ICCPR. This right has both external and internal dimensions and has been the subject of some controversy in recent years, as it is increasingly asserted by groups within countries, as distinct from ex-colonies and occupied countries. As far as the rights contained in the Covenant are concerned, the right of peoples freely to pursue their economic, social and cultural development includes freedom to carry on economic, social and cultural activities. Article 1 also provides that peoples may freely dispose of their natural resources and that in no case may a people be deprived of its own means of subsistence.

*States' obligations under ICESCR:* Article 2 outlines the nature of States parties' legal obligations and determines how they must approach the implementation of the substantive rights contained in articles 6 to 15. These obligations reflect duties to (a) respect, (b) protect, (c) promote, and (d) fulfil each of the rights contained in the Covenant. Each of these legal responsibilities can take on more specific obligations of 'conduct' (e.g. action or inaction) and obligations of 'result' (e.g. ends).

States are required to begin to discharge their obligations immediately. In many cases the adoption of legislation will be an indispensable step. Legislative action must be taken in some instances, particularly when existing laws are clearly incompatible with the obligations assumed under the Covenant or are discriminatory, or allow the violation of rights, especially in terms of the negative duties of States. But laws alone are not a sufficient response. Administrative, judicial, policy, economic, social and educational measures and many other steps will also be required.

The 'progressive obligation' component of the Covenant is often mistakenly taken to imply that it is only when a State reaches a certain level of economic development that the rights established under the Covenant must be realized. This is not the intent of this clause. Rather, the duty in question obliges all States parties, notwithstanding their level of national wealth, to move immediately and as quickly as possible towards the realization of economic, social and cultural rights. According to the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights,<sup>10</sup> States parties are obliged to ensure minimum subsistence rights for everyone, regardless of the level of economic development in a given country.

Article 2 also requires States parties to address discrimination. The grounds of discrimination mentioned in this provision are not exhaustive and thus certain other forms of discrimination negatively affecting the enjoyment of the rights enunciated in the Covenant (for instance, on the basis of sexual orientation) are also prohibited.

According to the Limburg Principles, special measures such as affirmative action programs are not considered discrimination, provided that such measures do not lead to the maintenance of separate rights for different groups and are not continued after their objectives have been achieved. This provision also applies to the duty of States parties to prohibit private persons and bodies (third parties) from practising discrimination in any field of public life.

*Gender Equality:* Article 3 guarantees that men and women possess precisely the same legal entitlement to the rights set forth in the Covenant and that, if necessary, special measures will be employed by States parties to ensure that this position of equality is attained. The Covenant provides a framework for instigating progressive and immediate measures such that women may enjoy on an equal footing, rights which have often been denied them. For instance, the housing rights provisions in article 11, paragraph 1, of the Covenant must apply to men and women equally, and thus women must be accorded equal rights to housing inheritance – a situation which is still not the case in many countries. Together, article 3 and article 2 (paragraph 2), thus

provide significant legal protection against all forms of discrimination in the pursuit of economic, social and cultural rights.

*Limitations:* Articles 4 and 5 provide certain limitations formulated in such a manner as to be protective of the rights of individuals. If a State party finds it necessary to invoke the provisions of these articles, it may do so only if this is provided for by law and only if the measures in question are consistent with the Covenant. Such measures cannot be applied in an arbitrary, unreasonable or discriminatory way. Moreover, individuals should have legal safeguards and effective remedies against illegal or abusive imposition of limitations. The burden rests on the State to prove that any limitations do not impair the democratic functioning of society.

*The right to work:* Article 6 obliges States parties to implement policies and measures aimed at securing work for all who are available to work. This right encompasses, therefore, both the right to enter into employment and the right not to be unjustly deprived of work.

*The right to just and favourable conditions of work:* Article 7 establishes a right to a minimum remuneration for employment, stipulating fair wages sufficient to guarantee a decent living, as well as working conditions that are just and favourable. This article relates closely to a large number of conventions adopted by the International Labour Organisation.

*The right to form and join trade unions:* Article 8 is closely linked to the right to freedom of association, which is widely recognized throughout international human rights law. These rights, combined with the right to strike, are fundamental. Article 8 provides for a right not to be compelled to join a particular trade union. It also includes the right to federate or confederate, which should not be subject to state control. The right to collective bargaining, the right to protection from dissolution or suspension and the right to strike are also protected.

*The right to social security and social insurance:* Article 9 relates to social security schemes in the following areas: medical care, cash sickness benefits, maternity benefits, old-age benefits, invalidity benefits, survivors' benefits, employment injury benefits, unemployment benefits and family benefits. A large number of States do not maintain adequate social security or social insurance provisions under domestic laws protecting people in vulnerable circumstances. At the same time, many countries which do provide such protection are beginning to transfer responsibility for these matters from the state to the private sector.

*Protection for the family, mothers and children:* Article 10 provides that mothers are to be accorded substantial protection before and after childbirth. It also relates to child labour and the living conditions of children.

*The right to an adequate standard of living:* Article 11 incorporates a broad range of concerns relating to the peoples' every day lives and livelihoods, in particular food, clothing and housing. The Committee on Economic, Social and Cultural Rights has devoted extensive attention to this article and has issued general comments on housing and food. Article 11 does not imply a stagnant state of affairs, but also includes a right "to the continuous improvement of living conditions" (para. 1) and the possibilities associated with international cooperation in the event of States parties being unable to guarantee the rights in question. This is particularly relevant in times of food crises or famine.

*The right to the highest attainable standard of physical and mental health:* Article 12 places emphasis on equal access to health care and minimum guarantees of health care in the event of sickness.

*The right to education:* Articles 13 and 14 guarantee all children a right to free and compulsory primary education, wherever they may live. They also enshrine the right to equal access to education and equal enjoyment of education facilities; the freedom to choose education and to

establish educational institutions; the protection of pupils against inhuman disciplinary measures; and academic freedom.

## **THE VIEW FROM THE MARKET PLACE**

However cogent and coherent ICESCR may be as a statement of the centrality of economic and social rights to our everyday lives, it does not – and indeed can not – address the considerable practical problems inherent in trying to provide for every person a “decent” standard of living. Nor does it provide easy answers to what is meant by words like “adequate”, “just”, “favourable” or “best possible” when they are applied to health care, conditions of work or education.

The unavoidable fact is that realising human rights – *all* human rights – requires significant outlays of public money and the key decisions affecting government spending are made on economic and political grounds. Realising human rights also requires priority-setting, “all human rights for all” is a nice slogan but in reality there will always be some mechanism for deciding how finite public finances are deployed against a myriad of concurrent needs.

The key words shaping contemporary economic and political decisions are productivity, competitiveness, free trade and globalisation. Inflation, interest rates, tariffs, balance of payments, current account deficits and balanced budgets are the tools on which policy makers and politicians rely in allocating limited resources against competing needs. Increasingly, evening news programs close with a summary of stock markets, gold prices and exchange rates, reflecting the extent to which economics has permeated everyday life.

For all the rights enumerated above, the workaday world increasingly relies on the application of market economics to decide how the available resources are to be allocated. Efficiency is the benchmark, not equity or equality. And the market is often global, not local. The prevailing economic consensus today is that the benefits of the price mechanism and globalisation outweigh the consequences of the erosion of the welfare state and economic sovereignty (or self-determination).

In the labour market it is becoming increasingly the case that governments dismantle the rights to freedom of association and collective bargaining on the grounds that deregulation is the only way to reduce unemployment. In developing countries, governments are under pressure from international markets, transnational corporations and financial institutions to provide ‘investor-friendly’ legal and industrial conditions that tend to limit workers’ rights and put downward pressure on wages. In particular, for those countries which have undergone severe economic shocks, the very measures being called for to attract the foreign investment needed to re-start economic growth pose dilemmas for the promotion and protection of economic rights.<sup>11</sup> On the other hand, in some industrial countries there is increasing reference to the ‘working poor’ as an increasingly segmented work-force finds that while jobs may be plentiful, well-paid jobs are increasingly being taken by a small, highly-skilled group of workers.

Many countries do not provide a social security system or even the most basic forms of social insurance, and in many of these countries the effect of economic and social change has been to undermine the family and community-based networks which have traditionally provided that safety net. In the countries that do have social safety nets, the welfare state is under serious pressure or is actively being dismantled.

While governments everywhere pledge that families are the cornerstone of stable societies, economic and social pressures are putting unprecedented strain on families and there is a widespread belief that stable family structures are disintegrating under the strains of a globalising world.

The absolute level of consumption of food, clothing and housing has risen sharply during the last half of this century – private and public consumption expenditures are now six times what they

were in 1950.<sup>12</sup> Moreover, there is intense pressure to keep consumption levels high to maintain economic growth. But more people than ever go hungry, inadequately clothed and without shelter – the poorest 20% of the world's population account for just 1.3% of private consumption.

While those who have missed out on the benefits of economic growth have difficulty receiving the most rudimentary healthcare and education, in the wealthier countries the gap between those who can afford the best of private healthcare and education and those who rely on increasingly less well funded public services is growing more rapidly.

A lot of these failures may be due to poor government, maladministration, corruption, discrimination, misdirection of resources and conflict. But these outcomes are also due to the fact that market forces are unable, or have failed, to address the problem of fairly distributing the aggregate increase in wealth that has come with economic growth. The big debate now is whether the solution to these problems is best achieved by allowing markets and the price mechanism to operate more freely or to bring them under greater regulation. From the human rights perspective the big debate is whether the market can ensure equity as well as efficiency, that is, whether it can acquire a basis of values – human rights values.

### **THE ASIAN ECONOMIC CRISIS: A LESSON LEARNT OR AN OPPORTUNITY MISSED?**

After decades of impressive economic growth, five key countries in East and South-East Asia suffered a severe financial crisis in 1997/98 which led to a sharp reversal in living standards for millions of people as well as fears of a global economic meltdown.

For a relatively brief time during the course of 1998, the massive upheaval caused by the East Asian financial crisis led to some intense questioning of the economic and political orthodoxy which had until that time reigned supreme. The usual debate about economic development and human rights was turned on its head as policy makers and commentators looked to political and social factors to explain how decades of stunning economic growth could so abruptly be stopped and reversed, leading to widespread hardship for millions of people suddenly left jobless, destitute and hungry. The crisis was widely seen as a significant blow to the cause of human rights in the countries most seriously affected.

Barely 12 months after the most intense period of concern about the East Asian financial crisis, most of the countries directly affected by the crisis are showing signs of recovery, even posting modest growth in GDP. Key stock markets have risen to all-time highs and the graphic accounts of hardship are all but forgotten. Has the chance to get a social perspective into economic discourse come and gone? Is it really a case of 'business as usual'?

The situation is not all bleak. The crisis did spawn a huge amount of economic analysis and public discussion and there is an increasingly vigorous debate taking place about the manifest failure of our economic systems to distribute wealth more equitably and sustainably. A new program of debt reduction for the most heavily indebted developing countries was agreed by the Group of Seven Industrialised Countries (G7) at their recent summit in Cologne, there is an emerging debate about the "stakeholder society" and business is giving more attention to the social dimension of economic activity.

### **THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS**

While human rights concerns generally, and economic and social rights in particular, are implicit in all foregoing activity, there is very little explicit acknowledgement that fundamental human rights are at issue. Whereas the environmental movement has secured itself a place in peak economic and trade forums and in the boardroom, the human rights community finds itself pretty much on the sidelines of many mainstream debates. There is clearly a pressing need for human rights advocacy in political and economic policy-making circles. This need exists within specific portfolios (eg. education, health and social security) to sensitise individual ministries to their

specific human rights obligations, as well as at a more global level (ie. finance) because finance ministries ultimately have the final say in the allocation of resources.

National institutions are already engaged in the promotion and protection of economic and social rights. They are concerned with monitoring and promoting both equality of outcomes, and equality of opportunity and have direct responsibility for monitoring governments' performance in carrying out their international treaty obligations. In large measure, this work relates to redressing discrimination in the provision of services, or in individuals' or groups' opportunities to gain equitable access to work, education, housing, healthcare, social security etc.

However, in addition to discrimination, national institutions also address economic and social rights when considering land and labour disputes and the human rights consequences on communities and individuals of economic development projects. They also have education and public affairs programs which promote discussion of human rights matters and education about human rights. National institutions also contribute in various ways to the work of government and the parliament as it relates to human rights.

The role of national institutions in the promotion and protection of human rights has been recognised by the United Nations Committee on Economic, Social and Cultural Rights. In its General Comment No.10, the Committee noted that "national institutions have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights".<sup>13</sup>

The various mandates of national institutions will always be relevant to how far a particular institution can go in pursuing economic and social rights. However, the experience of commissions of the region has been that the general power usually given to commissions to inquire into human rights problems is sufficient to allow them to act. In fact, national institutions have shown a certain creativity in finding ways in which to apply their mandates to areas which may not be strictly within their ambits or which may be politically sensitive.

One mechanism that has been found to offer scope for effective national institution action on economic and social rights is that of the public inquiry. Given the often systemic nature of violations in this area, an approach of undertaking a systemic inquiry leading to a report making wide ranging recommendations is likely to be more productive than one of simply trying to address individual problems as they arise. The Forum has proposed technical assistance on public inquiries in some of its country-specific programs. The recent Forum regional workshop on cooperation between national institutions and NGOs recommended that a workshop be held specifically on the conduct of public inquiries.

National institutions could also consider raising issues of economic and social rights in their public statements, training programs and seminars, publications and contacts with governments, business and the media. In addition, national institutions could seek to exert greater influence on the direction of public policy. As the opportunities for injecting a human rights perspective into economic, trade and business discourse open up, they offer national institutions the possibility of shaping macro economic policy decisions which in the long run have the greatest impact on the enjoyment of economic and social rights. National human rights institutions, given their mandates and their unique position *vis a vis* government and civil society, are well placed to contribute to the further opening up of public policy to human rights perspectives.

In pursuing these options, national institutions need to consider both the political and technical complexity that defines public policy in the areas of employment, health, housing, social security, education and family services. On the political front, national institutions have demonstrated a capacity to exert influence on government policy. However, the success of national institutions' engagement in the debates affecting economic and social rights will depend increasingly on their ability to influence the technical process by which interest groups marshal facts and figures in

support of arguments for or against particular proposals for raising and spending government revenues.

For example, generalised expressions of concern about the consequences of the Asian economic crisis highlighted rising unemployment, poverty and malnutrition. But to provide an appropriate and effective response to these problems in the medium to long run it will be necessary to know something about the way these consequences actually manifested themselves. One economic analysis of the crisis concluded:

It is clearly premature to analyse the impact of the crisis on poverty or on the distribution of income and wealth in any of the severely affected ASEAN economies.... While few serious commentators doubt that there will be a sharp fall in household incomes...it is far from clear how the decline will affect different regions, and different socio-economic groups.<sup>14</sup>

In these circumstances, how well equipped are national institutions to contribute to the formulation of responses? What do the national institutions' own statistics, experience and contacts have to say about the actual impacts of a crisis or some systemic problem underlying violations of economic and social rights? Do national institutions have data that can be used to quantify the consequences and identify the groups particularly affected?

In addition to the information which a national institution could generate from its own inquiries and case work, there is the option of using data and analysis developed by organisations like UNDP (Human Development Report), Commission on Sustainable Development (Working Group on Indicators) and the New Economic Foundation (Index of Sustainable Economic Welfare).

There is a growing debate on the social dimensions of economic policy but it tends to lack a rigorous human rights focus. For example, the World Business Council for Sustainable Development (WBCSD)<sup>15</sup> is actively promoting Sustainable Development through a program of dialogues and forums. The WBCSD brings together multinational corporations, non-governmental organisations, academics and representatives of international organisations. It is also linked to regional Business Councils for Sustainable Development which have national members in three of the countries represented by Forum members. Its sustainable development policy is based on three pillars, economic growth, ecological balance and corporate social responsibility (CSR). According to the WBCSD, CSR is gaining momentum among an increasing number of stakeholders, well beyond the traditional shareholders, employees and investors. These stakeholders represent various groups such as government development organizations, labor unions, human rights groups, religious groups and education and aid foundations. CSR embraces a wide range of issues for companies, including human rights and worker rights.

In response to the growing problem of the poor getting poorer while the rich get richer, a number of political economists have argued for the 'stakeholder society'.<sup>16</sup> The underlying idea is that inequality of opportunity underlies the growing gap between rich and poor and that conventional responses by the welfare state have failed to redress this. What is proposed by the various advocates of the stakeholder society is different means of re-distributing wealth to give individuals the opportunity to create and in turn benefit from a fairer society.

Organisations such as the New Economic Foundation<sup>17</sup> and the Grameen Bank are also exploring, or implementing, alternatives to mainstream economics in an effort to give economic sovereignty back to local communities.

National institutions and the Forum need to become active participants in these debates and contributors to policy development at all levels; local (responding to individual cases/complaints about discrimination in relation to economic and social rights), national (public inquiries into systemic problems, as well as influencing policy on health, housing, jobs, education, social security), regional (APEC and ASEAN, as relevant, as well as the Forum) and international (the

next WTO round, as well as the UN's human rights mechanisms) and build partnerships with business, governments and inter-governmental organisations.

## **CONCLUSION**

Irrespective of where on the developmental spectrum the countries of Forum member national institutions are, there are significant shortcomings in the extent to which economic and social rights are being realised in every one. All the governments in Forum members' countries have either already ratified or are committed to ratifying the International Covenant on Economic, Social and Cultural Rights. There is, therefore, a clear legal and/or political obligation on the part of those governments to seriously address how their policies promote or hinder the right to work, food, safe drinking water, clothing, housing, health, social security and education.

The specific ways in which individual member Institutions go about promoting and protecting economic and social rights will vary because of the different institutional, legal and political environments in which they operate. However, the following suggestions for action are presented to Forum members for their consideration:

- promote the ratification of international human rights instruments in those countries where ICESCR and other relevant treaties have not been ratified
- ensure that ratified treaties are effectively implemented in domestic legislation
- provide critical input into national reports made pursuant to relevant international treaty obligations to UN Treaty Bodies, in particular reports under ICESCR to the Committee on Economic, Social and Cultural Rights
- conduct public inquiries into systemic problems in the areas of economic and social rights
- where States have developed a National Action Plan on Human Rights advocate that it include concrete measures to improve the social and economic welfare and equality of all citizens
- vigorously seek to redress areas of discrimination
- foster a public debate on economic and social rights, through public speaking, publications, training and seminars and contacts with government, business and the media
- increase awareness of economic and social rights in the community generally and among vulnerable groups and policy makers in particular
- develop an institutional capacity to be an authoritative source of data on the patterns of enjoyment and violation of economic and social rights
- develop and maintain institutional links with relevant public policy, non-governmental, business, inter-governmental and academic organisations working in the areas of employment, industrial relations, social security, housing, nutrition, health and education.

The following suggestions for Forum Secretariat action are presented to Forum members for their consideration:

- communicate the views and concerns of Forum members to relevant governments, regional institutions, economic organisations and regional and international organisations

- conduct a workshop on public inquiries as a means of addressing systemic problems in this area
- explore the possibility of engagement with relevant forums such as the World Bank, the IMF and the World Business Council for Sustainable Development
- establish links with relevant UN organisations such as the Commission on Sustainable Development's Working Group on Indicators and non-governmental organisations such as the New Economic Foundation.

## ANNEX 1

### **International Covenant on Economic, Social and Cultural Rights**

**Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966**

***entry into force 3 January 1976, in accordance with article 27***

#### ***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 therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

##### ***Article 17***

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.
2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.
3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

##### ***Article 18***

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

*Article 19*

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

*Article 20*

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

*Article 21*

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

*Article 22*

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

*Article 23*

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

*Article 24*

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

*Article 25*

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

**PART V**

***Article 26***

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

#### *Article 27*

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

#### *Article 28*

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

#### *Article 29*

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

*Article 30*

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 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.

***The role of national human rights institutions in the protection of economic, social and cultural rights: 03/12/98. General Comment 10 E/C.12/1998/25. (General Comments)***

UNITED NATIONS	Economic and Social Council	Distr. GENERAL E/C.12/1998/25 10 December 1998 Original: ENGLISH
----------------	-----------------------------	--

COMMITTEE ON ECONOMIC, SOCIAL  
AND CULTURAL RIGHTS  
Nineteenth session  
Geneva, 16 November-4 December 1998  
Agenda item 3

**SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE  
INTERNATIONAL COVENANT 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\***

\*Adopted at the 51st meeting (nineteenth session), on 1 December 1998.

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.

## ENDNOTES

---

<sup>1</sup> Author's Note:

The decision to write the paper in terms of “economic and social rights” rather than “economic, social and cultural rights” was deliberate and considered. This approach, however, always carried the risk that the paper could be interpreted as a further assault on the principle of indivisibility of human rights. I would like to state at the outset, therefore, that the paper was in no way intended to downplay the concept of cultural rights or the specific content of Article 15.

The focus on Articles 6 to 14 was motivated by the view that these Articles form a coherent cluster of rights which pose some common analytical problems in terms of political economy and public finance. Or, put another way, they constitute the basic physical elements of the right to an adequate standard of living. On the other hand, Article 15 poses a discrete set of philosophical and practical problems that are deserving of attention in their own right.

Articles 6 to 14 deal with issues which are at the heart of contemporary political and economic discourse in both developing and developed countries. Yet, the dominant discourse on employment, education, health or social security issues almost universally ignores the explicit human rights dimensions of economic and social policy in these areas. Conversely, the debate on economic, social and cultural rights in key forums like the Commission on Human Rights is largely polemical and hopelessly politicised.

---

Part of the reason for this politicisation is the unfortunate split between civil and political rights and economic, social and cultural rights which, of course, flows from the existence of two separate covenants. Conceptually, however, there is no reason to necessarily treat cultural rights as part of a package of economic, social and cultural rights. It makes as much sense, and in some contexts more sense, to consider them in company with civil and political rights. However, we have become so accustomed to the terms “civil and political” and “economic, social and cultural” that we seem to adopt this artificial divide almost by reflex and thereby fail to address in a practical way the actual content of particular rights and the implications this has for policy makers and legislators.

This paper is premised on the argument that, by undertaking or promoting a more analytical content-based approach to specific rights, national human rights institutions are uniquely well-placed to bring about meaningful engagement between the human rights community and the dominant institutions shaping economic and social policies.

<sup>2</sup> Article 22 of the Universal Declaration of Human Rights (UDHR). The UDHR was adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.

<sup>3</sup> ICESCR was adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966. A copy of ICESCR is at Annex 1 of this paper.

<sup>4</sup> HDI value as at 1995.

<sup>5</sup> At the time of writing the 1998 Report was the most recent. However the 1999 Report is now available.

<sup>6</sup> Human Development Report, 1998, p2.

<sup>7</sup> Ibid.

<sup>8</sup> The Human Development Report uses a range of indicators to describe the level of development in individual countries and regions: the Human Development Index (HDI) is calculated on the basis of longevity (life expectancy at birth), knowledge (adult literacy and combined enrolment ratios) and standard of living (real GDP per capita). There are two Human Poverty Index's – HPI-1 for developing countries and HPI-2 for industrial countries – which are calculated on deprivations in longevity, knowledge and standard of living and, for HPI-2, on social exclusion. The Gender-related Development Index (GDI) and the Gender Empowerment Measure (GEM) measure the level of gender inequality in development.

<sup>9</sup> See UN Fact Sheet on Human Rights Number 16 and the General Comments of the Committee – available on the UN Human Rights Website ‘Treaty Bodies Database’ at [www.unhcr.ch](http://www.unhcr.ch).

<sup>10</sup> Adopted at an expert meeting of international lawyers in Maastricht, the Netherlands, June 1986

<sup>11</sup> *The Financial Crisis in Asia and Foreign Direct Investment – an Assessment*, United Nations, Geneva, 1998, p 14ff.

<sup>12</sup> Human Development Report, p1.

<sup>13</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No.10, E/C.12/1998/25 of 10 December 1998. A copy of this comment is at Annex 2 of this paper.

<sup>14</sup> *The Impact of the Crisis on Poverty and Equity*, Anne Booth in [Southeast Asia's economic crisis: origins, lessons and the way forward](#) Arndt and Hill (eds), Allen and Unwin, 1999.

<sup>15</sup> [www.wbcsd.org](http://www.wbcsd.org).

<sup>16</sup> *The Stakeholder society*, Ackerman and Alstcott, Yale; *The Stakeholding society: writings on politics and economics*, Hutton, Blackwells.

<sup>17</sup> [www.neweconomics.org](http://www.neweconomics.org).