

Report of the Proceedings

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

29 November - 01 December 2005
New Delhi, India



Organised by
**National Human Rights Commission of India
&
Office of the United Nations High Commissioner
for Human Rights**



The Round Table in progress



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A three-day International Round Table on National Institutions Implementing Economic, Social and Cultural Rights was held at the Ashok Hotel, New Delhi, India from 29 November to 1 December 2005. The Round Table was a collaborative venture of the National Human Rights Commission of India and the Office of the United Nations High Commissioner for Human Rights (OHCHR). The principal objective of the Round Table was to discuss and strengthen the role and capacity of National Institutions in protecting and promoting economic, social and cultural rights (ESCR). Its specific objectives were to:

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

The Round Table deliberated on the following sub-themes in seven substantive sessions with the help of papers commissioned for the purpose: The eighth session was devoted to the formulation of the Plan of Action for National Institutions regarding ESCR.

Day 1

Session – I

Key International Instruments on ESCR and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)

Session – II

General Principles of ESCR – State Obligations to Promote, Protect and Fulfil

Session – III

Justiciability of ESCR and Legal Protection

Day 2

Session – IV

Implementing ESCR – Modes and Modalities, Advocacy and Other Means

Session - V

General Principles of ESCR – Roles and Responsibilities of National Institutions

Session – VI

New Challenges and Dimensions to ESCR

Session – VII

An Introduction to the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986) and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997)

Day 3

Session – VIII

A Plan of Action for National Institutions regarding ESCR

Each of the above sessions was moderated either by the Chairperson or Member of a National Institution who first and foremost introduced the topic and then invited individual speakers from other National Institutions present on the occasion for making their presentations. Each of these presentations was followed by open discussions of critical nature among the participants. At the end of each day, salient points/features that emanated from the deliberations of each session were also highlighted. This facilitated in the preparation of the 'New Delhi Concluding Statement' that was adopted by all the delegates on the last day of the Round Table meet. The detailed programme schedule is at **Annexure–I**.

The Round Table was attended by representatives of 24 National Human Rights Institutions (NHRIs) from Afghanistan, Albania, Argentina, Burkina Faso, Costa Rica, the Democratic Republic of the Congo, Fiji, Ghana, India, Ireland, Jordan, Kenya, Kyrgyzstan, Mexico, Mongolia, Morocco, Nepal, New Zealand, the Republic of Korea, Senegal, South Africa, Sri Lanka, Thailand, and Uganda. The list of delegates is at **Annexure–II**.

Official Opening

The Round Table was inaugurated with the Opening Remarks of Dr. Justice A.S. Anand, Chairperson, National Human Rights Commission of India and Mr. Orest Nowosad, Coordinator, National Institutions Unit, OHCHR. Dr. Justice Anand urged all the NHRIs to address violations of economic, social and cultural rights as forcefully as they address civil and political rights. He said that political freedom would not have much significance for those people who suffered from poverty and other social evils resulting from it unless economic, social and cultural rights were assured to them. Complimenting the UN Committee on Economic, Social and Cultural Rights for taking a robust attitude towards practical implementation of economic, social and cultural rights, he said that the right to development as a human right was recognized by the United Nations itself in 1986. According to him, the Vienna Declaration and Programme of Action, which affirms that “all human rights are universal, indivisible and inter-dependent and inter-related” further put to rest the distinction made between the civil and political rights on the one hand and the economic, social and cultural rights on the other. It was thus the duty of NHRIs to play a greater role in correcting the fallacy of treating one set of rights as inferior to the other set of rights.

Quoting statistics from the Human Development Report, 2005, he pointed out that there existed massive inequalities, more particularly in the developing countries, which rendered the enjoyment of human rights rather illusory. With over one fifth of the world’s population continuing to suffer from poverty, hunger, lack of healthcare facilities and illiteracy, there was an urgent need for all National Institutions to ensure that economic, social and cultural rights of the people were enforced, he said. Lauding the Indian judiciary, he pointed out that ‘the courts have been reading Civil and Political Rights into the Economic, Social and Cultural Rights by construing the two sets of rights harmoniously by expanding the concept of “right to life and liberty” to mean the right to live with human dignity and all that goes with it’. The courts in India, he stated, have related health care, food security and elementary education with “right to life” and thereby ensured their “enforceability”. He further said that it was also the firm view of the Indian Commission to accept indivisibility and inter-related nature of the two sets of rights for full development of human personality. He reiterated the fact that to effectively implement economic, social and cultural rights, there was need to adopt a rights based approach. The text of his speech is enclosed at **Annexure–III**.

Mr. Orest Nowosad, Coordinator, National Institutions Unit, OHCHR in his opening remarks highlighted the role of NHRIs in addressing economic, social and cultural rights and called on them to adopt a proactive approach to challenge stereotypes. He voiced his concern over the prevailing cultural and social practices that prohibited the enjoyment of these rights. He

made a special reference to the Handbook for NHRIs on Economic, Social and Cultural Rights, brought out by the United Nations. Its aim, he said, was to assist NHRIs in the development of policies, processes and skills so as to integrate economic, social and cultural rights into their work. He said that though the Handbook was specifically directed towards the protection and promotion of economic, social and cultural rights, many of its approaches were equally applicable to the work of NHRIs in relation to civil and political rights. He concluded his address with the hope that the delegates attending the three-day Round Table Meet would benefit from its deliberations and so would their respective National Institutions. The text of his speech is enclosed at **Annexure-IV**.

Proceedings

Day One

(Tuesday, 29 November 2005)

Session – I

Key International Instruments on ESCR and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)

Moderator:

Mr. Suren Tserendorj, Chairperson, National Human Rights Commission of Mongolia

Topic Introducers:

Mr. Miloon Kothari, UN Special Rapporteur on the Right to Housing

Mr. Orest Nowosad, Coordinator, National Institutions Unit, OHCHR

Before the start of the session, Mr. Orest Nowosad gave a brief introduction about the programme including the time that would be allotted to each of the Moderators and Speakers as well as the time that would be given for the general discussions once the speakers had made their presentations in each of the sessions. He explained to the delegates that arrangements had been made for translating the deliberations of the Round Table in French and Spanish as well as in English when presentations were made in French and Spanish. This was followed by the introduction of the delegates.

The session on Key International Instruments on ESCR and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR) was moderated by Mr. Suren Tserendorj, Chairperson, National Human Rights Commission of Mongolia. To begin session-I, he invited the first speaker Mr. Miloon Kothari, UN Special Rapporteur on the Right to Housing.

Mr. Miloon Kothari began by introducing the various international instruments, which recognised economic, social and cultural rights as integral parts of the human rights framework. First and foremost, he made a reference to the Universal Declaration of Human Rights (UDHR) that was adopted by the United Nations (UN) General Assembly in the year 1948, as being the first comprehensive international instrument encompassing both sets of rights, i.e., civil and political rights and the economic, social and cultural rights. Elucidating the importance of both these sets

of rights, he stated that on adoption of the UDHR, the General Assembly took upon itself the task of drafting two separate covenants in order to codify the two sets of rights outlined in the Declaration. Thereafter, the Member States debated on the individual provisions for almost two decades till consensus was reached in 1966 when on 16 December the UN General Assembly adopted the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. In adopting these instruments, the international community not only agreed on the content of each right set forth within the Universal Declaration, but also on measures for their implementation. The adoption of these two Covenants, he said, endorsed that enjoyment of economic, social and cultural rights and civil and political rights were interconnected and inter-dependent.

Highlighting the significance of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Mr. Kothari informed the delegates that it remained the principal instrument on economic, social and cultural rights. It recognised the right to self-determination; equality for men and women; the right to work and favourable conditions of work; the right to form and join trade unions; the right to an adequate standard of living including adequate food, clothing and housing; the right to health and healthcare; the protection of the family; and the right to social security. As of November 2005, 149 countries had ratified this Covenant, which meant that they had voluntarily undertaken to implement and give effect to the norms and provisions established by the Covenant. He also made a reference about the Committee on Economic, Social and Cultural Rights that monitors States' compliance with their obligations under the Covenant. This Committee, he said, had issued numerous concluding observations on the periodic reports submitted by States on their implementation of the Covenant. Not only this, it had also adopted a series of general comments on the interpretation and application of various provisions of the Covenant. Prominent among these were reporting by States Parties (General Comment No. 1), the right to adequate housing (General Comment No. 4), the right against forcible evictions (General Comment No. 7), and the role of NHRIs in the protection of economic, social and cultural rights (General Comment No. 10).

Other key international instruments touched upon by him during the course of his presentation were the Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) and the Convention on the Rights of the Child, 1989 (CRC). The provisions of all these, he mentioned, prevented violations of economic, social and cultural rights at various levels. These conventions also had their monitoring treaty bodies, which from time to time had made various general comments that facilitated the States Parties to deal with violations of economic, social and cultural rights.

Thereafter, he talked about the various obstacles faced in fulfilling economic, social and cultural rights. The example cited by him was that of justiciability of rights and resources wherein he

narrated the recent incidents of rampant land grabbing and confiscation of land by the government.

Mr. Miloon Kothari's presentation was followed by that of Mr. Orest Nowosad, Coordinator, National Institutions Unit, OHCHR. He invited attention of all the delegates to the Optional Protocol to the ICESCR. He emphasised that adoption of this Optional Protocol would enable individuals to petition an international committee in relation to alleged violations of economic, social and cultural rights by a State Party to the ICESCR. It would also enable one to look into inter-state petitions, i.e., complaints from one State Party to the ICESCR against another. Further, it would facilitate in conducting inquiries into alleged grave or systemic violations of economic, social and cultural rights. Currently, a working group had also been constituted to discuss varied issues relating to the drafting of the Optional Protocol. This working group would convene a meeting in February 2006 in which National Institutions could participate on their own. He reiterated that Mrs. Louise Arbour, UN High Commissioner for Human Rights was very keen that all NHRIs should play an active role in drafting of the Optional Protocol and its subsequent adoption.

The above two presentations were followed by discussions wherein questions were raised with respect to clarification of the Millennium Development Goals (MDGs) and the procedure of individual complaints, role of international organisations and the importance of influencing parliamentarians with regard to economic, social and cultural rights.

The issue of MDGs overriding the international instruments was brought forth by the Sri Lankan delegate. It was reiterated that in no circumstances the MDGs should override international human rights instruments rather a human rights approach should be adopted to achieve the MDGs.

On the issue pertaining to the role of international organisations raised by the delegate from Albania, it was agreed that their role should be that of coordinating and facilitating the government and the non-governmental organisations working in the field of economic, social and cultural rights.

With regard to the importance of influencing parliamentarians raised by the delegates from Argentina and Costa Rica, it was pointed out that there was need to educate the parliamentarians on key international instruments of human rights if all economic, social and cultural rights were to be realised in totality. It was emphasised that National Institutions could play a pivotal role in providing human rights education to parliamentarians as well as the general public.

The session ended with the summing up of salient features that emanated during the course of the deliberations by the moderator including the discussion that followed. Of particular

importance were the need to monitor and promote State compliance with the ICESCR and where the State was not a party to the Covenant, the need to ratify the ICESCR; need to engage with the working group in drafting of the Optional Protocol to the ICESCR and encourage States Parties to adopt it; and need to make use of the existing tools and interpretations, including those developed by the United Nations, the Committee on Economic, Social and Cultural Rights, especially and its general comments as well as the Limburg Principles and the Maastricht Guidelines.

Session – II

General Principles of ESCR – State Obligations to Promote, Protect and Fulfil

Moderator:

Mr. Godana Doyo, Member, National Commission on Human Rights of Kenya

Topic introducers:

Justice Mr. Y. Bhaskar Rao, Member, NHRC, India

Mr. Chan-un Park, Director General, National Human Rights Commission of Korea

Mr. Constantine Karusoke, Member, Uganda Human Rights Commission

Session – II was moderated by Mr. Godana Doyo, Member, National Commission on Human Rights of Kenya. To start the session, he invited Justice Mr. Y. Bhaskar Rao, Member, NHRC, India to make his presentation.

Justice Mr. Y. Bhaskar Rao began his presentation by emphasising the fact that economic, social and cultural rights formed an integral part of international human rights law and it is precisely for this very reason that they have been fully recognised. Lamenting the fact that though economic, social and cultural rights had received less attention in comparison to civil and political rights, he said, the fact remained that both these sets of rights were indivisible and inter-dependent for there could not be a meaningful enjoyment of civil and political rights without the realisation of economic, social and cultural rights. Citing an example, he pointed out that, freedom of speech and expression and the right to information could exist meaningfully only when the people at large were educated.

Highlighting the significance of ICESCR, he said that the Government of India was Party to the ICESCR. He added, when a State ratified any of the Conventions, it accepted a solemn responsibility to apply each of the obligations embodied therein as well as ensured its compatibility with national laws in a spirit of good faith. In the case of economic, social and cultural rights too,

it became imperative on the part of the State to initiate steps for 'progressive realisation' of these rights. According to him, progressive realisation of economic, social and cultural rights was often thwarted with constraints of resources and it was simply for this reason that States were not able to accomplish these rights for their citizens in a short period of time. In such circumstances, those States, which were in a position to assist others, should come forward to help others. The Declaration on the Right to Development adopted by the UN General Assembly in its resolution 41/128 of 4 December 1986, assumed particular significance in this context, he asserted.

Thereafter, he briefly explained the three general obligations within the legal framework of economic, social and cultural rights – the obligation to promote, to protect and to fulfil these rights. The 'obligation to promote' required States to abstain from performing, sponsoring or tolerating any practice, policy or legal measure violating the integrity of individuals or infringing upon their freedom to use those materials or other resources available to them in ways they found most appropriate to satisfy economic, social and cultural rights. The 'obligation to protect' imposed a duty on the State to prevent violation of any individual's rights by any other individual or non-State actor. On the contrary, if violations took place, the State must guarantee access to legal remedies to all those victims whose rights have been infringed. The 'obligation to fulfil' implied positive measures on the part of the State when other measures failed to succeed in ensuring the realisation of these rights.

Citing the example of India, he then elaborated on the steps taken by the Constitution of India, the Government of India as well as the National Human Rights Commission in protecting and promoting economic, social and cultural rights. The complete text of his paper is enclosed at **Annexure-V**.

This presentation was followed by Mr. Chan-un Park, Director General, National Human Rights Commission of Korea. He began his presentation by highlighting the fact that the understanding of human rights including economic, social and cultural rights in Korea had not shown much difference with that of the international community. From the normative point of view, economic, social and cultural rights had been recognised in the Korean Constitution long before Korea ratified the ICESCR. Yet they had received much less attention in comparison to civil and political rights. However, ever since the Government of Korea ratified the ICESCR in 1990, appreciation for economic, social and cultural rights had grown considerably. In fact, the Committee on Economic, Social and Cultural Rights had examined and commented on two of their country reports submitted by the Government of Korea. This reporting process, according to him, had facilitated an understanding of economic, social and cultural rights in Korea.

He then elaborated on the multi-faceted obligations adopted by the State towards realisation of economic, social and cultural rights including the role of the National Human Rights Commission of Korea in protecting and promoting economic, social and cultural rights. According to him, owing to the multi-dimensional feature of State obligation, the Commission

was preparing a few policy recommendations with regard to the realisation of economic, social and cultural rights. For example, it was reviewing the government policy with regard to forced eviction, suspension of electricity, water and gas. The text of Mr. Park's paper is enclosed at **Annexure–VI**.

Mr. Constantine Karusoke, Member, Uganda Human Rights Commission, made the third presentation in this session. He stated that experience in Uganda had taught that the assertion of the right of personal freedom was incomplete unless it was related to the social and economic rights of the common man. According to him, the idea of 'rights' complemented the idea of 'needs' in a number of ways. It reiterated the moral importance that was placed on the human interests that were at stake, the priority that was to be accorded to them in the process of resource allocation, the status of the rights holder and the nature of the duties imposed on the State with regard to the realisation of economic, social and cultural rights. All States, he said, had an obligation to ensure to its citizens that they enjoyed these rights without any discrimination. Referring to the ICESCR, he reiterated that it was the obligation of each State Party to take immediate steps, irrespective of the level of their national wealth, for progressive realisation of economic, social and cultural rights. If a State Party did not take steps when it should, then it constituted a *prima facie* violation of the ICESCR. According to him, States were obliged to 'respect', 'protect' and 'fulfil' the rights contained within the treaty, by adopting appropriate State policies, laws and other measures.

He then elaborated some of the measures taken by the Uganda Human Rights Commission with regard to respect, protection and fulfillment of economic, social and cultural rights. Of prime importance was the ratification of ICESCR, CEDAW, CRC, the Convention relating to the Status of Refugees, ILO Conventions and the African Charter on the Rights and Welfare of the Child. The Government of Uganda had also provided adequate public funding for programmes and policies that helped implement economic, social and cultural rights, such as, the right to health, right to food, right to education, eradication of poverty and rights of refugees and internally displaced persons (IDPs).

Highlighting the challenges in the implementation of economic, social and cultural rights, he lamented that though Uganda had ratified many of the international conventions, many of these had yet to be implemented at the domestic level. Inadequate funding by the government was also responsible to some extent for stifling the performance of their Commission in monitoring activities relating to economic, social and cultural rights. Coupled with these was the fact that limited steps had been taken to promote awareness and understanding of the principles and provisions of the ICESCR. Moreover, the country's infrastructure was also not found to be conducive as it excluded vulnerable persons from the enjoyment of these rights. This apart, priorities were not matched with resource allocation. Though the government had put in place an NHRI through which a complaints procedure had been initiated, the non-justiciability of most of the economic, social and cultural rights had hindered the Courts of Law in Uganda to adjudicate violations of

the core content of economic, social and cultural rights. Prejudicial traditional practices and customs, prevailing particularly in rural areas, also hampered the effective implementation of the provisions of the ICESCR especially with regard to the principles of non-discrimination, best interests of the child and respect for the views of the vulnerable. In brief, the general attitude towards these rights was that they were considered as second-generation rights, which were merely desirable goals and were dependent on the generosity and political goodwill of the government, he concluded. The full text of the paper presented by Mr. C. Karusoke is enclosed at **Annexure–VII**.

The above three presentations were followed by an open discussion wherein it was pointed out by the delegate from Sri Lanka that it was necessary and essential for NHRIs to engage with the private sector and multi-sectoral organisations like the World Bank, International Monetary Fund, Asia Development Bank, in order to set the benchmark for accomplishing economic, social and cultural rights. The Ugandan delegate also seconded her opinion.

An intervention was also made by the delegate from Burkina Faso who apprehended that implementation of economic, social and cultural rights by NHRIs was not very simple as one had to confront many obstacles in their realisation. In order to overcome these obstacles, he opined that certain control mechanisms, such as surveillance, was essential. He emphasised the importance of resource management as well.

During the course of the discussion, Justice Rao categorically stated the core issues, which ought to be addressed by all NHRIs. These core issues were food, housing, health and education and were minimum requirements that each one was entitled to.

Emphasis was also laid on the rights-based approach by the delegate from Korea, for which the judiciary was required to play an important role if this approach was to be successful. The delegates also stressed the importance of human rights education along with international cooperation.

The session ended with a summing up of the salient features that emerged during the course of the deliberations including the discussion that followed by the Moderator. Some of these related to adopting and ensuring a rights-based approach for realisation of economic, social and cultural issues; coordinating with their respective governments in programme planning including budgetary allocations to ensure respect for protecting, promoting and fulfilling economic, social and cultural rights; work within their States with representatives of international financial institutions to help the State to ensure that their policies and practices did not impact negatively on the enjoyment of economic, social and cultural rights; and ensure, where national plan of actions were developed or were to be developed, that economic, social and cultural rights were taken into full consideration.

Session – III

Justiciability of Economic, Social and Cultural Rights and Legal Protection

Moderator:

Mr. Francois de Salle Bado, President, Commission Nationale des Droits Humains, Burkina Faso

Topic Introdurers:

Dr. Justice A.S. Anand, Chairperson, NHRC, India

Mr. Richard Quayson, Deputy Commissioner, Commission of Human Rights and Administrative Justice of Ghana

Mr. Francois de Salle Bado, President of the National Human Rights Commission of Burkina Faso, moderated this session. To begin the session, he invited Dr. Justice A.S. Anand, Chairperson, National Human Rights Commission of India to make his presentation.

Dr. Justice Anand began by introducing the importance of justiciability of economic, social and cultural rights. Subsequently, he highlighted the role of the judiciary as well as that of the National Human Rights Commission of India, which was playing a monumental role in realisation of the economic, social and cultural rights. Citing the Constitution of India, he said that civil and political rights and economic, social and cultural rights found their due place in the chapter concerning 'Fundamental Rights' and 'Directive Principles of State Policy'. While the former were justiciable and the latter non-justiciable rights, the Indian judiciary, he said, needed to be congratulated for expanding the ambit of Directive Principles of State Policy by making these rights at par with the Fundamental Rights in other words 'justiciable'. He further said that to effectively implement economic, social and cultural rights, there was need to adopt a rights based approach.

Following Dr. Justice Anand's presentation, Mr. Richard Quayson, Deputy Commissioner, Commission of Human Rights and Administrative Justice of Ghana was next invited by the Moderator to make his presentation. Mr. Quayson began by giving an outline of the mandate of the Commission, which consisted of three essential features – Ombudsman, National Human Rights Institutions and Anti-Corruption Agency under one umbrella. Thereafter, he detailed the structure and functions of the Ghanaian Commission.

Talking about the economic, social and cultural rights in Ghana, he said that the Constitution of Ghana guaranteed economic, social and cultural rights to its people and that Ghana had also ratified the ICESCR in September 2000. Imparting education and providing equal opportunities and facilities to all, including shelter, water and food were considered to be some of the essential

economic, social and cultural rights. With the passage of time, the courts were gradually becoming more and more sensitive to the injustice faced by the neglect of these rights.

Highlighting the role of the Ghanaian Commission in realizing economic, social and cultural rights, he said that it had intervened and provided remedies as and when there had been violations of these rights. This also entailed working closely with the courts, the department of social welfare and other enforcement agencies. He also emphasised on the need of educating people from all walks of life on economic, social and cultural rights. Talking about the challenges faced by Ghana in implementing these rights, he identified poverty and illiteracy as the two main causes hampering realisation of these rights. Nonetheless, he was optimistic that justiciability of economic, social and cultural rights would very soon become a reality in Ghana in the near future and their Commission would do all it could to protect and promote these rights. The text of the Power Point presentation made by Mr. Quason is at **Annexure–VIII**.

These two presentations were followed by an open house discussion wherein questions were raised from the delegates on varied issues related to the theme of the session.

The delegate from South Africa raised the issue of ‘separation of powers’ given the fact that different organs of State were meant to perform differing functions. Replying to this, Dr. Justice A.S. Anand said that judicial activism took place only when there was a *vacuum* and it was the role of the judiciary to establish and uphold the rule of law and democracy. Supplementing the point made by Dr. Justice Anand, Mr. Orest Nowosad also stated that National Institutions and the judiciary should complement each other in promoting economic, social and cultural rights.

The delegate from the Democratic Republic of Congo in relation to economic crimes then raised the issue of ‘justiciability of international instruments’. A consensus was thus reached among all the delegates that such serious cases could be combated only through international instruments when domestic legislation was found to be weak and inadequate.

Following this, the delegate from Nepal brought forth the issue of ‘difference in nature of economic, social and cultural rights to that of civil and political rights’. He commented on the ambiguity of such general policy issues. In this context, the Irish delegate presented a solution to such a constraint by way of identifying concrete minimum standards with regard to economic, social and cultural rights. She also emphasised that it was the duty of National Institutions to draw attention of the government towards international standards when there existed a large difference between domestic and international standards. The delegate from Sri Lanka drew the attention of the delegates to the Limburg Principles and the Maastricht Guidelines and said that economic, social and cultural rights could be clarified in the light of the said Principles and Guidelines. She also complimented the Indian jurisprudence for promoting economic, social and cultural rights and then gave a brief overview of the Sri Lankan jurisprudence.

Elucidating the role of National Institutions, Dr. Justice A.S. Anand concluded by saying that NHRIs should, first and foremost, suggest improvements in existent laws as this would facilitate an effective implementation of economic, social and cultural rights; second, seek the intervention of the court, as and when required, if at all enforcement of economic, social and cultural rights were to be made a reality; and third, they should be instrumental in generating awareness and spreading legal literacy, if at all these rights were to be realised.

The session ended with the summing up of salient features that came out of the deliberations including the discussion that followed by the Moderator. Some of these were making use of the complaint handling functions of a National Institution in order to provide effective redress for those who had suffered violations of economic, social and cultural rights; and making use of, wherever possible, quasi-judicial powers in implementing economic, social and cultural rights.

Wrap-up of Day One

Wrapping up the deliberations that took place on the first day of the Round Table, Mr. Orest Nowosad gave a summary of points that were highlighted by the speakers of each session as well as the points raised by the delegates. The text of the summary of points given by Mr. Nowosad on Day One is enclosed at **Annexure–IX**.

Day Two

(Wednesday, 30 November 2005)

Session–IV

Implementing Economic, Social and Cultural Rights – Modes and Modalities: Advocacy and Other Means

Moderator:

Ms. Lisbeth Tristan Queseda, Defensor de los Habitantes, Costa Rica

Topic Introducers:

Ms. Alpha Connelly, Chief Executive, Irish Human Rights Commission

Mr. P.C. Sharma, Member, NHRC, India

Mr. Kedar Poudyal, Acting Secretary, NHRC, Nepal

The Moderator for this session was Ms. Lisbeth Tristan Queseda from the National Human Rights Commission of Costa Rica. Before initiating the session, she gave a brief introduction about the nature of work being carried out by the Costa Rica Commission in defending economic, social and cultural rights. She gave considerable importance to the rights of children and the rights of terminally ill children. She then invited Dr. Alpha Connelly, Chief Executive, Irish Human Rights Commission to make her presentation.

Dr. Alpha Connelly began by giving a broad outline of the working of the Irish Human Rights Commission. She said that the Irish Commission was relatively young and its overall mandate was to protect and promote the human rights as recognised in the Irish Constitution and the international agreements to which Ireland was a party. According to her, much of the Irish Commission's work had concentrated on the latter and one of the main international agreements to which Ireland was a party was the ICESCR. Highlighting the work undertaken by the Irish Commission with regard to promotion of economic, social and cultural rights, she pointed out that it was conducting a major research on this category of rights with particular reference to women and persons with disabilities. It was also conducting an enquiry into the impact on elderly persons with regard to a legislative requirement concerning old age pension scheme from which they could not benefit.

In her presentation, she mainly concentrated on the Disability Act, 2005 recently enacted by the Irish Parliament. She elaborated that the Irish Commission along with other organisations vehemently urged for adopting a rights based approach towards the Disability Act. While the said Bill was in its draft stage, it assessed each of its clauses in relation to the main requirements of

international human rights law. Not only this, it identified several principles to ensure this. Despite all this, it had been observed that the Disability Act enacted by the Parliament in 2005 adopted a needs based approach and not a rights based approach. According to her, it would be a major challenge for the Irish Human Rights Commission to change the official perspective and secure an acceptance in government circles that human rights should be center stage when resources were allocated in this field.

Given the fact that Ireland had a long tradition of concern for civil and political liberties, it had by and large, yet to learn to bring a human rights perspective with regard to economic and social issues in Ireland itself, she said. Their Commission, therefore, had to undertake a major educational exercise in promoting economic, social and cultural rights. It is primarily for this reason that Ireland had initiated a major study on this subject. The text of her paper is enclosed at **Annexure-X**.

After Dr. Connelly's presentation, Mr. P.C. Sharma, Member, National Human Rights Commission of India was invited by the Moderator to make his presentation. Mr. P.C. Sharma said that the concept of 'rights' had been evolving ever since the Universal Declaration of Human Rights was adopted by the UN General Assembly and continued to do so even now so much so that it had given recognition to economic, social and cultural rights also. The nations long suppressed by colonial rule had now woken up and were striving to achieve dignity and parity not only in terms of political freedom but also in terms of fulfilling their social and cultural aspirations. As a result of all this, the economic, social and cultural rights were now being treated at par with the civil and political rights. Elaborating his point, he drew examples from history and said that the State should guard against non-State actors and prevent them from violating these rights. Quoting Arjun Sengupta, he said that economic, social and cultural rights were integrally dependent on civil and political rights. As such, all human rights were inter-dependent and indivisible for realisation of one right depended on the realisation of the level of other rights.

Recognising development or economic upliftment as a human right, Mr. Sharma sounded a word of caution by saying that one needed to tread cautiously while defining development as a human right. According to him, 'development' was not to be confused with GDP or industrialisation or export promotion or increasing the volume of employment. The economic development in the context of human rights was to be understood on the basis of its realisation that it was a process that had to be equitable and that in no way should increase inequalities rather it should lead to a fair sharing of the benefits of development. In other words, development was a process that did not recognise discrimination between people coming from different cultural backgrounds nor did it recognise caste, religion, gender or ethnicity, he said. Elaborating further on the concept of 'development as human right', he said that this kind of development was very close to the socialistic pattern of planning and development that India adopted after achieving independence from the colonial rule which aimed at product sharing and a participative endeavour. At this juncture, he

gave the example of the Planning Commission of India and the manner in which this institution had accelerated planned development in the country.

Talking about economic, social and cultural rights further, Mr. Sharma said that the process of development of economic, social and cultural conditions ought to become an obligation to fulfil development. For, if a right was claimed legitimately and justifiably by any agent in the society, then all other agents in the society whose actions had influence on the fulfillment of that right would have an obligation to the maximum extent possible, to fulfill them. Commenting further, he said that wherever NHRIs had been set up, they had a fair assessment of the conditions in their respective jurisdictions. It was their duty to draw the attention of the State and the civil society towards problems associated with human deprivation. Some of these being extreme hunger, homelessness, malnutrition, unemployment, illiteracy, chronic ill-health, access to clean drinking water and sanitation, primary education, etc., he said. He cited the example of the Indian National Human Rights Commission and the work being carried out by it in the area of healthcare, drinking water, prevention of starvation deaths, protection of the right of women and children, criminal justice system, human rights education, etc. The text of Mr. Sharma's paper is enclosed at **Annexure–XI**.

After the conclusion of Mr. P.C. Sharma's presentation, the Moderator next invited Mr. Kedar Prasad Poudyal, Acting Secretary of the Nepal Human Rights Commission. Citing examples from other countries, Mr. Poudyal said that throughout history, importance has been given to civil and political rights. However, one could not ignore economic, social and cultural rights as these were rights associated with the dignity of the poor, marginalised and less advantaged people of the world; for a large population of the world belonged to this segment. Talking about Nepal, he said that by and large civil and political rights were given superiority over economic, social and cultural rights, though this situation was gradually changing. One major shift of the State towards fulfilling economic, social and cultural rights had been that it had adopted a rights based approach to development. Similarly, various activities undertaken by the Government of Nepal in achieving the Millennium Development Goals had also been a step forward in fulfilling economic, social and cultural rights. However, in order to achieve better respect for these rights, the government could still adopt some more effective measures, he said. For instance, there were still a number of international instruments to define the scope and ambit of economic, social and cultural rights. There were also best practices that had been observed in different parts of the world. There was thus a need to consolidate all these and propagate at the national level among the key policymakers including the parliamentarians as this would enable them to have a better understanding about economic, social and cultural rights. Likewise, the judiciary also could be sensitised. Similarly, the functionaries of the Planning Commission or Planning Division of the government could be sensitised on a rights based approach to development and towards the realisation of economic, social and cultural rights.

Preparation of a country report for submitting it to the Committee on Economic, Social and Cultural Rights, which monitored the implementation of ICESCR, was another way by which sensitivity about economic, social and cultural rights could be spread among the States Parties. This in a way would also enable the States Parties to set up benchmarks and guidelines to protect these rights. In other words, it would facilitate the government to own up the responsibility for fulfillment of economic, social and cultural rights. The NHRIs could thus facilitate their governments in reviewing their national budgets, long-term plans as well as laws that had a direct bearing on economic, social and cultural rights. Perhaps, they could also encourage and assist their governments in preparing a national human rights action plan on economic, social and cultural rights.

Elaborating on the work of Nepal Human Rights Commission, he said that some of the key priorities, which needed to be addressed by their government were defining appropriate national standards for right to food, health, shelter, education and work. There was also a need to press for constitutional and legislative changes in order to ensure that the citizens were able to enjoy minimum standards relating to those rights. Equally, there was a need to conduct a national level research on the impact of globalisation, on household food security, on bonded labour, on the rights of farmers and Nepali migrant workers from the perspective of human rights. The text of his paper is enclosed at **Annexure–XII**.

These three presentations were followed by an open house discussion wherein questions were raised by the delegates on the importance of having an institution like the Planning Commission for the realisation of economic, social and cultural rights. First and foremost, Mr. Orest Nowosad raised the issue of transparency with regard to institutions that were identical to the one (Planning Commission of India) mentioned by Mr. P.C. Sharma in his presentation. Replying to the query, Mr. P.C. Sharma answered that the functioning of the Planning Commission in India as well as the activities carried out by it were widely publicised and the institution on the whole was extremely transparent in nature.

With regard to a question on the issue of resources raised by the Kenyan delegate, consensus was reached that NHRIs need to be creative while carrying out research studies in the area of economic, social and cultural rights. Regarding the significant role that the civil society could play in relation to the implementation of economic, social and cultural rights, it was collectively agreed that the civil society should always raise the concern of the people at large and that the national institutions too should replicate this.

The session ended with a summing up of salient features that came out of the deliberations by the Moderator including the discussion that followed. Some of these were raising awareness about the international human rights standards relating to economic, social and cultural rights among all the stakeholders; encouraging and actively supporting advocacy, education and training on economic, social and cultural rights for all Stakeholders; and developing public information campaigns for raising awareness about economic, social and cultural rights.

Session–V

General Principles of ESCR – Roles and Responsibilities of NIs

Moderator:

Ambassador Shaher Bak, Commissioner General, National Centre for Human Rights, Jordan

Topic Introducers:

Mr. R.S. Kalha, Member, NHRC, India

Ms. Diana Pickard, Senior Policy Analyst, New Zealand Human Rights Commission

Ambassador Salvador Campos, Executive Secretary, Mexican National Human Rights Commission

This session was moderated by Ambassador Shaher Bak, Commissioner General, National Centre for Human Rights, Jordan. To begin the session, he invited Mr. R.S. Kalha, Member, National Human Rights Commission of India to make his presentation.

Referring to the Paris Principles, Mr. R.S. Kalha said that any national institution that had been set up in accordance with it had a unique role to play in the protection and promotion of human rights, including economic, social and cultural rights. Elaborating further on this point, he said that quite often it had been noticed that despite following the Paris Principles religiously, the mandate of national institutions was invariably expressed in very general terms. It was, therefore, up to the national institution concerned to interpret its mandate. While doing so, it should not lose sight of the fact that apart from looking into complaints of violations, it had other roles to play also by way of conducting research, monitoring and developing policy. Further, it should work in cooperation with the government if success was to be achieved.

Elaborating further on the role and responsibilities of national institutions, Mr. Kalha said that any national institution trying to play an effective role must remember that one of its most important aspects was its accessibility. If a national institution was not accessible or its functions were not known to the vast majority of the people of its country, then its role was naturally circumscribed. Similarly, the functioning of the national institution must be widely publicised and made known to the people. Commenting further on accessibility of a national institution, he said that it should be physically approachable by all, especially those who live in rural and remote areas as this kind of accessibility would enhance the quality of its functioning.

On the basis of the above, he said that each national institution had to develop its own ethos and work culture and simultaneously encouraged all governmental, non-governmental and other

institutions to actively participate in the promotion of economic, social and cultural rights. The text of Mr. Kalha's presentation is enclosed at **Annexure–XIII**.

The Moderator then invited Ms. Diana Pickard, Senior Policy Analyst, New Zealand Human Rights Commission, the second speaker for session V. She started her presentation by pointing out that their experience in New Zealand had taught them that the assertion of the right of personal freedom was incomplete unless it encompassed the social and economic rights of the common people. It was simply for this reason that while the national action plan for human rights was being developed in the year 2003, the people of New Zealand told their Human Rights Commission that economic, social and cultural rights were equally important to them as civil and political rights.

Highlighting the measures undertaken by the New Zealand Human Rights Commission in promoting and delivering economic, social and cultural rights, she said that it particularly focused on the violations of economic, social and cultural rights and monitoring and promotion of these rights all over the country. She further said that in February 2005, the Commission completed the First New Zealand Action Plan for Human Rights. This Plan and the preceding status report entitled 'Human Rights in New Zealand Today' specifically looked into the provision of these rights in New Zealand, in particular the right to an adequate standard of living through the lens of child poverty and the right to housing; and the right to health, education and work. The status report provided compelling evidence of persistent inequalities in economic, social and cultural rights often connected with race, refugee or immigrant status. It also highlighted the extent to which realisation of one economic, social and cultural right was dependent on the realisation of others. Though, elements of these rights were addressed in some laws, government strategies, policies and programmes, these did not have the same level of legislative protection as civil and political rights. The challenge for the Commission now was to achieve implementation of the action plan for human rights at the ground level. With this in mind, she said that strategies were being developed for further interaction with central and local governments, the business class and the community at large.

This apart, as per their Human Rights Act, the Commission was mediating complaints about discrimination in health services, accommodation and employment. It was also intervening in court cases where the realisation of these rights was under threat. Talking about promotion of economic, social and cultural rights, she said that while elements of these rights were already included in some of their laws, policies and practices, it would be ideal if these rights *per se* were included in New Zealand's human rights legislation in totality as this would then make these rights directly justiciable. She further said that their Commission considered that it had a responsibility to spread human rights in the entire Pacific region, regarding the realisation of economic, social and cultural rights, as a 'good neighbour'. She concluded by saying that the challenge before their Commission was to ensure that everyone really knew, understood, observed and respected economic, social and cultural rights. The text of Ms. Pickard's presentation is enclosed at **Annexure–XIV**.

Ambassador Salvador Campos, Executive Secretary, Mexican National Human Rights Commission

was next invited by the Moderator to make his presentation. Mr. Campos stated that in spite of the best efforts made by several international, regional and national entities, the mandate of their Commission was limited, as it did not have the power to receive complaints on labour matters. The International Covenant on Economic, Social and Cultural Rights had been in force in Mexico since June 1981; yet eradication of poverty remained one of the Commission's main concerns. To look into this grave violation, he said that the Federal Government had visualised a vision for the social development of its people till 2025, as a guide for eradicating poverty.

He then gave a broad overview of the Mexican Human Rights Commission in protecting and promoting economic, social and cultural rights. He also informed the delegates that, of late, there were gradual changes in the nature of complaints received by their Commission. For instance, earlier there were a large number of complaints on torture received by the Commission. Now, the Commission received more and more complaints related to public health services, public housing services, compliance of social security provisions and inadequate provision of public electricity service. All this was due to the fact that there has been an increase in the education level of the people in Mexico. He mentioned that in Mexico people were aware of the fact that education was their best tool to prevent violations of human rights. Talking about the complaints received by their Commission on different economic and social rights, he said that these complaints were resolved through the mechanism of ombudsman. He concluded by stressing the importance of human rights education in realising economic, social and cultural rights. The text of Mr. Campos's presentation is enclosed at **Annexure–XV**.

These three presentations were subsequently followed by an open house discussion. The first question raised was by the Korean delegate who stressed on the importance of legislation in the protection of economic, social and cultural rights.

Addressing a question to Ambassador Campos, Mr. Quayson enquired about the procedure followed in cases pertaining to labour matters by the Mexican Human Rights Commission. Mr. Campos replied that whenever such a situation existed, a tri-partite system was adhered to among the workers, employers and the government. The labour justice system settled all such cases through mediation.

With regard to the issue concerning group rights versus individual rights, the delegate from South Africa said that in their country they took recourse to their Constitution whereby cultural rights (linguistic and minority rights) in all situations were to be upheld as long as they did not contravene any provision contained in the Bill of Rights (enshrined in the Constitution), meaning thereby that in no situation the group interest should violate individual interest.

Mr. Constantine Karusoke, the delegate from Uganda questioned Mr. Kalha as to the manner in which national institutions could retain their independence while tendering full cooperation to the government. To this Mr. Kalha replied that cooperation in no way meant loss of independence. In this context, he cited the example of the Indian Human Rights Commission that if

recommendations suggested by it were objective and logical, they were unanimously accepted by the government and this in no way hampered the independence of NHRC of India.

The session ended with a summing up of salient features by the Moderator that emerged out of the deliberations including the discussion that followed. A few of these related to developing a strong research capacity so as to deal with realisation of economic, social and cultural rights; monitoring activities and developing minimum standards to ensure the implementation of these rights by government agencies; and ensuring, while supporting the richness of cultural practices, that such practices did not contravene international human rights law.

Session–VI

New Challenges and Dimensions to ESCR

Moderator:

Ms. Farzana Gani, Education Training Officer, Fiji Human Rights Commission

Topic Introducers:

Mr. Nirmal Singh, Secretary General, NHRC, India

Mr. Jody Kollapen, Chairperson, National Human Rights Commission of South Africa

Mr. Juan Carlos Mazzini, Asesor, Defensor del Pueblo De la Nacion de Argentina

This session was moderated by Ms. Farzana Gani, Education Training Officer, Fiji Human Rights Commission. Before inviting the speakers to make their presentations on 'New Challenges and Dimensions to ESCR', she gave a brief introduction about the mandate of the Fiji Human Rights Commission as well as its overall functioning. She also highlighted the major issues on which the Fiji Human Rights Commission was dealing for realisation of economic, social and cultural rights. The text of the Power Point presentation made by Ms. Gani is at **Annexure–XVI**. She then invited Mr. Nirmal Singh, Secretary General, National Human Rights Commission of India to make his presentation.

Mr. Nirmal Singh began by articulating the fact that the Universal Declaration of Human Rights recognised two sets of rights – civil and political rights and economic, social and cultural rights and pointed out the purpose of the latter set of rights for the poor, starving and illiterate people. Citing alarming statistics of how children were dying every hour on account of poverty, how millions of people were living with HIV, how a billion lacked access to safe drinking water and how millions were affected with hunger as they did not have food to eat, he sounded a word of caution that these problems posed major challenges not only to the mankind but to human rights institutions as well. Elaborating further, he said that gender posed a major disadvantage for realisation of economic, social and cultural rights, especially in South Asia. To date, he lamented that there was no concrete

answer as to how discrimination based on gender could be tackled. Terrorism was another phenomenon that posed a major threat to the world community in acquisition of economic, social and cultural rights and world peace. Another new challenge that seemed to be cropping up in a few countries was that of nationalism. This phenomenon was directed against minorities and vulnerable groups in multi-cultural societies for consolidating the position of dominant ethnic groups he said.

Of late, he remarked that communication and information technology had opened new vistas for development of rights. He was optimistic that this technology would have a positive impact in realisation of these rights as it facilitated long distance education and learning that would make people come forward and participate in fulfillment of these rights. However, it needed to be ensured that this device was made easily accessible to all. He concluded his presentation by emphasising the fact that each country might altogether require a different strategy and approach to ensure the availability of economic, social and cultural rights to its citizens, in particular the vulnerable sections. The text of his paper is enclosed at **Annexure–XVII**.

The Moderator then invited Mr. Jody Kollapen, Chairperson, National Human Rights Commission of South Africa to make the presentation. Mr. Kollapen began by giving a brief overview of the functioning of the National Human Rights Commission of South Africa. He highlighted the fact that one of the most important aspects of their Commission was its independent nature that had been guaranteed to it by the Constitution itself. Talking about the economic, social and cultural rights, he said that these were policy choices as one had to arrange and rearrange national budgets for fulfilling these rights. Since the Constitution of South Africa guaranteed certain basic rights to its people, like the right to housing and right to food, it entrusted the Commission a specific task to monitor the implementation of these rights and apprised the Parliament too in this respect by submitting an annual report on its overall progress.

He stressed the fact that NHRIs all over the world should be independent entities and not be a part of the government or for that matter civil society. Talking about globalisation, he highlighted its negative aspects and stressed that these needed to be countered if at all one wanted to ensure the realisation of economic, social and cultural rights. He made a passionate plea to all concerned to strive towards fulfillment of these rights and mentioned that public hearings facilitated enforcement of these rights. He concluded by stating that globalisation, allocation of resources and kind of remedies offered posed some of the major challenges currently in ensuring these rights.

Mr. Juan Carlos Mazzini, Asesor, Defensor del Pueblo de la Nación de Argentina, was next invited by the Moderator to make his presentation. He started by putting forth the experience of Argentina with regard to realisation of economic, social and cultural rights. Mr. Mazzini said that a Committee of Crisis had been constituted in Argentina to deal with individual, judicial and parliamentary actions. Highlighting the dangers brought forth by privatisation of essential services like health, water, etc. as well as the pressures applied by international organisations like the World Bank and the International Monetary Fund, he said that a lot of emphasis was being placed on teaching human rights at all levels so that the

challenges posed with regard to realisation of economic, social and cultural rights were taken care of.

These three presentations were subsequently followed by an open discussion. The first question raised was by the Nepalese delegate with regard to the role of non-State actors in realising economic, social and cultural rights. A consensus was reached that violation of human rights by non-State actors, which resulted in displacement, and hampering of their economic, social and cultural rights should in no way be tolerated.

With regard to the query raised by Mr. Nowosad as to how national institutions could work with the media, the Senegalese and the Albanian delegates pointed out that media's role was very significant in creating awareness and eradicating illiteracy among people and could also be used as a powerful tool by the national institutions. In this regard, Mr. Kollapen pointed out that there was need to train the media personnel if the reporting by the media was to be objective.

The session ended with a summing up of salient features that emerged out of the deliberations including the discussion that followed, by Ms. Farzana Gani, Moderator of the session. A few of these pertained to paying attention to areas which has an impact on the enjoyment of economic, social and cultural rights, including trade, environment, corruption and the role of non-State actors. There was need to give particular attention to these rights in situations of conflict and while assessing the positive and negative consequences of globalisation, including migration and its impact on the enjoyment of economic, social and cultural rights.

Session–VII

An Introduction to the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986) and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997)

Moderator:

Dr. Deepika Udagama, Member, National Human Rights Commission of Sri Lanka

In this session Dr. Deepika Udagama, Member, National Human Rights Commission of Sri Lanka, gave a brief introduction to the Limburg Principles (1986) and the Maastricht Guidelines (1997) in order to acquaint the delegates about the nature and scope of States Parties obligations towards these in protecting and promoting economic, social and cultural rights. The text of the Power Point presentation made by Ms. Udagama is at **Annexure–XVIII**.

Wrap-up of Day Two

Wrapping up the deliberations that took place on the second day of the Round Table, Mr. Orest Nowosad gave a summary of points that were highlighted by the speakers of each session as well as the points raised by the delegates. The text of the summary of points given by Mr. Nowosad on Day Two is enclosed at **Annexure–XIX**.

Day Three

(Thursday, 1 December 2005)

Session–VIII

A Plan of Action for NIs regarding ESCR

Moderator:

Dr. Justice Shivaraj V. Patil, Member, NHRC, India

Topic Introducers:

Mr. Surasee Kosolnavin, Commissioner, National Human Rights Commission of Thailand

Mr. Hamid Rifai, Member, Conseil Consultatif des Droits De l'Homme da Maroc

This session was moderated by Dr. Justice Shivaraj V. Patil, Member, National Human Rights Commission of India. In his introductory remarks, he stated the fact that “all human rights are universal, indivisible and interdependent and interrelated” for civil and political rights would not be meaningful unless economic, social and cultural rights were realised. Both these sets of rights, he said, were *sine qua non* for the overall development of human prosperity. According to him, “if the dream of all human rights for all is to be a reality, all human beings all over should be able to enjoy economic, social and cultural rights”. He then stressed the role that the national institutions ought to play in protecting and promoting human rights at the national level taking into consideration the standard set by the United Nations. He reiterated the fact that there was an urgent need to focus on an effective plan of action in implementing economic, social and cultural rights.

He then invited Mr. Surasee Kosolnavin, Commissioner, National Human Rights Commission of Thailand, to make the presentation. Mr. Kosolnavin spoke on the importance of developing effective strategies in order to respond to abuses of economic, social and cultural rights. While doing so, he particularly emphasised on ‘capacity building and empowerment for all Thais, especially the vulnerable groups’. In addition to this, the other activities undertaken by them for the implementation of economic, social and cultural rights were integration of work pertaining to these rights into the organisational processes and practices through strategic planning, investigation, promotion and evaluation; encouraging and developing a national plan of action for realisation of these rights; extending cooperation to education and health ministries, public institutions, national law commissions and vulnerable groups; dealing with economic, social and cultural rights complaints; honing skills and resources to undertake work relating to promoting and monitoring of these rights; conducting regular education programmes and information campaigns, examining existent laws, conducting research,

investigating specific complaints and providing reports to public authorities and civil society; and encouraging members and staff of the Commission as well as external groups to impart training and knowledge on these rights.

He then briefly focused on the areas of concerns pertaining to economic, social and cultural rights being dealt by their Commission. Some of these were crime against children, crimes related to drugs, environment, employment, health, human trafficking, labour, community media and natural resources. He also dwelt in brief about the strategies adopted by them in realising these rights. Some of these were organising training programmes and seminars, strengthening networks, launching awareness campaigns, granting nationality and ensuring the existence of community information centres. The target groups for these were the community at large, including women and children, local school teachers, police, public prosecutors, judges and representatives of non-governmental organisations.

Talking about the challenges in fulfilling these rights, he pointed towards the ignorance of vulnerable groups and lack of cooperation among the major actors, i.e., the government officials, the police, NGOs and the civil society. The text of his paper is enclosed at **Annexure–XX**.

Dr. Justice Shivaraj V. Patil then invited the next speaker, Mr. Hamid Rifai, Member, Conseil Consultatif des Droits De l'Homme da Maroc. Mr. Rifai initiated his presentation by giving a brief overview of the Moroccan Commission. He mentioned that in their country not much importance was being accorded to economic, social and cultural rights. As such, the onus of realising these rights had become the responsibility of the Moroccan Commission. Their Commission, he said, was focusing its attention on the rights of women, the problem of inequality, the relation between economic development and democracy and the problem of cultural diversity in Moroccan society. Drawing comparison with India, he also highlighted the fact that the right to education was a fundamental right in Morocco and that the Moroccan State had ensured education up to the age of sixteen years. He endorsed Mr. Kosolnavin's idea of imparting training to different segments of society, as this would go a long way in implementing economic, social and cultural rights. An important point raised by him during his presentation related to the establishment of a Family Code in order to promote gender equality. The text of his paper is at **Annexure–XXI**.

These two presentations were subsequently followed by an open house discussion. The first question raised during the course of discussion came from the Korean delegate who pointed towards the role of NHRIs in formulation of national action plan on economic, social and cultural rights. Citing example from his Commission, he stated that it had drafted a national action plan and two-thirds of it was devoted to economic, social and cultural rights.

Thereafter, the Ugandan delegate informed the steps being taken by their government in promoting women's rights. He said that every female student seeking admission in the university was given

additional points in comparison to their male counterparts in order to attract more and more female students to attain higher education. Yet their country faced a dilemma when it came to sharing of property between males and females and also with regard to the prevalent cultural practice of polygamy. In this context, he requested the Moroccan delegate to share the experience of their country in dealing with the issue of polygamy. Replying to this query, the Moroccan delegate said that polygamy continued to be a problem even now in Morocco and voiced that it should be abolished by all means. Referring to the Family Code, Mr. Rifai said that it included many provisions for gender equality.

Appreciating the role of the Indian judiciary towards protecting and promoting economic, social and cultural rights, the Kenyan delegate said that they would like to replicate the Indian model in their country. He also laid emphasis on the need for capacity building and strengthening of national institutions in order to fulfil these rights.

The delegate from Kyrgyz Republic stated that punishment accorded to officials violating economic, social and cultural rights should be made more stringent.

Dr. Justice Patil, the Moderator of the session, in his concluding remarks on 'plan of action for national institutions regarding ESCR' suggested eight points, which according to him, all national institutions should adhere to. These were as follows:

- All national institutions should satisfy the requirements of Paris Principles in their composition, autonomy and functioning.
- There was need to educate people and create awareness about human rights to which they were entitled to either under the national law(s) or various international instruments. This step would help in generating public opinion and facilitate in creating pressure on the people in charge of governing economic, social and cultural rights.
- Adequate budget provisions should be made for the national institutions in order to make them financially independent.
- The judiciary, both at the Apex and subordinate levels should also be sensitized and made more responsible towards economic, social and cultural rights issues. Not only this, the national institutions should be in a position to inform the judiciary wherever necessary by approaching the concerned courts and facilitating them in interpreting and expanding the existing constitutional and legal provisions so as to give impetus to economic, social and cultural rights.
- National institutions should also play an active role in the implementation of existent laws or enact new law(s) in order to achieve the object of economic, social and cultural rights.

- National institutions should be in a position to persuade States to fix-up priority in matters pertaining to basic necessities of life such as food, shelter, health and education and they must also insist on fixing the time limit. This is because progressive realization of these rights without fixing-up the priority and time limit may not be effective.
- In the constitutions of almost all the democratic countries, the provisions contained to fulfill economic, social and cultural rights should not remain mere letters but be put into practice.
- The focus of all national institutions should be more on ensuring implementation of economic, social and cultural rights.

Session–IX

Chair

Dr. Justice Shivaraj V. Patil, Chairperson, NHRC India

Presenter

Mr. Orest Nowosad, Coordinator, National Institutions Unit, OHCHR, Geneva

Wrap-up and Adoption of Conclusions

This session was moderated by Mr. Orest Nowosad wherein he invited Dr. Alpha Connelly, Chief Executive of the Irish Human Rights Commission to read out to the delegates the draft New Delhi Concluding Statement. Thereafter, Dr. Connelly presented before the delegates the text of the draft New Delhi Concluding Statement, which *inter alia* contained the salient features that emanated from each session. After she had read the same, suggestions were invited from the delegates for proposing any changes/amendments therein. Once the text was finalised, the same was adopted as 'New Delhi Concluding Statement' by all the delegates. The final text of the 'New Delhi Concluding Statement' is at **Annexure–XXII**.

Annexure–I

Programme Schedule

Tuesday, 29 November 2005

0900 - 0930 Official opening :	Dr. Justice A.S. Anand, Chairperson, National Human Rights Commission of India Mr Orest Nowosad, Coordinator, National Institutions Unit, OHCHR
0930 – 1000 Tea Break :	Interaction of the Delegates with the Media
1000 - 1115 Session-I:	Key International Instruments on ESCR and the Optional Protocol to CESCR
Topic introducers:	Mr Suren Tserendorj, Chairperson, National Human Rights Commission of Mongolia
Speakers:	<ul style="list-style-type: none">• Mr. Miloon Kothari, Special Rapporteur on the Right to Housing• Monsieur Djibril Badiane, Membre, Comite Senégalais Des Droits de l'Homme
1115 - 1300 Session-II:	General Principles of ESCR – State Obligations to Promote, Protect and Fulfil
Moderator:	Mr. Godana Doyo, Member, National Commission on Human Rights of Kenya
Topic introducers:	<ul style="list-style-type: none">• Justice Mr.Y. Bhaskar Rao, Member, NHRC, India• Mr Chan-un Park, Director General, National Human Rights Commission of Korea• Mr. Constantine Karusoke, Member, Uganda Human Rights Commission
1300 - 1500 Lunch Break	
1500 - 1630 Session-III:	Justiciability of ESCR and Legal protection
Moderator :	Mr. Francois de Salle Bado, President, Commission Nationale des Droits Humains, Burkina Faso
Topic Introducers:	<ul style="list-style-type: none">• Dr. Justice A.S. Anand, Chairperson, National Human Rights Commission of India• Mr. Richard Quayson, Deputy Commissioner, Commission of Human Rights and Administrative Justice of Ghana
1630 - 1645 Tea Break	
1645 - 1800 Wrap-up of day One	

Wednesday, 30 November 2005

0900 - 1030 Session-IV: Implementing ESCR Rights-Modes and Modalities: Advocacy and Other Means

Moderator: Ms. Lisbeth Tristan Queseda, Defensor de los Habitantes, Costa Rica

Topic Introducers:

- Alpha Connelly, Chief Executive,
- Irish Human Rights Commission
- Mr. P.C. Sharma, Member, NHRC, India
- Mr. Kedar Poudyal, Acting Secretary, Nepal Human Rights Commission

1030 - 1045 Tea Break:

1045 - 1230 Session-V: **General Principles of ESCR-Roles and Responsibilities of NIs**

Moderator: Ambassador Saher Bak, Commissioner general, National Centre for Human Rights, Jordan

Topic Introducers:

- Mr. R.S. Kalha, Member, NHRC, India
- Ms. Diana Pickard, Senior Policy Analyst, New Zealand Human Rights Commission
- Ambassador Salvador Campos, Executive Secretary, Mexican National Human Rights Commission

1230 - 1400 Lunch Break

1400 - 1530 Session-VI: **New Challenges and Dimensions to ESCR**

Moderator: Mr. Farzana Gani, Education Training Officer, Fiji Human Rights Commission

Topic introducers:

- Mr. Nirmal Singh, Secretary General, NHRC, India.
- Mr. Jody Kollapen, Chairperson, National Human Rights Commission of South Africa.
- Mr. Juan Carlos Mazzini, Asesor, Defensor del Pueblo de la Nacion de Argentina.

1530 - 1545 Break

1545 - 1730 Session-VII : **An Introduction to the Limburg Principles on the implementation of the IESCR (1986) and the Moistricht Guidelines on Violations of ESCR (1997).**

1730-1800 Wrap-up Day Two

Thursday, 1 December 2005

0900 – 1030 Session-VIII:

A Plan of Action for NIs regarding ESCR

Moderator:

Dr. Justice Shivaraj V. Patil, Member, NHRC, India

Speakers:

- Mr. Surasee Kosolnavin, Commissioner, National Human Rights Commission of Thailand.
- Mr Hamid Rifai, Member, Conseil Consultatif des Droits de l'Homme du Maroc

1030 – 1045 Tea Break:

1045 – 1300 Session-IX:

Wrap-up and Adoption of Conclusions

Chair :

Dr. Justice A. S. Anand, Chairperson, National Human Rights Commission of India

Presenter :

Mr. Orest Nowosad, Coordinator, National Institutions Unit, OHCHR

Annexure–II

List of Delegates

National Institutions	Delegates
AFRICA	
Burkina Faso: Commission Nationale des Droits Humains	M. François de Salle BADO President
Democratic Republic of Congo: Observatoire National des Droits de l'Homme	Mr. KANYENYE BYUMANINE Alexis Vice-President
Kenya: Kenya National Commission on Human Rights	Mr. Godana Doyo Commissioner Mr. Maina MUTUARUHIU Programme Officer for the Commission's Economic and Social Rights Programme
Ghana: Commission of Human Rights and Administrative Justice	Mr. Richard Ackom QUAYSON Deputy Commissioner
Morocco: <i>Conseil consultatif des droits de l'homme</i> (CCDH)	Mr. Hamid Rifai Membre du Conseil
Sénégal: Comité sénégalais des droits de l'homme	Monsieur Djibril BADIANE Member of the Commission
South Africa : South African Human Rights Commission	Mr. Jody KOLLAPEN Chairperson
Uganda : Uganda Human Rights Commission	Mr. Constantine K. KARUSOKE Member
AMERICAS	
Argentina: Defensor del Pueblo de la Nación	Mr. Juan Carlos MAZZINI Asesor
Costa Rica: Defensoría de los Habitantes	Dra. Lisbeth QUESADA Costa Rican Ombudsman (Defensora)
Mexico: Comisión Nacional de los Derechos Humanos	Emb. Salvador CÀMPOS Icardo Executive Secretary

ASIA-PACIFIC

Afghanistan: Afghan Independent Human Rights Commission

Mr. Qader Rahimi
Head, Herat Field Office

Fiji: Fiji Human Rights Comisión

Ms. Farzana Gani
Education Training Officer

India: National Human Rights Commission of India

Dr. Justice A.S. Anand
Chairperson

Dr. Justice Shivaraj V. Patil
Member

Justice Y. Bhaskar Rao
Member

Mr. R.S.Kalha
Member

Mr. P.C. Sharma
Member

Mr. Nirmal Singh
Secretary General

Mrs. Aruna Sharma
Joint Secretary

Mongolia: National Human Rights Commission of Mongolia

Mr. Suren Tserendorj
Chief Commissioner

Nepal: National Human Rights Commission

Mr. Kedar Prasad Poudyal
Acting Secretary

New Zealand: New Zealand Human Rights Commission

Ms. Diana Pickard
Senior Policy Analyst

Republic of Korea: National Human Rights Commission of Korea

Mr Chan-un Park
Director GenL., Human Rights Policy Bureau

Sri Lanka: Human Rights Commission of Sri Lanka

Dr. Deepika Udagama
Member

Thailand: National Human Rights Commission of Thailand

Mr. Surasee Kosolnavin
Commissioner

Mrs. Supattra Limpabandhu
Officer

EUROPE	
Albania: People’s Advocate Institution	Mr. Artur Lazebeu Chief of Cabinet
Kyrgyz Republic: Ombudsman Institution (Akyikatchy)	Mrs. Sultanbaeva Asel Director
Ireland: Irish Human Rights Commission	Dr. Ms. Alpha Connelly Chief Executive
ARAB	
Jordan: National Centre for Human Rights	Mr. Shaher Bak Commissioner
OHCHR	
Mr. Orest Nowosad Coordinator, National Institutions Team, OHCHR, Geneva	
Mr. Poul Hauch Fenger Associate Expert, National Institutions Unit, OHCHR, Geneva	

Annexure–III

Opening Remarks

Dr. Justice A.S. Anand,
Chairperson, NHRC, India

Mr. Orest Nowosad, Excellencies, Distinguished Participants, Ladies & Gentlemen.

On behalf of the National Human Rights Commission of India, I extend to the distinguished delegates, participating in the Round Table Meet of The National Institutions to discuss 'Ways to implement Economic, Social and Cultural Rights', a very warm welcome. The National Human Rights Commission of India is, indeed, privileged to host this Round Table meeting at New Delhi – jointly with the office of the High Commissioner for Human Rights.

The purpose of the Round Table Meet of the representatives of the National Human Rights Institutions is to discuss the roles of the National Institutions to meet the challenges of protecting and promoting Economic, Social and Cultural rights in their respective countries.

In democratic societies, fundamental human rights are broadly classified into civil and political rights on the one hand and economic, social and cultural rights on the other. The object of both sets of rights is to make an individual an effective participant in the affairs of the society. Unless both sets of rights are available, neither full development of the human personality can be achieved nor can it be said that true democracy exists. Unfortunately, however, protection of economic, social and cultural rights compared to the protection of civil and political rights, both at the national and international level, has been poor and irregular. The UN Committee on Economic, Social and Cultural Rights (CESCR) is taking a robust attitude towards practical implementation of economic, social and cultural rights. It was recognised by the UN in 1986 when it acknowledged the Right to Development as a human right. The right to development as formulated in the 1986 UN Declaration is a synthesis of the two sets of rights. The distinction, long made, between civil and political rights on the one hand and the economic, social and cultural rights on the other was put to rest by the Vienna Declaration and Programme of Action, which affirms that "all human rights are universal, indivisible and inter-independent and inter-related". The Declaration, however, will amount to a little more than an aspiration so long as economic, social and cultural rights are not protected and promoted. The National Human Rights Institutions have a great role to play to correct the fallacy of treating one set of rights as inferior to the other set of rights so that they can implement economic, social and cultural rights in the political and social contexts in which they operate.

I must compliment Mr. Orest Nowosad, Coordinator, National Institutions Unit, Office of the High Commissioner for Human Rights to have thought of the idea of the Round Table of National Institution at this particular time, when the Human Development Report, 2005, records:

- Every hour 1200 children die. One crore (Ten Million) children every year do not live to celebrate their fifth birthday;
- More than 100 crore people survive on less than one dollar a day;
- 250 crore people live on less than two dollars a day;
- The world richest 500 individuals have a combined income greater than 40 crore of world poorest;
- As many as 250 crore people account for less than 5 percent of the worlds income.

The Human Development Report estimates a cost of \$300 billion for lifting 100 crore people above the extreme poverty line. This amount represents just 1.6 percent of the income of the richest 10 percent of the world's population.

These statistics demonstrate that there exist massive inequalities, more particularly in the developing countries, which render the enjoyment of Human Rights rather illusory. The political freedom would not have much of significance or meaning for the teeming millions of people in various countries who suffer from poverty and all social evils flowing from it unless economic, social and cultural rights are assured to them. The National Institutions need to address violations of economic, social and cultural rights as forcefully as they address those of civil and political rights.

This Round Table would provide the delegates an opportunity to have an in-depth discussion about the ways to implement economic, social and cultural rights. In an increasing number of constitutions of various countries, Economic, Social and Cultural Rights are acknowledged but they are usually stated to be non-justiciable. With over one-fifth of the world's population continuing to suffer from hunger, poverty, lack of health-care facilities and illiteracy, there is today an urgent need to seek means by which these rights can be enforced if the States fail to comply with the obligations they have voluntarily undertaken.

In India, thanks to the judiciary, the courts have been reading Civil and Political Rights into the Economic, Social and Cultural Rights by construing the two sets of rights harmoniously – by expanding the concept of “right to life and liberty” to mean the right to live with human dignity and all that goes with it. The courts in India have related health care, food security and elementary education with “Right to Life” and thereby ensured their “enforceability”. It is also the firm view of the Indian Commission, that we must accept indivisibility and inter-related nature of the two sets of rights for full development of human personality. To effectively implement economic, social and cultural rights, we need to adopt a rights based approach. During the next two days, the delegates would be able to gain from each other's experience to promote Human Rights and usher in a “Better Tomorrow”.

To the Delegates,

I would like to take this opportunity to thank you for responding to the invitation and coming all the way to New Delhi. We, at the National Human Rights Commission, India, have endeavoured to

take sufficient care for your comfortable and pleasant stay in India. I would request the delegates to kindly bear with us in case there have been any shortcomings.

You would have received a letter from our Joint Secretary giving you various details including the contact numbers of the team of officials of National Human Rights Commission, India, who shall be there at your disposal for any assistance you may require.

We have made arrangements for some local sight seeing after the conclusion of the Round Table on 1st December, 2005. The sight-seeing trip will include visit to some monuments of great historical importance, but of course, there will also be time for your shopping. You can loosen your purse strings without hesitation!

I would take this opportunity to thank the office of the High Commissioner for Human Rights and in particular Mr. Orest Nowosad, Coordinator, for their support in preparing the background paper and bringing out the Handbook on Economic, Social and Cultural Rights, besides for making other arrangements. I also wish to acknowledge the participation of the members of the UN family, who are here with us today.

On behalf of Members and staff of the NHRC, India and on my own behalf, I wish you all a pleasant and comfortable stay at New Delhi and free, frank, meaningful and fruitful discussions at the Round Table.

Annexure–IV

Opening Remarks

Mr. Orest Nowosad,
Coordinator, National Institutions Unit, OHCHR

Mr. Chairman, Excellencies, Distinguished participants, Ladies and gentlemen

It is a pleasure for me to be standing here today at the opening of this important event on National Institutions Implementing Economic, Social and Cultural Rights. I am delighted to be here working in close cooperation with our partner the National Human Rights Commission of India. I would like to express my sincere appreciation to Commission and its Chair Dr. Justice A.S. Anand and the Government of India for the support we have received concerning the arrangements of this Round Table.

It is noteworthy that the National Human Rights Commission of India has in many ways led the way concerning economic, social and cultural rights and in particular concerning their justiciability. It is therefore all the more fitting that this Round Table is held in the capital of India.

I also wish to recognise the participation of the members of the UN family, in particular our colleagues from UNESCO, who are also here with us today.

On the occasion of the opening of the Round Table, it is a pleasure to be able to present the Handbook on Economic, Social and Cultural Rights and National Institutions, which will soon be available in all official United Nations languages. The Handbook aims to help national human rights institutions to maximise the effectiveness of their functions and powers in addressing economic, social and cultural rights. It intends to assist national human rights institutions in developing policies, processes and skills to further integrate economic, social and cultural rights into their work.

The Handbook further more discusses ways in which National human rights institutions can become more effective in protecting and promoting economic, social and cultural rights. It examines ways in which National human rights institutions legal mandates can be interpreted to incorporate economic, social and cultural rights within their jurisdictions, how their functions and powers can be exercised more appropriately in regard to these rights, how they can use their resources most efficiently and effectively, and how they can implement economic, social and cultural rights in the political and social contexts in which they operate.

All participants in the room here today constitute together with all the national institutions of the

world the audience for the handbook. The handbook is intended primarily for the members and staff of national human rights institutions. It can, however, also be a resource for those involved in the establishment of national human rights institutions and for national human rights institutions partners.

It has been our aspiration to make the handbook as informative, widely applicable and globally relevant as possible. To solicit this vision, we have brought in case studies and examples which illustrate how national human rights institutions have addressed economic, social and cultural rights within the variety of their national contexts.

The Handbook, which we hope will provide inspiration for your discussions over these next few days. In this regard let me give a quick overview of its three main sections:

- 1. Section 1** seeks to deepen the legal understanding of economic, social and cultural rights and the State obligations to promote and protect them under international and domestic law.

Here the centrality of the International Covenant on Economic, Social and Cultural rights and the most important international instruments are addressed as well as the recommendations of made by the Committee on Economic, Social and Cultural Rights.

In this section the 1998 Maastricht Guidelines on Economic, Social and Cultural Rights (Guideline 25), are also discussed. It is, for example, highlighted that national institutions should address violations of economic, social and cultural rights as vigorous as they address those of civil and political rights.

We also look to the core principles of the need to respect, protect and fulfil economic, social and cultural rights. There are minimum core obligations and one cannot shy away from these using the progressive realisation principle.

- 2. Section 2** examines the role of national human rights institutions through a fuller understanding of their mandate, powers and functions. It also outlines challenges in addressing economic, social and cultural rights

For example in relation to their:

- Educational role;
- Dealing with legislation;
- Providing technical advice;
- Identifying benchmarks to measure economic, social and cultural rights;
- Research;
- Monitoring compliance with regard to specific rights; and
- Examining complaints.

Some of the challenges are internal such increasing the level understanding of economic, social and cultural rights within the institution; to ensure there is institutional capacity to deal with these rights; and the definition of standards and benchmarks

External challenges include having an effective, independent judiciary, an accountable democratic institution and an engaged and informed civil society and a solid legislative framework to protect such rights.

3. Section 3 focuses on practical strategies for national human rights institutions to work with economic, social and cultural rights

Examples include the powers to :

- Investigate;
- Monitor;
- Develop quantitative and qualitative indicators; and
- Promote activities.

It is our hope that this Handbook, developed with the input of a large number of national human rights institutions will be of use to you. I am sure that your fruitful and hopefully informal discussions over the next three days will enrich and embellish that which we have provided.

Mr. Chairman,
Excellencies,
Distinguished participants,
Ladies and gentlemen

Once again I would like to take this public opportunity to express my sincere appreciation to the National Human Rights Commission of India for having performed an excellent lead up to the Round Table.

It has been a pleasure working together with you in preparation for this important event. We look forward to working together with you over the next three days, to continue strengthening the partnership between your institution and those others present here in the years ahead of us, and to meaningful follow up to your recommendations.

I wish you all a successful Round Table.

Thank you.

Annexure–V

General Principles of Economic, Social and Cultural Rights State Obligations to Promote, Protect and Fulfil

Justice Y. Bhaskar Rao,
Member, NHRC, India

Ladies and Gentlemen,

It is a privilege to address this round table organized with the aim of strengthening the capacity of National Institutions to ensure the realization of Economic, Social and Cultural Rights. I must thank the Office of the United Nations High Commissioner for Human Rights for organizing this round table which will be very useful at the present juncture.

Economic, Social and Cultural Rights are an important part of the international human rights law. They have been fully recognized by the international community and throughout international human rights law. Although these rights have received less attention than civil and political rights, far more serious consideration than ever before is currently being devoted to them. The question is not whether these rights are basic human rights, but rather what entitlements they imply and the legal nature of the obligations of States to realize them. The fact is that civil and political rights and economic, social and cultural rights are indivisible and interdependent. Without realizing economic, social and cultural rights, there cannot be a meaningful enjoyment of civil and political rights.

The International Covenant on Economic, Social and Cultural Rights (1966) which is the foundational international instrument in this respect recognizes the rights to work, right to enjoyment of just and favourable conditions of work, right to form trade unions, right to social security, right of the family to protection and assistance, right to an adequate standard of living including adequate food, clothing and housing, right to the enjoyment of the highest attainable standard of physical and mental health, right to education, right to take part in cultural life etc. Civil and political rights were then considered as capable of being enforced against the State through judicial orders and were hence made justiciable while socio-economic rights were considered as requiring resources and policy initiatives on the part of the Government and were, therefore, put in Part IV. But it is now apparent that the division between civil and political rights on the one hand and economic, social and cultural rights on the other, is artificial. It is difficult to keep the two sets of rights separate. They are inter-dependent and are meant to be looked at in totality. For example, freedom of speech and expression and the right to information can exist meaningfully only when people have education. Their access to knowledge, information and their ability to form an independent informed opinion on the basis of available material, are at the core of a democratic way of life. And these depend on education. Freedom of the press and the rights of the media are also

inextricably linked with this right. Equality before the law, non-discrimination on the grounds of race, religion, caste, sex etc. are all dependent on the empowerment of the weak so that they may be able to assert their equality, fight discrimination and enjoy the same benefits as the strong. Therefore, special provisions are required to strengthen the weak, socially, economically and culturally, to enable them to enjoy their human rights.

India has ratified the International Covenant on Economic, Social and Cultural Rights. When a State ratifies one of the Covenants, it accepts a solemn responsibility to apply each of the obligations embodied therein and to ensure the compatibility of their national laws with their international duties, in a spirit of good faith. Through the ratification of human rights treaties, therefore, States become accountable to the international community, to other States which have ratified the same texts, and to their own citizens and others resident in their territories.

Article 2 of the Covenant on ESCR provides that -

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.

The Covenant provides for progressive realization of the ESCR and acknowledges the constraints of resources. It also imposes various obligations which are of immediate effect.

The undertaking in article 2 (1) "to take steps", should be construed in its proper perspective. Thus while the full realization of the relevant rights may be achieved "progressively", steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant. "All appropriate means, including particularly the adoption of legislative measures" are to be taken resort. In addition to legislation, judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable may be provided for. I will later refer to the steps that India has taken in this regard.

In suitable cases constitutional recognition can be and has been accorded to specific economic, social and cultural rights, or the provisions of the Covenant can be incorporated directly into national law. Other measures which may also be considered “appropriate” for the purposes of article 2 (1) include administrative, financial, educational and social measures.

The principal obligation reflected in article 2 (1) is to take steps “with a view to achieving progressively the full realization of the rights recognized” in the Covenant. The term “progressive realization” is often used to describe the intent of this phrase. The concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal.

Even where the “available resources” are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. The phrase “to the maximum of its available resources” is not to be used as an escape route for not ensuring ESCR. If there are any constraints of resources, the State parties are obligated to seek international cooperation for the realization of economic, social and cultural rights. It is particularly incumbent upon those States which are in a position to assist others in this regard. Declaration on the Right to Development adopted by the UN General Assembly in its resolution 41/128 of 4 December assumes particular significance in this context.

Apart from the above specific obligations, three general obligations within the legal framework of economic, social, cultural rights are : the obligation to promote, to protect and to fulfill these rights.

The “obligation to promote” requires the States to abstain from performing, sponsoring or tolerating any practice, policy or legal measure violating the integrity of individuals or infringing upon their freedom to use those material or other resources available to them in ways they find most appropriate to satisfy economic, social and cultural rights. This obligation protects citizens from arbitrary interference with the enjoyment of economic, social and cultural rights.

The “obligation to protect” imposes a duty on the State to prevent violation of any individual’s rights by any other individual or non-State actor. If any violations take place, the State must guarantee access to legal remedies for the victims of the infringement.

The “obligation to fulfil” requires positive measures by the State when other measures have not succeeded in ensuring the full realization of these rights.

I will now turn to how India has tried to discharge its obligations under the Covenant and how the National Human Rights Commission has stepped in and aided the efforts to ensure realization of economic, social and cultural rights by the masses, although a lot of space is yet to be covered.

In the Indian Constitution, we incorporated fundamental rights in Part III (most of the civil and political rights) and Directive Principles in Part IV (most of the economic, social and cultural rights) making the former alone justiciable.

Economic, Social and Cultural Rights were considered as requiring resources and policy initiatives on the part of the Government and were, therefore, put in Part IV which are non-justiciable. But it is now apparent that the division between civil and political rights on the one hand and economic, social and cultural rights on the other, is artificial. It is difficult to keep the two sets of rights separate. They are inter-dependent and are meant to be looked at in totality. If socio-economic rights are not ensured, even access to judicial remedies will not be available to all. Therefore, a method must be provided by which the weak can access the law courts. In India, we have tried to do this in the form of public interest litigation on behalf of those who would not otherwise be able to access the legal system. As a result, a large number of human rights issues have been agitated before the courts with the help of the constitutional provisions through public interest litigation. For example, this has enabled the courts to deal with maladministration in orphanages for destitute children and in the protective homes for women. It has led to improvement in jail conditions and treatment of prisoners and under-trials in the jails. Bonded labour, child labour, health of workers in hazardous industries such as asbestos industry have all been adjudicated upon and relief granted through the medium of public interest litigation. Therefore, in effect, many of the economic and social rights placed under Directive Principles have been judicially enforced through public interest litigation when requisite policies and actions from the State have not been forthcoming through a wider interpretation of fundamental rights. It has led the court to devise new mechanisms for supervision and implementation of its orders and it has led to some innovative techniques in law enforcement. PIL has become now an important tool to be used in conjunction with constitutional rights and remedies for promoting human rights jurisprudence in this country.

The Government of India has enacted Protection of Human Rights Act, 1993 for better protection of human rights and for matters connected therewith or incidental thereto. National Human Rights Commission and a number of State Human Rights Commissions have been set up under the Act which are playing a vital role today.

The Government of India has enacted a number of social welfare legislations guided by the Directive

Principles of State Policy. Education of all children up to the age of 14 has now been made a fundamental right by amending the Constitution. Some other legislations are - Bonded Labour System (Abolition) Act, 1976 abolishing bonded labour practices in the country, Child Labour (Abolition) Act, the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 - providing for the prohibition of employment of Manual Scavengers as well as construction or continuance of dry latrines, Child Marriage (Restraint) Act, 1929, Domestic Violence (Prevention) Act - to protect a woman from acts of domestic violence, Hindu Succession Act, Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 to help the disabled, National Rural Employment Guarantee Act guaranteeing a minimum of 100 days of employment in a year to every rural household, etc. Apart from this, there are some schemes run by the Government of India like Sarva Siksha Abhiyan which is an effort to universalize elementary education by community ownership of the school system and aims to provide useful and relevant education for all children in the 6-14 age group by 2010, Antyodaya Anna Yojana under which the "Poorest of the poor" are issued a red card entitling them to rice and wheat from Public Distribution System, Mid-day Meal Schemes for school children. To mobilize resources for all important education sector, the government has imposed a 2% cess on income tax etc. from the last financial year which will yield about Rs.4,000-5,000 crores per annum.

Whenever and wherever it was found necessary, the National Human Rights Commission has intervened by making recommendations and changes in the existing/proposed legislations. Some of the suggestions made by National Human Rights Commission have been accepted and given effect to by the Government. Some successes by the Indian Commission are -

When the Government of India had announced the National Rural Employment Guarantee Scheme guaranteeing a minimum of 100 days of employment in a year to 'one able bodied person' in every household, on the urging by the Commission the Government deleted the reference 'able bodied persons' the Government accepted the suggestion of the Commission and the National Rural Employment Guarantee Bill which has now become an Act did not restrict the guarantee to 'able bodied persons'.

With a view to curbing the practice of child marriage, the Commission in the year 2001-2002 recommended to the Central Government a number of amendments to the Child Marriage Restraint Act, 1929. The Central Government introduced a new Prevention of Child Marriage Bill, 2004 incorporating almost all the recommendations made by the Commission. One of the key recommendations was to urge the Government to define a 'child' as per the Convention on the Rights of the Child which defines a 'child' as a human being below the age of 18 years.

The amendment made to the Hindu Succession Act by the Hindu Succession (Amendment) Bill, 2004 resulting in equal rights to females as their male counterparts in all property, including agricultural land will go a long way in empowering women and removing gender discrimination.

The Commission undertook a detailed investigation of the functioning of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. In order to build capacity for better protection of rights of persons with disability, the Commission took up a project with the Canadian Human Rights Commission and National Open University. A National Conference of Disability was held in June, 2005 at New Delhi. Detailed set of recommendations have been formulated and a manual has been prepared as an outcome of the Project which will sensitize NGOs., academics, human rights activists and the general public.

After studying draft bill on domestic violence along with the Parliament's Standing Committee report detailed suggestions were forwarded to the Government. The Bill which has become an Act now takes into consideration almost all the modifications suggested by the Commission. For instance, the definition of domestic violence has been broadened to include actual abuse, or threat of abuse and encompasses physical, sexual, verbal, emotional and economic abuse. It also seeks to protect the right of women to secure housing, as also a right to reside in the matrimonial home or household.

An Action research on Trafficking in Women and Children in India was commissioned by the NHRC to study the trends, dimensions and magnitude of the problem, identify the roots of trafficking, study the existent laws on trafficking and analyse issues relating to rehabilitation and repatriation of trafficked women and children after their rescue. Being an Action research a number of training programmes involving more than 2000 police officials, judicial officers and for NGOs/civil society were also held. A number of amendments to the Immoral Traffic (Prevention) Act, 1956 have been suggested – like providing a legal definition of trafficking, and ensuring separate treatment of child victims in consonance with the Juvenile Justice (Care and Protection of Children) Act, 2000. Suggestions have also been made to make sections 3 to 6 of Immoral Traffic (Prevention) Act more stringent.

The Human Rights Commission has also an agenda to promote social, economic and cultural rights through facilitating State and non-State actors in these fields. For example, it has a programme agenda in the area of prevention and release of bonded labour and child labour, ensuring in specific cases that proper rehabilitation packages are delivered. Unfortunately, both these practices still persist. But the work which is done in the country through NGOs supported by NHRC is having some impact on these practices.

The Commission is also active in the area of women's human rights, the empowerment and education, maternal health, women's reproductive health, prevention of child marriages, human rights of abandoned widows and old people, preventing sexual harassment, molestation of children and violation of child rights. It has a special Focal Point on Trafficking in Human Beings, where it has taken initiatives jointly with the police, the State Government and the administration as well as the NGOs and social work institutions, to devise programmes for prevention, rescue and rehabilitation

of trafficked victims. A network of nodal officers covering every State and Union Territory has been set up with State and police cooperation. There are other areas where the Commission works to help the backward castes and classes. It has been consistently examining all complaints of violation of human rights of scheduled castes and scheduled tribes and other backward groups. It has ensured that they receive adequate compensation for violation of their rights. It has supported NGOs. working for the human rights of Scheduled Castes and Scheduled Tribes. It has also a Special Rapporteur for the disabled.

Obviously, no single agency or institution can accomplish the enormous task of safeguarding human rights. NHRC is a facilitator. It brings together the Government, its administration, the police and the civil society for protection and promotion of human rights. All institutions private or public need to work together. At the root of many violations of human rights are poverty, ignorance and lack of education. A major national effort is needed to overcome these. That is why ensuring economic, social and cultural rights to the people assumes greater importance.

I hope the discussions that will take place among the representatives of various National Human Rights Institutions will prove very meaningful and useful and better equip them with new strategies in ensuring better protection and promotion of economic, social and cultural rights for our people.

Annexure–VI

Economic, Social and Cultural Rights State Obligations and National Human Rights Commission of Korea

Mr. Chan-Un Park,
Director General, Human Rights Policy Bureau,
National Human Rights Commission of the Republic of Korea

1. Understanding of Economic, Social and Cultural Rights in Korea

The understanding of human rights including Economic, Social and Cultural Rights (hereinafter “ESCR”) in Korea has not shown difference with that of the international community. From the normative point of view, ESCR have been recognized in the Korean Constitution even long before Korea ratified the International Covenant on Economic, Social and Cultural Rights (hereinafter “ICESCR”), yet they have received much less attention than civil and political rights. For a long time Korean society has recognized ESCR as programmatic rights when interpreting them in terms of constitutional basis, and consequently limited ESCR to the obligation to strive or aspiration toward life worthy of human beings. For that reason, it has been broadly accepted that the individual ESCR prescribed in the Constitution cannot be implemented without them into legislation.

However, since the ratification of the ICESCR in 1990 by the Korean government, the new appreciation of ESCR has grown. Since then, the Committee on Economic, Social and Cultural Rights has examined and commented on two state party reports on the Covenant submitted by the Korean government, reviewing the overall implementation of ESCR. This reporting process has great influence on the understanding of ESCR in Korea. In the meantime, since the 1990s, human rights activists and professionals have introduced international discussions on the nature and contents of ESCR to the public. This movement has brought the new understanding that ESCR are not either obligation to strive or policy aims but legal rights. In particular, since the 1993 Vienna World Conference on Human Rights, the understanding that all human rights are indivisible interdependent and interrelated has begun to get widespread support. Within this context the attitude of drawing distinction between ESCR and civil rights encountered criticism.

2. Multi-faceted State Obligations in Economic, Social and Cultural Rights

The State obligations under the International Human Rights Treaties are understood to be multi-faceted. That is to say, State obligations are understood to have a three or four layered structure,

emphasizing obligations to respect, protect, fulfil or to promote. The understanding that State obligations are multidimensional makes it possible to have realistic approach in the domestic implementation of ESCR. The dichotomy between civil rights and ESCR, namely that civil rights are negative rights and ESCR are positive, has made individual rights under the ICESCR just declarations in a vacuum.

On the contrary, the multifaceted understanding of State obligations indeed contributes to the recognition of the enforceable legal nature of ESCR. For instance, by employing this approach, it is possible to understand that the State obligation to the right to housing does not merely entail the obligation to supply housing, but also the obligations to respect and to protect the right, which greatly contributes to recognition of the obligation of the immediate implementation of the housing right.

In Korea, scholars have introduced this new understanding of multidimensional features of State obligations, explaining that the nature of ESCR is not different from that of civil rights. However, it is hard to say that this new approach is accepted by the government institutions, especially by the judiciary. It is still a prevalent notion that ESCR have distinct characters from civil rights and cannot be enforced without incorporation into proper legislation regardless of their legal foundation in the Constitution or in the International Covenant on Economic, Social and Cultural Rights. Without doubt, this notion functions as an obstacle for the National Institutions to investigate individual complaints or to recommend policy change in relation to ESCR.

3. The Work of the National Institutions with the multidimensional features of State Obligations

Recently, in its second term, the National Human Rights Commission of Korea has listed the implementation of ESCR among its priorities. For this reason, the Commission has organized a research society on ESCR with academics, lawyers and human rights activists and launched full-scale analysis on ESCR. The most important factor in studying ESCR is to understand the nature of the rights and State obligations, for without the understanding that the nature of State obligation in ESCR is not different from that of civil rights, there is hardly any room for work by the National Institutions for Human Rights.

Owing to the multidimensional feature of State obligation discussed at the international level, the Commission is preparing a few policy recommendations with regard to ESCR. For instance, the Commission is reviewing the government policy in relation to forced eviction, which is inevitably aimed at protecting the right to housing. Even though local inhabitants are losing their housing without any support or interim relief measures through urban development, there is no solution suggested. In the view of State obligations in the right to housing, any forced eviction without appropriate safeguards clearly constitutes a violation of ICESCR. In relation to housing right, the

Commission will point out that the current legislations and practices violate the Korean government's obligations to respect and protect and urge for improvement to meet with its obligations within a short period of time.

4. Minimum Core Obligations

The full-fledged realization of ESCR, in principle, is to be progressively achieved within the limit of available resources. Yet, if a State fails to ensure the minimum core obligations, it would be a violation of ESCR. Therefore, the NIs should recognize the minimum core obligations, and monitor any violation of the minimum core obligations. Although it might be hard to explore how to enforce the minimum core obligations as the NIs are not directly dealing with welfare policy, it is an essential task to identify what factors constitute the minimum core obligations. What is important is the NIs' approach to the improvement of ESCR. Considering the functions of the NIs, it is natural to take a rights-based approach rather than a welfare-based approach.

In the same vein, the Commission of the National Commission of Korea is examining the suspension of electricity and water. Sometimes, people in poverty cannot use electricity and water since the companies suspend the supply after a certain period due to the failure in making payment of bills. Due to this problem, the lives of people in poverty are threatened and sometimes they commit suicide. Therefore, the NIs cannot be blind to the complete suspension of electricity, water and gas. State should supply minimum amount of electricity and water to the people in poverty to protect their rights to life, to housing and to health. The problem here is that how much and to what degree the government should supply. This question is related to the minimum core obligations. Knowing the minimum amount of electricity and water is a conclusive factor in determining whether State violates ESCR or not. The Commission has lately launched the expert's investigation of actual conditions on how much amount of electricity and water is needed to survive, that is to say, the minimum the government should supply. Depending upon the result, the Commission can produce important guidelines for decisions in dealing with similar human rights situations and also can recommend policy reformation to the relevant institutions.

5. Protection of ESCR in investigations and remedies

The National Human Rights Commission of Korea was established following the Paris Principles. Thus the Commission has mandate to recommend policy change and to conduct investigation of complaints as well. However, compared to no limitation on policy recommendation, the statutory legislation called *The National Human Rights Act* clearly puts limitation on investigation of complaints, which should be, in principle, an alleged violation of civil rights. In order to overcome the limitation, while trying to revise the Statute, the Commission is dealing with limited ESCR violation cases by interpretation at the moment. That is to say, Article 10 of the Korean Constitution stipulates the right to human dignity and to seek happiness and the violation of Article 10 falls

into the Commission's mandate of complaints investigation. Therefore, with the interpretation of the general provision, the Commission has decided whether or not the government violates ESCR. For example, with regard to the complaint that schools subsidized by the government did not have access facilities for persons with disabilities such as elevators, the Commission has decided that there was a violation of Article 10 of the Constitution, not a violation of the right to education, and recommended the schools to install facilities for persons with disabilities and to let the victim choose the school to go to for his convenience of immediate relief measure.

6. Tasks of the National Human Rights Commission of Korea for the improvement of ESCR

The Commission has a few plans for the improvement of ESCR, which are the following:

Firstly, the survey of actual conditions of individual ESCR is to be done in order to identify the minimum core obligations. To this end, the members of the Commission and external experts will join and work together. Based on surveys, the Commission will make decisions on individual complaints of violations of ESCR and will recommend to the government policy improvements in various areas.

Secondly, to enhance the justiciability of ESCR, the function under the National Human Rights Act to present *amicus* brief on any human rights related cases to the court, mainly the Supreme Court or the Constitutional Court, will be strengthened.

Lastly, the improvement of ESCR cannot be envisaged only by the Commission alone, therefore the Commission will initiate various projects to enhance the capacity of experts in the fields of ESCR. To do so, the Commission has launched a research society on ESCR monitoring and analyzing various issues in relation to ESCR, such as the current debate at the international level, and will disseminate the outcome of the research to the public.

Annexure–VII

General Principles of Economic, Social and Cultural Rights State obligations to Promote, Protect and Fulfil

Mr. Constantine Karusoke,

Commissioner, Uganda Human Rights Commissioner with special assistance of Monitoring
and Treaties Directorate of the Uganda Human Rights Commission

Ladies and Gentlemen,

I wish to extend my sincere thanks and gratitude for having been invited to this Round Table discussion aimed at discussing practical experiences and deliberating on how best to implement Economic, Social and Cultural Rights (ESCR). It is the hope of the Uganda Human Rights Commission that this round table discussion will make a strong and positive contribution to this theme, and that we will be better positioned to monitor the implementation of ESCR in our respective countries.

Experience in Uganda has taught us that the assertion of the right of personal freedom is incomplete unless it is related to the social and economic rights of the common man. The idea of “*rights*” complements the idea of “*needs*” in a number of respects. It stresses the moral importance that is placed on the human interests that are at stake, the priority that is to be accorded to them in the process of resource allocation, the status of the rightholder (as an autonomous and empowered holder of entitlements) and the (rather than merely objective) nature of the duties imposed on the State with respect to their realization.

All States have an obligation to endeavour to ensure the widest possible enjoyment by all its citizens of all the rights recognized in the International Covenants without any discrimination and on the basis of equal opportunity, paying special attention to the protection of the rights of the most vulnerable segments of the population and to the equitable and effective use of the available resources.

Suffice to note that States are bound by their own consent to a set of obligations concerning their treatment of individuals, without discrimination, within their jurisdiction. However, under the International Covenant on Economic, Social and Cultural Rights, it is expected that, these rights be achieved *progressively*. 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. Therefore certain obligations must be met immediately, and others as soon as possible. If a State Party does not take steps when it should, then it constitutes a *prima facie* violation of the Covenant on Economic, Social and Cultural Rights .

Ladies and Gentlemen, at a minimum, policy-makers must therefore, remain actively engaged with the following questions:

- i. What is the scope of protected rights?
- ii. To what extent are they currently realised?
- iii. What is the extent of the State Party's current capacity to realise the rights?
- iv. How might relevant rights be capable of fuller realisation within current resources?

From that background, States Parties can be regarded as obliged to '**respect**', '**protect**' and '**fulfil**' the rights contained within the treaty.

Respect

States are obliged to ensure that human rights are fully respected in the context of state policies, laws and actions. This obligation requires states to ensure that none of its ministries or institutions or public servants violate or impede enjoyment of human rights by their policies or actions.

Protect

States are obliged to ensure that enjoyment, by everyone without discrimination, of all their human rights is protected from abuse by third parties - i.e. from the actions of individuals and groups at *all* levels of society, including corporations, institutions and public and private bodies. This protection should be through the introduction of laws to protect human rights, and the provision of affordable and accessible redress procedures in the event of abuse of the rights.

Fulfil

States are obliged to take the necessary steps to ensure the realisation of human rights in practice through the adoption of legislative and other measures, such as the provision of education and other public services and policies designed to ensure access for everyone to basic needs. The obligation to fulfil includes the obligations to facilitate, promote and provide. In the context of economic, social and cultural rights, States are obliged to take all measures to achieve the progressive realisation of the rights.

Practical Experiences: National Implementation-Uganda

Uganda has to an extent ensured the Respect, Protection and Fulfilment of ESCR. In this respect;

1. Uganda has ratified *inter alia*, ICESCR, CEDAW, CRC, Convention relating to the Status of Refugees, ILO Conventions, the African Charter on the Rights and Welfare of the Child.

2. GoU with the assistance of the donor community has provided adequate public funding for programmes and policies that help implement economic, social and cultural rights such as the rights to health, food, and education, eradication of poverty, and rights of refugees and IDPs. These policies and programmes include;
 - The introduction and implementation of the Universal Primary Education popularly known as (UPE), has witnessed the numbers of boys and girls at schools approaching equalisation. There was also the expansion and diversification of the post primary education and training; expansion of non-formal education, higher enrolment of children with special needs, and provision of more core learning materials.
 - The introduction of the Uganda Food and Nutrition Policy in July 2003, is aimed at ensuring adequate food security in both quantity and quality. Introduction of the IDP policy in August 2004, whose aim is to provide for the protection and assistance of IDPs by providing guidelines to Government Institutions, local and international humanitarian organisations and NGOs involved in upholding the rights of IDPs.
 - Formulation of the Poverty Eradication Plan in December 2004, and this has five pillars, namely: Economic Management, Production, Competitiveness and Incomes, Security, Conflict Resolution and Disaster Management, Good Governance and Human Development.
 - Introduction of the Orphans and Vulnerable children's policy
 - Introduction of the Equal opportunities policy
 - Priority is being given to health, in particular health care for children, including efforts to reduce child mortality through on-going regular vaccination against preventable killer diseases, facilitate breastfeeding, support nutrition programmes, combat HIV/AIDS, systematically eliminate female genital mutilation and increase access to clean drinking water
 - Introduction and implementation of the HIV/AIDS policy: This has ensured accessibility of the Anti-retro viral therapy; the National Strategic framework for the expansion of HIV/AIDS care and support was introduced; and Voluntary Counselling and Testing policy was introduced and implemented in addition to earlier on programmes of public awareness creation and sensitisation about abstinence, faithfulness and condom use.
 - Uganda enacted the Consumer Protection Act and the National Safety Act, 2001 aimed at the realisation of the right to adequate food.
3. Government set up the National Human Rights Institution (UHRC) that, *inter alia*, promotes economic, social and cultural rights thus enabling the State to monitor violations of those rights. Government also created an enabling environment to ensure un-impaired performance of UHRC's activities.

4. Government put mechanisms in place to ensure that citizens have access to a complaints handling procedure and to remedies (through the Uganda Human Rights Commission) including when laws dealing with economic, social and cultural rights are violated.
5. Government developed the decentralization policy to ensure accessibility of ESCR.

Challenges in the implementation of ESCR

1. Although Uganda has ratified many of the International Conventions, domestication to give enforcement of those rights is not yet fully done.
2. Inadequate funding from the GoU has stifled full performance of UHRC's monitoring activities on ESCR. Government departments and implementing agencies lack the requisite institutional capacity, skills and financial resources to fully carry out their mandates.
3. Uganda has limited human and financial capacity to collect and process data, as well as to develop specific indicators to evaluate progress achieved and assess the impact of policies adopted in areas of ESCR.
4. Insufficient steps have been taken to promote awareness and understanding of the principles and provisions of the Convention. The Commission is concerned that the training on ESCR provided to all professional groups, including members of the police and other security forces and other law enforcement officials, army officials, judicial personnel, lawyers, social workers and officials of central and local administrations is insufficient, uncoordinated and unsystematic.
5. Availability and Accessibility of services in regard to the enjoyment of ESCR is deficient. The country's infrastructure is not inclusive and indirectly excludes vulnerable persons e.g. People With Disabilities. The right to Education is not fully achieved, as institutional structures are not readily accessible to groups like LOPs and PWDs.
6. Priorities are not marched with resource allocation e.g. Agriculture is identified as central in the eradication of poverty in Uganda because 80% of Uganda's population depends on it. However the amount of resources allocated to it in the PEAP does not correspond to its importance.
7. The vulnerable persons are not adequately targeted in Government policies such as the PEAP. The PEAP does not have a generic definition that captures a substantial number of vulnerable people in order to address specific poverty issues.
8. Although Government has put in place a NHRI through which a complaints procedure is initiated, the non-justiciability of most of the ESCR has hindered Uganda Courts of Law (incl. the UHRC Tribunal) to adjudicate violations of the core content of ESCR.

9. General attitude on ESCR: Many legal practitioners and policy makers regard ESCR as second-generation rights that are merely desirable goals that depend on the generosity (political goodwill) of the government and therefore do not treat them seriously enough as is the case with Civil and Political Rights.
10. Prejudicial traditional practices and customs, prevailing particularly in rural areas, hamper the effective implementation of the provisions of the ICESCR especially with regard to the principles of non-discrimination, best interests of the child and respect for the views of the vulnerable.
11. The standard of living is still very low in Uganda whose per capita income is US \$300. Great disparity exists between people living in rural and urban areas. Access to food, clean water and other basic amenities is still remarkably limited.
12. Armed conflict in Northern Uganda has impeded full implementation of ESCR in the Northern and North Eastern Region. Accessibility of humanitarian assistance (food, health services) to these regions has been limited by armed rebellion.

UHRC'S Role in the Implementation of ESCR

UHRC is mandated under article 51 & 52 of the 1995 Constitution of Uganda to report annually to Parliament on the status of political, civil, economic, social and cultural rights in the country. The reports have analysed the state of some of ESCR in Uganda.

UHRC is in the process of developing monitoring tools on the Right to Adequate Food, the Right to Adequate Housing, the Right to Education and the Right to Adequate Shelter. This will go a long way in monitoring progress on the ESCR.

The Commission also participated in the negotiation and finalisation of the Voluntary guidelines on the implementation of the Right to Adequate Food.

The Commission is actively engaged in monitoring the implementation of the LDP Policy and the Chairperson UHRC is the chair of the National Human Rights Committee for the LDP policy.

The Commission was also involved in the drafting and reviewing of the Food and Nutrition Policy.

The Commission is actively engaged in monitoring Bills of Parliament: UHRC has made various recommendations to Parliament of Uganda to ensure Justiciability of ESCR, for instance in the Constitution Amendment Bill, 2004 in which the Commission recommended to Parliament that these rights should form part of chapter 4 of the Constitution, which guarantees fundamental human rights and freedoms; and the Domestic Relations Bill, 2003 which will go a long way in protecting families from Domestic Violence.

UHRC has made recommendation to the Government to introduce a minimum wage to ensure the realisation of the right to work. The continued absence of a minimum wage is in violation of the ILO Convention No. 26 on the Minimum Wage Fixing Machinery 1963 (ratified by Uganda), and the Minimum Wages Advisory Board and Wages Council Act of 1964 Cap 221.

The Commission was engaged in sensitisation workshops on integrating human rights based approach in policy - making to Officials in the Administration of Justice, employers and employees. The Commission also conducts education and training to Parliamentarians, Policy makers, lawyers and other stakeholders on adopting the rights based approach to development when planning for programmes and policies.

UHRC has produced special reports on the Right to Adequate Food in Uganda and the state of People with Disabilities. A special report on the state of IDPs in Uganda is in the offing.

UHRC monitors the progress of government reporting and assesses compliance with treaty obligations and has reminded government of its obligations to submit periodic reports to the UN ECOSOC Committee.

UHRC has networked with other CSOs and Government departments to promote ESCR through consultative meetings.

Way Forward on the Implementation of ESCR

1. There is need to set up or *strengthen* existing National Human Rights Institutions (Human Rights Commissions) and ombudsmen that promote economic, social and cultural rights and enable the State to monitor violations of those rights.
2. NHRIs and NGOs/CSOs should Identify and bring to the attention of policy makers the economic, social and cultural issues of greatest immediate concern;
3. Public education on ESCR should be enhanced. NHRIs and identified NGOs/CSOs should educate the population about ESC rights and about other sources of related human rights; When informing the general public about human rights, it is not necessary to rely on lengthy guidebooks but public education on human rights include plays, television dramas, newspaper columns, comic books, dances and songs and training workshops.
4. Human Rights Defenders need to understand how universal human rights obligations may need to be adapted to fit particular local and national conditions;
5. Human Rights Defenders should monitor, report on and jointly oppose violations of the Covenant on ESCR, such as those that involve direct State actions;
6. NHRIs should monitor progress of government reporting on ESCR. Government Periodic

reports should not be written for the sole purpose of fulfilling the report obligation; they should provide an insightful view into the state of human rights in respective states. This will go a long way in offering an opportunity to reaffirm a State Party's commitment to respect the rights of its citizens and to reassert that commitment in the domestic political forum. Secondly, it offers the reporting state an opportunity for domestic stocktaking and for the adoption of measures to remedy any shortcomings which have been identified. Again, an opportunity is created for a State Party to proclaim to the international community that it is seriously concerned about its human ESCR obligations. So too does state reporting provide the State Party with an occasion to undertake a comprehensive review of national legislation, administrative rules and procedures in order to ensure the fullest possible conformity with the provisions of the Convention. Lastly, the reporting process acts as a catalyst to the formulation of appropriate policies to solve the problems that are identified.

7. A strategy that NGOs and NHRls can adopt to strengthen implementation of economic, social and cultural rights is to urge that annual government financial plans respect the State's obligations under the Covenant. To try to achieve more balance in the concerns addressed in the budget-planning process, NGOs and NHRls in some countries prepare and publicise their own "alternative" or "parallel budgets. e.g. Canadian Alternative Budgets have been designed to promote more job creation than the federal government's budgets promise to achieve.
8. Although human rights have become internationalized, accessible and effective public remedies remain the primary means of protecting social and economic rights. Constitutional entrenchment offers the best protection of human rights especially in countries that have constitutional supremacy combined with judicial review. Otherwise ESCR could be rendered ineffective if they are not reinforced or complimented by judicial remedies. NHRls and NGOs/CSOs should therefore lobby to ensure the economic, social and cultural rights are guaranteed in a State's Constitution (included in justiciable rights/Bill of rights) or in other laws, they can then be claimed or defended in courts of law.
9. By persuading governments or courts to strengthen environmental regulation, NHRls and NGOs/CSOs might be acting as a catalyst for reinforcement of the rights to health, life, food, water and/or adequate living standards. In some circumstances, protection of the environment also promotes indigenous or minority rights.
10. NHRls should mobilise together at the community and national levels, in cooperation with human rights NGOs, to advocate practical steps to improve implementation of economic, social and cultural rights at all levels.
11. NHRls should develop Monitoring tools on ESCR, which would comprehensively define a particular right, demand action plans and clear milestones in ministry reports. The tools should also Include clear templates for reports and provide a mechanism for regular status review that involves other stakeholders.

12. NHRls should lobby governments to adopt the decentralisation policy to ensure decentralisation of services and accessibility of services that will ensure enjoyment of ESCR.
13. NHRls should also actively engage in the peace processes of respective countries to ensure stability and enjoyment of ESCR.

In conclusion, Ladies and Gentlemen, it is clear from the discussion above that the ICESCR has impacted Africa and particularly Uganda in a way that cannot be ignored. African States have shown overwhelming formal commitment to ESCR by ratifying the ICESCR widely and by not making reservations that depart radically from the obligations of the Covenant. Other measures including setting up domestic institutions have been set up to implement these ESC rights.

It is however worrying to note that apart from the formal commitment, some African States have not entrenched ESCR as justiciable rights in their Constitutions. Suffice to note, most African States have not fulfilled their reporting obligations. This casts doubts on the reality of the commitment of African States to implement these rights beyond the paper. It also becomes difficult to identify factors that impede the full implementation of these rights and areas where much has not been done, as has been shown above, for possible future remedial attention.

It is therefore our hope that perhaps a new way is found to address these vital issues and in this way the Uganda Human Rights Commission will make a more constructive contribution towards the integration and implementation process of economic, social and cultural rights into national development strategies. It is also our sincere hope that the drafting of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (the Optional Protocol) that is underway, will compliment and reinforce the reporting system under the ICESCR.

Thank You.

Annexure–VIII

Justiciability of ESCR and Legal Protection: Practical Experience of the CHRAJ

Mr. Richard A. Quayson,
Deputy Commissioner, CHRAJ

Order of Discussion <ul style="list-style-type: none">• Mandate of CHRAJ• Practical Experience in ESCRs• Way forward & challenges• Conclusion
CHRAJ <p>The Commission was established in 1993 under the 1992 Constitution of Ghana by Act 456. It is the National Institution for the protection and promotion of fundamental rights, freedoms and administrative justice in Ghana.</p>
Mandate and Functions <p>The Commission combines:</p> <ul style="list-style-type: none">• Ombudsman;• National Human Rights Institution; and• Anti-Corruption Agency <p>under one umbrella.</p>
Structure <ul style="list-style-type: none">• 3 Member Commission i.e. Commissioner & 2 Deputies• Departments- legal & investigations; anti-corruption; public education, research & monitoring; admin & finance• 10 Regional directorates• 100 District directorates
What we do <ul style="list-style-type: none">• We investigate complaints of violations of fundamental rights and freedoms in both public and private sectors.• We investigate abuse of power and unfair treatment of any person by a public officer in the exercise of official duties.• We investigate allegations of non-compliance of the provisions of the Code of Conduct for Public Officers.

- We investigate all instances of alleged or suspected corruption and misappropriation of public monies by public officials, and promote accountability and public integrity.
- Our emphasis though is the preventive approach.
- We are currently developing guidelines for preventing and managing Conflict of Interest, the foremost incubator of corruption.
- We research and monitor the human rights situation in the country, including conditions at the country's prisons and police cells to prevent human rights abuse to inmates.
- We currently have on the drawing board a programme to monitor the implementation of Free Compulsory Universal Basic Education and the National Health Insurance Scheme to ensure equal opportunity and access to all persons targeted under the programme. This represents a major step in enforcing ESCRs in Ghana.
- We help to set standards and best practice guidelines for State institutions and the general public to improve the quality of life for our people. We are currently investigating the impact of mining operations on mining communities to help formulate best practice guidelines.
- We educate the public on their fundamental rights and freedoms as well as their responsibilities towards each other and towards the State.
- Through our rural community-based public education project the Commission is bringing enlightenment to many, and empowering them with human rights knowledge to take better control of their lives.

Remedies available

- Taking appropriate action to remedy, correct and reverse wrongful actions and decisions through such means as are fair, proper and effective, including
 - negotiation and compromise
 - causing the complaints and our findings to be reported to the superior of the offending person:
 - bringing proceedings in a competent court to terminate the offending action or conduct, or the abandonment or alteration of the offending procedures:
 - and
 - bringing proceedings to challenge the validity of legislation or regulation as unreasonable or otherwise ultra vires if the offending action or conduct is sought to be justified by such legislation.

Interconnectivity

It is trite knowledge that corruption and good governance have direct bearing on the enjoyment of ESCRs. At CHRAJ we emphasize the interconnectivity between corruption, good governance and human rights and try to bring all our 3 fold mandates to bear on the enforcement of ESCRs in Ghana.

ESCRs in Ghana

- Ghana ratified the ICESCR in Sept. 2000
- Even before that, Act 33(5) was categorical that rights listed in constitution are not exhaustive, but includes rights necessary in a democracy
- Maintained that ESCRs are guaranteed under Ghana's Constitution of 1992

ESCRs in Ghana

Some of the ESCRs guaranteed under the 1992 Constitution of Ghana are the right:

- to practise any religion and to manifest such practice;
- to work under satisfactory, safe and healthy conditions, and receive equal pay for equal work without distinction of any kind.
- of every worker to rest, leisure and reasonable limitation of working hours, and periods of holidays with pay, as well as remuneration for public holidays.
- to form or join a trade union of one's choice for the promotion and protection of his economic and social interests
- to Health and medical care
- to education, and equal educational opportunities and facilities
- to shelter, water and food
- to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion subject to the provisions of this Constitution.

ESCRs – Practical Experiences: Legislative Interventions

- Intestate succession Law
- Children's Act of 1998 (Act 560) on the rights of the child
- Act 484 (amending the CC) criminalizing Trokosi & FGM, etc
- Domestic violence Bill
- New Minerals Bill

Protection of ESCRs – Practical Experiences

- The courts in Ghana have been extremely cautious in enforcing ESCRs, often citing the "floodgate" rule.
- However, the courts are gradually becoming more and more sensitive to the injustice occasioned by neglect of these rights.

Practical Experiences – 2 Court & 1 CHRAJ cases

- Right to work under safe, healthy and non-discriminatory conditions - GHACEM Case
- Right to Shelter/housing: Sodom and Gomorrah
- Jemima Scheck Vrs Ghacem

CHRAJ v. GHACEN, Suit No. FT/ (HR) 72001 (unreported) - 4/12/2001

- In that case, CHRAJ applied to the Fast Track High Court, Accra, for an order to enforce its decision against the Respondent (GHACEM) in a case filed by some workers of GHACEM. The petitioners complained that "...though they worked for GHACEM for several years, they were always treated as casuals and denied medical facilities and other workers..." The Commission arrived at the decision after six months of the date of their employment (and that) the respondent should accord them that recognition with immediate effect and stop the discrimination.

CHRAJ V. GHACEM

- His Lordship Julius Ansa J. A. dismissed the application but made very interesting remarks to

which I wish to draw your attention. He said:

- "...It was most unfair and amounts to undue exploitation and manifestly unjust, to say the least, for an employee to engage the services of a poor worker (as) a mere contractor, use his services in working in as hazardous an area as a cement factory for such a long period of time and yet not accord him the recognition of a permanent worker and thereby deny him the trappings that go with that status...How many workers in Ghana are prepared to or must work in this killing condition? These category of workers have suffered for too long.
- They should not be made to suffer any longer than they have: enough is enough. It is with the greatest reluctance that I rule against granting this application. I am constrained by the peculiar facts of this case to do so but not because I relish the idea of making or approving the situation wherein some workers are being consigned into a situation wherein they would become perpetual temporary workers or contractors. I hope for the day when this manifest injustice would be brought to an end also that not be too long."

Sodom and Gomorrah case

- Involves unlawful eviction of 30,000 squatters from a suburb of Accra named Sodom and Gomorrah for its squalor.
- CHRAJ joined CEPIL in applying for injunction to restrain AMA/Government from arbitrarily evicting the squatters.
- The application was declined and Squatters given 14 days in 2001 to quit. We then resorted to mediation and negotiations to try and get squatters resettled. The matter is still pending and squatters still there.

Jemima Scheck Vrs Ghacem

- Complainant worked with Respondent as casual worker for 3 years without annual vacation leave. In the course of her employment she became pregnant. The Respondent failed to grant her maternity leave. She delivered still born baby and was detained at hospital for 2 days. although the Respondent was informed of Complainant's situation it nonetheless dismissed her for absenteeism, arguing that casual workers are not entitled to maternity leave.
- The Commission held the dismissal to be wrongful; that denying Complainant maternity leave was a violation of her annual vacation leave and other conditions and entitlements available to her colleague workers were discriminatory and a violation of her fundamental rights. The CHRAJ awarded compensation to the Complainant.

Justiceability of ESCRs

- Still a relatively new under the Ghanaian justice delivery system as compared to the enforcements of other rights, especially civil and political rights. The courts as indicated earlier, will ultimately come round to accept their responsibility in the enforcement of ESCRs, but this may still take some time.
- In the mean time we must still find ways to enforce and protect these rights.

Way forward

The approach of CHRAJ has been to engage the enforcement agencies and the general public to build

better understanding and consensus on the justiceability and enforceability of ESCRs.

- Intervene and provide remedy when there have been violations of these rights. This entails close collaboration between CHRAJ, the Courts, Dept of Social Welfare and other enforcement agencies.
- Public Education - through press media, school, religious groups, community education; seminars, workshops for govt officials and enforcement agencies, etc.

Currently we are working with the Chief Justice to make inputs in the continuous legal education for Judges and Magistrates.

- Monitoring of the state's compliance with her obligations under ICESCRs - e.g.. FCUBE and NHIS

Challenges

- Poverty and illiteracy
- Misunderstanding of the nature of ESCRs obligations of states
- Doctrine of legal precedents
- Many others

Conclusion

- There is a huge potential for justiceability of ESCRs to become a reality in Ghana in the nearest future. The role of the NHRI is nurture all opportunities available to make the dream a reality sooner than later.

Annexure–IX

Summary of Day 1

Participants highlighted the importance for national human rights institutions to:

- Be adequately resourced to deal with economic, social and cultural rights (ESCR);
- Stress the need of indivisibility, interdependence and universality of human rights;
- Adopt a rights-based approach to economic, social and cultural issues rather than only as welfare measures;
- Ensure that the Millennium Development Goals (MDGs) process is consistent with state obligations to international human rights instruments and that their implementation is undertaken from a rights-based approach;
- Strive to ensure an independent access to the international treaty body system;
- Exert their role on ESCR not only through the educational system but to ensure that Government officials including those in economic and planning ministries, the judiciary, Parliamentarians and other partners know their international obligations in relation to economic, social and cultural rights;
- Where possible use their quasi-judicial powers in implementing ESCR including, for example, the presentation of amicus briefs to the judiciary thereby assisting it in developing appropriate jurisprudence harmonising civil and political rights with economic, social and cultural rights;
- Pay attention to areas which impact on the enjoyment of ESCR including trade, environment, corruption and the activities of non-state actors;
- Neglect of ESCR can lead to conflicts resulting in violations of human rights thus posing a threat to peace and security;
- Engage with a variety of actors – state, parliament, government – including ministries such as planning and development – civil society and international organisations through a rights-based manner to promote and protect ESCR;
- Find ways to enforce ESCR – this can be through departments of social welfare, the courts and civil society – to ensure better awareness of the justiciability and enforceability of ESCR with the resultant provision of effective remedies;
- Use their quasi-judicial powers, where they exist, or be empowered to be forceful in

ensuring compliance and or penalties concerning ESCR. [For example, Supreme Court of India remitted to the HRC of India the right to food – state shall implement the directives given by the Commission as concerns right to food.];

- Provide voice to those areas where the law is silent;
- Seek with innovation and interpretation ways to ensure for legal protection of rights even where they may not be explicitly provided for in their national constitutions or legislation;
- Work with bodies, within their respective mandates, to combat corruption which has a direct impact on the enjoyment of ESCR;
- Courts at times are unfairly accused of engaging in judicial activism while giving rightful place to ESCR – case of Ghana seems to be that the court looking to policy issues rather than those of law – i.e. concerned with ability of system to deal with cases;
- Assist to ensure that domestic legislation which may impact on the enjoyment of ESCR is in compliance with international human rights norms and provides for sufficient protection of ESCR;
- Need to ensure public education concerning ESCR and ensure legal literacy of them;
- Monitor state compliance under the International Covenant to Economic, Social and Cultural Rights;
- Work within their states with representatives of IFIs to help the state to ensure that their policies and practices do not impact negatively on the enjoyment of ESCR;
- Need to help inform about, and where they do not exist help in developing, minimum obligations [standards] concerning ESCR.
- Use the existing tools and interpretations including those developed by the United Nations, the Committee on Economic, Social and Cultural Rights including their General Comments, as well as the Limburg Principles and Maastricht Guidelines.
- Engage with the Working Group in drafting the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and encourage states to adopt it

Annexure–X

The Irish Human Rights Commission and the Implementation of Economic, Social and Cultural Rights

Dr. Ms. Alpha Connelly,
Chief Executive, Irish Human Rights Commission, Ireland

Introduction

It gives me great pleasure to make this short presentation today by way of contribution to a discussion on the implementation of economic, social and cultural rights.

The Irish Human Rights Commission (IHRC) is a relatively young national institution. Its mandate is to protect and to promote the human rights recognised in the Irish Constitution and in international agreements to which Ireland is party. In fact, in much of its work the Commission has concentrated on the latter and, of course, one of the main international agreements in this area to which Ireland is party is the International Covenant on Economic, Social and Cultural Rights.

A very wide range of functions has been conferred on the Commission: from monitoring activities, such as reviewing the law and practice in the State for conformity with human rights standards, through promotional activities, such as education and research and making recommendations to the Government, to enforcement activities, such as aiding a person to gain a remedy for a violation of their rights and taking legal proceedings in its own name on behalf of a person or class of persons. The Commission also has an inquiry function which is specifically linked to, and is intended to further, the performance of certain of its other functions.

As with any other public body with limited resources, the Commission has had to prioritise in order to be effective. In its current Strategic Plan, it has identified a number of key areas of work. These are the administration of justice; economic, social and cultural rights in general; racism; person with disabilities; gender; and equality and human difference.

With regard to economic, social and cultural rights, the Commission is doing a number of things. It has been conducting a major piece of research on this category of rights and will be hosting an international conference on 9 and 10 December, 2005 on the enforcement of economic, social and cultural rights. In relation to specific groups of people, it has paid particular attention to the economic, social and cultural rights of persons with disabilities and of women. It is also conducting an enquiry into the impact on elderly persons of a legislative requirement to contribute to an old age pension scheme from which they could not benefit.

Article 2 of the International Covenant on Economic, Social and Cultural Rights imposes an obligation on States Parties progressively to achieve the full realisation of these rights by all appropriate means, including particularly the adoption of legislative measures.

In this presentation, I will concentrate on one recent legislative measure in Ireland, the Disability Act 2005. A Minister of the Government may refer a legislative proposal to the Commission for its views on the implications of the proposal for human rights. The Minister for Justice, Equality and Law Reform referred this legislative measure, at the Bill stage, to the Commission for its views in 2004.

Persons with Disabilities and Economic, Social and Cultural Rights

The Disability Bill dealt with the assessment of the health and education needs of persons with disabilities, the provision of services to meet these needs (including the adoption of sectoral plans by relevant Ministers of the Government), access to public buildings and services, and public service employment.

A Rights-Based Approach

Together with many organisations, the Commission urged a rights-based approach to the legislation. It assessed the clauses of the Bill by reference to what it saw as the main requirements of international human rights law.

It identified these requirements as being:

- a. The provision of services must be effectively centred on an individualised assessment of needs which is in compliance with international human rights standards, both in the parameters of the assessment and in relation to its independence.
- b. Mechanisms for the allocation of funding and the provision of services must effectively guarantee the progressive realisation of the economic and social rights of persons with disabilities. A forward moving dynamic that progressively ratchets upwards the level of provision is required. The human rights of persons with disabilities must be the paramount consideration in the rationalisation of resources and services.
- c. Mechanisms for the allocation of funding and the provision of services must guarantee that basic standards of services never fall below a floor that is determined by the core minimum contents of social and economic rights and are consistent with the imperative of human dignity.
- d. There must be effective remedies. Orders for the provision of services must be capable of

enforcement. Findings must be subject to appeal and review; and any procedures put in place in this regard must be fair and independent.

- e. The State's obligations in the area of promoting and protecting equality and preventing discrimination extend to ensuring that proposed systems provide equal participation in society for persons with disabilities.

I propose briefly to outline what the legislation now provides in relating to each of these requirements.

The Disability Act

Regarding the assessment of the needs of a person with a disability, the Act provides for the appointment of assessment officers. The officers are public servants in the employ of the Health Service Executive, and the Act states that they shall be independent in the performance of their functions. An officer determines whether an applicant has a disability (which is defined quite restrictively by the Act) and, if so, draws up a statement of the health and education needs of the person as well as of the services considered appropriate to meet these needs. The applicant and a representative may be invited to participate in the assessment process. A statement of health and education needs is then considered by a 'liaison officer' who in turn draws up a statement of the health and education services which will be provided to the applicant and arranges for the delivery of the services. A liaison officer is also an employee of the Health Service Executive and among the matters which this officer must take into account in preparing a service statement is the amount of public moneys allocated to the Executive in the relevant financial year to implement its service plan.

The Act does therefore provide for an individualised assessment of needs, but the independence of the assessment may be questioned given the fact that both the assessment officers and the liaison officers are employees of the Health Service Executive, the Executive being the body which may provide the service or on whose behalf the service may be provided.

Regarding the requirement of the progressive realisation of the economic and social rights of persons with disabilities, this is not addressed as such in the Act; but it is possible that the sectoral plans which some Ministers must prepare may contain an element of progressive realisation. These plans will outline the programme of measures which it is proposed to take in the Minister's area of responsibility in connection with the provision of services to persons with specified disabilities. For example, a sectoral plan prepared by the Minister for Transport must contain information on a programme of projected measures for the provision of access for persons with disabilities to passenger transport services for the general public as well as a time-frame within which such measures are to be taken.

Regarding the requirement that there be basic standards, or a floor, of services for a person with a disability, this has also not been specifically addressed in the Act, and it remains to be seen whether or not some cognisance will be taken of this in practice.

Regarding the requirement that there be provision for appeals from findings and effective remedies, the Act allows for complaints in relation to assessments and service statements to be made to a <complaints officer>; but again a complaints officer is an employee of the Health Service Executive, albeit 'independent in the performance of his or her function'. If a complaint is upheld, the officer may make a recommendation to the relevant person or body that the situation be rectified. The findings and recommendations of a complaints officer may be appealed to an 'appeals officer' by either the applicant or a service provider. The appeals officer is a public servant but not an employee of the Health Service Executive and must be appointed following a competition for the position. The procedures for an appeal appear on the whole to be fair and independent and include provision for mediation. There can be no appeal from a determination of the appeals officer to the courts other than an appeal on a point of law to the High Court. However, if a service provider fails to implement a determination of the appeals officer or a recommendation of the complaints officer, an application may be made to the Circuit Court for an order requiring the implementation of the determination or recommendation. A degree of judicial control by the regular courts is therefore built into the enforcement procedures, but it is limited.

Lastly, regarding the duty of the State to promote equality for persons with disabilities, there is no explicit recognition of this duty in the Act, but the Act could be said to further the equal participation of persons with disabilities in society by taking some steps to this end.

Challenges Ahead

In this short presentation I have not gone into the details of the legislation but have rather given the thrust of some of the main provisions with respect to the provision of services for persons with disabilities. One thing is however clear, and it is the absence of a rights-based approach to the provision of services. Thus, for example, there is no right to any services, basic or otherwise, and there is no recognition of the duty on the State progressively to realise the economic and social rights of persons with disabilities.

It will be a major challenge for the Irish Human Rights Commission to change the official perspective and to secure an acceptance in Government circles that human rights should be centre stage when resources are allocated in this field.

Ireland has a long tradition of concern for civil and political liberties. However it has, by and large, yet to learn to bring a human rights perspective to bear on economic and social issues in Ireland itself. The Commission faces a major educational exercise in this regard. This is why it has

initiated a major study of economic, social and cultural rights and why it is very shortly to hold a conference on the nature, implementation and enforcement of these rights.

The political climate is not entirely propitious to these endeavours at this time. There are opposing ideologies which see such matters from a welfare perspective and some which would even reject the equality of all human beings as a social aspiration. Even in relatively wealthy countries, such as Ireland, there can be a blindness to the responsibilities which we all owe to one another as economic and social actors and to the rights which we all should enjoy as members of the human species. The issue of the realisation of economic and social rights is not unique to anyone State or group of States. It is a universal concern.

Thank you for your attention.

Annexure–XI

Implementing Economic, Social and Cultural Rights Modes and Modalities: Advocacy and Other Means

Mr. P.C. Sharma,
Member, NHRC, India

Ever since the adoption of Universal Declaration of Human Rights, the rights concept is evolving and now encompasses economic, social and cultural rights.

The nations long suppressed by colonial rule have woken up and are striving to achieve dignity and parity not only in terms of political freedoms but also for fulfilling their social, cultural aspirations. The economic, social and cultural rights are now being regarded as fundamental as the civil and political rights.

First step towards implementing these rights is the recognition that the distinction between civil and political rights is extremely artificial one. Protecting these rights from violation depends on the realization as to what the States are not supposed to do or interfere. Not only that, the State should also guard against non-state actors and prevent them from violating these rights. To quote Arjun Sengupta. “The economic social and cultural rights would also be seen as integrally dependent on many of the negative civil and political rights such as the right to life, freedom of movement, of information, of association and basic liberties. “Human Rights have come to be recognized as totally interdependent as the level of realization of one right depends on the realization of the level of other rights”.

These are two major implications of recognizing development or economic upliftment as a human right. First not any kind of development can qualify as human right. It has not to be confused with GDP or industrialization or export promotion or increasing the volume of employment. The economic development in the context of human rights ought to be based on the realization that it is a process that has to be equitable, i.e. without increasing the inequalities and with a fair sharing of the benefits of development. It is a process that does not permit discrimination between people coming from different cultural backgrounds, a process which does not recognize caste, religion, gender or ethnicity. It is very close to the socialistic pattern of planning and development that India adopted after achieving independence from the colonial rule which aimed at product sharing and a participative endeavour. India has, perhaps, a unique institution in the Planning Commission which had been constituted not only to adopt a planned economic strategy, but also to take care of the deprived sections of society. It has been allocating State funds for improving the economic lot of the people who have been economically deprived, culturally and educationally backward. This experiment, ladies and gentlemen, has worked.

The second aspect is the process of development of economic, cultural and social conditions ought to become an obligation to fulfill development. Human Rights imply obligations. If a right is claimed, legitimately and justifiably by any agent in the society, then all other agents in the society whose actions have influence on the fulfillment on that right will have an obligation to the maximum extent possible, to measures to fulfill them.

Having said all that, I would like to stress that Human Rights Institutions should have a fair assessment of the conditions in their respective jurisdictions. Globally we have some idea of the problem of human deprivation. It is estimated that over one billion people live in circumstances of extreme hunger, homelessness, malnutrition, unemployment, illiteracy and chronic ill-health. More than 1.5 billion people lack access to clean drinking water and sanitation, some 500 million children do not have access even to primary education and more than one billion adults cannot read and write.

These are the specific issues that the Human Rights institutions should draw the attention of the State and the civil society. The National Human Rights Commission of India have taken up these matters with right earnestness. We have been focusing on drinking water, healthcare, matters like starvation deaths wherever as reported from

Legislation

International Covenants

Countries should learn from Indian example where cultural, economic rights have been enshrined in the Constitutions. Based on them, we have economic policies, aiming not only at economic progress but also economic upliftment of the deprived sections of the society.

Annexure–XII

Implementing ESCR – Modes and Modalities, Advocacy and Other Means

Mr. Kedar Prasad Poudyal,
Acting Secretary, National Human Rights Commission of Nepal

Introduction

ESC rights are the rights of poor, marginalized, and backward people of the world and a large population of the world belongs to this group. It means, developing countries have much more concerns on these rights. However, it is the developed countries to contribute through technical and financial assistance to improve the rights situation in these countries.

Interdependency of rights

Mostly it is mistaken by giving civil and political rights superiority. If we talk about the right to dignity, we cannot give less importance to the ESC rights as these rights are associated with the dignity of people.

Implementing ESCR modes and modalities advocacy and other means

Historically, ESCR rights were not given serious attention by the states and it was merely regarded as aspirations rather than rights. We have passed through a long way in getting recognition of such aspiration as rights.

There was also reluctance to give mandate to NHRIs to work on this area.

It is obvious that these rights are non controversial as compared to the civil and political rights. It is also because economic rights mostly attract collective responsibility and the CDESCR gives some level of flexibility to the states in the implementation of these rights.

The issue relating to the protection of ESCR by the court is much discussed. We have understood that there are lots of opportunities of court intervention for the protection of these rights. But considering the specific nature of these rights, in many occasions, the court may not be able to help. We have observed that the jurisprudence regarding civil and political rights is well developed in many countries. It however needs lots of additional effort from the court to have the same level of understanding as regards ESCR. It is also a fact that there is dearth of capacity to analyze policy

issues and give directives to the government. There are also obstacles in implementing the provisions stipulated in the treaties in the absence of clear domestic legal provision

Therefore the NHRIs need to explore other ways and means where by they can help government in fulfilling their obligations. Many times, there is unintentional avoidance of ESCR issues by the government. It may be because they did not realize to the extent they should have been. There are some nomenclatures in economics referring to the development, for example – sustainable development, rights based approach, vulnerable groups, balanced allocation of resources, poverty alleviation, basic needs. Mostly manifesto of Political Parties have included these all aspects. If we could convince them as to how they relate to the rights issues, may be it is easy to motivate the policy makers.

Thus, it is also clear that the people who are in policy level need to be sensitized because their serious consideration makes lots of changes.

One major shift of the state towards fulfilling ESCR is recognizing rights based approach to development. Similarly various activities of the government in achieving the Millennium Development Goal is also a step forward towards fulfilling the ESCR.

Thus in addition to legal remedy and implementation of ESCR through the courts, there are some effective measures where we can engage even the government in the process and achieve better respect for these rights by the government

- There is abundant number of international instruments to define the scope and ambit of ESCR Rights. There are also best practices observed in different parts of the world. In addition, General Comments, conclusion of various international meetings, and guidelines adopted by the states such as Voluntary Guidelines to ensure Rights Food adopted by the government in 2004 are now basic norms recognized and adopted by the international community. There is a need to consolidate all these standards and propagate at the national level among the key policy makers including the Parliamentarians. It is felt that there is lack of understanding of the issue of ESCR among the key actors.
- Bringing the best practices form other countries and have a discussion with the judiciary is another ways to encourage the judges to go a bit ahead wherever possible to protect these rights. The commission itself or with the help of the court may set guidelines on various aspects of ESCR.
- Planning commission or planning division of the government is a place really to intervene for the purpose of sensitizing them on rights based approach to development and various aspects of ESCR.
- Another area may be engaging in the preparation of treaty reports. This is the most

effective way of advocating ESC rights. The government extremely realizes the problems when they sit for the preparation of the report. NHRIs may engage in building their capacity and providing inputs to the reports.

- Setting benchmarks and guidelines for the protection of ESCR in close coordination with the government so that the Government also owns it.
- Review of government policy and laws and recommending for necessary measures to be taken by the government. Here NHRIs can review even the national budget, long-term plans and laws that have bearing with socio-economic rights.
- To encourage, and assist to the government to prepare national human rights action plan.

Some of the activities in this respect so far envisaged by NHRC Nepal are as follows:

Strategic Objective 3:

To advocate right to food, health, shelter, education and work as the fundamental rights of the people with special attention to improving the human rights situation in the most underdeveloped regions of Nepal.

Key priorities will be:

- Pursuing His Majesty's Government to define appropriate national standard/s for right to food, health, shelter, education and work.
- Pressing for constitutional and/or legislative changes to ensure that the citizens are able to enjoy minimum standard of those rights.
- Pursuing His Majesty's Government to prepare and implement a plan of action to address the food security problem in chronic food deficit areas.
- Conducting national level research on impact of globalization, on household food security, on bonded labour, on the rights of farmers, workers (including health, education and status of women and children workers) and Nepali migrant workers from human rights perspective.
- Raising awareness on economic, social and cultural rights and building the capacity of human rights NGOs and civil society to defend these rights.
- Monitoring the condition of ex-Kamaiyas, Haliya, Gothala and similar practices; and pursuing His Majesty's Government to take actions to address their rights.
- Monitoring and enforcing minimum wage and equal wage requirements.
- Ensuring that His Majesty's Government properly regulates and monitors the contractual arrangements and conditions of Nepalese migrant workers.

- Pursuing adoption of/changes in policies and the legislation for culturally appropriate and affordable housing for rural and urban poor, and protection of tenancy rights.
- Working with the stakeholders to declare the children, hospital and medical facilities and sites of cultural heritage as Peace Zones.
- Monitoring the progress of His Majesty's Government on its implementation of the universal and free quality primary education policy and free quality basic health care services to the people.
- Monitoring of implementation of ESCR components of the National Human Rights Action.

Challenges

- Conflict situation itself is a challenge because a number of ESCR issues are in rise. But the government tries to avoid engaging in these issues justifying itself for the use of resources for anti terrorist activities.
- NHRC itself can not concentrate much on ESCR issues once there are serious cases to deal such as killings, disappearances and torture.
- Policy document of the government many times look like a perfect document. But the implementation is the real problem.
- There is also dearth of capacity within the institutions. And the same is obvious so far the government offices are concerned.
- NGOs contribute a lot in sensitizing government. We have not fully utilized their capacity in this area.
- So far ESCR is concerned there cannot be only one Ministry of the government to focus on. It has been difficult to consolidate the effort of concerned ministries. Staff are frequently transferred, and frequent political change has affected advocacy activities.
- Political commitment comes through people. In the absence of elected government, it is difficult to achieve the same level of commitment.

Annexure–XIII

Roles and Responsibilities of National Institutions in Implementing ESCR

Mr. R. S. Kalha,
Member, NHRC, India

It is a pleasure to be here and to present my views on the Role and responsibility of National Institutions in implementing E.S.C.R.

Any National Institution that is set up and which conforms to the Paris principles has a unique role to play. Such National institutions are by their very nature organizations that are independent, are established by law and have specified powers and functions. This gives them a certain status and consequently they enjoy a credibility that is not available to either governmental or non-governmental organizations. Thus, National institutions are not only catalysts for action, but can play a positive role in relation to promotion of human rights, including ESCR.

Quite often the mandate, even going by the Paris Principles that is given to the National institutions, is invariably expressed in very general term. Sometimes reference is specifically made to certain rights, but more often than not, they are only expressed in general terms. Thus, it is up to each National institution to interpret its mandate. In the interpretation of its mandate, it should not lose sight of the very fact that, apart from conducting investigations and making recommendations, it has a positive role to play in the fields of research, monitoring, advisory and policy development.

The fact that a National institution is set up under the Paris Principles, gives it a certain amount of independence and flexibility. It also attains a unique opportunity to fashion its own policies and programmes. The fact that it can manage its own finance, through agreed to budgetary allocations, gives it even greater independence. This does not mean however that the work of the National institution can be entirely divorced from that of the government. In fact, seeking and obtaining the necessary cooperation from the government, can very often help in the work assigned to a National institution.

A National institution which is trying to play an effective role must remember that one of the most important aspects is its accessibility. If a National institution is not accessible or its functions are unknown to the vast majority of the citizens of that country, then its role would naturally be circumscribed. Similarly its functioning must be widely known. Accessibility must not only be through the medium of a telephone or by e-mail, but it should also be physically approachable, particularly by those people who are living in rural and remote areas. Every official must be easily

available. If necessary, a National institution must ensure not only regular visits by its field officers, but arrange good communications with the ability to access even those that may be suffering from disability or living in the remote areas. In other words, accessibility will enhance the quality of its functioning.

Another important factor is that sometime needs and demands are far in excess of the limited resources available. Needless to say, any National institution would not only have to prioritize its work methods, but would have to ensure that its practices are effective and efficient, so that a National institution does not get swamped by a huge number of references. In this case care has to be taken to handle sensitive cases on a priority basis.

Another factor which plays an important role is that the people that are being served in a particular area must get the feeling that their approach to the National institution does receive a proper and meaningful hearing and that, at the end of the day, due justice is received. While dealing with the individual complaints, it should also be remembered that there are the larger rights of groups and of societies as a whole. These may not necessarily be the same as those rights of an individual. Therefore, decision making process in National institutions not only has to be open, rational, but must seem to be shared and consistent. A National institution has to ensure that priority is given to rights of groups over rights of individuals. There is no doubt that this can be a contentious issue, for it can be argued equally well that the rights of an individual are equally important as those of a group. Here it would be important to note the cultural background and political ethos of the environment under which a particular National institution has to function would play an important role.

Often National institutions are confronted with domestic legislation and practices that do not conform to internationally recognized covenants. To give you an example, the international covenant on ESCR as under Article 8 which relates to trade union and article 13(2) (a) which relates to free and compulsory primary education are domestically contentious political issues. States with chronically deficit budgets, although signatories to the covenant may not be able to pay the same attention to the implementation of such articles when it comes to implementing domestic law. Quite often such egalitarian declarations have a low priority in domestic law. Therefore, National institutions must take an active interest to help and promote such concepts, as these are core concepts when human rights are involved and must be implemented with vigor. One method would be sensitization of the general public as also key functionaries of state governments.

Finally, each National institution has to develop its own ethos and a work culture. It should simultaneously encourage all governmental, non-governmental and other institutions to actively participate in the promotion of ESCR. It would be the best if a National institution sees its role not as adversarial, but seeks co-operation. In co-operation with the government and civil society lies the best chance that ESCR will be effectively implemented.

Annexure–XIV

The Irish Human Rights Commission and the Implementation of Economic, Social and Cultural Rights

Ms. Diana Pickard,
Senior Policy Analyst, New Zealand Human Rights Commission

1. Introduction

- 1.1 The approach taken by people in New Zealand to economic, social and cultural rights (ESCR) can be expressed in two ways, which at their heart are very similar. The first is a Maori proverb which says:-

Ui mai koe ki ahau he aha te mea nui o te ao,
maku e kr am he tangata, he tangata, he tangata!

Ask me what is the greatest thing in the world
I will reply: It is people, it is people, it is people!

- 1.2 The second is a statement from 1948, made by New Zealander Colin Aikman at the United National General Assembly in Paris that voted to adopt the Universal Declaration of Human Rights. He said:

We regard with particular satisfaction the place which is given in the declaration to social and economic rights. Experience in New Zealand has taught us that the assertion of the right of personal freedom is incomplete unless it is related to the social and economic rights of the common man.

There can be no difference of opinion as to the tyranny of privation and want.

There is no dictator more terrible than hunger. And we have found in New Zealand that only with social security in its widest sense can the individual reach his full stature. Therefore, it can be understood why we emphasise the right to work, the right to a standard of living adequate for health and well being, and the right to security in the event of unemployment, sickness, disability, widowhood and old age. Also the fact that the common man is a social being requires that he should have the right to education, right to rest and leisure, and the right to freely participate in the cultural life of the community.

These social and economic rights can give the individual the normal conditions of life which

make for the larger freedom. And in New Zealand we accept that it is function of government to promote their realisations¹.

1.3 As part of developing a National Plan of Action for Human Rights in New Zealand in 2003, some 55 years later, New Zealanders told the Human Rights Commission that economic social and cultural rights are still as important to them as civil and political rights.

2. Measures undertaken by the NZ Commission

2.1 The Commission has adopted a range of measures that aim to promote and deliver ESCR. Some measures are focused on the government sector, others apply more broadly. As we all know, there is no one, magic measure, through which respect for ESCR can be ensured. Instead, there is a 'rights message' that gains strength from its repeated telling across the range .

2.2 In the time available to me today, I intend to just note the various initiatives of the New Zealand Human Rights Commission. These are grouped under the three roles the OHCHR Handbook identifies for human rights bodies in relation to ESCR, namely:

- Dealing with violations of ESCR;
- Monitoring ESCR; and
- Promoting ESCR.

2.3 I have also taken the liberty of including some questions in my paper - where the New Zealand Human Rights Commission seeks to learn from the expertise of your institutions. These questions are for your later consideration, and I would be happy to discuss any of them with you over the next few days or by email at a later date (dianap@hrc.co.nz).

3. Dealing with violations of ESCR

ESCR initiatives in the Commission's NZ Action Plan for Human Rights

3.1 In February 2005, the Commission completed the first New Zealand Action Plan for Human Rights. The Plan, and the preceding status report 'Human Rights in New Zealand Today', specifically consider the provision of ESCR in New Zealand. We focused on the right to an adequate standard of living (through a lens of child poverty and the right to housing) and the rights to health, education and work.

3.2 The status report highlighted both, 'Where New-Zealand does well' in relation to human rights, and importantly, 'Where we must to do better'. The status report, and many other studies, provided compelling evidence of the persistent inequalities in people's experience of economic, social and cultural rights - often connected with race, and/or refugee or immigrant status. The report also highlighted the extent to which realisation of one ESC

¹ Colin Aikman "New Zealand and the Origins of the Universal Declaration" (1999) 29 VUWLR, at page 5.

right is dependent on the realisation of others. For example, attainment of the highest standard of health is related to education and to healthy housing, and income sufficient for an adequate standard of living, in turn, requires access to decent work.

3.3 Although elements of ESCR are addressed in some laws, and in many government strategies, policies and programmes, in New Zealand they do not have the same level of legislative protection as civil and political rights.

3.4 The Action Plan built on the status report by identifying activities to address those situations where New Zealand could do better. Some actions are specific and short term, others broader over time. One action to address poverty, for example, is to:

- develop an official poverty measure;
- set targets for the reduction of poverty; and
- monitor progress towards meeting those targets.

3.5 To better realise the right to education, we promoted accessible, appropriate and quality literacy services being available to all adults in New Zealand, and schools as human rights communities. The Commission also indicated its intention to pursue strategic litigation if necessary, to enforce the right to free primary and secondary education.

3.6 The challenge for the Commission now is to maintain traction and achieve implementation of the Action Plan on the ground. With this in mind, strategies are being developed for our further interaction with central and local government, with business, with the community, and with iwi (Maori tribes).

3.7 You might be interested to know more about this work. Both the status report and the Action Plan, plus details about the Action Plan project as a whole, can be found on the Commission's website at www.hrc.co.nz

Commission mandate to mediate discrimination complaints

3.8 Under the Human Rights Act 1993, the Commission provides a public service, mediating complaints about discrimination. This encompasses alleged discrimination in the provision of ESCR-related matters, such as health services, accommodation and employment. Statistics about these complaints inform the Commission's policy work.

Ability to intervene in court cases

3.9 The Commission may also intervene in court cases where the realisation of human rights is under threat. In 2002, for example, we made submissions to New Zealand's top court in a case about the quality of education available to disabled children after the inclusion of those children in the mainstream education system.

Consultation on the proposed Optional Protocol to the ICESCR

- 3.10 Optional Protocols provide valuable mechanisms to address violations of ESCR. The New Zealand Government has to date indicated strong support for the universality and indivisibility of rights, and for the international community better promoting ESCR. However, it has stopped short of endorsing the Optional Protocol to ICESCR, citing the complex nature of the issue concerned and the need for further discussion. It has sought the views of a variety of departments and organisations, including the Commission.

4. Monitoring ESCR

Commission contributions to NZ's periodic reports under ICESCR

- 4.1 New Zealand, as with all States who have ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), makes periodic reports on compliance to the UN Committee on ESCR. The Commission has provided comment on and made independent contributions to these reports, often noting our specific relevant activities.
- 4.2 And of course it is also open to us, as with all national institutions, to make shadow reports to the UN Committee where necessary, encouraging closer scrutiny of a country's record of 'progressive realisation'.

Monitoring by Commission and others under Action Plan for Human Rights

- 4.3 Continuing work on implementing the Action Plan for Human Rights clearly involves a significant monitoring component. Plus, the Plan itself contains a specific action calling for the collection of consistent and comprehensive data, for use in human rights reporting, problem identification, policy development and monitoring.

5. Promoting ESCR

Commission education programmes

- 5.1 The Commission's formal education packages have traditionally addressed discrimination - in the context of both community and government sectors. As noted earlier, this means non-discrimination is considered in the provision of ESCR related services such as schooling, social welfare benefits and health care. The Commission is also piloting a regional outreach process, with a focus to date on identifying the housing, access to services, work, safety and education needs of a remote community. In addition, the Commission is currently reviewing its approach to human rights education.

A. Seeking Information: On education packages that your national institution has developed

for a variety of audiences that specifically address ESCR? What are the key messages your NHRI uses?

Involvement in New Zealand's constitutional development with ESCR

5.2 New Zealand has no single constitutional document, instead it has a number of Acts, the Treaty of Waitangi, and practices/conventions that combine to create our constitutional arrangements. New Zealand's human rights legislation forms part of those constitutional arrangements. But, to date, New Zealand's human rights legislation has not included ESCR. The Commission has therefore, since 1989, been actively promoting the inclusion of ESCR in that human rights legislation.

5.3 We have also stressed the importance of employing a participatory process for such constitutional examination and development - as befits our democracy. The Action Plan in 2005 noted the need for 'a discussion with the nation' to occur on the inclusion of ESCR in New Zealand's constitutional arrangements.

5.4 While elements of ESCR are already included in some New Zealand laws, policies and practices, if the rights themselves were included in New Zealand's human rights legislation this would make ESCR directly justiciable. This is a suggestion which some in my country maintain will create enormous resource implications, be unworkable, and is unnecessary. However, the Commission advised a recent Parliamentary Committee - the Constitutional Arrangements Committee - that the inclusion of ESCR in New Zealand's constitutional arrangements:

is not a 'brand new' consideration for New Zealand, as early versions of the Bill of Rights .. contained some economic, social and cultural rights. Those versions did not succeed because the government of the day considered those particular rights non-justiciable. As the Constitutional Court of South Africa now so ably demonstrates, some 15 years later, that view is now difficult to sustain.

B. Seeking information: On whether your countries 'have ESCR' included in their Constitution/ human rights legislation, and the influence that has on getting ESCR explicitly considered by governments?

C. Seeking information: On your positive, practical experiences with the justiciability of ESCR?

Provision of advice and submissions on legislation and policies

5.5 The Commission maintains an active legal and policy programme, providing advice and submissions to central and local government on the compliance of policy and legislative proposals with human rights. Commission comment on ESCR implications are vital, because current government processes only require policies to be formally checked for compliance with the range of civil and political rights contained in New Zealand's human rights legislation.

5.6 Recent examples of Commission submissions relating to ESCR include those made to:

- the Wellington City Council about proposed bylaws which would have criminalised the homeless; and
- a Parliamentary Committee in favour of a Bill seeking to protect property rights.

5.7 It is fair to say that, while our submissions are not always adopted by government, we are heard.

D. Seeking information: On whether your national institution has developed, for government officials, any practical tools to use in their work, that deliver a human rights / ESCR approach to the development of policy and legislation?

E. Seeking information: What open and transparent checks and balances exist in your governments processes for developing policy and legislation, to ensure compliance with ESCR?

Promotion of ESCR in the Pacific

5.8 The Commission considers that it has a responsibility to be a 'good neighbour' for human rights in the Pacific region. This includes assisting human rights bodies in the area where we can. We are also currently researching forms of NHRI appropriate for small States, given that resources are a challenge to both establishing NHRI and to the progressive realisation of ESCR.

F. Seeking information: On the extent to which national institutions in small States are able to actively promote ESCR (for example, through education programmes)?

G. Seeking information: On the extent to which the form of their national institution influences their ability to deliver ESCR to people - are some forms of NHRI better than others for this task (such as, for example, joint Ombudsman / Human Rights Commission)?

5.9 The Commission is also interested in the positive development of ideas about 'custom and human rights', while these two are often in conflict. ESCR can support and promote traditional custom and culture (through, for example, the right to culture and indigenous intellectual property rights).

H. Seeking information: On ways that your national institution has explored 'custom and human rights', especially with regard to promoting ESCR.

6. Conclusion

6.1 Through the above measures, as Mary Robinson said In 2002, we are committed to human rights becoming 'the rules of the road'. The challenge for us with regard to ESCR is to ensure that everyone really knows and understands, observes and respects, those rules.

Annexure–XV

National Commission of Human Rights in Mexico on the protection of economic, social and cultural rights

Mr. Salvador Campos,
Ambassador and Executive Secretary of the
National Commission of Human Rights in Mexico

Introduction

Whereas it is true that at first the National Institutions for the Protection and Promotion of Human Rights in the world were mainly engaged in the protection of the so called First Generation rights, related to the freedom and equality among people, they gradually and according to the principles of indivisibility and interdependence of Human Rights. started to design strategies which allowed them to have an influence on the defense of economic, social and cultural rights (DESC). aware of the fact that the satisfaction thereof. depends a great deal on the economic capacity of States. as these rights are the one which guarantee a proper quality of life for the people and they apply to the following areas:

- Access to jobs and to fair working conditions;
- Organization of workers in trade unions;
- Social security;
- Priority to the family and to the special protection of children;
- enjoyment of the culture;
- Feeding;
- housing;
- education;
- physical and mental health;
- a healthy environment; etc.

In the World Conference of Human Rights in Vienna (1993) indivisibility, interconnection and interdependence of all human rights were established. In said conference, the international community committed themselves to guarantee the integral protection of these rights. These principles had previously been established both in the Universal Declaration of Human Rights (1948) and in the

International Agreement of Economic, Social and Cultural Rights (PIDESC. 1966); likewise, the Committee in charge of supervising the duties of the signing States was created.

However, and in spite of the efforts of the several international, regional and national entities, no effective mechanisms of enforceability and justice have been implemented. This constitutes one of the main complaints of the Mexican society and of the whole world; in this sense, the adoption by the UN General Assembly of an empowering protocol from PIDESC, is yet another action that aims at the long awaited fulfillment of these rights.

Initiatives soon became real and in Latin America, for instance, a meeting in Quito, Ecuador was organized in 1998, in order to discuss the enforceability of DESC and to suggest initiatives that might help to make them possible. Even though said meeting was called by the Organized Civil Society, several social and public sectors and agents gathered in order to contribute ideas to raise up hopes, so that millions of people in our continent might be able to overcome poverty, unemployment, illiteracy and social exclusion.

In said meeting, the following was stated: the form and the extent to which a State fulfills their duties related to DESC, must not only be subject to supervision on the part of the entities in charge of checking the compliance with the rules which establish and guarantee those rights. but it must also include the active participation of civil society as a substantial condition of the exercise of their citizenship. Then and now, in the National Commission of Human Rights, we reaffirm that States have a unique and unavoidable responsibility in the satisfaction and guarantee of these rights.

As regards the specific mechanisms established by the ASO (OEA) inter-American system of Human Rights, the Additional Protocol to the American Convention on Human Rights in the field of Economic, Social and Cultural Rights (widely known as San Salvador Protocol) specifically contemplates these rights.

Although the Commission and the Inter-American Court of Human Rights are instances where failure of States to comply with DESC may be reported, only a few complaints are filed.

1. Economic, Social and Cultural Rights in Mexico

The International Agreement of Economic, Social and Cultural Rights (PIDESC) has been in force in Mexico since June 23rd, 1981. PIDESC is a part of the national legislation, as according to article 133 of the Political Constitution of the United States of Mexico, international treaties entered into by the President of the Republic and ratified by the Senate are, together with the Constitution and with the laws passed by the Federal Congress, the Supreme Law of the Nation.

2. Current status of Economic, Social and Cultural Rights in Mexico

2.1 The economic context: Policies of structural adjustment applied in Mexico during the last 20 years have registered and claimed by themselves, the impairment of the quality of life of the population, which represents a systematic violation of Human Rights, and therefore, an attack against human safety of millions of people in our country.

The model of economic opening to the external market and the promotion of foreign investment as a growth generator, started as from 1985, has failed to comply with the reactivation objectives leading to the constant economic growth of the country, and the application of said model in Mexico has not been socially responsible. On the other hand, the dismantling of the State, the privatization of public companies, the opening of the market, the control of inflation, unbalanced budgets, the deficient and unstable credit availability, dishonest competition for the national producers, the cancellation of subsidies, the freezing of salaries and the deregulation of markets, among the most outstanding economic policies, have brought about changes in the productive structure of the country, with serious effects on the quality of life and on the economic, social and cultural rights of the people and the families.

2.2 The social context: poverty in Mexico: DESC Committee has pointed out that, even though the term “poverty” is not explicitly used in the Agreement, it has always been one of its main concerns, as the right to work, to an appropriate quality of life, to housing, feeding, health and education which are present in the core of the Agreement, have a direct and immediate relation with poverty reduction. The Committee maintains that poverty is a denial of Human Rights and may be defined as a human condition characterized by the permanent deprivation of resources, capacities, options, security and power, which are necessary to enjoy an adequate quality of life, and other civil, cultural, economic, political and social rights. Likewise, in general observation N°3, about the duties of the Member States, the DESC Committee considers that: “The States which are Members of said Agreement have the minimum obligation of securing the satisfaction of at least essential levels of each of the rights established therein. For example. a Member State in which a substantial percentage of people are deprived of food, of primary health attention, of basic shelter and dwelling or of the most basic forms of education is not complying with its duties according to the Agreement”. In this sense, constant deterioration of the quality of life of millions of Mexican women and men who live in poverty and extreme poverty, and the lack of effective public policies and of assignation of resources, are some of the main concerns related to violations to Human Rights in our country.

Official measurements of poverty in Mexico are based upon the Lines of Poverty methodology adopted by the Federal Government, in accordance with the recommendations and criteria of the Technical Committee for the Measurement of Poverty. In the research document

entitled *Evolution and Characteristics of Poverty in Mexico in the last decade of the XXth Century*, published in 2002 by the Ministry of Social Development (SEDESOL), three lines of poverty are subject to measurement: 1) poverty related to food, 2) poverty related to capacities and 3) poverty related to property. The conclusion is that at least 58% of the Mexican population can be found within any of this three lines of measurement.

3. Absence of DESC perspective in the policy of attack for poverty

Starting from the governmental acknowledgment of the situation of social disadvantage and of innumerable lacks in certain groups of the population - which suffer several forms of social vulnerability, lack of defenses, insecurity, exclusion and huge limitations which do not allow them to have influence on the decisions that concern their lives - the Federal Government defined a vision of the Mexican social development for 2025, as a guide for establishing a long term commitment with the Mexican society.

Although we may agree with the Government when they state that: *social policy actions cannot be conceived as an exclusive responsibility of a unique governmental entity or monopoly*. The challenge lies in promoting a framework of well-understood co-responsibility, in which, among other aspects, participation of several social actors is taken into account, with the inclusion of these actors in the design of public policies and the State must fully assume social, economic and Human Rights' duties.

DESC Committee are aware of the fact that there are structural obstacles for the eradication of poverty in developing countries, such as: unbearable external debt, a growing gap between the rich and the poor, and the absence of equitable multilateral trade, investment and financial systems. Therefore, they consider that it is imperative for them to take urgent measures in order to eliminate those obstacles; otherwise, anti-poverty strategies of States have a few possibilities of success. In our opinion, Mexico would be among these cases, and that's why we assert that without a change in the economic policy there will not be an effective social policy and a real policy of attack to poverty. One of the recommendations that DESC Committee made to Mexico in 1999 related to the attack to poverty deals precisely with this issue: "The Committee considers that, unless structural causes of poverty are properly analyzed, Mexico shall not achieve a more equitable distribution of wealth between social sectors, between states or between rural and urban areas. The Committee encourages the Member State to confront the structural causes of poverty in Mexico and to adjust their social programs accordingly. Besides, the Committee asks the Member State to include the civil society in general and the assisted groups in particular in planning, application and evaluation of said programs".

For these reasons, more comprehensive public policies must be elaborated, in order to overcome contradictions and discouraging consequences arising from different kinds of policies, especially from economic policy as opposed to social policy.

4. The role of the National Commission of Human Rights in the Protection of the Economic, Social and Cultural Rights

The National Commission of Human Rights (CNDH), which is ruled by the so-called “Principles of Paris”, since the creation thereof, has made an important effort to defend and protect DESCs. However, in the beginning, as many other National Human Rights’ Institutions, they focused their efforts on the protection of the first generation rights, as the context called for it. CNDH was created at a critical moment, where killings of journalists, people disappearances, torture and illegal detention prevailed. Therefore, it was necessary to stop these situations, which put life, security and integrity of citizens in danger. But soon this National Commission, taking into account the indivisibility and interdependence of Human Rights, devoted themselves to protect DESC, being aware of the fact that it was a difficult task, due to the social and economic conditions of a country that in 1990 already began to glimpse the damages caused by an economic crisis, which last up to this date.

In this sense, we must admit that in the field of definitions of these rights, international instruments are a legal tool that provide international standards, which must be fulfilled in good faith, as well as the general observations of the Committee of Economic, Social and Cultural Rights. In this case, they specify and clarify each of the rights included in the International Agreement of the Economic, Social and Cultural Rights, and they have enriched and oriented States about the way of interpreting these rights and their true fulfillment.

Among the general observations made by the Committee of Economic, Social and Cultural Rights, number 10 refers to “the function of national institutions of human rights in the protection of economic, social and cultural rights”, and as the name indicates, it deals with the role that these entities have in the promotion and protection of indivisibility and interdependence of all human rights.

On this point it is appropriate to point out that the Law of the National Commission of Human Rights in Mexico has the following functions among others:

- I. To receive complaints about alleged violations to Human Rights;
- II. To become aware and investigate, at the request of somebody or on its own initiative, alleged violations to Human Rights, in the following cases:
 - a) Actions or omissions of federal administrative authorities and
 - b) When an individual or any other social agent commits crimes, with the tolerance or approval of any public servant or authority, or when the latter refuse to exercise their legal powers related to said crimes, especially referred to behavior affecting the physical integrity of the people.

- III. To make public non-binding recommendations and complaints before the pertinent authorities, according to the terms of article 102, Section B of the Political Constitution of the United States of Mexico:
- IV. To become aware of and decide in the last instance the claims due to omissions of human rights' entities referred to in the previous section, and due to failure of the local authorities to comply with the recommendations of these entities, according to the provisions of this law;
- V. To encourage the observation of Human Rights in the country;
- VI. To encourage study, teaching and promotion of Human Rights in the national and international environments;

The law states that the National Commission shall not deal with the following issues:

- I. Actions and decisions of election entities and authorities;
- II. Decisions related to jurisdiction;
- III. Labor disputes; and
- IV. Requirements from authorities, individuals or other entities about the interpretation of constitutional and legal provisions.

In this context, I will name some of the activities that this entity has performed in relation with these rights.

In addition, and aware of the fact that due to constitutional provisions this National Entity does not have power to take part in labor matters, even though we acknowledge the right to work as a fundamental right stated in our Constitution. Therefore, through these 15 years of intense work, the National Commission of Human Rights has been changing gradually the tendency to deal with complaints, and although in the beginning we mostly received complaints for torture, today we still receive complaints for refusal to provide medical attention or for inadequate health care, for discrimination in schools, for lack of public safety or defects in the procedures followed in order to assign a house under a social assistance plan.

As regards the protection of these rights, CNDH participates by attending complaints, in order to achieve the restitution of rights to the aggrieved parties and in order to correct the defective behavior of authorities, as well as to promote changes and modifications to administrative regulations and practices, which favor violations to human rights, so that authorities solve irregularities.

Among the 20 main causes which allegedly violate Human Rights and are commonly claimed by

people who complain, during the last four years, we may find: refusal to provide or inadequate provision of the public health service, failure to provide social security benefits, refusal to provide or inadequate provision of public education service and medical negligence. These are followed by these other causes for complaints: refusal to provide or inadequate provision of public housing service and the refusal to provide or inadequate provision of public electricity services.

An increase is noted in the number and seriousness of complaints due to deficiencies in the provision of the public health service. In this field, as in other services, we may observe a decrease in the quality, so it is important to find essential and long-term answers, which guarantee financing of the health system in order to solve these deficiencies.

I will give some numerical examples: during the first semester of 2005 among the main violations to human rights reported before the National Commission the following are outstanding: inadequate provision of public service in 172 cases; refusal to provide or inadequate provision of the public housing service, in 38 cases; failure to comply with social security provision in 30 cases and the refusal to provide or inadequate provision of the public electricity service in 26 cases.

In all these complaints the alleged violations to human rights were established, so CNDH started the pertinent records. During the first semester of 2005, complaints were mostly directed against the Institute of the National Housing Fund for Workers (INFONAVIT), with 31 complaints and 22 complaints were submitted against the Federal Commission of Electricity.

In order to start actions for the protection of DESC, CNDH has taken into account the valuable data contributed by the United Nations' Development Program:

Mexico is in the 53rd place of the Index of Human Development (IDH); this is one place before Cuba and only one position on top of Trinidad and Tobago. At the national level, the Federal District has the highest IDH and the lowest one corresponds to the State of Chiapas; as regards the Health index, the State of Baja California has the highest position and Chiapas the lowest one. As regards the Education Index, the Federal District has the highest position and Chiapas the lowest one, and the same situation is true of the Income Index. This shows inequality in the satisfaction of DESC in our country.

In this context, the National Commission of Human Rights has started actions such as the following ones:

Right to Education

The National Commission of Human Rights issued two General Recommendations to Governors of Federative Entities, to the Mayor of the Federal District and to the Minister of Federal Public Education. One of them was about discrimination suffered by students who are sick with VIH/

SIDA, and the other one was about discrimination in schools due to religious reasons. Both recommendations have had good repercussion, as they are not only aimed at solving the damage caused to girls, boys and adolescents affected by this, but they are also aimed at creating structural conditions which stop these kinds of violations of fundamental rights.

During the last five years, the Commission has issued more than 15 recommendations related to abuse, maltreatment and discrimination suffered not only by children but also by adults in the national educational system.

About this topic, and being aware of the fact that education is our best tool in order to prevent violations to Human Rights, we make a tireless effort to provide training to four basic sectors of society, such as: public authorities and services, ONG, vulnerable groups and the Educational System. In addition, they have engaged in a specialized level, and they provide master degrees in this subjects. A society that knows their rights shall be, on the one hand, more willing to defend them and on the other hand, they shall be more conscious of the importance of living within an ethical-legal framework, in order to achieve a healthy and a harmonic coexistence between individuals and peoples.

Right to Health Protection

As a part of their work on the protection and defense of this right during the first semester of 2005. CNDH dealt with one of the main violations to human rights reported: the refusal to provide or the inadequate provision of the public health service, in 83 cases and 8 cases were about refusal to provide medical attention. Complaints were mostly directed to the Mexican Social Security Institute (IMSS) and to the Institute of Social Security and Services for State Workers (ISSTE).

As regards mental health, on October 19th 2004, this National Commission issued General Recommendation Number 9, about the situation of human rights of patients suffering from mental diseases in reclusion centers of the Mexican Republic. This General Recommendation was directed to Governors of Federative Entities, to the Mayor of the Federal District, to the Minister of Public Safety and the Minister of Federal Health.

Between 2002 and 2004, the National Commission visited 451 reclusion centers that exist throughout the country, with the purpose of checking if they have the conditions for the appropriate attention of the needs of patients suffering from mental diseases, especially the ones related to their stay in the center, medicines and psycho-social rehabilitation. These visits showed that in most federative entities, these people are subject to violations of human rights, especially the right to a dignified treatment, to the protection of their health, to freedom, to justice and legal protection.

Having recognized the severe lacks and deficiencies that exist in the treatment of patients suffering from mental diseases, this Recommendation aims at guaranteeing them the full enjoyment of their rights. It is necessary to take into account the need to encourage respect to human dignity and to the constitutional guarantees related to the protection and satisfaction of their needs of stay and health, including social rehabilitation and integration, which is essential in a highly vulnerable group.

It is necessary to point out that the National Commission works in the prevention of human rights' violations, by providing training courses on human rights to public officers and servers, who work for the people, and by developing open campaigns and specific campaigns, as well as by making and publishing posters, leaflets and other materials.

The National Commission of Human Rights has undoubtedly issued in the last years. recommendations to the authorities in charge of providing health services. In fact, during the last five years, authorities in charge of social security have received more recommendations than the ones in charge of providing public safety or than the ones in charge of administering justice. basically, as regards the refusal to provide health services, medical negligence and lack of medicines. In the last five years, they have issued more than 80 recommendations, which shows the crisis that exists within our health service.

Right to Feeding

In this topic CNDH has developed the National Program for the Protection of Women and Childhood. against Abandonment and Failure to comply with Feeding Obligations. They support the free obtention of the right to alimony payments, which is already in force in 21 states of the Mexican Republic.

Cultural Rights

Finally. the development and promotion of the several cultural expressions and the protection of the particular varieties of the culture is a fundamental right, which allows us to reaffirm but also recreate identity, to open up to the world and to be more tolerant. In this sense, we have paid special attention to the preservation of sacred places of the different ethnic groups of our country and of its several forms of expression.

In accordance with these principles, the Fourth General Visitor's Office works in order to achieve respect for languages, cultures. usages and customs, resources, religious and spiritual practices, and specific forms of social organization. Thus, the importance given by our country to the respect for cultural diversity is highlighted.

Right to a Healthy Environment

The National Commission receives complaints about violations to human rights related to the practices of public companies, which produce toxic waste and cause environmental problems. In this sense, from June 1990, when CNDH started working, to November 2005, the number of records of complaints registered with this national Entity, referring to violations of the right to enjoy a healthy environment was 34. In this same period, the number of records filed for ecological damage was 250.

During the 15 years of their existence, the National Commission has done a comprehensive broadcasting task for the knowledge of human rights, through leaflets, books and studies.

We have a very hard work before us, especially in the countries where development levels are still unsatisfactory. The challenge of achieving the equal respect of all human rights, without differences between civil and political rights on one hand, and economic, social and cultural rights on the other hand. In this work which means a commitment for States and civil society, as well as for the international community, the National Institutions may promote and supervise the respect for these rights and may act as a means to point out the obligations in order to build a better coexistence, fair and dignified for everybody.

Thank you.

Annexure–XVI

National Human Rights Institutions and Economic, Social and Cultural Rights-States of Fiji Human Rights Commission

Ms. Farzana Gani,
Education Training Officer, Fiji Human Rights Comisión

Fiji Human Rights Commission

- FHRC was established under Section 42 of the 1997 Constitution of Fiji. The Commission is a national institution and an independent office by law.
- Protection of human rights is enshrined in Fiji's Constitution through Chapter 4 or The Bill of Rights.
- Fiji Human Rights Commission is the guardian of these rights and ensures that they are not violated.

Vision and Mission

The vision of FHRC:

- Human Rights for everyone-one nation, many peoples.

The mission of FHRC:

- To take a leading role in the promotion and protection of the Human Rights of the people of the Fiji Islands; to build strengthen and sustain a Human Rights culture in the Fiji Islands.

Constitution of the Republic of the Fiji Islands and FHRC

- The Commission is bestowed with very comprehensive mandate, functions and powers.
- It has a constitutional mandate.
- The Constitution contains provisions for redress, making it mandatory for the courts to consider public international Law when making decisions on the constitutional redress. This provision can be used by the general public or the Commission.
- The interpretation section (S 42) of the Constitution has a human rights interpretive provision.
- This means that the entire Constitution has to be interpreted from a human rights perspective.
- Section 21 of the Bill of Rights binds the legislative, executive and judicial branches of government at all levels.

Fiji Human Rights Commission Act 1999

- Apart from the Constitution, the Commission has its own legislation, the Human Rights Commission Act 1/1999.
- This Act extends the power and functions of the Commission already stipulated in the 1997 Constitution.

- It expands on unfair discrimination, which is already mentioned in the Constitution. It particularly concentrates on discrimination in the workplace.
- It also outlines the Commission's procedures for receiving and investigating complaints.
- It lays procedures for facilitating the conciliation process.
- It also contains a Remedies Section for violations against human rights, which contains whole range of legal remedies including damages.

Functions of FHRC

- The Commission's three main responsibilities include:
 - Educating the public about the nature and content of the Bill of Rights, its international origins and the responsibilities of the UN Human Rights Organs.
 - To make recommendations to the government about matters affecting compliance with human rights.
 - To receive complaints from public about human rights violations and act upon them through conciliation and court action if necessary.

FHRC and Economic, Social and Cultural Rights

- Since Fiji Islands is a member of United Nations, it has adopted UDHR as a guideline. This is entrenched in the Constitution, particularly in the Bill of Rights and the interpretive provision.
- Even though Fiji Islands has not ratified ICCPR and ICESCR, courts in Fiji, by the virtue of Section 43(2) of the Constitution, can make reference to international conventions when dealing with human rights violations.
- This section states:
 - In interpreting the provisions of this Chapter, the courts must promote the values that underline a democratic society based on freedom and equality and must, if relevant have regard to public international law applicable to the protection of the rights set out in this Chapter.
- Fiji has ratified the following conventions:
 - CRC, CERD and CEDAW.
- These conventions contain rights that are also mentioned in ICESCR.
- Together with this, Chapter 4, of the Constitution or the Bill of Rights is very comprehensive and covers a number of significant rights protected under ICESCR.

Bill of Rights (Chapter 4 of 1997 Constitution of Fiji)

Rights or freedom	Bill of Rights (Chapter 4)	UDHR	ICESCR	OTHERS
Rights to life	Section 22	Art 3	Art 11	CRC 6
Rights to personal liberty	Section 23	Art 3, 9	Art 3	
Freedom from servitude and forced labour	Section 24	Art 4		CRC 19 ILO 29, 105
Freedom from cruel and degrading treatment	Section 25	Art 5		CRC
Freedom from unreasonable search and seizure	Section 26	Art 17		
Rights of arrested and detained persons	Section 27	Art 9		
Rights of a charged person	Section 28	Art 14		
Access to courts and tribunal	Section 29	Art 14 (1)		CRC 40
Freedom of expression	Section 30	Art 19		CRC 12
Right to assembly	Section 31	Art 20		CRC 15 ILO C98
Right to association	Section 32	Art 20		CRC 15 ILO C87
Right to work	Section 33	Art 23, 24	Art 6, 7, 8	CRC 31, 32 ILO C154, C14/106, C95/131, C165, C138
Freedom of movement	Section 34	Art 13		
Freedom of religion and belief	Section 35	Art 18		CRC 14
Right to secret ballot	Section 36	Art 21		
Right to privacy	Section 37	Art 12		CRC 16
Right to equality	Section 38	Art 1, 2, 6, 7	Art 3	CRC 2 CEDAW/CERD (1) ILO C100, C111
Right to basic education	Section 39	Art 26	Art 13	CRC 26
Protection from compulsory acquisition of property	Section 40	Art 17		

The 1997 Constitution also contains:

- Chapter 2 - Compact; [Section 6(a) contains collective and individual right.]
- Chapter 5 - Social Justice and Affirmative Action;
- Chapter 13 - Group Rights.

Chapter 5 of 1997 Constitution - (Social Justice)

- This Chapter contains Section 44, which states that the Government must make provisions for programs designed to achieve for all groups of people who are disadvantaged effective equality of access to:
 - education and training;
 - land and housing;
 - participation in commerce and in all levels and branches of service of the state.
- The government therefore must provide Affirmative Action Programs that will assist all disadvantaged people. Some of these include:
 - Small/Micro Enterprise Development,
 - Small Business Equity Scheme,
 - Student Loan Scheme and Scholarships,
 - Self Help Housing Assistance in Rural Areas,
 - Family Assistance Scheme,
 - Poverty Alleviation Projects.
- These are some of the programs designed by the Government to allow for equality of access to opportunities.
- These programs will help to overcome some of the socio-economic disparities existing in Fiji.
- One of the issues relating to CESCR that FHRC is currently pursuing is the right to housing for the disadvantaged.
- Section 44 is closely related with Section 38 or right to equality. This means that all people should have adequate shelter, as housing is related to the right of life; to live with dignity and self worth.
- Displaced people and people living in squatters, due to inadequate housing, face serious and persistent medical problems which arises from lack of clean water, clean and proper food, poor sewerage facilities and sanitation.
- Most people living in squatter settlements do not have access to electricity, making it difficult for children to be educated properly.
- All of the above infringes on an individual's right to life; to have adequate standard of living and to have highest attainable standard of physical and mental health.
- Due to the conventions ratified and the 1997 Constitution, Fiji is obliged to meet economic, social and cultural right of its citizens as a number of significant rights present in ICESCR is contained in these documents.

Case Studies

- Some complains and queries received by FHRC on violation of rights relating to ESCR:
 1. [Freedom of movement, right to life & education]
 - Farmers in Nabitu, Sigatoka could not transport their produce to market and children could not attend school as landowners levied toll fees for using their land.
 - FHRC investigated and found out that the landowners and state had wrong maps and boundaries. The land claimed by the clan was wrongly marked.
 - State advised authorities property mark the territory.
 2. [Right to life-water, right to equality]
 - Families living at Lakena Hill, Tailevu, were not receiving clean or adequate water supply for the part authorities.
 - FHRC investigated and found that there were two hills in Lakena (Hill 1 and Hill 2). Settlers at Hill 1 had regular supply of water. This Hill also contained a commercial poultry farm. While settlers at Hill 2 were charged for water despite non supply of water.
 - FHRC tendered Fiji School of Medicine to conduct a comprehensive survey and compile a report on the health issues surrounding the residents, social structure, health and sanitation, standard of living and the environment (air, soil, water)
 - The report was issued to the Prime Minister and the Commission is awaiting response from the Ministry of Works and Energy.
 3. [Right to life]
 - The rubbish dump situated in Lami was becoming a hazard, after a fire started and continued to burn for a week. Dense smoke emitted caused health problem to people, especially the residence and road users.
 - FHRC, upon the request of the residence of Lami, had a meeting and briefed them on their rights which were being violated.
 - Together with this, there was a huge media campaign which caused the local authorities to close the dump.

Annexure–XVII

New Challenges and Dimension of Economic, Social and Cultural Rights

Mr. Nirmal Singh,
Secretary General, NHRC, India

The Universal Declaration of Human Rights recognizes two sets of human rights, the Civil and Political Rights and Economic, Social and Cultural Rights. At one extreme lies the view that these Economic, Social & Cultural Rights are superior to civil and political rights. Because what use are these rights to those who are starving and illiterate?

Every hour more than 1200 children die away. The cause of death may vary but major reason is poverty. Though the world is becoming prosperous but 10.7 million children every year do not live to celebrate their 5th birthday. 98% of these, they are from poor countries. A recent U.N. report has indicated that about 40.3 million people are living with HIV? More than a billion lack access to safe water and over 8 million go hungry without food. It is distressing to note that 2.5 billion are living on less than two dollar a day, that is 40% of the world's population. More than 1 billion people survive on less than 1 dollar a day. It is estimated to cost about \$ 300 billion for lifting 1 billion people living on a less than \$ 1 a day? Despite the number of success stories of progress, it is painful to note that nearly a billion, a sixth of the humanity are functionally illiterate and will enter the 21st century unable to read a book or sign their name and out of them two-thirds are likely to be women. Civil and political rights, it is generally accepted can be enforced through Court but regrettably there is no such remedy for Economic, Social and Cultural Rights. How to solve these problems is a major challenge to the mankind and Human Rights institutions.

Trafficking in the world, of human being particularly children, for exploitation is a manifestation of modern form of slavery. This phenomenon has recently gained momentum with the increasing flow of population between the Central and Eastern Europe. Similarly in the South Asian countries there is an increase and large scale smuggling of illegal migrants are being used for this purpose. It is difficult to collect data on trafficking. According to UN estimates, about 4 million people are traded. In fact, it has become a big trade estimated more than one billion dollars.

Gender is one strongest marker for the disadvantage. This is especially in South Asia. It starts from birth. In India the death rate for children ages 1-5 is 50% higher for girls than for boys. In Pakistan gender parity in school attendance would give two million more girls the chance of education. We all keep on saying that all human beings are equal before law and entitled without any discrimination, equal protection of the law. But how to tackle this Discrimination based on gender, none has an answer so far.

Terrorism is another new phenomenon in international relations as particularly it affects economic and social rights. We have seen in the recent years increasing terrorism. The world community is under serious stress to face this new international terrorism, which is endangering the world peace and thereby hindering the human rights.

The communication and information technology has opened a new chapter for development of rights. This technology need to have a positive impact because it enables everyone for long distance education and learning, and this will make it easier for people to participate in the various economic and cultural rights. This is a new dimension with a possibility of easy access to various issues. But it needs to be ensured that it is easily accessible and not regulated in such a way that it is a disadvantage to the poor.

Globalisation of markets, capital, communication and technology is changing the face of the world as it opens up new opportunities for millions of people. Globalisation has impacted the entire world and has the potential under perfect conditions to reduce poverty. Global and regional interactions are wiping out international barriers. Globalisation sometimes erodes the abilities of the Government to intervene on behalf of the poor. Because of this, for a large number of countries, so far it is only a story of marginalisation.

Nationalism is another new challenge, which is now cropping up in a few countries. This phenomenon is tending to become as discrimination directed against the other group in multi cultural society and used to consolidate the position of dominant ethnic groups by creation of internal enemies. Such a tendency in number of countries is fomenting insecurity for the minorities and vulnerable groups.

Realizing Economic, Cultural and Social Rights not only involves massive resources but also needs appropriate technology and delivery system. The question is, who will provide these resources and how? Each country may require a different strategy and approach to ensure that these rights are available to the vulnerable and poor. The present policy for naming and shaming to achieve the desired result may not be sufficient.

Annexure–XVIII

An Introduction to The Limburg Principles on the Implementation of the ICESCR (1986) and the Maastricht Guidelines on Violations of Economic, Social, Cultural Rights (1997)

Dr. Deepika Udagama,
Human Rights Commission of Sri Lanka

- Adopted by groups of independent experts
- Non-binding guidelines
- Officially recognized by the UN
- Widely used in UN HR fora and in academic circles, activists and legal professionals in several jurisdictions
- “Soft Law ”

Limburg Principles

- Indivisibility of rights
- No specific political or economic systems are prescribed
- States must fulfill obligations in good faith
- Some rights can be made justiciable implemented immediately
- “Steps” to be taken are not only legislative
- Obligated to provide appropriate remedies including judicial
- “Progressive realization” involves effective use of available resources
- Non-discrimination
- Equal rights for Men and Women

Limitations

- To be determined by law

- Promote the general welfare
- In a democratic society

Violations of ESC Rights

Part D of Limburg Principles

Maastricht Guidelines

- Violations of ESC Rights
- Respect, Protect, Fulfill
- Obligation of conduct and result
- Margin of discretion
- Minimum core obligations

Availability of resources

- Core minimum obligations (irrespective of resources)
- Full realization entails raising adequate resources

Inability to comply Vs. unwillingness to comply

Violations of ESC rights through acts of commission or omission

Responsibility for Violations

- States
- Occupying powers
- Non-States actors
(States responsible if they do not exercise due diligence)
- States participating in international organisations

Victims of Violations

- Individuals

- Groups
- Cannot apply Criminal sanctions

Remedies

- Access
- Judicial or other remedies
- Adequate reparation
 - Compensation
 - Rehabilitation
 - Satisfaction
 - Non-Repetition
- Obligation of judicial and other organisations not to sanction violations of international standards on economic social and cultural rights
- Use international standards as “Interpretive Guides”
- Obligation of national institutions to address violations of economic social and cultural rights
- Important role of legal professionals

Normative Content of ESC Rights

- Interpretation of normative content of economic, social and cultural rights left to relevant UN Organizations
- Relevance of general comments of UN committee on ESCR.

Annexure–XIX

Summary of Day 2

- Despite the development of a universal human rights framework there remain inequities and injustices requiring more proactive strategies to realise the enjoyment of ESCR;
- Strengthen their capacity institutionally to be more effective in promoting and protecting ESCR;
- Ensure, where National Plans of Action are developed, that ESCR are taken into full consideration;
- Influence, in coordination with their respective governments, programme and planning including budgetary allocations to ensure respect for ESCR;
- Work within their states with representatives of IFIs to help the state to ensure that their policies and practices do not impact negatively on the enjoyment of ESCR and that all live in dignity;
- Need to help inform about, and where they do not exist help in developing, minimum obligations concerning ESCR.
- Having ESCR units or focal points and to develop substantive policy capacity so as to effectively engage on ESCR issues;
- Encouraging and actively supporting advocacy, education and training on ESCR by a variety of means for rights-holders and public authorities, including the judiciary, the media and for the wider civil society;
- Developing a strong research capacity to be able to deal with ESCR effectively;
- Monitoring activities and developing minimum standards for use by government agencies;
- Developing new and innovative strategies, including community dialogue and ways of gathering information beyond traditional forms of complaints-handling processes;
- Using the range of reporting strategies and mechanisms, including annual, parliamentary and extraordinary reports;
- While supporting a richness of cultural practices ensuring that such practices must not contravene international human rights law.

- Using the complaints-handling functions of national institution to provide effective redress for those who have suffered violation of ESCR and engage with other partners where the national institution may not be mandated to address specific ESCR;
- Seek with innovation and interpretation ways to ensure for legal protection of rights even where they may not be explicitly provided for in their national constitutions or legislation.
- Need to develop strategies to raise the gravity of ESC issues including poverty and a lack of dignity. Effective engagement with the media is essential.
- Particular challenges facing national institutions include ensuring respect for ESCR in relation confronting a rationalization of resources among various institutions; addressing ESCR in situations of conflict; and in relation to globalization.
- Need to ensure that essential services which lead to the enjoyment of ESCR are provided at a minimum and affordable level. Where privatized the State remains obligated to ensure that the provision of such services do not contravene international economic, social and cultural rights. Their privatization should not affect negatively the enjoyment of ESCR.

Annexure–XX

A Plan of Action for National Institutions regarding ESCR

Mr. Surasee Kosolnavin,
Commission, National Human Rights Commission of Thailand

As we are here and aim to strengthen the capacity of NHRIs in Economic, Social and cultural rights. We had talked about the developing tools and methods which NHRIs can promote and protect ESCR within the mandates in our countries. Our workshops in the Philippines, Fiji and Hong Kong including the 1st Congress of the National Human Rights Institutions of the Francophonie and the 5th Conference of African National Human Rights Institutions had emphasized on the importance of developing effective strategies to respond to abuses of ESCR. And our round table will discuss the best way forward.

For the implementation of ESCR, the national human rights commission of Thailand had emphasized on capacity building and empowerment for all Thais, especially the vulnerable groups. We believed that it's the way of sustainable protection for our people, meanwhile we also organizing the activities for the implementation of ESCR which are:

- Integrating work for ESCR into the organizational processes and practices through strategic planning, investigation, promotion and evaluation.
- Encouraging and developing national plan of action for the realization of ESCR.
- Cooperating with education and health ministries, public institutions, national law commissions and vulnerable groups
- Dealing with ESCR complaints within its jurisdiction and the skills and resources to undertake related monitoring and promotional activities.
- Conducting regular educational programmes and information campaigns, scrutinizing existing laws and conducting research, investigating specific complaints and providing reports to public authorities and civil society .
- Encouraging members, staff and external groups to participate and deliver training to develop skills and knowledge on ESCR.

Sample of ESCR Implementation in Thailand

<p>AREAS OF CONCERN:</p> <ul style="list-style-type: none"> • Child crime, drugs • Community Media • Environment • Employment • Health • Human trafficking • Labors • Nationality • Natural resources 	<p>The Thai human rights commission places primary emphasis on the empowerment of people. Problems arise in various fields which are principally child crime, drugs, community media, environment, employment, health, human trafficking, labors, nationality, natural resources</p>
<p>NORTH</p> <ul style="list-style-type: none"> • Environment • Employment • Health • Nationality • Temple • Conservation <p>SOUTH</p> <ul style="list-style-type: none"> • Child Crime • Drugs • Natural Resources <p>NORTH EAST</p> <ul style="list-style-type: none"> • Environment • Community • Land, Slum <p>CENTRAL/EAST/WEST</p> <ul style="list-style-type: none"> • Community Media • Environment • Labors • Women, Children 	<p>We had organized 4 participatory seminars on ESCRs issues in every regions and the 5th seminar was for the cooperation and future plan. Each region has its specific problems, for instance; the North of Thailand is very much concerned with nationality issues, whereas the South has major infrastructure problems. Environment is a concern of almost all areas.</p> <p>The NHRC has enhanced its actions to tackle the troubles.</p>
<p>STRATEGIES</p> <p>Empowering people by:</p> <ul style="list-style-type: none"> • Organizing trainings, seminar • Strengthening networks • Granting nationality • Launching awareness campaigns • Ensuring the existence of community information centers 	<p>In order to combat human rights violations:</p> <p>The NHRC organizes trainings, gathers communities in meetings, launches awareness campaigns, and ensures the continuity of the existence of community information centers.</p>

<p>TARGET GROUPS</p> <ul style="list-style-type: none"> • Communities • Women, Children • Local school teachers • The police • Public prosecutors • Judges • NGO's 	<p>The trainings and workshops are for selected groups, which include woman and children, as they are the main victims, as well as members of the police, local school teachers, immigration police, public prosecutors, judges and NGO's, as they are the ones who can contribute to the elimination of human rights violations.</p>
<p>CHALLENGES</p> <ul style="list-style-type: none"> • Lack of information of vulnerable groups • Lack of cooperation of major actors 	<p>Two of the main challenges, which contribute to the continuation of the violation are the lack of information of the victims together with the lack of cooperation of the police, and the lack of cooperation between government officials, NGO's and civil societies.</p>
<p>SUGGESTED STRATEGIES</p> <p>To strengthen the ESCRs of the communities, each region has to:</p> <ul style="list-style-type: none"> • Contribute to the conduction of seminars and analyze the problems of the community • Build up learning processes and share knowledge to increase the potential of the community • Exchange experience among each group • Build up networks where the community can stress its problems and find solutions together • Set up a community fund which enables the community to manage by itself • Set up community information centers 	<p>Despite the fact that each region has its own areas of concern and difficulties, there have been a number of strategies that have been stressed in order to strengthen the ESC rights of the communities.</p>

<p>THE COOPERATION PLAN</p> <p>which draws its attention to the strategies to implement the issues previously mentioned include:</p> <ul style="list-style-type: none"> • Exchange of experiences to strengthen the capacity of the community • Cooperation between networks • Cooperation between the government officials and the vulnerable groups • Promoting equitable and transparent “law and justice” • Communication • Database, check whether human rights are violated. 	<p>The vulnerable groups, NGOs & communities from 5 regions in our country had gathered in August 2005 and had prioritized the areas of cooperation.</p> <p><i>The capacity building works!!!</i></p> <p>They had already communicated, exchanged and cooperated between networks.</p> <p>The Human Rights Commission of Thailand was placed as the center of the cooperation.</p>
<p>GOVERNMENT COMMITMENT ON ESCR</p> <ul style="list-style-type: none"> • National Human Rights Master Plan: will be formed by the Ministry of Justice, NHRC, Vulnerable groups & NGOs. • Nationwide Project of overcoming the Poverty. • OTOP(One Tumbon or village One Product), & village fund for economics & self-reliance 	<p>Our NHRC had organized the meeting with the Prime Minister in September 2005 and agreed to form the NHR Master Plan which will be emphasized on the participation of all units including the vulnerable groups.</p> <p>The government presented the commitment in ESCR by running national projects such as : Project of overcoming the Poverty, the OTOP project and Village funds for economics & self-reliance. NHRC will work together and keep eyes on these projects.</p>

Our ESCR victims asked us to bring back the concrete cooperation from this round table.

Thank you.

Annexure–XXI

Royal Kingdom of Morocco Advisory Council of Human Rights

Mr. Hamid Rifai,

Membre du Conseil, Conseil consultatif des droits de l'homme (CCDH), Morocco

Action plan of national institutions concerning economic, social and cultural rights (DESC) New Delhi from November 27th to 29th

The Advisory Council of Human Rights of Morocco (CCDH) is an institution pluralistic in nature, responsible to His Majesty the King of Morocco on an advisory mission of recommendation & impulse - driven to safeguard and promote human rights. It is an independent institution comprising representatives of political parties, trade unions, civil society especially human rights organizations and professional institutions.

CCDH was created in 1990 and its statutes were modified in 2001 in order to include its competences and among others to allow it to submit an annual report on the state of human rights in Morocco, to take stock of its achievements and also to devise a strategy for its future action.

One of the many concerns of CCDH includes the examination of serious human rights violations that have been committed in Morocco in the past. Thus, was created at the heart of CCDH, an independent committee that was put in charge of examining complaints addressed to the council by the victims of these violations and of giving a ruling in each case and claiming compensation for them.

Recently, on the suggestion of CCDH, His Majesty the King has created "Fair Proceedings and reconciliations" to bring to light serious human rights violations committed in the past and to rectify the distress suffered by the victims by empowering them in such a way that such gross violations are never repeated again. These proceedings have just come to an end and a report in this regard will be published at the end of November 2005.

Among the other achievements of CCDH is the publication of a report on prisons. In order to preserve the dignity of prisoners, regular visits are carried out in penitentiaries to observe the physical conditions of the prisons, as well as those of the prisoners. Please note that Morocco has a law that recognizes torture as a criminal offense. It has dissolved a special court of Justice. It has created a Higher Authority for Audiovisual Communication, an independent proceeding that controls and guarantees the freedom of expression.

While it is true that civil and political rights have largely dominated the operation and consideration of CCDH, economic, social and cultural rights (DESC) are no less important. The dignity of a human being cannot be dissociated either from its political or its socio-economic and cultural part.

Human development is evaluated with the help of indicators relating to the access of fundamental human rights including economic, social and cultural rights (DESC). The CCDH put a committee in charge to deal with the subject of economic, social and cultural rights (DESC). Thus a detailed report was brought out regarding the right of association, report on the DESC with the aid of sector - based statistical data. Many seminars have been organized on this subject, bringing together other than the CCDH members, other representatives of human rights commissions, sociologists, economists, legal experts and physicians.

These thought provoking encounters open up a debate regarding a participatory approach which would include the collaboration of many functionaries! members. The main concern being the elaboration of a specific concept of the DESC, aimed primarily at asking lucid and realistic questions and avoiding all manners of exaggeration and demagoguery.

After these exchanges, the CCDH will be in a position to present a model approach, and hence fulfill the function that it has been delegated.

Three views deserve a special mention here. These are:

- Women's rights and the problem of disparity between the sexes in different spheres of life; how to develop a vision regarding the DESC and promote this approach vis-a-vis institutional policy makers.
- Economic and democratic development is dependent on credible, independent, accessible, transparent and functional justice.
- Moroccan society constitutes a cultural diversity and a specific religious identity. These two elements assume a fundamental characteristic

The CCDH must fulfill its observational role in the evolution of the DESC in the context of globalization. It must also fulfill its recommendatory role and act as a catalyst for actions and decisions.

Human development is the objective towards which all responsible and reasonable action of the decision-makers should strive. In the same context of human development, Morocco has attained important, quantifiable progress according to universally recognized criteria.

- In the field of the right to education "the Charter of National Education and Training" establishes the principle of equality of all citizens; men, women, girls and boys. The state

is liable to provide schooling to all children till they attain 'working - age. Education has become compulsory from the age of 6 to over 15 years. The fight against illiteracy also constitutes one of the objectives assigned to those who are in the field of education. The percentage of illiterates still remains significant in Morocco. We cannot conceive of any sustained development without the complete eradication of illiteracy. A big project named "Massirat Ennour" was launched to this effect in 2003. It is an ambitious program that portends the decline in the number of illiterates by 1 million towards 2015-2020. According to His Majesty King Mohammed VI, "The eradication of illiteracy constitutes a prerequisite for citizenship and a commitment to progress"

- In the field of healthcare, some of the steps taken are as follows: extensive vaccination campaigns to prevent infections childhood diseases, along with a more general check -up, fight against contagious and sexually transmitted diseases in the centres that fall under the jurisdiction of the Ministry of Health as well as those that are in the midst of specialized groups with programs specially designed for fighting and preventing disease.

Keeping in mind the time allotted to us, we will content ourselves with the simple recapitulation of the progress and achievements regarding the subject matter.

- In the domain of women's right; with the recent adoption of the family code by the parliament, a woman's legal, economic, social and cultural rights have been restored. Family courts have been created and judges specializing in such matters have been assigned to rule on lawsuits arising from disputes between two parties as in the case of divorces.
- As far as the right to work and favorable conditions thereof is concerned, a new work code has been adopted after consultation and after arriving at a consensus between the authorities, trade unions and employers, in the context of a social, responsible dialogue.

In the framework of the DESC, His Majesty the King has recently launched a "National Initiative for Human Development" LIDs ambitions program will be endowed with a sizeable budget and will be relevant to all fields of human development. Government programs will be registered simultaneously and managed by functionaries of local authorities in partnership with civil society.

Annexure–XXII



The New Delhi Concluding Statement

A three-day International Round Table on National Institutions Implementing Economic, Social and Cultural Rights was held at New Delhi, India from 29 November to 1 December, 2005. The Round Table was a collaborative venture of the National Human Rights Commission of India and the Office of the United Nations High Commissioner for Human Rights (OHCHR). The Round Table was attended by representatives of 24 national human rights institutions from Afghanistan, Albania, Argentina, Burkina Faso, Costa Rica, the Democratic Republic of the Congo, Fiji, Ghana, India, Ireland, Jordan, Kenya, Kyrgyz Stan, Mexico, Mongolia, Morocco, Nepal, New Zealand, the Republic of Korea, Senegal, South Africa, Sri Lanka, Thailand and Uganda.

The principal objective of the Round Table was to discuss and strengthen the role and capacity of national institutions in protecting and promoting economic, social and cultural rights (ESCR). Its specific objectives were to:

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

Keeping the objectives in view, the deliberations of the Round Table were inclusive, informal and participatory in nature. All present emphasized the importance of the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) adopted by the United Nations General Assembly on 20 December 1993, and called on States to respect these principles and ensure that national human rights institutions are established in accordance with them. They also called on their national institutions to be adequately resourced to enable them to deal with ESCR.

Participants used as points of reference the International Covenant on Economic, Social and Cultural Rights and the general comments of the Committee on Economic, Social and Cultural

Rights, the Limburg Principles on the implementation of the International Covenant on Economic, Social and Cultural Rights and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights. It was reaffirmed that all human rights being universal, indivisible and interdependent, national institutions should adopt a comprehensive approach to the promotion and protection of human rights, which includes ESCR.

It was reiterated that national institutions must adopt a rights-based approach to ESCR. Due emphasis was placed on particular challenges faced by national institutions including ensuring respect for ESCR in relation to rationalizing resources among various institutions and addressing ESCR in situations of conflict and in relation to globalisation. It was highlighted that neglect of ESCR can lead to conflicts resulting in violations of human rights, thus posing a threat to peace and security. The view was expressed that despite the development of a universal human rights framework there remain inequities and injustices requiring more proactive strategies to realise the enjoyment of ESCR.

During the three-day deliberations delegates were able to exchange best practices and enhance their understanding of ESCR. The Round Table deliberated in the following substantive sessions:

- Key international instruments on ESCR and the Optional Protocol to the Covenant on Economic, Social and Cultural Rights
- General principles of ESCR – State obligations to promote, protect and fulfil
- Justiciability of ESCR and legal protection
- Implementing ESCR-modes and modalities: Advocacy and other means
- General principles of ESCR-roles and responsibilities of national institutions
- New challenges and dimensions to ESCR
- A review of the Limburg Principles and the Maastricht Guidelines
- A plan of action for national institutions regarding ESCR

The participants at each session noted the importance for national institutions, under the following points, to:

I. KEY INTERNATIONAL INSTRUMENTS ON ESCR AND THE OPTIONAL PROTOCOL TO THE COVENANT

- (a) Monitor and promote State compliance with the International Covenant on Economic, Social and Cultural Rights and where the State is not a party to the Covenant call for its ratification;

- (b) Engage with the working group in drafting an optional protocol to the Covenant and encourage States to adopt it;
- (c) Ensure independent access to the international treaty body system;
- (d) Assist in ensuring that domestic legislation that may impact on the enjoyment of ESCR is in compliance with international human rights norms and provides for sufficient protection of ESCR;
- (e) Use the existing tools and interpretations, including those developed by the United Nations, the Committee on Economic, Social and Cultural Rights and its general comments, as well as the Limburg Principles and the Maastricht Guidelines;
- (f) Ensure that the Millennium Development Goals process is consistent with State obligations under international human rights instruments and that their implementation is undertaken from a rights-based perspective;

II. GENERAL PRINCIPLES OF ESCR – STATE OBLIGATIONS TO PROMOTE, PROTECT AND FULFIL

- (a) Ensure a rights-based approach to ESC issues;
- (b) Encourage States to establish, where appropriate, governmental institutions to guide planning for, and implementation of, ESCR;
- (c) Ensure that government officials, including those in economic and planning ministries, the judiciary, parliamentarians and other partners know their international obligations in relation to ESCR;
- (d) Ensure, where national plans of action are developed, that ESCR are taken into full consideration;
- (e) Find ways to enforce ESCR – including through departments of social welfare, the courts and civil society – to ensure better awareness of the justiciability and enforceability of ESCR;
- (f) Work with bodies, within their prescribed mandates, to combat corruption, which has a direct impact on the enjoyment of ESCR;
- (g) Coordinate with their Governments in programme planning, including budgetary allocations to ensure respect for ESCR so that everybody lives with dignity;
- (h) Assist their States to prioritise the implementation of ESCR to ensure their progressive realisation within a given time frame;
- (i) Work within their States with representatives of international financial institutions to help the State to ensure that their policies and practices do not impact negatively on the enjoyment of ESCR;

- (j) Help inform about, and where they do not exist to help in developing, minimum standards to ensure implementation of ESCR;
- (k) Ensure that essential services which lead to the enjoyment of ESCR are provided at a minimum and affordable level. Where these are privatised, the State remains obligated to ensure that the provision of such services do not contravene international ESCR;

III. JUSTICIABILITY OF ESCR AND LEGAL PROTECTION

- (a) Use, where possible, quasi-judicial powers in implementing ESCR including, for example, the presentation of amicus briefs to the judiciary, thereby assisting it in developing appropriate jurisprudence harmonising civil and political rights with economic, social and cultural rights;
- (b) Ensure that national institutions have adequate powers and competency to undertake investigations;
- (c) Use the complaints-handling functions of a national institution to provide effective redress for those who have suffered violations of ESCR and engage with other partners where the national institutions may not be mandated to address specific ESCR;
- (d) Seek by means of innovation and interpretation ways to ensure legal protection of rights even where they may not be explicitly provided for in their national constitutions or legislation;

IV. IMPLEMENTING ESCR RIGHTS-MODES AND MODALITIES: ADVOCACY AND OTHER MEANS

- (a) Provide a voice for those whose ESCR have been violated to ensure the effective provision of remedies;
- (b) Raise awareness about the international human rights standards of ESCR;
- (c) Encourage and actively support advocacy, education and training on ESCR by a variety of means for rights-holders and public authorities, including the judiciary, and civil society;
- (d) Be aware of, and advise on, legal instruments and human rights norms to prevent violations of ESCR, including regional mechanisms, and the need for effective policy development and implementation;
- (e) Ensure public education concerning ESCR;
- (f) Develop public information campaigns and engage the media, and devise effective media strategies, to raise awareness of ESCR and violations thereof;
- (g) Use the range of reporting strategies and mechanisms, including annual, parliamentary and extraordinary reports;

V. GENERAL PRINCIPLES OF ESCR–ROLES AND RESPONSIBILITIES OF NATIONAL INSTITUTIONS

- (a) Develop a strong research capacity to be able to deal with ESCR effectively;
- (b) Monitor activities and develop minimum standards to ensure the implementation of ESCR for use by government agencies;
- (c) Ensure, while supporting a richness of cultural practices, that such practices do not contravene international human rights law;

VI. NEW CHALLENGES AND DIMENSIONS TO ESCR

- (a) Pay attention to areas which impact on the enjoyment of ESCR, including trade, the environment, corruption and the activities of non-State actors;
- (b) Pay particular attention to ESCR in situations of conflict and recognise that a lack of respect for ESCR is a root cause of conflict;
- (c) Assess the positive and negative consequences of globalisation, including migration, and its impact on the enjoyment of ESCR;

VII. INTRODUCTION TO THE LIMBURG PRINCIPLES AND THE MAASTRICHT GUIDELINES

Follow the Limburg Principles and the Maastricht Guidelines for the promotion and protection of ESCR;

VIII. A PLAN OF ACTION FOR NATIONAL INSTITUTIONS REGARDING ESCR

In addition to striving to implement the various action points within this Concluding Statement, national institutions particularly commit themselves within their different mandates and circumstances under which they operate to:

- (a) Strengthen their capacity institutionally to be more effective in promoting and protecting ESCR;
- (b) Establish ESCR units or focal points and develop substantive policy capacity so as to engage effectively on ESCR issues;
- (c) Develop new and innovative strategies, including through community dialogue, on ways of gathering information beyond traditional forms of complaints-handling processes;

- (d) Develop particular strategies to address the ESCR of vulnerable groups and women and children;
- (e) Assess the enforceability, including through judicial procedures, of ESCR in their states and report on this at the next international conference of national human rights institutions;
- (f) Encourage the development of national plans of action which implement ESCR;
- (g) Request that this Concluding Statement be submitted to the next session of the United Nations Commission on Human Rights.

Expression of appreciation

Participants expressed their appreciation to the National Human Rights Commission of India and the Office of the United Nations High Commissioner for Human Rights for convening and organizing the Round Table.

**Adopted at New Delhi, India
1 December 2005**



The Round Table in progress



