

***ECONOMIC, SOCIAL & CULTURAL RIGHTS
and CLIMATE CHANGE:
A Legal Reference Guide***

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TABLE OF CONTENTS

Foreword.....	1
Overview	3
Acronyms.....	4
1. Human Rights and The International Climate Change Regime.....	5
2. International Human Rights Law	9
3. The International Covenant on Economic, Social & Cultural Rights	16
4. Equality and Non-Discrimination	27
5. The Rights to Work and Social Security.....	35
7. The Right to an Adequate Standard of Living	54
9. The Right to Education.....	84
10. Right to Culture.....	93
About the Editors & Contributors	102
Acknowledgements	104
Works Cited	105

FOREWORD

People in the world's affluent countries know a little about the massive and severe poverty that still persists in South Asia, Africa and Latin America. Most of them regard such poverty as a mild reason for charitable giving, but they typically do not recognize it as an injustice – let alone an injustice in which they are personally involved. They believe that questions of justice do not arise in this context because they do not see themselves as acting in ways that foreseeably harm the global poor or as involved with the poor in joint productive activities whose fruits are then divided among the collaborators.

This common belief among the world's affluent is mistaken. The most straightforward way of appreciating this point is afforded by a basic understanding of anthropogenic climate change. By engaging in consumption that releases greenhouse gases into the atmosphere, affluent populations directly contribute to global warming which is associated with substantial harms to poor and vulnerable populations: with increasingly frequent extreme-weather events, for example, and with the spread of tropical diseases, desertification and rising sea levels. Poor people are much more vulnerable to these environmental threats: they tend to live in the most exposed areas, typically cannot protect themselves (by living in solid dwellings, for example) and also lack the means to cope once some threat has materialized. And poor people are not to blame for excessive pollution: the greenhouse gas emissions attributable to them are universally sustainable in the sense that, if all human beings contributed to pollution at their level, we would have no climate change problem.

The consumption of the world's affluent produces vastly more pollution. The consumption of US residents, for instance, produces over 10 times as much CO₂ as the consumption of residents of India and over 50 times as much as the consumption of residents of Kenya. This excess pollution severely harms millions of people today; and it will inflict even much larger harms upon poor populations in the future. The greenhouse gases now rapidly accumulating in the atmosphere will remain there for centuries and even millennia – continuing to warm the planet even if all emissions ceased today. Excess emissions lead then not merely to continued, but to accelerating increases in the planet's surface temperatures. Assuming that the global distribution of income and wealth will remain as dramatically uneven as it is today, we can foresee that present excess emissions will cause vastly greater harms to poor populations in the future than they are causing today.

Climate change is a clear and massive impediment to the realization of social, economic and cultural human rights. For this reason, it is a central concern of Academics Stand Against Poverty (ASAP), which is an international professional association focused on helping poverty researchers and teachers enhance their positive impact on severe poverty. ASAP fulfils its mission by promoting collaboration among poverty-focused academics and effective outreach to policy makers and broader public audiences as well as by helping academics turn their expertise into impact through specific intervention projects. ASAP strongly supports efforts to reach and to inform especially the people whose consumption contributes disproportionately to climate change. They should fully understand the harms they are causing as well as the much larger harms their current activities will cause in the future. Such an understanding will lead many of them to restrain and reorient their

consumption and also to lend political support to the national and international reforms that are urgently needed to curb excess greenhouse gas emission. Such reforms must ensure, in particular, that climate-relevant decisions by corporations and individuals are guided by prices that take full account of the true present and future costs of greenhouse gas emissions.

The manual you are holding is responsive to the profound and wide-ranging threats posed by climate change and to the various policies and institutional reforms these threats require. Aimed at policy-makers, negotiators, scholars, and stakeholders working on climate change issues around the world, the manual seeks to provide a resource on international legal commitments and best practices for respecting, protecting, and fulfilling economic, social, and cultural human rights in a changing climate. More specifically, it contains information, relating to these rights, on principles, obligations, and standards that are relevant to the design and implementation of climate policies around the world, with a special focus on areas where the effects of rapid climate change are likely to be most severe.

Our hope is that this manual will inspire, support, and guide global efforts aimed at mitigating climate change and adapting to its manifold consequences. We also intend this manual to initiate an international dialogue among scholars, practitioners, policy-makers, and stakeholders on the concrete measures that can be taken to ensure that policies aimed at addressing climate change enhance, rather than undermine, internationally protected rights to life, work, family, health, food, water, shelter, education and culture. On behalf of ASAP and its two partners – Yale’s Governance, Environment & Markets Initiative and the Centre for International Sustainable Development Law in Montréal – I encourage you to join this conversation and to contribute to the next iteration of this manual which is conceived as a living document that will evolve in line with developing standards of international law, the identification of best practices and the exchange of academic and traditional knowledge within relevant networks and communities of practice.

Prof. Thomas Pogge

Director of the Global Justice Program and Leitner Professor of Philosophy and International Affairs, Yale University and President of Academics Stand against Poverty

OVERVIEW

Purposes & Objectives

Given the serious human rights ramifications of climate change, States are obliged to take all appropriate means to avoid and mitigate climate change and its harmful consequences, as well as assist vulnerable communities in adapting to its consequences. States are also required to ensure that their responses to climate change are consistent with their human rights obligations under domestic and international law.

This introductory legal reference guide examines the connections between climate change and human rights, with a particular focus on the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). It seeks to provide policy-makers, advocates, and experts with basic knowledge of obligations and principles related to international economic, social, and cultural rights, along with concrete examples of their relevance to climate change-related policy-making. The guide thus aims to ensure that governments continue to meet their obligations to respect, protect, and fulfil economic, social, and cultural rights in the context of new challenges brought by climate change, as well as to highlight opportunities for policy-makers worldwide.

A Living Document

This manual is intended to be a living document that the co-editors will update in the years to come, based on new developments in the international human rights and climate regimes, as well as feedback received on the current version. Readers are therefore encouraged to send ideas and suggestions regarding the content, especially case studies of climate policies and projects that have effectively integrated human rights principles, standards, and considerations, to the editors by writing to Sébastien Jodoin at sebastien.jodoin@yale.edu and Katherine Lofts at klofts@cisdl.org.

Outline

Part I of this manual provides a general introduction to human rights and the international climate change regime, including the relationship between climate change and human rights. Part II surveys basic concepts of international human rights law. Part III examines the ICESCR more specifically, including its structure, the nature of its obligations, means of implementation, and compliance mechanisms. Finally, Parts IV through X discuss specific rights enumerated in the ICESCR, including: the right to equality and non-discrimination; the rights to work and social security; the right to family life; the right to an adequate standard of living; the right to the highest attainable standard of physical and mental health; the right to education; and the right to culture. These sections also provide case studies illustrating how climate policies are being implemented to concomitantly address climate change and enhance the realisation of human rights.

ACRONYMS

ACHR – American Convention on Human Rights
ACHPR – African Convention on Human and Peoples’ Rights
CEDAW – Convention on the Elimination of All Forms of Discrimination against Women
CESCR – Committee on Economic, Social and Cultural Rights
COP – Conference of the Parties
CRC – Convention on the Rights of the Child
CRPD – Convention on the Rights of Persons with Disabilities
ECHR – European Convention on Human Rights
ECOSOC – United Nations Economic and Social Council
FPIC – Free, Prior and Informed Consent
ICCPR – International Covenant on Civil and Political Rights
ICESCR – International Covenant on Economic, Social and Cultural Rights
IPCC – Intergovernmental Panel on Climate Change
UNFCCC – United Nations Framework Convention on Climate Change
LDC – Least Developed Country
NAPA – National Adaptation Programmes of Action
OHCHR – Office of the High Commissioner on Human Rights
SIDS – Small Island Developing States
UDHR – Universal Declaration of Human Rights
UNDRIP – United Nations Declaration on the Rights of Indigenous Peoples
UNHCR – United Nations High Commissioner on Refugees
UNHRC – United Nations Human Rights Council

1. HUMAN RIGHTS AND THE INTERNATIONAL CLIMATE CHANGE REGIME

1.1 Introduction to Climate Change and Human Rights

Climate change is the greatest challenge of our time. Its impacts will be myriad, and include extreme weather events (such as floods, cyclones and droughts), increasing temperatures, rising sea levels, changes in precipitation patterns, melting permafrost, receding coastlines, and loss of territory. Indeed, many of these effects are already being felt by communities around the world, and with current projections of warming by as much as 4°C this century¹, such impacts are set to increase dramatically. These phenomena also have direct impacts on human populations – affecting core rights such as the right to health, the right to an adequate standard of living, the right to work, and the right to culture.

Crucially, the enjoyment of these rights will be affected not only by the effects of climate change itself, but also by States’ mitigation and adaptation responses. *Mitigation* refers to efforts to reduce or prevent the emission of greenhouse gases,² while *adaptation* means “anticipating the adverse effects of climate change and taking appropriate action to prevent or minimise the damage they can cause.”³ The particular ways in which mitigation and adaptation responses may impact economic, social and cultural rights is the subject of the chapters that follow.

Examples of the Impact of Climate Change on Human Rights⁴

Climate Impact	Human Impact	Rights Implicated
Sea Level Rise <ul style="list-style-type: none"> Flooding Sea Surges Erosion Salination of land and water 	<ul style="list-style-type: none"> Loss of land Drowning, injury Lack of clean water, disease Damage to coastal infrastructure, homes, and property Loss of agricultural lands Threat to tourism, lost beaches 	<ul style="list-style-type: none"> Self-determination [ICCPR;ICESCR,1] Life [ICCPR, 6] Health [ICESCR, 12] Water [CEDAW,14; ICRC 24] Means of subsistence [ICESCR,1] Standard of living [ICESCR, 12] Adequate housing [ICESCR,12] Culture [ICCPR, 27] Property [UDHR,17]
Temperature Increase <ul style="list-style-type: none"> Change in disease vectors Coral bleaching Impact on Fisheries 	<ul style="list-style-type: none"> Spread of disease Changes in traditional fishing livelihood and commercial fishing Threat to tourism, lost coral and fish diversity 	<ul style="list-style-type: none"> Life [ICCPR, 6] Health [ICESCR, 12] Means of subsistence [ICESCR, 1] Adequate standard of living [ICESCR, 12]
Extreme Weather Events <ul style="list-style-type: none"> Higher intensity storms Sea Surges 	<ul style="list-style-type: none"> Dislocation of populations Contamination of water supply Damage to infrastructure: delays in medical treatment, food crisis Psychological distress Increased transmission of disease Damage to agricultural lands Disruption of educational services Damage to tourism sector Massive property damage 	<ul style="list-style-type: none"> Life [ICCPR,6] Health [ICESCR,12] Water [CEDAW,14; ICRC 24] Means of subsistence [ICESCR,1] Adequate standard of living [ICESCR, 12] Adequate and secure housing [ICESCR,12] Education [ICESCR,13] Property [UDHR,17]
Changes in Precipitation <ul style="list-style-type: none"> Change in disease vectors Erosion 	<ul style="list-style-type: none"> Outbreak of disease Depletion of agricultural soils 	<ul style="list-style-type: none"> Life [ICCPR,6] Health [ICESCR,12] Means of subsistence [ICESCR,1]

UDHR = Universal Declaration of Human Rights; ICCPR = International Covenant on Civil and Political Rights; ICESCR = International Covenant on Economic, Social and Cultural Rights; CEDAW = Convention on the Elimination of All Forms of Discrimination against Women; ICRC = Convention on the Rights of the Child.

United Nations Secretary-General Ban Ki-moon has affirmed: “There is virtually no aspect of our work that does not have a human rights dimension. Whether we are talking about peace and security, development, humanitarian action, the struggle against terrorism, climate change, none of these challenges can be addressed in isolation from human rights.”⁵ This understanding led to the adoption in 2003 by the United Nations of a Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and programming⁶ and, in 2009, the creation of the UN Development Group’s Human Rights Mainstreaming Mechanism (UNDG-HRM).⁷

Over the last decade, increasing attention has also been given to human rights in the context of climate change policy-making, prompted in large measure by the efforts of small island developing states (SIDS), least developed countries (LDCs), Indigenous peoples, and other activists, who have helped place a greater focus on the human dimensions of climate change. This greater focus on human rights in the climate change arena also coincides with the growing importance of rights-based approaches to governance more generally, in the fields of development, health, and environment.⁸

In the context of climate change governance, a rights-based approach seeks to ensure that responses to climate change protect, respect, and fulfil human rights obligations and that human rights find application throughout the various stages of climate responses (including planning, funding, implementation, monitoring, and evaluation). The influence of this approach on policy-making varies with the type of human rights responsibility involved: while the responsibility to protect and respect human rights *constrains* policy-making, the responsibility to fulfil human rights *guides* and *supports* policy-making. Ultimately, a rights-based approach posits that if policy-makers applied the full range of their existing human rights obligations in a proactive manner, the global response to climate change would be significantly strengthened.

The ICESCR provides an important legal justification for an international response to climate change founded on a rights-based approach – that is, an approach founded on the existing obligations of States to respect, protect, and fulfil the rights protected in ICESCR, including through the provision of international funding, assistance, and cooperation by developed countries for the fulfilment of human rights in developing countries. As the Committee on Economic, Social and Cultural Rights (CESCR) has stated, “in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States.”⁹

This approach requires that developed and developing countries alike comply with the minimum core obligations under each human right; take deliberate, concrete and targeted measures to move as expeditiously and effectively as possible towards the full realization of rights; and guarantee non-discrimination in access to these rights in spite of the impacts and consequences of climate change. Developed States remain under the obligation to cooperate in assisting developing countries with the implementation of economic, social and cultural rights in light of these same impacts and consequences.¹⁰

1.2 Human Rights and the Climate Change Negotiations under the UNFCCC

Although the *U.N. Framework Convention on Climate Change* (UNFCCC) and the *Kyoto Protocol*¹¹ do not include references to international human rights law, a number of states, particularly small island developing states and least developed countries, supported by countries such as Switzerland and Bolivia, have been instrumental in bringing attention to the human rights aspects of climate change.¹² The UN Human Rights Council (UNHRC) has adopted two resolutions on human rights and climate change,¹³ and commissioned a study from the Office of the High Commissioner on Human Rights (OHCHR), which stated that “human rights standards and principles should inform and strengthen policy measures in the area of climate change.”¹⁴ The United Nations High Commissioner on Refugees (UNHCR) has also issued a position paper on the links between climate change and human displacement.¹⁵

In addition, the UNFCCC Conference of the Parties (COP) has officially recognized:

that the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights and that the effects of climate change will be felt most acutely by those segments of the population that are already vulnerable owing to geography, gender, age, indigenous or minority status and disability.¹⁶

Indeed, the decision of the Ad Hoc Working Group on Long-term Cooperative Action, adopted at COP16 in 2010, states unequivocally that “Parties should, in all climate change-related actions, fully respect human rights.”¹⁷

States’ duties under the UNFCCC, and the actions they take in response to climate change more generally, are therefore reinforced and constrained by obligations to protect, respect and fulfil human rights.¹⁸ As a result, the human rights ramifications of climate change hold significant implications for policy-makers, who must effectively act to mitigate and adapt to the effects of climate change while complying with obligations under international human rights law.

¹ World Bank, “Turn Down the Heat: Why a 4°C Warmer World Must be Avoided” (2012) at 1, online: The World Bank <http://climatechange.worldbank.org/sites/default/files/Turn_Down_the_heat_Why_a_4_degree_centrigrade_warmer_world_must_be_avoided.pdf>.

² United Nations Environment Program, “Climate Change Mitigation”, online: United Nations Environment Program <<http://www.unep.org/climatechange/mitigation/>>.

³ European Commission, “Adaptation to climate change”, online: European Commission <http://ec.europa.eu/clima/policies/adaptation/index_en.htm>.

⁴ The Center for International Environmental Law, “Climate Change and Human Rights: A Primer”, online: The Center for International Environmental Law <http://ciel.org/Publications/CC_HRE_8July2013.pdf> (originally adapted from Office of the High Commissioner for Human Rights, *Human Rights Council Resolution 7/23 ‘Human Rights and Climate Change’: Submission of the Maldives to the Office of the UN High Commissioner for Human Rights*, OHCHR, (2008), online: OHCHR <http://www.ohchr.org/Documents/Issues/ClimateChange/Submissions/Maldives_Submission.pdf>.

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- ⁵ Secretary-General Ban Ki-moon, “Opening remarks at news conference”, online: UN News Centre <http://www.un.org/apps/news/infocus/speeches/search_full.asp?statID=176>.
- ⁶ UN Practitioners’ Portal on Human Rights Based Approaches to Programming, *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies*, online: HRBA Portal <<http://hrbaportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies>>.
- ⁷ United Nations Development Group, *Human rights-based approach to development programming (HRBA)*, online: United Nations Development Group <<http://www.undg.org/?P=221>>.
- ⁸ See e.g. Jessica Campese et al, eds, *Rights-based approaches: Exploring issues and opportunities for conservation* (Indonesia: CIFOR & IUCN, 2009); Sam Hickey & Diana Mitlin, eds, *Rights-based approaches to development: exploring the potential and pitfalls* (Virginia: Kumarian Press, 2009); Jude Rand & Gabrielle Watson, *Rights-based approaches: learning project* (Massachusetts: Oxfam America, 2007); Sofia Gruskin, Dina Bogecho & Laura Ferguson, “Rights-based approaches’ to health policies and programs: Articulations, ambiguities, and assessment” (2010) 31(2) *Journal of Public Health Policy* 129.
- ⁹ CESCR, *General Comment No 3*, UN Doc E/1991/23, (14 December 1990) at para 14 [*General Comment No 3*].
- ¹⁰ Office of the High Commissioner for Human Rights, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*, UN Doc A/HRC/10/61, (15 January 2009) at paras 75-77, 84-86 [*OHCHR Report on Climate Change and Human Rights*].
- ¹¹ *United Nations Framework Convention on Climate Change*, 9 May 1992, 1771 UNTS 107 (entered into force 21 March 1994); *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, 10 December 1997, 37 ILM 22 (1998), UN Doc FCCC/CP/1997/7/Add 1 (entered into force 16 February 2005).
- ¹² See e.g. *Malé Declaration on the Human Dimension of Global Climate Change* (adopted by SIDS on 14 November 2007), online: CIEL <http://www.ciel.org/Publications/Male_Declaration_Nov07.pdf> (calling for assistance from the UNHRC and the OHCHR in assessing the human rights implications of climate change). See also Organization of American States, *Human Rights and Climate Change in the Americas*, AG/RES 1896 (XXXII-O/02), online: OAS <<http://www.oas.org/dsd/FIDA/documents/res1819.htm>>.
- ¹³ UN Human Rights Council Resolution 7/23, 7th Sess, UN Doc A/HRC/7/78, (14 July 2008); UN Human Rights Council, Resolution 7/23, Human Rights and Climate Change, 10th Sess, UN Doc UN Doc A/HRC/10/L11, (25 March 2009); UN Human Rights Council, Resolution 10/4, 41st Mtg, UN Doc UN Doc A/HRC/10/L.11, (25 March 2009).
- ¹⁴ OHCHR Report on Climate Change and Human Rights, *supra* note 10 at para 95.
- ¹⁵ Office of the High Commissioner for Refugees, *Climate Change, Natural Disasters and Human Displacement: A UNHCR perspective*, (14 August 2009), online: UNHCR <www.unhcr.org/climate>.
- ¹⁶ *Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention*, adopted by the Conference of the Parties to the UNFCCC, Decision 1/CP.16, (4 December 2010), preamble [*Cancun LCA outcome*].
- ¹⁷ *Ibid* at para 8.
- ¹⁸ Indeed, the COP has stated unequivocally that “Parties should, in all climate change-related actions, fully respect human rights”; *Cancun LCA outcome*, *supra* note 16 at para 18.

2. INTERNATIONAL HUMAN RIGHTS LAW

2.1 International Human Rights Law

Human rights are generally defined as rights that every person is endowed with as a consequence of his or her mere existence as a human being. The modern concept of human rights draws its origins from a number of intellectual movements and political developments, including the spread of natural law theory and the English, American, and French revolutions.

International human rights law is the body of law that ensures the protection of human rights at the international level. It was first established in the aftermath of the Second World War, whereupon States committed to strengthening cooperation aimed at protecting fundamental rights and improving the living conditions of all human beings. To this end, Article 1(3) of the Charter of the United Nations (1945) provides that one of the four purposes of the United Nations is “To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”¹⁹

The core of international human rights law is codified in what is known informally as the International Bill of Human Rights: the *Universal Declaration of Human Rights* (UDHR), the *International Covenant on Civil and Political Rights* (ICCPR), and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). In addition to these general instruments, States have adopted a number of human rights treaties that focus on the protection of human rights in terms of specific acts, such as the prohibitions against torture, genocide, and discrimination, or in terms of specific vulnerable groups, such as women and children.

International Protection of Human Rights	
Key Declarations	Universal Declaration of Human Rights (1948); Declaration on the Right to Development (1986), Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992), Vienna Declaration and Programme of Action (1993), United Nations Declaration on the Rights of Indigenous Peoples (2007),
Key Treaties	<p><i>General:</i> International Covenant on Civil and Political Rights & Optional Protocol (1976); International Covenant on Economic, Social & Cultural Rights.</p> <p><i>Specific acts:</i> Convention on the Prohibition and Punishment of the Crime of Genocide (1948); Convention on the Elimination of All Forms of Racial Discrimination (1965); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984); Rome Statute of the International Criminal Court (1998).</p> <p><i>Specific groups:</i> Convention relating to the Status of Refugees (1951); Convention on the Elimination of All Forms of Discrimination against Women (1979); Convention on the Rights of the Child (1989); Convention Concerning Indigenous and Tribal Peoples in Independent Countries (1989);</p>

	Convention on the Rights of Persons with Disabilities (2008).
Key Bodies and Institutions	United Nations Human Rights Council; Human Rights Committee; Committee on Economic, Social and Cultural Rights; UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities; International Criminal Court; Commission on the Status of Women; Committee against Torture; Committee on Elimination of Racial Discrimination; Committee on the Elimination of Discrimination against Women; Committee on the Rights of the Child; Committee on the Rights of Persons with Disabilities.

In addition to human rights instruments of universal application, there are also a number of treaties for the protection of human rights at the regional level, including regional thematic treaties. For example both the European and Inter-American human rights systems have conventions on the prohibition of torture. Much of the content of the rights protected by these regional instruments derives from the international treaties, though each regional treaty has developed its own approach and practices. These treaties therefore hold particular persuasiveness in given region. Frequently, they also contain stronger compliance mechanisms than are found under international human rights treaties.

Regional Protection of Human Rights	
Key Declarations	<i>Americas:</i> American Declaration of the Rights and Duties of Man (1948). <i>Asia:</i> ASEAN Human Rights Declaration (2012). <i>Europe:</i> European Charter of Fundamental Rights (2000). <i>Middle East:</i> Arab Charter on Human Rights (2004).
Key Treaties ²⁰	<i>Americas:</i> American Convention on Human Rights (1969); Protocol of San Salvador on Economic, Social and Cultural Rights (1988); Statute of the Inter-American Commission on Human Rights (1980). <i>Africa:</i> African Charter on Human and Peoples' Rights (1981), <i>African Charter on the Rights and Welfare of the Child</i> (1990), <i>Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa</i> (2003), <i>African Youth Charter</i> (2006). <i>Europe:</i> European Convention on Human Rights (1950) & protocols; European Social Charter (1981) & protocols.
Key Bodies	<i>Americas:</i> Inter-American Commission on Human Rights; Inter-American Court of Human Rights. <i>Africa:</i> African Commission on Human and Peoples' Rights, African Court of Human and Peoples' Rights. <i>Europe:</i> European Court of Human Rights; European Court of Justice; European Committee of Social Rights.

2.2 The Implementation of International Human Rights Law

Human rights treaties require States to take measures to respect, protect, and fulfil the rights established therein, whether through domestic legislation or by other means. Treaties also establish compliance mechanisms, the strength of which depends on the availability of remedies, the accessibility of the mechanisms, and whether their use is compulsory or optional for a State party to the treaty.

Major international human rights treaties have treaty bodies known as committees, which oversee their implementation. These bodies review periodic reports made by State Parties regarding their compliance with the respective treaties. They also issue general comments that provide authoritative interpretations of the treaty provisions and examine the extent to which the treaties have been implemented by State Parties. In addition, they make recommendations addressing particular areas where State Parties should change legislation, policy and practice in order to promote treaty compliance.

Under certain conditions, some treaty bodies may also receive communications from individuals, groups, or State Parties alleging treaty violations. These bodies may then issue adjudicative decisions interpreting and applying treaty provisions, and establishing whether a State party has complied with its treaty obligations. At the regional level, human rights treaties have established courts, which may order remedies, such as cessation of the infringement of a right and financial compensation. To reflect the principle of complementarity between national and international institutions, one general condition for the use of these international and regional mechanisms is the exhaustion of local remedies.

Human Rights Compliance Mechanisms		
Strength	Compliance Body	Type of Mechanism
Weak	Committee on the ICESCR	State reporting.
	Human Rights Council	Special country specific or thematic report mechanisms; Resolution 1503 information-petitioning system.
	Human Rights Committee (under Optional Protocol I).	State reporting; inter-state complaints procedure; individual complaints procedure.
	African Commission on Human and Peoples' Rights	State reporting; inter-state complaints procedure, non-state communications; special communications.
	Committee on CEDAW (under the Optional Protocol).	State reporting; individual communications procedure; inquiry procedure.
Strong	Inter-American Commission on Human Rights	Fact-finding missions; inter-state complaints procedure; individual complaints procedure.
	Inter-American Court of Human Rights	Advisory jurisdiction; contentious jurisdiction, including award of damages.
	African Court of Human and Peoples' Rights	Inter-state complaints procedure; individual complaints procedure; contentious jurisdiction, including award of damage.
	European Court of Human Rights	Inter-state complaints procedure; individual complaints procedure; contentious jurisdiction, including award of damage.
	European Court of Justice	Judicial review of EC Acts and Acts of Member States in EC Areas.
	International Criminal Court	Prosecution of individuals responsible for war crimes, genocide and crimes against humanity.

Human rights treaties also set out the conditions under which limitations can be imposed by States on the exercise of some human rights under exceptional circumstances. In general, such limitations will be allowed provided that they are determined by law and necessary in a

democratic society to ensure respect for the rights and freedoms of others, or to meet the just requirements of public order, public health or morals, national security or public safety.²¹

Human rights treaties also provide that derogation (temporary suspension) from human rights may be permitted “in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed.”²² Such derogations must be strictly required by the exigencies of the situation, must not be inconsistent with other obligations under international law, and must not be discriminatory. In addition, there are a number of rights from which derogation is never allowed, including those rights relating to: freedom from the arbitrary deprivation of life; torture and other ill-treatment; slavery; imprisonment for debt; retroactive penalty; non-recognition of the law; and freedom of thought, conscience, and religion.²³

2.3 The Universalism/Relativism Debate in International Human Rights Law

The nature, content and prioritization of human rights remain controversial, especially across different cultures and societies. In particular, some non-western States advance their own human rights standards or challenge the full application of international human rights standards.

Examples of challenges to the full application of international human rights law
<ul style="list-style-type: none"> during the Cold War, communist States claimed that economic, social and cultural rights were more important than civil and political rights, while Western States held the opposite belief some Asian States claim that the needs of a collective or of society supersede the rights of individuals some Islamic States claim that primacy should be accorded to the <i>Sharia</i> in instances where the latter conflicts with international human rights law

At the same time, international human rights law holds that human rights are universal in application, as well as inalienable: just as a human cannot be deprived of his or her humanity, he or she cannot be deprived of his or her human rights.²⁴ The tension between these two positions is known as the universalism/relativism debate.²⁵

The universalism/relativism debate has had a significant impact on the development of an influential theory, which holds that there are three generations of human rights. The features of these three generations are summarized below:

The Three Generations of Human Rights			
	First generation: Civil & Political Rights	Second generation: Economic, Social & Cultural Rights	Third Generation: Solidarity Rights
Instruments	ICCPR, Art. 2-27; UDHR, Art. 2-21; ECHR, Art. 2-18; ACHR, Art. 3-25; ACHPR, Art. 2-14.	ICESCR, Art. 2-25; UDHR, Art. 22-27; ACHR, Art. 26; Protocol of San	UN Charter, Art. 1(2); UDHR, Art.1; ICCPR, Art.1; ICESCR, Art.1; ACHPR, Art. 19-24.

		Salvador, Art. 6-18; European Social Charter, Art. 1-31; ACHPR, Art. 15-18.	
Subject Matter	Protecting the individual against the abuses and excesses of the State. Focus is on formal equality.	Ensuring that conditions are created whereby everyone may equally enjoy certain basic social, economic and cultural standards. Focus is on substantive equality.	Ensuring that conditions are created whereby a group may enjoy certain basic collective entitlements, such as the right to self-determination and the right to development.
Type of Right	<i>Negative</i> rights: States must abstain from certain actions to respect these rights, such as refraining from the use of torture.	<i>Positive</i> rights: States must undertake certain actions to respect these rights, such as providing a system of free primary education.	The right to self-determination is essentially a negative right. Other solidarity rights are held to constitute political programmes of action.
Binding Character	Immediately binding obligation to respect and to ensure these rights.	Immediately binding obligation to move towards the realization of these rights. In this way, undertakings are said to be progressive in nature.	The right to self-determination is a binding legal right. Other solidarity rights are held to be non-binding.
Justiciability	Held to be justiciable, i.e. can form the basis of a claim decided by a court of law.	Are generally not justiciable and are therefore subject to political supervision (see, however, CESCR General Comment No. 3, para. 5).	The right to self-determination is justiciable. Implementation of other solidarity rights is subject to political supervision.
Compliance Mechanism	Varies with the human rights treaty regime. May include: monitoring and reporting systems, an individual complaints procedure (e.g. ICCPR), or the provision of remedies for violations (e.g. ACHR, ECHR).	Limited to monitoring and reporting systems.	No compliance mechanism as such.

While this categorization can be useful, it does not fully reflect the complex relationship between the different generations of rights. Firstly, some of the differences between these rights are more illusory than real. For instance, certain civil and political rights do in fact require positive action by the State (such as the actions that must be taken and the financial resources that must be invested to guarantee the fair trial rights of an accused person under Article 9 of the ICCPR), while economic, social and cultural rights may also include freedom from unlawful State intervention (such as the right to form a trade union in Article 8 of the ICESCR).

Secondly, the different generations of rights are mutually supportive. For example, civil and political rights are necessary for the exercise of economic, social and cultural rights as they make it possible for groups to seek the implementation of their rights through participation in judicial and political processes.

Finally, certain rights do not fit neatly into any of the three existing categories. The right to a healthy environment, for example, has been characterized and recognized as a civil and political right (e.g. the right to judicial review of decisions affecting the environment), an economic, social and cultural right (e.g., the right to a healthy environment), and as a solidarity right (e.g. a people's right to a healthy environment). In addition, a number of declarations and treaties contain provisions that relate to two or more generations of rights. Most notably, the UDHR and the African Charter on Human and Peoples' Rights (ACHPR) affirm the existence of all three generations of rights.

“All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”

Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights on 25 June 1993, U.N. Doc. A/CONF.157/23, at para. 5.

In principle, under international human rights law, all human rights are considered to be universal, inalienable, indivisible, interdependent and interrelated. Practically speaking, however, international human rights law itself accords a certain priority to civil and political rights over the other two generations of rights. This priority is reflected in the vague, recommendatory, and aspirational terminology that often characterises second and third generation rights, as well as the lack of strong mechanisms to ensure compliance with these rights. As the CESCR has pointed out: “In effect, despite the rhetoric, violations of civil and political rights continue to be treated as though they were far more serious, and more patently intolerable, than massive and direct denials of economic, social and cultural rights.”²⁶

While there is some scope within international human rights law for differences in the implementation or prioritisation of certain human rights standards, these differences have no bearing on the legal question of whether a State must comply with its human rights obligations. Nevertheless, this debate is of practical importance: it influences the negotiation of international human rights instruments, impacts upon whether a State will sign a human rights treaty or make reservations to it, and may have a bearing on whether a human rights standard will actually be complied with by a State.

¹⁹ *Charter of the United Nations*, 26 June 1945, Can TS 1945 No 7, online: United Nations <<http://www.un.org/en/documents/charter/>>.

²⁰ There are no regional human rights treaties or treaty bodies in Asia.

²¹ See e.g. *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, (entered into force 3 January 1976), Article 4 [ICESCR].

²² See e.g. *International Covenant on Civil and Political Rights*, 16 December 1966, (entered into force 23 March 1976), Article 4(1) [ICCPR].

²³ See e.g. *ibid*, Article 4(2).

²⁴ This view is expressed in the preamble of every international human rights instrument. See e.g. *ICCPR*, supra note 22 (For example, the preamble of the ICCPR states as follows: “Considering that [...] recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Recognizing that these rights derive from the inherent dignity of the human person”).

²⁵ A number of approaches can be used to make this debate a constructive one. One can emphasize that while there are legitimate disagreements over the existence or the prioritisation of certain human rights, there are also a number of rights which are truly universal, in the sense that they are common, in one form or another, to all societies and cultures. One can also stress the universal character of human rights values, while highlighting the different ways of in which these values manifest themselves in different societies. One example is the right to life. Every society or culture values human life; however, they may differ in their conception of the limits that can be imposed on the right to life, such as whether the death penalty is legitimate or not.

²⁶ CESCR, *Statement to the World Conference*, UN Doc E/1993/22/ at para 5.

3. THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL & CULTURAL RIGHTS

Structure of the ICESCR

Part I: Right to self-determination (Article 1)

Part II: General nature of obligations of State Parties (Articles 2-5)

Part III: Specific substantive rights (Articles 6-15)

Part IV: International implementation & compliance mechanisms (Articles 16-25)

Part V: General provisions of a legal nature (Articles 26-31)

3.1 Nature of Obligations

Article 2(1) requires a State party 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.”

Article 2(1) of ICESCR describes the nature of the obligations undertaken by State Parties. ICESCR is often criticized for not carrying immediate legal effect as compared with the ICCPR.²⁷ But while the obligations under ICESCR are geared toward the progressive realization of rights, State Parties do in fact have an immediate obligation to take steps towards this realization: “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.”²⁸

State Parties are also bound to ensure a minimum adherence to each of the rights contained in the Covenant: “a State party in which any significant number of individuals is deprived of

State Parties have immediate obligations:

- To take steps towards the full realization of rights;
- To ensure a minimum of essential levels of each of the rights;
- To guarantee the exercise of rights without any kind of discrimination.

essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant.”²⁹ Finally, as discussed below, State Parties are obligated to guarantee that the rights contained in the Covenant will be exercised without discrimination.³⁰

The CESCR has conceived of the obligations of State Parties under the Covenant as entailing three types of obligations: the obligation to *respect*, requiring States to abstain from interfering with an individual’s rights and freedoms; the obligation to *protect*, requiring States to

prevent other individuals from interfering with an individual’s rights and freedoms; and the obligation to *fulfil*, requiring States to take the necessary measures to ensure the satisfaction of the needs of individuals that such individuals cannot secure by their own personal efforts.

3.2 Elements of Flexibility

A measure of flexibility is built into the obligations contained in the ICESCR. Firstly, as mentioned above, the concept of the progressive realization of rights recognizes “the difficulties involved for any country in ensuring the full realization of economic, social and cultural rights.”³¹ The ultimate objective of the Covenant is thus the full realization of these rights over time; nonetheless, meeting this objective requires expeditious and effective action by State Parties. Certainly, the adoption of deliberately retrogressive measures “would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.”³²

Elements of Flexibility

- Progressive realization of rights
- To the maximum of available resources
- Neutral as to economic and political system (provided it is democratic and respectful of human rights)

The second element of flexibility in the ICESCR is introduced by the fact that a State Party is only obligated to take steps “to the maximum of its available resources.”³³ This qualification even applies to the minimum core obligations of State Parties, although the threshold for justifying a failure to discharge such obligations on this basis is high, as a State Party “must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.”³⁴ In circumstances where a State Party is

lacking in available resources, it remains obligated “to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances”, as well as to “monitor the extent of the realization, or more especially of the non-realization, of economic, social and cultural rights and to devise strategies and programmes for their promotion”.³⁵ In addition, in the view of the Committee on Economic Social and Cultural Rights, “even in times of severe resources constraints whether caused by a process of adjustment, of economic recession, or by other factors the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes.”³⁶

The final element of flexibility lies in the fact that implementation of the ICESCR is not geared towards any particular political or economic system. While the CESCR has affirmed that the rights contained in ICESCR “are susceptible of realization within the context of a wide variety of economic and political systems”, it has specified that a given system should be democratic and respectful of the interdependence and indivisibility of civil and political rights and of economic, social and cultural rights.³⁷

3.3 Legal Limitations on the Enjoyment of Rights

Articles 4 and 5 set out the legal limitations that may be placed on the exercise of the rights protected in ICESCR. Article 4 provides that a State may impose limitations, as determined by law, upon the rights contained in the Covenant “only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.” Article 5(1) explains that the rights cannot be limited to a greater extent than is provided in the Covenant. Article 5(2) addresses the relationship of Covenant rights to other fundamental rights, and provides that limitations may not be imposed on

other fundamental rights “on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.”

3.4 Means of Implementation

Under ICESCR, the means by which the full realization of rights is achieved is open and broad. Nonetheless, despite this wide scope, the choice of means of implementation is not entirely free of constraints. ICESCR specifies that:

Although the precise method by which Covenant rights are given effect in national law is a matter for each State party to decide, the means used should be appropriate in the sense of producing results which are consistent with the full discharge of its obligations by the State party. The means chosen are also subject to review as part of the Committee’s examination of the State party’s compliance with its obligations under the Covenant.³⁸

The CESCR has stated that State Parties must respect the following three principles in deciding on appropriate means of implementation:

- the means of implementation must be adequate to ensure fulfilment of the obligations under the Covenant;
- the means of implementation should not differ from those used in relation to other human rights; and
- the formal incorporation of the ICESCR into national law is not obligatory, but is desirable as it provides a basis for the direct invocation of the ICESCR by individuals in national courts.³⁹

Means of Implementation

- Legislation
- Judicial or other effective remedies
- Other administrative, financial, educational and social measures

While the CESCR has emphasized that legislation can be indispensable in the implementation of a number of rights, it has also maintained that State Parties should make use of any other means of implementation appropriate under the circumstances with respect to each right.⁴⁰ As such, available means may include administrative, financial, educational and social measures.⁴¹

To this end, the CESCR has highlighted the importance of providing judicial or other effective remedies for violations of the rights contained in the Covenant, expressing the view that every right included in the Covenant possesses “some significant justiciable dimension.”⁴² It has therefore rejected the idea that economic, social and cultural rights could be defined as essentially non-justiciable, as this would go against the principles of the indivisibility and interdependence of human rights and prevent courts from effectively protecting the rights of the most vulnerable and disadvantaged groups in society.⁴³ In particular, the CESCR has pointed to a number of provisions in the Covenant which it deems to be entirely justiciable: Articles 3, 7(a)(i), 8, 10(3), 13(2)(a), (3) and (4), and 15(3).⁴⁴ The justiciability of these provisions arises from their expression in compulsory terms as well as the fact that many of them are similar in nature to civil and political rights, relating to the

principle of non-discrimination or taking on the form of a freedom. The CESCR has also rejected the idea that the provisions in the Covenant are not self-executing,⁴⁵ as many of these provisions have the requisite clarity and specificity to be executed by a court.⁴⁶ At the very least, the provisions of the Covenant should be used in the interpretation of domestic law.⁴⁷

Administrative remedies may also be an appropriate means of implementation in certain cases. The CESCR has noted that “those living within the jurisdiction of a State party have a legitimate expectation, based on the principle of good faith, that all administrative authorities will take account of the requirements of the Covenant in their decision-making.”⁴⁸ Administrative remedies should be accessible, affordable, timely and effective, and a right to judicial appeal from administrative decisions should also generally be available.

Nevertheless, State Parties are not *obligated* to provide effective remedies for violations of economic, social and cultural rights, as they are for civil and political rights.⁴⁹ The CESCR has expressed the view, however, that the failure to provide remedies would have to be justified by demonstrating that they are unnecessary or do not constitute appropriate means. The CESCR has indicated that it would not be easy to make this demonstration and, furthermore, that “in many cases, the other means used could be rendered ineffective if they are not reinforced or complemented by judicial remedies”.⁵⁰ It should also be noted that remedies for violations under ICESCR need only be judicial in nature if a right cannot be made fully effective without some role for the judiciary, such as rights concerning non-discrimination.⁵¹

Finally, in General Comment No. 10, the CESCR discussed the role of national human rights institutions in the protection of economic, social and cultural rights. It listed a number of activities that could be performed by such institutions with respect to ICESCR, including education, capacity-building and training activities; monitoring of compliance with the Covenant; assessment of the conformity of domestic law with the Covenant; identification of national-level benchmarks against which the realization of obligations can be measured; research on the realization of particular Covenant rights; and the examination of complaints alleging violations of the Covenant.⁵²

3.5 International Assistance & Cooperation

International assistance and cooperation, especially that which is economic and technical in nature, is an important element of the ICESCR.⁵³ Indeed, the notion of drawing on “the maximum of available resources” under of Article 2(1) includes those resources that are available from the international community through international assistance and cooperation. As well, Articles 11, 15, 22 and 23 specifically refer to such cooperation and assistance.⁵⁴ The CESCR has also emphasized that “in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States.”⁵⁵ As such, international assistance and cooperation form an indispensable means of implementing the ICESCR.

Similarly, the *Vienna Declaration and Programme of Action* invites countries to make “[i]ncreased efforts [...] to assist countries which so request to create the conditions whereby each individual can enjoy universal human rights and fundamental freedoms.”⁵⁶ The CESCR has interpreted the ICESCR provisions regarding international cooperation as containing extraterritorial obligations in certain occasions. For instance, in its General Comment No. 14 on the right to the highest attainable standard of health, the CESCR noted that State Parties must “prevent third parties from violating the right in other countries, if they are able to influence these third parties by way of legal or political means, in accordance with the *Charter of the United Nations* and applicable international law.”⁵⁷ Another example is General Comment No. 15 on the right to water, where the CESCR affirmed a duty to refrain from actions within a State’s jurisdiction that would have detrimental effects on the enjoyment of human rights in another State:

To comply with their international obligations in relation to the right to water, States parties have to respect the enjoyment of the right in other countries. International cooperation requires States parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries. Any activities undertaken within the State party’s jurisdiction should not deprive another country of the ability to realize the right to water for persons in its jurisdiction.⁵⁸

According to De Schutter, when read in conjunction with the *Charter of the United Nations* and the *Vienna Declaration*, the ICESCR can be understood as establishing obligations by States to uphold the human rights of populations in other States:⁵⁹ “There is a growing recognition [...] that the fact of the interdependency of States should lead to impose an extended understanding of State obligations, or an obligation on all States to act jointly in face of collective action problems faced by the international community of States.”⁶⁰ While he states that the content of such an obligation is yet to be defined, he suggests that this could include regulating “the activities of private actors whose behavior a State may decisively influence”.⁶¹ In the case of climate change, this could be the foundation of an obligation for high carbon-emitting States to adopt mitigation policies.

De Schutter’s interpretation of the ICESCR is reinforced by the *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, adopted by prominent human rights experts in September 2011. Articles 3 and 9 of the *Principles* affirm an interpretation of international law extending States’ obligations to extraterritorial situations where they are in a position to have an effect or influence on the realization of human rights:

3. All States have obligations to respect, protect and fulfil human rights, including civil, cultural, economic, political and social rights, both within their territories and extraterritorially. [...]
9. A State has obligations to respect, protect and fulfil economic, social and cultural rights in any of the following:
 - a) situations over which it exercises authority or effective control, whether or not such control is exercised in accordance with international law;

b) situations over which State acts or omissions bring about foreseeable effects on the enjoyment of economic, social and cultural rights, whether within or outside its territory;

c) situations in which the State, acting separately or jointly, whether through its executive, legislative or judicial branches, is in a position to exercise decisive influence or to take measures to realize economic, social, and cultural rights extraterritorially, in accordance with international law.⁶²

The foregoing suggests that the obligation to engage in international assistance and cooperation under the ICESCR is of particular relevance in the context of climate change mitigation and adaptation.

3.6 Compliance Mechanisms

3.6.1 State Reporting System

The State reporting system is the only compliance mechanism provided for in the ICESCR text. Under Article 16, State Parties are required to submit reports to the UN Economic and Social Council (ECOSOC), by way of the UN Secretary-General, on their observance of the obligations contained in the Covenant. Under Article 17, State Parties may indicate factors and difficulties in complying with these obligations. State Parties must submit an initial report within two years of signing the Covenant, and every five years thereafter.⁶³

The CESCR was created by ECOSOC in 1985 to consider the reports submitted by State Parties. The CESCR is comprised of 18 members, who are elected by ECOSOC for renewable four-year terms. The members serve in their personal capacities, not as State representatives. The CESCR meets for three-week sessions twice a year, during April-May and November-December. The CESCR may also hold extraordinary sessions. The following table sets out the procedure of the State reporting system.

State Reporting Procedure
The State party submits its report to the CESCR.
The CESCR decides at which session it will consider the report.
A five-member working group of the CESCR undertakes an initial review of reports that are to be considered at the next session; this initial review includes drawing up a list of questions for the State parties.
State Parties must respond in writing to the questions drawn up by the working group.
The CESCR reviews the State's report during public sessions, normally lasting around two days. The sessions center around the list of questions drawn up by the working group. Representatives of the State party present the report and respond to the working group's questions. The members of the CESCR state their views on the report, ask questions and request further information from the State representatives, and make suggestions and recommendations. At the start of a session, NGOs are afforded the right to make presentations and present alternative reports.
The CESCR produces a public report known as Concluding Observations. Concluding Observations are divided into five sections: (a) introduction; (b) positive aspects; (c) factors and difficulties impeding the implementation of the Covenant; (d) principal subjects of concern; (e) suggestions and recommendations.

The CESCR has set out guidelines regarding the form and content of reports to be submitted by State Parties under Articles 16 and 17 of the ICESCR.⁶⁴ The CESCR has also discussed at length the aims and objectives of the State reporting system. It has stated that the reporting obligations “are designed principally to assist each State party in fulfilling its obligations under the Covenant and, in addition, to provide a basis on which the Council, assisted by the Committee, can discharge its responsibilities for monitoring States parties’ compliance with their obligations and for facilitating the realization of economic, social and cultural rights in accordance with the provisions of the Covenant.”⁶⁵ The CESCR has moreover stated that the process of the preparation and submission of reports by States should serve a number of objectives:

- to ensure that a comprehensive review is undertaken with respect to national legislation, administrative rules and procedures, and practices in an effort to ensure the fullest possible conformity with the ICESCR;
- to ensure that the State Party monitors the actual situation with respect to each of the rights on a regular basis and is thus aware of the extent to which the various rights are, or are not, being enjoyed by all individuals within its territory or under its jurisdiction;
- to enable State Parties to elaborate clearly stated and carefully targeted policies on the basis of a detailed overview of the existing situation;
- to facilitate public scrutiny of government policies with respect to economic, social and cultural rights and to encourage the involvement of the various economic, social and cultural sectors of society in the formulation, implementation and review of the relevant policies;
- to provide a basis on which the State Party itself, as well as the CESCR, can effectively evaluate the extent to which progress has been made towards the realization of the obligations contained in the ICESCR;
- to enable the State Party itself to develop a better understanding of the problems and shortcomings encountered in efforts to realize progressively the full range of economic, social and cultural rights;
- to enable the CESCR, and the State Parties as a whole, to facilitate the exchange of information among States, and to develop a better understanding of the common problems faced by States and a fuller appreciation of the type of measures that might be taken to promote the effective realization of each of the rights contained in the ICESCR.⁶⁶

3.6.2 Adoption of General Comments

The CESCR adopts General Comments on various articles of the ICESCR to clarify their content and facilitate their observance by State Parties. In particular, the CESCR:

endeavours, through its general comments, to make the experience gained so far through the examination of these reports available for the benefit of all States parties in order to assist and promote their further implementation of the Covenant; to draw the attention of the States parties to insufficiencies disclosed by a large number of reports; to suggest improvements in the

reporting procedures and to stimulate the activities of the States parties, the international organizations and the specialized agencies concerned in achieving progressively and effectively the full realization of the rights recognized in the Covenant. Whenever necessary, the Committee may, in the light of the experience of States parties and of the conclusions which it has drawn therefrom, revise and update its general comments.⁶⁷

General Comments⁶⁸		
No.	Subject	Year
1	Reporting by States parties	1989
2	International technical assistance measures (art. 22)	1990
3	The nature of States parties' obligations (art.2 (1))	1990
4	The right to adequate housing	1991
5	Persons with disabilities	1994
6	The economic, social and cultural rights of older persons	1995
7	The right to adequate housing: forced evictions (art.11 (1))	1997
8	The relationship between economic sanctions and respect for economic, social and cultural rights	1997
9	The domestic application of the Covenant	1998
10	The role of national human rights institutions in the protection of economic, social and cultural rights	1998
11	Plans of action for primary education (art. 14)	1999
12	The right to adequate food (art. 11)	1999
13	The right to education (art. 13)	1999
14	The right to the highest attainable standard of health (art. 12)	2000
15	The right to water (arts. 11 and 12)	2002
16	The equal right of men and women to the enjoyment of all economic, social and cultural rights (art.3)	2005
17	The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author (art. 15 (1) (c))	2005
18	The right to work (art. 6)	2005
19	The right to social security	2008
20	Non-discrimination in economic, social and cultural rights (art. 2, para. 2)	2009
21	The right of everyone to take part in cultural life	2009

3.6.3 Other Procedures

Fact-finding missions

Members of the CESCR may undertake fact-finding missions within State Parties to assess, first-hand, the observance of the ICESCR. To this end, the CESCR has requested invitations to visit the territories of States Parties, including the Dominican Republic and Panama. Of these two, only Panama issued such an invitation and a fact-finding mission took place in April 1995.

General Discussion Days

During each session, the CESCR holds a day of general discussion on a specific issue with UN specialised agencies and NGOs. The days of general discussion have three purposes: (1) assist the CESCR in furthering its understanding of these issues; (2) encourage inputs into the CESCR's work from all interested parties; and (3) form the basis for the elaboration of General Comments.⁶⁹

Days of General Discussion⁷⁰	
Subject	Year
Right to food	1989
Right to housing	1990
Economic and social indicators	1991
Right to take part in cultural life (art. 15)	1992
Rights of the ageing and elderly	1993
Right to health (art. 12)	1993
Role of social safety nets as a means of protecting economic, social and cultural rights, with particular reference to situations involving major structural adjustment and/or transition to a free market economy	1994
Human rights education and public information activities	1994
Interpretation and practical application of the obligations incumbent on States parties	1995
Draft optional protocol to the Covenant	1995 / 1996
Normative content of the right to food	1997
Globalization and its impact on the enjoyment of economic and social rights	1998
Right to education (arts. 13 & 14)	1998
Right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which a person is the author	2000
International consultation on economic, social and cultural rights in development activities of international institutions	2001
Equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3)	2002
Right to work (art. 6)	2003
Right to social security (art. 9)	2006
Right to take part in cultural life (art. 15)	2008
Non-discrimination and economic, social and cultural rights (art. 2)	2008
The right to sexual and reproductive health (arts. 10 & 12)	2010

Collaboration with UN Bodies

The CESCR collaborates with UN specialized agencies and Special Rapporteurs on the implementation of the ICESCR. Examples of such collaboration include the frequent addresses made by other UN bodies to the CESCR during its sessions.

Optional Protocol

In 1996, acting upon a recommendation by the World Conference on Human Rights, the CESCR elaborated a draft Optional Protocol to the ICESCR granting the right of individuals or groups to submit communications concerning non-compliance with the Covenant. The draft Optional Protocol was adopted by the Human Rights Council in June 2008, and by the UN General Assembly in December 2008. It entered into force in May 2013.

3.6.4 Issues & Difficulties

Unfortunately, the compliance mechanisms established to monitor, facilitate and ensure the observance by State Parties to the ICESCR remain unsatisfactory. Firstly, many States fail to fulfil their reporting obligations by submitting late, incomplete, inadequate or vague reports. Secondly, very little case law exists in the field of economic, social and cultural rights, complicating the task of interpreting and applying these rights, which are already considered vague and ambiguous by some. This second difficulty may be attenuated by the coming into force of the Optional Protocol discussed above, which allows the CESCR to hear individual or group complaints.

²⁷ See *ICCPR*, *supra* note 22, ([s]tates undertake to “respect and ensure rights recognized in the Covenant” at Article 2(1)).

²⁸ *General Comment No 3*, *supra* note 9 at para 2.

²⁹ *Ibid* at para 10.

³⁰ *ICESCR*, *supra* note 21, at Article 2(2).

³¹ *Ibid* at para 9.

³² *Ibid*.

³³ *Ibid*.

³⁴ *Ibid*, at para 10.

³⁵ *Ibid*, at para 11.

³⁶ *Ibid*, at para 12.

³⁷ *Ibid*, at para 8.

³⁸ CESCR, *General Comment No 9*, UN Doc E/C.12/1998/24, (3 December 1998) at para 5 [*General Comment No 9*].

³⁹ *Ibid* at paras 7-8.

⁴⁰ *General Comment No 3*, *supra* note 9 at paras 3-4.

⁴¹ *Ibid* at para 7.

⁴² *Ibid* at para 10.

⁴³ *Ibid*.

⁴⁴ *General Comment No 3*, *supra* note 9 at para 5.

⁴⁵ A self-executing rule is a rule that can be applied by a judicial body. A non-self-executing rule must be operationalized in some way before it can be applied by a judicial body.

⁴⁶ *General Comment No 9*, *supra* note 38 at para 11.

⁴⁷ *Ibid* at para 11.

⁴⁸ *Ibid*.

⁴⁹ See *ICCPR*, *supra* note 22, Article 2(3)(a) ([s]tates are obligated to provide effective remedies with respect to violations of civil and political rights under the terms of certain human rights treaties); *Prosecutor v Rnamakuba*,

ICTR-98-44C-T, Decision on Appropriate Remedy, (31 January 2007) at paras 40-41 (International Criminal Tribunal for Rwanda, Trial Chamber III) (this obligation has achieved customary status as well).

⁵⁰ *General Comment No 9*, *supra* note 38 at para 3.

⁵¹ *General Comment No 9*, *supra* note 38 at para 9.

⁵² CESCR, *General Comment No 10*, UN Doc E/C.12/1998/25, (14 December 1998) at para 3 [*General Comment No 10*].

⁵³ See CESCR, *General Comment No 2*, UN Doc E/1990/23, (2 February 1990) [*General Comment No 2*] (on international technical assistance measures).

⁵⁴ *General Comment No 3*, *supra* note 9 at para 13.

⁵⁵ *Ibid* at para 14.

⁵⁶ United Nations, *Vienna Declaration and Programme of Action*, UN Doc A/CONF.157/23, (12 July 1993), Article 5.

⁵⁷ CESCR, *General Comment No 14* (2000): *The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc E/C.12/2000/4, (2000) at para 39 [*General Comment No 14*].

⁵⁸ CESCR, *General Comment No. 15* (2002): *The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc E/C.12/2002/11, (26 November 2002) at para 31 [*General Comment No 15*].

⁵⁹ Olivier De Schutter, “Extraterritorial Jurisdiction as a Tool for Improving the Human Rights Accountability of Transnational Corporations” (2006) at 18 (report prepared as a background paper for the legal experts meeting with John Ruggie in Brussels, 3-4 November 2006).

⁶⁰ *Ibid* at 19.

⁶¹ *Ibid* at 20.

⁶² Olivier De Schutter et al, “Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights” (2012) 34 *Human Rights Quarterly* 1085 at 1090.

⁶³ ECOSOC, *Res 1988/4*, UN Doc E/C.12/1989/4.

⁶⁴ See CESCR, *Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, UN Doc E/C.12/1991/1, (17 June 1991) [*General Reporting Guidelines*].

⁶⁵ CESCR, *General Comment No 1*, UN Doc E/1989/22, (24 February 1989) at para 1.

⁶⁶ *Ibid* at paras 2-9 (adapted from).

⁶⁷ CESCR, *Introduction, The purpose of general comments*, UN Doc E/1989/22, Annex III, at 87.

⁶⁸ See “General Comments”, online: OHCHR <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11>.

⁶⁹ CESCR, *Report on the Tenth and Eleventh Sessions*, UN Doc E/1995/22, (1 January 1995) at para 44.

⁷⁰ OHCHR, online: OHCHR <<http://www2.ohchr.org/english/bodies/cescr/discussion.htm>> (documents from general discussion days are available).

4. EQUALITY AND NON-DISCRIMINATION

Article 2

(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.

4.1 Understanding the Right to Equality and Non-Discrimination

4.1.1 Concept & Content

Under international human rights law, the concept of equality is implemented through the prohibition of certain types of discrimination. Discrimination is defined, according to the CESCR, as “any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination [discussed below] and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights.”⁷¹ As the CESCR has emphasised “[d]iscrimination undermines the fulfilment of economic, social and cultural rights for a significant proportion of the world’s population.”⁷²

Two approaches to prohibiting discrimination are possible, either through the principle of equality, or through the right of non-discrimination. On one hand, the principle of equality characterizes all fundamental rights, and flows from their universal character: everyone should enjoy equally the same “universal” rights. Hence, the first recital common to the two international covenants recognizes “the *equal* and inalienable rights of all members of the human family.”⁷³ On the other hand, the right to non-discrimination can be understood as an autonomous right belonging to the members of certain protected categories.

Equality and the right to non-discrimination not only demand that a State respect and ensure the rights of *everyone*, but also that it does this *with the same level of care*. In other words, no one should, without a legitimate justification, enjoy a lesser degree of protection than others on the basis of a prohibited ground of discrimination, even if the protection enjoyed by this person does indeed reach the threshold of the minimum obligations of a state.⁷⁴

Types of discrimination

Discrimination can be either formal or substantive, and States must work towards the elimination of both. The elimination of formal discrimination requires “ensuring that a State’s constitution, laws and policy documents do not discriminate on prohibited grounds.”⁷⁵ The elimination of substantive discrimination, on the other hand, requires “paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations.”⁷⁶ To this end, State Parties must

immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination. For example, ensuring that all individuals have equal access to adequate housing, water and sanitation will help to overcome discrimination against women and girl children and persons living in informal settlements and rural areas.

Discrimination may also be categorized as direct or indirect. Direct discrimination occurs when an individual is treated less favourably than another person in a similar situation for a reason related to a prohibited ground.⁷⁷ By contrast, indirect discrimination refers to cases of *de facto* discrimination, where a law, policy or practice may appear neutral on its face, but nonetheless has a disproportionate impact on the exercise of ICESCR rights “as distinguished by prohibited grounds of discrimination.”⁷⁸

Prohibited grounds

Article 2(2) provides an illustrative list of prohibited grounds of discrimination under ICESCR. These grounds are race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁷⁹

This list is not exhaustive, however; the expression “other status” in Article 2(2) paves the way for arguments in favour of adding further grounds of discrimination. To this end, the CESCR has identified the following grounds of non-discrimination in addition to those listed explicitly in Article 2(2): disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, and economic and social situation.⁸⁰

Other provisions of the ICESCR reiterate certain applications of the prohibition of discrimination in the enjoyment of economic, social and cultural rights, further highlighting the prohibition of discrimination between men and women (Art. 3); in the workplace (Art. 7(a)(i) and (c)); and in access to higher education (Art. 13(2)(c)).

Permissible Scope of Differential Treatment

Although prohibited in principle, differential treatment based on “grounds of discrimination” may nonetheless be justified (and, therefore, permitted) under exceptional circumstances. According to the CESCR, such justification requires that the differential treatment be “legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society.”⁸¹ In addition, the justification of such differential treatment requires a “clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects.”⁸² Thus, a justified differentiation based on a prohibited ground is allowed if it is lawful (not arbitrary), based on objective elements, and reasonable in its consequences.

4.1.2 Obligations of State Parties

State Parties to ICESCR have the obligation to undertake to guarantee that the rights enunciated in the Covenant are exercised without discrimination.⁸³ To this end, Article 2(1) states:

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.”⁸⁴

The level of a State’s obligation depends on its “available resources,” meaning that least developed countries (lacking financial resources), and so-called “failing states” (lacking political resources), may not be able to make the same efforts toward the realization of economic, social and cultural rights as wealthy countries with a strong and uncontested government. For example, Article 2(3) of ICESCR states that “[d]eveloping 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.” Nevertheless, whatever its available resources, the ICESCR clearly provides that each and every State party does have certain obligations; “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.”⁸⁵

Regarding the nature of these obligations, the CESCR has distinguished five actions that States should take to implement the right to non-discrimination at the national level:

1. Legislation: The “[a]doption of legislation to address discrimination is indispensable” and should “aim at eliminating formal and substantive discrimination” through “attribute[ing] obligations to public and private actors.”⁸⁶
2. Policies, plans and strategies: State Parties should ensure that strategies, policies, and plans of action are adopted and implemented in order to address both formal and substantive discrimination by public and private actors with respect to rights covered by the ICESCR. These strategies, policies and plans of action may take numerous forms. For instance, “[t]eaching on the principles of equality and non-discrimination should be integrated in formal and non-formal inclusive and multicultural education, with a view to dismantling notions of superiority or inferiority based on prohibited grounds and to promote dialogue and tolerance between different groups in society.”⁸⁷
3. The elimination of systemic discrimination: States must take an active approach to eliminating systemic discrimination and segregation. The CESCR highlights that tackling systemic discrimination “will usually require a comprehensive approach with a range of laws, policies and programmes, including temporary special measures.”⁸⁸
4. Remedies and accountability: States should provide for mechanisms and institutions that effectively address the individual and structural nature of the harm caused by

discrimination in the area of ICESCR rights. In particular, this should occur through “courts and tribunals, administrative authorities, national human rights institutions and/or ombudspersons,” which “adjudicate or investigate complaints promptly, impartially, and independently and address alleged violations relating to article 2, paragraph 2, including actions or omissions by private actors.”⁸⁹

5. Monitoring, indicators and benchmarks: The CESCR highlights that “States parties are obliged to monitor effectively the implementation of measures to comply” with their obligations.⁹⁰

Finally, with respect to discrimination in the private sphere (for example, within families or in the workplace), States are required to “adopt measures, which should include legislation, to ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds.”⁹¹

Possible Impacts of Climate Change on the Right to Equality

The right to equality and non-discrimination is of prime importance in the context of climate change. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has observed that “[t]he effects of climate change will be felt most acutely by those segments of the population who are already in vulnerable situations due to factors such as poverty, gender, age, minority status, and disability.”⁹² Particular regions (including sub-Saharan Africa, South Asia, the Middle East, and the Arctic) are also likely to bear a greater burden of climate change impacts on human rights.⁹³

In response to concerns about the unequal impact of climate change on vulnerable populations, the OHCHR has emphasized that “[u]nder international human rights law, States are legally bound to address such vulnerabilities in accordance with the principle of equality and non-discrimination.”⁹⁴

Adapting the environmental justice approach – that is, an approach that accounts for the disproportionate impacts of environmental harms on the health and well-being of particular marginalized groups, such as low-income communities and communities of colour⁹⁵ – to the particular context of climate change may therefore be of great relevance to identifying the impacts of climate change on the right to equality and non-discrimination. For instance, Beverly Wright and Earthea Nance observe that:

[p]re-existing environmental justice vulnerabilities make it harder for vulnerable populations (whose health is already compromised as a result of existing environmental burdens) to protect themselves against increasing climate change health burdens, such as waterborne disease. Vulnerable populations already living in disaster-prone areas (as a result of poverty and discrimination) are even more vulnerable to the coming onslaught of more intense and more frequent storms.⁹⁶

4.2 Understanding the Right to Equality and Non-Discrimination in the Context of Climate Change Mitigation Policies

States must take the right to non-discrimination into account in the design, implementation and monitoring of mitigation measures. These mitigation measures may take the form of large-scale infrastructure and energy projects, such as hydroelectric dams, or economic policies, such carbon pricing and fiscal incentives.

Large-scale mitigation projects have the potential to seriously impact the lives of local populations. The Three Gorges Dam on China's Yangtze river, whose construction displaced more than a million people,⁹⁷ is just one example out of many. Conflicts of interest are frequent between central and peripheral agents involved in such projects (e.g. majority/minorities, rural/urban populations, or simply populations of different regions). In particular, Indigenous peoples are often disproportionately affected by mitigation projects, due to their special relationship to their ancestral territory and natural resources, and frequent political and socio-economic marginalization. They may also lack the economic and technical resources available to non-Indigenous communities to deal with the effects of such projects.

Other mitigation measures, such as carbon pricing, may also disproportionately burden certain segments of the population. While the uneven impact of such measures may be less immediately obvious, the effects can be just as discriminatory, as unequal participation, access to justice, and political representation can result in *de facto* discrimination in mitigation measures against Indigenous and local communities, minorities, women and other marginalized groups.

Case study: Does Carbon Pricing Place a Disproportionate Burden on Australia's Indigenous Communities?

Australia is pursuing a carbon pricing policy as part of its national climate change response. Although the original Carbon Pollution Reduction Scheme (CPRS), which would have introduced an emission trading scheme (ETS) was shelved in 2010, the Australian Parliament passed a new clean energy legislation package in 2011, introducing a carbon tax that will transition into an ETS in 2015.

While the details of this ETS have yet to be finalized, it appears that the impact of carbon pricing will disproportionately affect Australia's Indigenous peoples. Their communities are more vulnerable than the country's non-Indigenous population for a number of reasons.⁹⁸ For example, a disproportionate number of Indigenous Australians live in remote or very remote areas; they are more likely to be in the lowest quintile of income earners; they are much less likely to own their own homes; and they suffer from a lack of education and access to information.⁹⁹ As a result of these factors, they will have "limited access to emission intensive product substitutes, and alternative transport options."¹⁰⁰ The industries most affected by carbon pricing are also likely to have a disproportionate percentage of Indigenous employees.¹⁰¹

In order to counter the potential for substantive discrimination in Australia's climate change response, the government must therefore take special measures to ensure that Indigenous peoples do not bear a disproportionate burden. For example, Indigenous communities should be involved in helping to set policy under the future ETS.¹⁰² In addition, tax relief promised by the government to offset the adverse impacts of the ETS on disadvantaged communities should be specially fine-tuned in the case of Indigenous peoples to achieve more equal outcomes.¹⁰³

4.3 Understanding the Right to Equality and Non-Discrimination in the Context of Climate Change Adaptation Policies

The right to non-discrimination is also relevant in the context of climate change adaptation. Because populations will be unequally affected by climate change impacts, States adaptation responses must take this inequality into account in their design and implementation. For instance, the Committee on the Elimination of Discrimination against Women highlighted that "climate change does not affect women and men in the same way and has a gender-differentiated impact."¹⁰⁴ Women's unequal access to health care, social security, adequate housing and disaster relief are just several examples of this gender differentiation, which requires particular consideration in adaptation planning.¹⁰⁵

In particular, the right to non-discrimination does not only prohibit unjustified distinctions based on certain grounds; it also demands that public authorities distinguish between significantly different situations. In the words of the Committee on Economic, Social and Cultural Rights, "States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination."¹⁰⁶ Therefore, public authorities may be required to take positive measures to help those categories of persons who are most vulnerable to climate change. For example, in some circumstances, such populations may require specific adaptation policies, tailored for their particular needs and response to their particular characteristics.¹⁰⁷

Case study: Project for the protection of children under five and pregnant women against malaria in the areas most vulnerable to climate change, Benin

The project for the protection of children under five and pregnant women against malaria in areas most vulnerable to climate change was developed by a partnership between several Beninese government ministries, with the support of the Global Environment Facility's Least Developed Countries Fund. This project succeeded in mainstreaming the protection of these particularly vulnerable groups into one of the country's adaptation strategies.

The project identifies malaria as a growing public health issue due to the effects of climate change. In particular, it recognizes that some sections of the population are particularly vulnerable to the disease, noting that:

- An important part of the population cannot access to health services for lack of financial resources, in the absence of a social security plan;
- Certain regions are at higher risk;

- Malaria is more dangerous for young children and pregnant women.

To reduce morbidity and mortality induced by malaria, the project therefore aims at focusing the country's limited resources on the geographic regions most severely affected by malaria, as well as on high risk populations – namely, young children and pregnant women.¹⁰⁸

The project also demonstrates the extent to which recognising the unequal impacts of climate change, protecting the right to equality and non-discrimination, and ensuring the efficiency of adaptation policies are often mutually reinforcing.

⁷¹ CESCR, *General Comment No 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2)*, (2009) at para 7 [*General Comment No 20*].

⁷² *Ibid* at para 1.

⁷³ ICESCR, *supra* note 21 at preamble; ICCPR, *supra* note 22 at preamble (emphasis added).

⁷⁴ See generally *General Comment No 3, supra* note 9 at para 10; *General Comment No 20, supra* note 72 at paras 1-14.

⁷⁵ *General Comment No 20, supra* note 72 at para 8.

⁷⁶ *Ibid*.

⁷⁷ *Ibid*. (it may also include “detrimental acts or omissions on the basis of prohibited grounds where there is no comparable similar situation (e.g. the case of a woman who is pregnant) at para 10(a)).”

⁷⁸ *Ibid*.

⁷⁹ ICESCR, *supra* note 21, Article 2(2).

⁸⁰ *General Comment 20, supra* note 72 at paras 27-35.

⁸¹ *Ibid* at para 13.

⁸² *Ibid*.

⁸³ ICESCR, *supra* note 21, Article 2(2).

⁸⁴ *Ibid*, Article 2(1).

⁸⁵ *General Comment No 3, supra* note 9 at para 11.

⁸⁶ *General Comment 20, supra* note 72 at para 37.

⁸⁷ *Ibid* at para 38.

⁸⁸ *Ibid* at para 39.

⁸⁹ *Ibid* at para 40.

⁹⁰ *Ibid* at para 41.

⁹¹ *General Comment 20, supra* note 72 at para 11.

⁹² OHCHR *Report on Climate Change and Human Rights, supra* note 10 at para 42.

⁹³ Office of the High Commissioner for Human Rights, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*, UN Doc A/HRC/10/61, (15 January 2009).

⁹⁴ OHCHR *Report on Climate Change and Human Rights, supra* note 10 at para 42.

⁹⁵ David Monsma, “Equal Rights, Governance, and the Environment: Integrating Environmental Justice Principles in Corporate Social Responsibility” (2006) 33(2) *Ecology Law Quarterly* 443.

⁹⁶ Beverly Wright & Earthea Nance, “Toward Equity: Prioritizing Vulnerable Communities in Climate Change” (2012) 4 *Duke Forum for Law & Social Change* 1.

⁹⁷ See e.g. International Rivers, “Three Gorges Dam”, online: International Rivers <<http://www.internationalrivers.org/campaigns/three-gorges-dam>>.

⁹⁸ Karen Bubna-Litic, “Climate Change Impacts on the Poor – A Case Study of Australia’s Indigenous Population and the Impact of Australia’s Response on this Population,” in Yves Le Bouthillier et al, eds, *Poverty Alleviation and Environmental Law* (Massachusetts: Edward Elgar Publishing Limited, 2012) at 77.

⁹⁹ *Ibid* at 81.

¹⁰⁰ *Ibid*.

¹⁰¹ *Ibid*.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ Committee on the Elimination of Discrimination against Women, *Statement of the CEDAW Committee on Gender and Climate Change*, 44th Sess, (20 July – 7 August 2009) at 1, online: OHCHR <http://www2.ohchr.org/english/bodies/cedaw/docs/Gender_and_climate_change.pdf>.

¹⁰⁵ *Ibid* at 1-2.

¹⁰⁶ *General Comment 20*, *supra* note 72 at para 9.

¹⁰⁷ The Inter-American Court of Human Rights has strong language on taking into account the particular vulnerability of certain groups in guaranteeing rights. See e.g. *Sawhoyamaya Indigenous Community v. Paraguay* at para 189.

¹⁰⁸ UNFCCC, “Benin: Profil des projets du NAPA”, online: UNFCCC <http://unfccc.int/files/adaptation/napas/application/pdf/02_ben_pp.pdf> (in French).

5. THE RIGHTS TO WORK AND SOCIAL SECURITY

5.1 Right to Work

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 8

1. The States Parties to the present Covenant undertake to ensure:
 - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
 - (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

5.1.1 Understanding the Right to Work

Concept & Content

The right to work is contained in Article 6 of the ICESCR, which deals more comprehensively with work than any other instrument. This right refers to *decent* work – work that respects fundamental human rights as well as the rights of workers.¹⁰⁹ It is further developed through Articles 7 and 8, such that these three articles are considered to be interdependent.¹¹⁰ As noted in the CESCR’s General Comment No. 18, several other international and regional instruments also recognize the right to work.¹¹¹

The right to work is both individual and collective in nature, and covers all forms of work, from independent work, to dependent wage-paid work.¹¹² The exercise of work also requires the existence of four interdependent and essential elements: availability, accessibility, acceptability and quality.¹¹³

Essential Elements for the Exercise of Work	
Availability	“States parties must have specialized services to assist and support individuals in order to enable them to identify and find available employment;” ¹¹⁴
Accessibility	<ul style="list-style-type: none"> - “The labour market must be open to everyone under the jurisdiction of States parties;”¹¹⁵ - “the Covenant prohibits any discrimination in access to and maintenance of employment on the grounds of race, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, or civil, political, social or other status, which has the intention or effect of impairing or nullifying exercise of the right to work on a basis of equality;”¹¹⁶ - “Physical accessibility is one dimension of accessibility to employment;”¹¹⁷ - “Accessibility includes the right to seek, obtain and impart information on the means of gaining access to employment through the establishment of data networks on the employment market at the local, regional, national and international levels;”¹¹⁸
Acceptability and quality	“Protection of the right to work has several components, notably the right of the worker to just and favourable conditions of work, in particular to safe working conditions, the right to form trade unions and the right freely to choose and accept work.” ¹¹⁹

The full and effective enjoyment of the right to work is also “essential for realizing other human rights and forms an inseparable and inherent part of human dignity.”¹²⁰ Economic, social and cultural rights, such as the right to an adequate standard of living, may be particularly affected. To this end, Article 7 recognizes the right to the enjoyment of just and favourable conditions of work, including fair wages and equal pay for equal work, safe and healthy working conditions, and rest and leisure time, as well as ensuring a decent living for workers and their families.

The ICESCR also recognizes that work and productive employment are important in light of the “the social role which they confer and the feeling of self esteem which workers derive from them.”¹²¹ This link with human dignity is emphasized in Article 6(1), which recognizes the right of workers to freely chose or accept work, as well as in the guarantee in Article 7 of fair and equal remuneration and opportunity for promotion. Finally, in its collective

dimension under Article 8, the right to work includes freedom of association rights relating to trade unions.

The right to work does not imply an absolute and unconditional right to obtain employment. Rather, it implies three specific rights: (1) the right not to be forced in any way whatsoever to exercise or engage in employment; (2) the right of access to a system of protection guaranteeing each worker access to employment; and (3) the right not to be unfairly deprived of employment.¹²²

The first right reflects the prohibition on forced labour, which is defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”¹²³ The second right implies the establishment of a system of access to employment providing “specialized services to assist and support individuals in order to enable them to identify and find available employment” (availability); an open labour market that is accessible to all without discrimination (accessibility); and the right to just and favourable conditions of work, as well as the right to join and form trade unions (acceptability and quality).¹²⁴ The third right imposes “the requirement to provide valid grounds for dismissal as well as the right to legal and other redress in the case of unjustified dismissal.”¹²⁵

Obligations of State Parties

The core obligation that State Parties are bound to respect under Article 6 is the obligation to ensure non-discrimination and equal protection of employment, including the obligations:

- (a) To ensure the right of access to employment, especially for disadvantaged and marginalized individuals and groups, permitting them to live a life of dignity;
- (b) To avoid any measure that results in discrimination and unequal treatment in the private and public sectors of disadvantaged and marginalized individuals and groups or in weakening mechanisms for the protection of such individuals and groups;
- (c) To adopt and implement a national employment strategy and plan of action based on and addressing the concerns of all workers on the basis of a participatory and transparent process that includes employers’ and workers’ organizations.¹²⁶

In terms of the progressive realization of the right to work, States parties are obliged to take steps:

- to *respect* the right to work by prohibiting forced or compulsory labour and refraining from denying or limiting equal access to decent work for all persons, especially disadvantaged and marginalized individuals and groups;
- to *protect* the right to work by ensuring equal access to work and training, ensuring that privatization measures do not undermine workers’ rights;
- to *fulfil* the right to work by formulating and implementing an employment policy which seeks to counter underemployment and unemployment, by taking positive measures to enable and assist individuals to enjoy the right to work and to implement technical and vocational education plans to facilitate access to

employment and by undertaking educational and informational programmes to instil public awareness on the right to work.¹²⁷

Possible Impacts of Climate Change on the Right to Work

Climate change may affect the right to work in numerous ways, notably by provoking important economic transformations or by jeopardizing individuals' access to safe working conditions. For example, with the expected bleaching of coral reefs due to increased temperatures and ocean acidification,¹²⁸ and with changes to ecosystems and wildlife stocks, economies relying on tourism may face difficulties as tourism declines, resulting in the loss of employment. Rising temperatures may also affect areas relying on winter tourism.¹²⁹ Changes in ocean acidity and temperature may impact fisheries, as fish stocks collapse or migrate. Other slow onset events such as increased temperatures, rainfall variability, and water salinization will effect the agricultural sector, impacting employment.¹³⁰

Extreme weather events such as hurricanes and typhoons will also have important economic consequences that affect the right to work due to the destruction of infrastructure, the interruption of transportation, and the disruption of business activities. Some businesses might decide to leave vulnerable areas permanently, resulting in job losses or necessitating migration.

With regard to safe working conditions, the IPCC warns that increased temperatures will lead to higher risks of injuries, infectious, respiratory and skin diseases, and exposure to wildfires for workers in certain sectors (including farming, construction, and logging).¹³¹

5.1.2 Understanding the Right to Work in the Context of Climate Change Mitigation Policies

The right to work may be affected by governments' mitigation measures in response to climate change. This may occur through States' transition to a low carbon economy, as well as in relation to the implementation of mitigation measures, such as projects under the Clean Development Mechanism (CDM) or Reducing Emissions from Deforestation and Forest Degradation (REDD+) in developing countries. For example, the implementation of REDD+ projects is likely to have an impact on the livelihoods of those living in affected areas, including those engaged in agriculture or forestry.

As governments seek to mitigate climate change by moving away from economies that are heavily dependent on carbon-intensive industries, they will face new challenges and opportunities. Value and production chains will need to be adapted for low-carbon economies. For example, reductions in coal-fired power generation will lead to job losses in the mining industry as well as in rail freight and related industries,¹³² while the transition to collective transport will lead to a transformation of the automobile industry. On the other hand, increased demand for sustainable production will create green employment opportunities via production and value chains.¹³³ Ultimately, it is the responsibility of States to ensure that innovation and development create new opportunities for investment and growth.

In addition, States have a core obligation to adopt and implement national employment strategies and plans of action, which may be of particular importance in the case of economies in transition.¹³⁴ Indeed, the transition to a low-carbon economy will effect the labour markets of States as some jobs will be adapted or refined to the new green economy, new jobs will be created, and other jobs will be lost.¹³⁵ States must ensure the right to work during this transition.¹³⁶ In this context, the right to work and the right to social security overlap, and the creation of “green jobs” may also be viewed as an adaption measure ensuring more sustainable livelihoods adapted to new realities.

Finally, while the creation of new green jobs will help mitigate emissions, States must also ensure that they respect, protect and fulfil the right to work in the changing landscape of employment and livelihood. For example, employment opportunities in emerging sectors must be made available in a non-discriminatory way, with particular attention given to disadvantaged and marginalized individuals and groups. Such employment opportunities must also be accessible and acceptable in the manner described in section 5.1.1 above.

CASE STUDY: The Right to Work and the United Kingdom’s Green Economy

Estimates suggest that the transition to green economy could create upwards of 400,000 new jobs.¹³⁷ The UK Government’s 2009 “Low Carbon Industrial Strategy”¹³⁸ is a key part of its overall mitigation strategy.¹³⁹ Focusing on jobs, the strategy sets out how the UK plans to take advantage of the opportunities presented by the transition to a low carbon economy. The core objective of the strategy is “to ensure that British businesses and workers are equipped to maximise the economic opportunities and minimise the costs.”¹⁴⁰ To this end, it discusses various economic areas that are predicted to grow and create new green jobs, such as offshore wind power, carbon markets, and low-carbon buildings and construction. The Government also acknowledges that it “will aim to make the transition [to a low carbon economy] in a way that ensures a fair distribution of costs and benefits across the economy.”¹⁴¹

Of particular significance with respect to the right to work is the strategy’s inclusion of provisions new skills training, and measures to address the potential skills gap and “just transition” considerations in moving away from a more carbon-intensive economy. Thus, the strategy strives to respect the right to work by taking into consideration the effects of the transition on individual workers and businesses alike.

5.1.3 Understanding the Right to Work in the Context of Climate Change Adaptation Policies

It is clear that a range of livelihoods will be impacted by climate change. As a result, States must work with those in impacted sectors to provide them with the skills, knowledge and resources they need to adapt to changing circumstances. In some cases, where adaptation within a given sector is impossible, States must facilitate the transition to alternative livelihoods in way that fully respects the right to work.

In order to respect the right to work in adaptation policies, States should take employment and livelihood considerations into account in their adaptation impact assessments. For

example, the ILO recommends that such assessments include the impact slow-onset and extreme weather events on:

- Employment: What will be the direct and indirect employment losses (and gains) due to climate change effects (including migratory flows)?
- Productivity of existing employment and livelihoods: What will be the changes in existing productivity that may not result in actual job losses but are likely to result in the deterioration of employment and livelihoods?
- Multiplier benefits: What are multiplier effects throughout the economy and employment as a whole?
- Impacts on the quality of employment: What are the impacts on informality, standards and conditions, child labour, occupational health and safety?
- Demands for social protection and security, demands on labour market institutions for retraining and other active labour market policies, increases in transitional unemployment, etc.
- Social impacts of direct and indirect factors: What are the decreases in household income and consumption? Impacts on health and education?¹⁴²

Adaptation in relation to work and livelihoods is also intrinsically linked with mitigation. For example, “exploring the ways in which strategies of adaptation in developed countries can work with strategies of mitigation is leading to a more precise focus on public policy and the drivers of change in economic activity.”¹⁴³ In this respect, work adaptation policies can be viewed from the standpoint of the transition to a low-carbon economy. Work can be “greened” or adapted to be more conducive to low-carbon social structures.

CASE STUDY: Prioritizing the Protection of Livelihoods of the Vulnerable in Lesotho’s Adaptation Planning¹⁴⁴

Lesotho has made the positive livelihood and employment impacts of adaptation a priority in its National Adaptation Programme of Action (NAPA). In the NAPA, proposed adaptation measures were evaluated on: the impact on vulnerable groups and resources; impact on the economic growth rate of the vulnerable communities; impact on poverty reduction; multilateral environmental agreements synergies; employment-creation; and prospects for sustainability.

On the basis of this assessment, the top three adaptation options identified were: improving the resilience of livestock production systems under extreme climatic conditions in various livelihood zones in Lesotho; promoting sustainable crop-based livelihood systems in particular regions; and capacity-building and policy reform to integrate climate change into sectoral development plans.

5.2 Right to Social Security

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

5.2.1 Understanding the Right to Social Security

The right to social security is included in Article 9 of ICESCR. This right represents “an important legal guarantee aimed at ensuring the right of everyone to live a life in human dignity in situations of social distress such as old age, disability, unemployment, employment injury, illness, childbirth, death, or other unforeseen circumstances.”¹⁴⁵ The right to social security is also contained in various other international and regional instruments.¹⁴⁶

Concept & Content

As stated by the Committee on Economic, Social and Cultural Rights (CESCR), social security plays an important role in reducing and alleviating poverty, preventing social exclusion, and promoting social inclusion.¹⁴⁷ The right to social security includes the right to access and maintain benefits without discrimination, to secure protection from “(a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents.”¹⁴⁸ Social security may be delivered through various measures, including contributory or insurance-based schemes such as social insurance, non-contributory schemes such as universal schemes, or other delivery mechanisms.¹⁴⁹

While Article 9 does not specify the type or level of protection to be guaranteed, the CESCR has found that social security benefits must be “adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care.”¹⁵⁰ Further, all schemes must be available and in place to ensure that benefits are provided for the relevant social risks and contingencies.¹⁵¹ With respect to the scope of the right, the CESCR has stated that social security should cover health care, sickness, old age, unemployment, employment injury, family and child support, maternity, disability, and survivors and orphans.¹⁵² Finally, social security measures should be accessible. The CESCR has defined accessibility as coverage, eligibility, affordability, participation and information, physical accessibility.¹⁵³ This definition is broken down into its five components below:

Coverage	“All persons should be covered by social security systems [...]” ¹⁵⁴
Eligibility	“Qualifying conditions for benefits must be reasonable, proportionate and transparent.” ¹⁵⁵
Affordability	“If a social security system requires contributions, those contributions should be stipulated in advance.” ¹⁵⁶
Participation and information	“Beneficiaries of social security schemes must be able to

	participate in the administration of the social security system.” ¹⁵⁷
Physical access	“Benefits should be provided in a timely manner and beneficiaries should have physical access to the social security services in order to access benefits and information, and make contributions where relevant.” ¹⁵⁸

Concerning the progressive realization of the right to social security, the Reporting Guidelines point to a number of factors that may be taken into consideration, including “the comprehensiveness of the coverage provided, both in the aggregate and with respect to different groups within the society, the nature and level of benefits, and the method of financing the schemes.”¹⁵⁹ The Reporting Guidelines also attach importance to whether “there any groups which do not enjoy the right to social security at all or which do so to a significantly lesser degree than the majority of the population”, as well as to the effect of measures for implementation on the situation of the vulnerable and disadvantaged groups, in particular women.¹⁶⁰

The CESCR has affirmed that social security and income support rights are particularly important for persons with disabilities. It has found that these rights should “reflect the special needs for assistance and other expenses often associated with disability”, as well “cover individuals (who are overwhelmingly female) who undertake the care of a person with disabilities.”¹⁶¹ With respect to older persons, the CESCR has concluded that “States parties must take appropriate measures to establish general regimes of compulsory old-age insurance, starting at a particular age, to be prescribed by national law.”¹⁶² Such an insurance scheme should be based on a flexible retirement age, depending on the occupations performed and the working ability of elderly persons;¹⁶³ should provide benefits to survivors and orphans upon the death of the wage earner who was in receipt of social security or pension benefits;¹⁶⁴ and should provide “non-contributory old-age benefits and other assistance for all older persons, who, when reaching the age prescribed in national legislation, have not completed a qualifying period of contribution and are not entitled to an old-age pension or other social security benefit or assistance and have no other source of income.”¹⁶⁵ Notably, the CESCR also states that internally displaced persons and internal migrants should not suffer from any discrimination in regard to social security.¹⁶⁶

Obligations of State Parties

Under Article 9, State parties are bound to respect the following core obligations:

- (a) To ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education. If a State party cannot provide this minimum level for all risks and contingencies within its maximum available resources, the Committee recommends that the State party, after a wide process of consultation, select a core group of social risks and contingencies;
- (b) To ensure the right of access to social security systems or schemes on a non-discriminatory basis, especially for disadvantaged and marginalized individuals and groups;

- (c) To respect existing social security schemes and protect them from unreasonable interference;
- (d) To adopt and implement a national social security strategy and plan of action;
- (e) To take targeted steps to implement social security schemes, particularly those that protect disadvantaged and marginalized individuals and groups;
- (f) To monitor the extent of the realization of the right to social security.¹⁶⁷

A State party's obligations can also be analyzed through the respect, protect, fulfill framework. As defined by the CESCR, the obligation to respect the right to social security requires States to "refrain from interfering directly or indirectly with the enjoyment of the right to social security."¹⁶⁸ Thus, social security must not be discriminatory, and the State should not deny or limit equal access to adequate social security. Furthermore, the State must not arbitrarily interfere with self-help, customary or traditional arrangements for social security, nor with institutional arrangements that provide social security.¹⁶⁹

The obligation to protect requires States to prevent third parties from interfering with the right to social security. This obligation includes adopting the "necessary and effective legislative and other measures, for example, to restrain third parties from denying equal access to social security schemes operated by them or by others and imposing unreasonable eligibility conditions."¹⁷⁰ States should also prevent third parties from arbitrarily or unreasonably interfering with self-help or institutional social security measures.¹⁷¹

Finally, the obligation to fulfil the right to social security can be subdivided into the obligations to *facilitate*, *promote* and *provide*. These obligations may be defined as follows:

1. "The obligation to facilitate requires State to take positive measures assist individuals and communities to enjoy the right to social security."¹⁷²
2. "The obligation to promote obliges the State party to take steps to ensure that there is appropriate education and public awareness concerning access to social security schemes ..."¹⁷³
3. "States parties are also obliged to provide the right to social security when individuals or a group are unable, on grounds reasonably considered to be beyond their control, to realize that right themselves, within the existing social security system with the means at their disposal."¹⁷⁴

Possible Impacts of Climate Change on the Right to Social Security

The inter-linkages between climate change and social security are vast, as the effects of climate change add stress to wide range of pre-existing social issues. The IPCC warns that climate change will significantly increase the risk of lack of access to basic necessities. Causes include a decrease in crop productivity attributable to drought in seasonally dry and tropical regions, increase in coastal erosion and flooding, and species extinction.¹⁷⁵ Extreme weather events also provoke increases in injury, malnutrition, disease and death, and put a strain on

States' capacity to provide social security services in accordance with international standards. For example, Angola's 2013 severe drought (and the government's difficulty in responding to it) left approximately 1.8 million people without access to clean water.¹⁷⁶

The additional stress caused by climate change also stands to directly affect social groups that are already in positions of vulnerability, including women, children, the elderly, the chronically ill, Indigenous peoples, and other minorities. As a result, existing social security systems must be "climate-proofed" to take into account the effects of climate change and its differentiated impact on particular groups. Climate proofing social security would require an individual analysis for each subject area covered to determine the possible direct effects of climate change.

5.2.2. Understanding the Right to Social Security in the Content of Climate Change Mitigation Policies

Relatively little research or analysis has been undertaken to examine in-depth the effects of climate change mitigation actions on the right to social security. The links between climate change and its effects on social security therefore require further study. Nevertheless, climate change mitigation activities do have the potential to impact this right – for example, as States transition to greener, low-carbon economies.

CASE STUDY: Transitioning to a Low-Carbon Economy, Flexicurity, and the Case of Germany

The transition to a low carbon economy has the potential to bring with it a new wave of green jobs. However, these jobs will require workers to adapt to new technologies and develop new skill sets. In this respect, as jobs in emission-heavy sectors are phased out and the shift to creating green jobs via government policy to mitigate climate change is intensified, there is a potential for "losers," or individuals whose jobs do not transition into the low carbon-economy. Thus, "flexicurity," or work-related security, stands to be affected by the transition to a low-carbon economy and should be developed to take these potential effects into account.

Before analyzing the case of Germany, it is pertinent to outline the concept of flexicurity with respect to the transition to a low-carbon economy. Flexicurity combines an appropriate social insurance model, sufficiently flexible work contracts, and effective policies to support labour market transitions and lifelong learning.¹⁷⁷ In relation to the transition to a low-carbon economy, various International Labour Organization (ILO) instruments detail the content of the right to social security during transition.¹⁷⁸ These instruments require States to take specific work-related security measures, with specific regard to preventing unemployment and underemployment resulting from the structural change.

Germany is a world leader in this respect. For the period of 2006-2010, Germany analyzed its expected green job growth in various sectors such as geothermal energy, solar energy, and biomass industries,¹⁷⁹ enabling the country to estimate where jobs would be created. Germany has also institutionalized a dialog between unions, employers, environmental groups and government through the Alliance for Work and the Environment to ensure a just

transition into a greener economy.¹⁸⁰ Through this program, Germany retrofitted 300,000 apartments, which substantially reduced CO₂ emissions, lowered heating costs for landlords and tenants, created jobs, and provided government revenue through income tax.¹⁸¹ Thus, Germany has taken strong steps towards respecting the right to social security while transitioning to a low-carbon economy through its study of jobs in the low-carbon economy and its institutionalized dialogue on the subject.

5.2.3 Understanding the Right to Social Security in Relation to Climate Change Adaptation Policies

States must also ensure that their adaptation measures respect the right to social security. Notably, States should ensure that response measures do not negatively affect vulnerable individuals or communities, or, if certain individuals or groups are affected, that social security schemes are inclusive towards these people. As noted above with respect to flexicurity, strong adaptive policies relating to social security can facilitate mitigation. Just as with the direct effects, it will be important to analyze each subject area covered by social security schemes to ensure that government response to climate does not negatively impact the delivery of social security.

¹⁰⁹ CESCR, *General Comment No 18*, UN Doc E/C.12/GC/18, (24 November 2005) at para 7 [*General Comment No 18*].

¹¹⁰ *Ibid* at paras 7-8.

¹¹¹ See e.g. *International Covenant on Civil and Political Rights*, Article 8(3)(a); *International Convention on the Elimination of All Forms of Racial Discrimination*, Article 5(e)(i); *Convention on the Elimination of All Forms of Discrimination against Women*, Article 11(1)(a); *Convention on the Rights of the Child*, Article 32; *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, Articles 11, 25, 26, 40, 52, 54. For regional instruments that recognize the right to work, see *European Social Charter of 1961* and *Revised European Social Charter of 1996, Part II, Article 1*; *African Charter on Human and Peoples' Rights*, Article 15; *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*, Article 6.

¹¹² *General Comment No 18*, *supra* note 109 at para 6.

¹¹³ *Ibid* at para 12.

¹¹⁴ *Ibid* at para 12(a).

¹¹⁵ *Ibid* at para 12(b).

¹¹⁶ *Ibid* at para 12(b)(i).

¹¹⁷ *Ibid* at para 12(b)(ii).

¹¹⁸ *Ibid* at para 12(b)(iii).

¹¹⁹ *Ibid* at para 12(c).

¹²⁰ *Ibid* at para 1.

¹²¹ *ILO Convention No. 168 concerning Employment Promotion and Protection against Unemployment*, 21 June 1988, ILO Gen Conf, 75th Sess (entered into force 17 October 1991), Preamble.

¹²² *General Comment No 18*, *supra* note 109 at para 6.

¹²³ *ILO Convention No. 29 concerning Forced or Compulsory Labour*, 28 June 1930, ILO Gen Conf, 14th Sess (entered into force 1 May 1932), Article 2(1); See also *ILO Convention No. 105 concerning the Abolition of Forced Labour*, 25 June 1957, ILO Gen Conf, 40th Sess (entered into force 17 January 1959) at para 2.

¹²⁴ *General Comment No 18*, *supra* note 109 at para 12.

¹²⁵ *Ibid* at para 11.

¹²⁶ *Ibid* at para 31.

¹²⁷ *Ibid* at paras 23-28.

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- ¹²⁸ Intergovernmental Panel on Climate Change, *Fourth Assessment Report*, at 52 [IPCC].
- ¹²⁹ International Labour Organization, *Employment Working Paper No. 104: Towards an ILO Approach to Climate Change Adaptation*, (2011) at 22 [ILO Approach].
- ¹³⁰ *Ibid* at 18.
- ¹³¹ IPCC, *supra* note 128 at 53.
- ¹³² Samuel Fankhauser, Friedel Sehlleier & Nicholas Stern, “Climate Change, Innovation and Jobs” (2008) 8 *Climate Policy* 421 at 424.
- ¹³³ Global Climate Network and the Centre for American Progress, *Low Carbon Jobs in an Inter-Connected World* (London, 2009) at 4, 12.
- ¹³⁴ *Ibid* at para 31.
- ¹³⁵ United Nations Environment Programme, *Green jobs: towards decent work in sustainable, low-carbon world*, (Geneva: UNEP, 2008) at 43 [Green Jobs]. See also ILO Committee on Employment and Social Policy, *Employment and Labour Market Implications of Climate Change*, 303rd Sess, GB303/ESP/4, (November 2008) at paras 16-22.
- ¹³⁶ European Trade Union Confederation et al, *Climate Change and employment: Impact on employment in the European Union-25 of climate change and CO2 emission reduction measures by 2030*, (2007) at 37; ILO Committee on Employment and Social Policy, *Employment and Labour Market Implications of Climate Change*, 303rd Sess, GB303/ESP/4, (November 2008) at paras 10, 12, 13; Ana Belén Sanchez & Peter Poschen, “The social and decent work dimensions of a new Agreement on Climate Change: A Technical Brief” (2009) (International Labour Organization, Policy Integration Department) at 11; United Nations Environment Programme, *Labour and the Environment: A Natural Synergy* (Nairobi: UNEP, 2007) n 53 at 6 [Labour and the Environment].
- ¹³⁷ Jenny Bird & Kayte Lawton, “The Future’s Green: Jobs and the U.K. low-carbon transition” (2009) (Institute for Public Policy Research) at 6.
- ¹³⁸ HM Government, Department for Business Innovation and Skills, Department of Energy and Climate Change, *The UK Low Carbon Industrial Strategy* (2009) [The UK Low Carbon Industrial Strategy].
- ¹³⁹ See also *The UK Low Carbon Transition Plan*, the *UK Renewable Energy Strategy* and the *Carbon Reduction Strategy for Transport*.
- ¹⁴⁰ *The UK Low Carbon Industrial Strategy*, *supra* note 135 at 5.
- ¹⁴¹ *Ibid*.
- ¹⁴² Excerpted from: *ILO Approach*, *supra* note 131 at 45.
- ¹⁴³ Work in a Warming World Research Programme, *What Do We Know? What Do We Need to Know? The State of Research on Work, Employment and Climate Change in Canada* (2010) at 18.
- ¹⁴⁴ *ILO Approach*, *supra* note 131 at 49.
- ¹⁴⁵ CESCR, *Day of General Discussion: The Right to Social Security (article 9 of the Covenant)*, UN Doc E/2007/22/CRP.3, (15 May 2006) at para 5 (comment made by Mr. Alessio Bruni, Team Leader of the Treaty Implementation and Follow-up Team I at the United Nations High Commissioner for Human Rights).
- ¹⁴⁶ For international instruments, see e.g. *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*, Article 5 (e) (iv); *Convention on the Elimination of All Forms of Discrimination against Women*, Article 11, para 1 (e), 2(c), 14; *Convention on the Rights of the Child*, Article 26. For regional instruments, see *American Declaration of the Rights and Duties of Man*, Article XVI; *Additional Protocol to the American Convention on Human Rights in the Area of Economic Social and Cultural Rights (Protocol of San Salvador)*, Article 9; *European Social Charter (and 1996 revised version)*, Articles 1, 12, 13.
- ¹⁴⁷ CESCR, *General Comment No 19: The right to social security (Art. 9 of the Covenant)*, UN Doc E/C.12/GC/19, (4 February 2008) at para 4 [General Comment No 19].
- ¹⁴⁸ *Ibid* at para 2.
- ¹⁴⁹ *Ibid* at para 4.
- ¹⁵⁰ *Ibid* at para 22.
- ¹⁵¹ *Ibid* at para 10.
- ¹⁵² *Ibid* at para 10.
- ¹⁵³ *Ibid* at para 10.
- ¹⁵⁴ *Ibid* at para 23.
- ¹⁵⁵ *Ibid* at para 24.
- ¹⁵⁶ *Ibid* at para 25.
- ¹⁵⁷ *Ibid* at para 26.
- ¹⁵⁸ *Ibid* at para 27.

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- ¹⁵⁹ *General Reporting Guidelines*, *supra* note 64, Article 9.
- ¹⁶⁰ *Ibid.*
- ¹⁶¹ CESCR, *General Comment No 5*, UN Doc E/1995/22, (9 December 1994) at para 28.
- ¹⁶² CESCR, *General Comment No 6*, U.N. Doc. E/1996/22, (8 December 1995) at para 27.
- ¹⁶³ *Ibid* at para 28.
- ¹⁶⁴ *Ibid* at para 29.
- ¹⁶⁵ *Ibid* at para 30.
- ¹⁶⁶ *General Comment No 19*, *supra* note 146 at 39.
- ¹⁶⁷ *Ibid* at para 59.
- ¹⁶⁸ *Ibid* at para 44.
- ¹⁶⁹ *Ibid.*
- ¹⁷⁰ *Ibid* at para 45.
- ¹⁷¹ *Ibid* at para 45.
- ¹⁷² *Ibid* at para 48.
- ¹⁷³ *Ibid* at para 49.
- ¹⁷⁴ *Ibid* at para 50.
- ¹⁷⁵ IPCC, *supra* note 128.
- ¹⁷⁶ Mark Tran, “Angola 'in denial' over impact of severe drought”, *The Guardian*, 22 October 2013. Available: <http://www.theguardian.com/global-development/2013/oct/22/angola-in-denial-severe-drought>
- ¹⁷⁷ European Commission, *Employment in Europe 2006* (Luxemburg: Office for Official Publications of European Communities, 2006) at 75.
- ¹⁷⁸ *Convention No. 122 Convention Concerning Employment Policy*, 569 UNTS 65 (entered into force 15 July 1966); Labour Organization, *Recommendation 169 Recommendation Concerning Employment Policy, 70th Sess, Record of Proceedings* (Geneva: International Labour Office, 1984) XVIII at Article 10.
- ¹⁷⁹ *Green Jobs*, *supra* note 129 at 8.
- ¹⁸⁰ *Labour and the Environment*, *supra* note 130 at 55.
- ¹⁸¹ *Ibid.*

6. THE RIGHT TO FAMILY LIFE

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

6.1 Understanding the Right to Family Life

6.1.1 *Concept and Content*

Article 10 of the ICESCR is premised on the notion that family is “the natural and fundamental group unit of society,” especially insofar as it is responsible for the upbringing and wellbeing of children. As such, Article 10(1) emphasizes that “[t]he widest possible protection and assistance should be accorded to the family, [...] particularly for its establishment and while it is responsible for the care and education of dependent children.”¹⁸² Article 10 also stipulates that marriage must be entered into with the free consent of intending spouses.

Article 10(2) is concerned with the well-being of women before and after childbirth, including the provision of paid leave or leave with social security benefits for working mothers during this period. Finally, Article 10(3) requires special measures of protection and assistance to all children and young persons, with no discrimination based on parentage or other factors. It also secures the rights of children to be “protected from economic and social exploitation.” Specifically, any employment likely to “hamper their normal development” and paid child labour in violation of set age limits must be prohibited and punishable by law.

6.1.2 Obligations of State Parties

Obligations of State Parties related to climate change under Article 10 intersect with obligations under a number of related international treaties, which will be briefly summarised here, with a focus on obligations flowing from the right to family life that relate more specifically to the challenge of climate change.

- **Ensuring equal rights to men and women in the family:** One implication of Article 10 is that partners in the family unit should have an equal share and voice in making important decisions. Laws that circumscribe the role of women within the family, for example in terms of control of resources, contradict Article 10. Laws that determine the status of women in relation to male members of the family are similarly problematic in terms of Article 10. Related and more detailed obligations are found in articles 9 and 16 of the CEDAW, including rights and responsibilities within marriage and ownership of property. Issues of control of resources within the family are particularly relevant in terms of adaptation to climate change. In communities that are especially vulnerable to climate change, women tend to be responsible for gathering basic resources such as drinking water and fuel. As such, they might be more aware of the necessity and responsive to issues of sustainable resource management, for example.
- **Guaranteeing access to information and resources for voluntary family planning:** The right of individuals and especially women to determine the number and spacing of their children was recognised in major UN conferences in Tehran in 1968 and Cairo in 1994. Article 10 of CEDAW includes a right to family planning. Importantly, rapid population growth was an issue raised by 93% of LDCs in National Adaptation Programmes of Action (NAPAs) submitted to the Global Environmental Facility (GEF) between 2004 and 2009. While it has been met with some resistance, empowerment of women for family planning has repercussions both in terms of climate change mitigation and adaptation.
- **Protecting Children against Harmful Employment:** Article 10 unequivocally circumscribes the type of labour that children can engage in, especially condemning labour harmful to their healthy development. Overall, Article 10 emphasizes state support to the family unit as a safe place for the “care and education of dependent children.” This obligation is developed in more detail in the Convention on the Rights of the Child, for example articles 28, 29, 31 and 32. The healthy development of children is an important issue in terms of integrated strategies for adaptation to climate change.
- **Facilitating Family Reunification:** Forced migrations are a tragically inevitable aspect of climate change. Article 10 emphasizes the importance of a cohesive family unit, especially during the time it is responsible for the upbringing of children. When parents and children reside in different countries, states have an obligation to facilitate communication between them and deal with requests to enter and leave a state in an expedited and humane manner for the purposes of reunification. This right is particularly important for refugees. Similar obligations are found in article 12

of the Convention Relating to the Status of Refugees and articles 10 and 22 of the Convention on the Rights of the Child.

Possible Impacts of Climate Change on the Right to Family

To date, the link between the right to family life and climate change has not attracted a great deal of attention from legal researchers and policymakers. Issues relating to access to resources and sustainable livelihoods are most often linked to the right to an adequate standard of living under Article 11 of the ICESCR, which arguably also incorporates elements of the right to family life. For example, Article 11 notes “the right of everyone to an adequate standard of living for himself and his family”. The intersection between child rights and climate change has also garnered increasing attention in studies and publications by specialized UN agencies and others.¹⁸³

Generally speaking, however, the impacts caused by climate change may add stress to a wide range of pre-existing social issues. Those who are already vulnerable, such as women and children, will face increased vulnerability; impacts on livelihoods will strain family resources; and climate-induced displacement may result in the separation of families.

In relation to the challenges posed by climate change, and in line with CESCR’s Reporting Guidelines, the following aspects of the right to family life are particularly pertinent:

- **Access to Sustainable Livelihoods:** The family, as a primary unit for the care and education of children, requires support to carry out this role. Specifically, families need access to necessities such as housing, clean water, food and sustainable livelihoods. Climate change poses a severe threat to the wellbeing of families — particularly to families already vulnerable due to geography, social or economic marginalization, and other factors — insofar as it may restrict access to essential resources that allow the family unit to function.
- **Child Rights:** Article 10 of the ICESCR stipulates that children “should be protected from economic and social exploitation.” Children are particularly vulnerable to the effects of climate change. For example, the impact of climate change on family livelihoods, as well as climate-related migration or displacement may put children at increased risk of exploitation.
- **Rights of Forced Climate Migrants:** Family rights entail the reunification of families that have been separated by forced migrations. This is likely to become increasingly relevant in the context of climate change, given the growing phenomenon of forced climate migrants.

Overall, there are important connections between the right to family life and the impacts of climate change, as well as States’ mitigation and adaptation policies. The key resides in the development of integrated strategies that take this right into account.

6.2 Understanding the Right to Family Life in the Context of Climate Change Mitigation Policies

The right to family life has interesting intersections with climate change mitigation. The promotion of equal rights for women and men in marriage, and specifically the legal empowerment of women to control property and other valuable resources, and to participate in decision-making processes, is beneficial for climate change mitigation. Women are generally more vulnerable to climate change than men, as they constitute the majority of the world's poor and are more dependent on natural resources for their livelihoods. In many areas, they also face social, economic and legal barriers that limit their capacity. However, women can also be the most active agents of change in terms of transitioning to sustainable livelihoods and mitigating climate change. Due to their position in many households and communities as stewards of natural resources, women are more likely to be aware of, and responsive to, the need for the sustainable use of these resources. They may also be responsible for meeting their families' energy needs. Strategies aimed at climate change mitigation, to be successful, should therefore consider a gender empowerment perspective.

Important concrete measures in terms of the right to family life that can benefit climate change mitigation include, for example:

- Improving the social status of women through financial and technical support to women's groups.
- Improving women's access to and control over resources such as land and water, but also technological inputs, information and access to credit.
- Ensuring that legal frameworks empower women and provide for gender equality, and that related organisational structures provide for participation and representation of women.
- Reducing women's workloads in order to allow for diversification of activities.
- Providing leadership and entrepreneurial capacity-building to women.

Such measures will improve the sustainable use of natural resources, which is an important element of climate change mitigation.

The relationship of voluntary family planning to climate mitigation is much more controversial, linked to the fear of coercive family planning programmes and issues relating to women's autonomy. Some studies have suggested that empowering women to time their pregnancies, presumably by reducing overall births and the subsequent increase of pressure on natural resources, could reduce global carbon emissions by 8 to 15%. Certainly, government policies aimed at disseminating information and resources with regard to voluntary family planning are beneficial for women's sexual and reproductive health, and overall opportunities for lifestyle choice.

CASE STUDY: The Green Belt Movement

The Green Belt Movement (GBM) is a Kenyan women's NGO founded by the late Nobel Laureate Prof. Wangari Maathai in 1977. It aims at empowering women and tackles issues directly linked to climate change mitigation, such as deforestation. Trees are planted by voluntary networks of women and their families, and provide income through fruit and other cash crops. Participants are also trained in sustainable agriculture, in order to diversify and increase the resiliency of their sources of income. Women benefit from extensive capacity-building so as to generate their own income and maintain sustainable livelihoods to help support their families.

The GBM has also made a significant contribution to climate change mitigation. Carbon emissions are absorbed by planting new trees, and by improving the stewardship of existing trees. Sustainable agriculture and land use are also important elements of mitigation supported by the GBM. Since 1977, GBM communities have planted over 45 million trees in Kenya to restore natural forest cover and preserve essential ecosystems. Since the late 1980s, GBM has also been involved in advocacy activities to curb mismanagement of natural resources in Kenya by preventing forest destruction and ending poor governance and human rights abuses.

6.3 Understanding the Right to Family Life in the Context of Climate Change Adaptation Policies

The right to family life offers many important insights in terms of climate change adaptation. For example, Article 10 of ICESCR emphasizes the family as a place of care and education for children, and also provides for guarantees against harmful forms of employment of children. Yet children are particularly vulnerable to the effects of climate change. As such, States' adaptation planning should place a special focus on child rights, including with respect to health and safety considerations, educational opportunities, and forced labour.

Adaptation to climate change also entails preserving the unity of the family when individuals are forced to migrate. This concern is implied by the emphasis on the family unit in Article 10 of ICESCR. Adaptation plans require a consideration of how to manage climate migrations, including a focus on mechanisms to reunite separated families in an expedited manner. This planning also requires full cooperation between States, as climate migrants may cross national boundaries.

Finally, States' adaptation planning should also aim to empower women within the family unit as central decision-makers.

CASE STUDY: Integrated Adaptation in the Wichi Area of Ethiopia

The Wichi area of Metu Woreda in Ethiopia is increasingly prone to drought and dry weather conditions linked to climate change. Dry weather causes challenges in terms of food production in a context of high population growth, which led to the deforestation of previously untouched areas. This deforestation aggravated problems linked to soil erosion and land degradation, resulting in the further conversion of land for agricultural use. As such, climate change and high population growth were fostering unsustainable land management practices.

A Consortium led by international organisations and the Ethiopian government implemented an integrated approach in order to counter the problem by addressing its varied sources. A project was developed from 2005 to 2007, covering over 3,000 rural households and aimed at improving crop production, minimising biodiversity loss and addressing the rapid population growth. Household members were trained in sustainable land use management, and reforestation efforts. They were also provided with information related to family planning. As such, sexual and reproductive health issues linked to voluntary family planning were successfully mainstreamed into a project promoting sustainable land use, and an improved focus on health and women's empowerment contributed to the success of the project.

¹⁸² ICESCR, *supra* note 21, Article 10(1).

¹⁸³ See, for example, Lucy Stone and Katherine Lofts, "Climate Change, Child Rights and Intergenerational Justice," Institute of Development Studies, Nov. 2009. Available: http://www.childreninachangingclimate.org/database/ids/Publications/Stone-Lofts_InFocus-IntergenerationalJustice_2009.pdf

7. THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

Article 11

(1) The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

(2) The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

7.1 Understanding the Right to an Adequate Standard of Living

7.1.1 *Concept and Content*

The right to an adequate standard of living has a broad meaning and includes rights other than those listed in Article 11(1) of the ICESCR, such as the rights to health, education, and transportation.¹⁸⁴ In its approach to this right, the CESCR has focused on other rights emanating from, and indispensable to, the realization of the right to an adequate standard of living. In particular, the CESCR has emphasized the rights to housing, food and water, as opposed to the right to an adequate standard of living as such.¹⁸⁵ The Human Rights Council has also affirmed that the right to safe drinking water and sanitation are “derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity”¹⁸⁶

In its Reporting Guidelines, the CESCR has established a number of quantitative indicators for evaluating the progressive realisation of the right to an adequate standard of living, including: (1) information on the current standard of living of a given population, in respect to both the aggregate standard of living, and that of different socio-economic, cultural, and other groups within the society; (2) the per capita Gross National Product for the poorest 40 per cent of a given population, as well as information on a country’s poverty line; and (3) a country’s Physical Quality of Life Index, which uses as measurements life expectancy, infant mortality and literacy rates.¹⁸⁷

Nevertheless, the CESCR has yet to specifically define the notion of an adequate standard of living, leaving to States a certain margin of appreciation in its concrete definition and application. Some suggest that the right to an adequate standard of living should encompass the “basic needs” of an individual, which have been defined as follows:

First, they include certain minimum requirements of a family for private consumption: adequate food, shelter and clothing, as well as certain household equipment and furniture. Second, they include essential services provided by and for the community at large, such as safe drinking water, sanitation, public transport and health, educational and cultural facilities.¹⁸⁸

In this way, the right to an adequate standard of living may be interpreted so as to address concerns that do not fall under the ambit of other Covenant rights.

The Right to Adequate Food

The right to adequate food is protected by virtue of Article 11(1) of the ICESCR as an element of the right to an adequate standard of living. It is also explicitly mentioned under the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD), as well as implied in provisions on an adequate standard of living in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).¹⁸⁹ In addition, Article 11(2) of the ICESCR enshrines the right to be free from hunger and malnutrition.

Freedom from hunger implies a right to freedom from starvation. It is thus intimately connected to the right to life and, for this reason, it is the only right in the ICESCR to be termed “fundamental.” The right to be free from hunger requires States to take necessary action to alleviate hunger, even in times of disaster.¹⁹⁰ The right to adequate food on the other hand is a broader concept, which extends beyond basic needs for survival. The CESCR has affirmed that the right to adequate food “is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights.”¹⁹¹ The CESCR has also recognised the inter-dependence between the right to food and the environment, stating that the right to adequate food requires “the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfilment of all human rights for all.”¹⁹²

The CESCR has specified that the full realization of the right to adequate food entails that “every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.”¹⁹³ In this regard, the CESCR has insisted on the importance of four related notions – availability, adequacy, accessibility and sustainability – defining the core content of the right to adequate food as implying the availability of adequate food¹⁹⁴ accessible to all individuals under the jurisdiction of a State.¹⁹⁵

Notion of Food Availability	
Availability	“refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand.” ¹⁹⁶
Dietary needs	“implies that the diet as a whole contains a mix of nutrients for physical and mental growth, development and maintenance, and physical activity that are in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation.” ¹⁹⁷
Free from adverse substances	“sets requirements for food safety and for a range of protective measures by both public and private means to prevent contamination of foodstuffs through adulteration and/or through bad environmental hygiene or inappropriate handling at different stages throughout the food chain”. ¹⁹⁸
Cultural or consumer acceptability	“implies the need also to take into account, as far as possible, perceived non nutrient-based values attached to food and food consumption and informed consumer concerns regarding the nature of accessible food supplies.” ¹⁹⁹

Notion of Food Accessibility	
Economic Accessibility	“implies that personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised.” ²⁰⁰
Physical Accessibility	“implies that adequate food must be accessible to everyone, including physically vulnerable individuals, such as infants and young children, elderly people, the physically disabled, the terminally ill and persons with persistent medical problems, including the mentally ill.” ²⁰¹

Right to Adequate Housing

The right to adequate housing is protected in several international human rights instruments.²⁰² It is most comprehensively enshrined under Article 11 of the ICESCR as an element of the right to an adequate standard of living.²⁰³

The CESCR has concluded that “the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity,” but rather that “it should be seen as the right to live somewhere in security, peace and dignity.”²⁰⁴ In this regard, the CESCR has emphasized the link between the right to housing and other human rights and principles enshrined in the ICESCR, finding that the right to housing should therefore be “ensured to all persons irrespective of income or access to economic resources.”²⁰⁵ The CESCR has thus interpreted the right to housing as including the security of tenure; protection against forced evictions; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location and cultural adequacy.²⁰⁶

This right finds support in many international documents. The UDHR states that “Everyone has the right to a standard of living [...] including [...] housing” (art. 25). Similarly, the *European Social Charter* contains an engagement by States to guarantee an “effective exercise of the right to housing” (art. 31).²⁰⁷ States have also extensively supported the *Guiding Principles on Internal Displacement*.²⁰⁸ they were noted as being widely used by the Security Council in 2000²⁰⁹ and were the object of the Commission on Human Rights²¹⁰ and of the UN General Assembly’s “appreciation” in 2004.²¹¹ Generally speaking, these principles affirm individuals’ right to be protected from forced displacement from their homes (art. 5-

9), to receive protection and assistance once displaced (art. 10-27), and to return to their homes (art. 28-30). In 2007, the Human Rights Council reaffirmed its view of “adequate housing as a component of the right to an adequate standard of living.”²¹² Finally, the parties to the *American Declaration of the Rights and Duties of Man*²¹³ (art. IX) and the *Charter of the Organization of American States*²¹⁴ (art. 34(k)) have committed themselves to guarantee the right to housing.

Notion of Adequacy of Housing ²¹⁵	
Legal security of tenure	“Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.”
Availability of services, materials, facilities and infrastructure	“An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.”
Affordability	“Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised.”
Habitability	“Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well.”
Accessibility	“Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources.”
Location	“Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. (...) Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.”
Cultural adequacy	“The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.”

Forced evictions

The CESCR has paid particular attention to the protection against forced evictions.²¹⁶ Interpreting article 11 of the ICESCR, the CESCR has affirmed in its General Comment No. 4 that “instances of forced eviction are prima facie incompatible with the requirements of the Covenant”²¹⁷. The same committee added in its General Comment No. 7: “while manifestly breaching the rights enshrined in the [ICESCR], the practice of forced evictions may also result in violations of civil and political rights”²¹⁸. The CESCR defines forced eviction as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”²¹⁹ It has emphasized that forced evictions constitute a violation of the Covenant and may also breach “civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.”²²⁰

In 1993, the Commission on Human Rights opined that the “practice of forced eviction

constitutes a gross violation of human rights, in particular the right to adequate housing”.²²¹ The African Commission on Human and Peoples’ Rights has ruled that “forced evictions and destruction of housing [...] amounts to cruel, inhuman and degrading treatment or punishment” under art. 5 of the *Banjul Charter*²²² and, more recently, Colombia’s 1991 Constitution²²³ (art. 51) and South Africa’s 1996 Constitution²²⁴ (art. 26) both enshrined a right to housing, the respect of which is manifestly incompatible with forced evictions.

Right to Water

The right to water is enshrined in a number of core international human rights instruments, including the CEDAW, CRPD and CRC.²²⁵ The CESCR has also recognized the right to water as implicitly protected under Article 11: “The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival.”²²⁶ The CESCR has concluded that the right to water is closely related to other Covenant rights, finding that water “is necessary to produce food (right to adequate food) and ensure environmental hygiene (right to health)” and “is essential for securing livelihoods (right to gain a living by work) and enjoying certain cultural practices (right to take part in cultural life).”²²⁷

According to the CESCR, the right to water “entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.”²²⁸ It also encompasses freedoms, including “the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies,” and entitlements, including “the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water.”²²⁹

Notion of Adequacy of Water²³⁰		
Availability	“The water supply for each person must be sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene. The quantity of water available for each person should correspond to World Health Organization (WHO) guidelines. ²³¹ Some individuals and groups may also require additional water due to health, climate, and work conditions.”	
Quality	“The water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological <i>hazards</i> that constitute a threat to a person’s health. Furthermore, water should be of an acceptable colour, odour and taste for each personal or domestic use.”	
Accessibility	Physical Accessibility	“water, and adequate water facilities and services, must be within safe physical reach for all sections of the population.”
	Economic Accessibility	“Water, and water facilities and services, must be affordable for all.”
	Non-Discrimination	“Water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds;”
	Information Accessibility	“accessibility includes the right to seek, receive and impart information concerning water issues.”

Right to Sanitation

The Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, while acknowledging the difficulty of defining the notion of sanitation and the need for any definition to be able to evolve, defined sanitation “as a system for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene.”²³² Recognition of water and sanitation as human rights was re-affirmed by the General Assembly in 2010²³³ and by the Human Rights Council in September 2010.²³⁴ In November 2010, the CESCR stated: “The Committee is of the view that the right to sanitation requires full recognition by States parties in compliance with the human rights principles related to non-discrimination, gender equality, participation and accountability.”²³⁵

The right to adequate sanitation is inseparable from the right to water, because it is the primary cause of water contamination and diseases linked to water.²³⁶ It is also closely tied to the principle of sustainable development. The Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation observes that sustainability

is more than mere reliability or functionality, and requires a balance of its different dimensions. Water and sanitation must be provided in a way that respects the natural environment; finite resources must be protected and overexploitation cannot occur. Likewise, the economic and social dimensions have to be balanced: while service provision relies on raising sufficient revenue, this must be achieved in such a way as to ensure affordability for all people in society, including those living in poverty.²³⁷

Notion of Adequacy of Sanitation²³⁸		
Availability	“There must be a sufficient number of sanitation facilities (with associated services) within, or in the immediate vicinity, of each household, health or educational institution, public institutions and places, and the workplace. There must be a sufficient number of sanitation facilities to ensure that waiting times are not unreasonably long.”	
Quality	“Sanitation facilities must be hygienically safe to use, which means that they must effectively prevent human, animal and insect contact with human excreta. [...] Sanitation facilities must also be technically safe to use, which means that the superstructure is stable and the floor is designed in a way that reduces the risk of accidents (e.g. by slipping). [...] Ensuring safe sanitation requires adequate hygiene promotion and education to encourage individuals to use toilets in a hygienic manner that respects the safety of others.”	
Accessibility	Physical Accessibility	“Sanitation facilities must be physically accessible for everyone within, or in the immediate vicinity of, each household, health or educational institution, public institutions and places, and the workplace. [...] Sanitation facilities should be designed in a way that enables all users to physically access them, including, especially, those with special access needs, such as children, persons with disabilities, elderly persons, pregnant women, parents accompanying children, chronically ill people and those accompanying them.”
	Economic Accessibility	“Access to sanitation facilities and services, including construction, emptying and maintenance of facilities, as well as treatment and disposal of faecal matter, must be available at a price that is affordable for all people without limiting their capacity to acquire other basic goods and services, including water, food, housing, health and education guaranteed by other human rights. Water disconnections resulting from an inability to pay also impact on waterborne sanitation, and this must be taken into consideration before disconnecting the water supply.”

	Non-Discrimination	“States must realize their human rights obligations related to sanitation in a non-discriminatory manner. They are obliged to pay special attention to groups particularly vulnerable to exclusion and discrimination in relation to sanitation, including people living in poverty, sanitation workers, women, children, elderly persons, people with disabilities, people affected by health conditions, refugees and IDPs, and minority groups, among others. Priority should be given to meeting the needs of these groups and, where necessary, positive measures should be adopted to redress existing discrimination and to ensure their access to sanitation. States are obliged to eliminate both de jure and de facto discrimination on grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status, or any other civil, political, social or other status.”
	Information Accessibility	“States are also obliged to ensure that concerned individuals and communities are informed and have access to information about sanitation and hygiene and are enabled to participate in all processes related to the planning, construction, maintenance and monitoring of sanitation services. Full participation, including representatives of all concerned groups is key to ensuring that sanitation solutions answer the actual needs of communities and are affordable, technically feasible, and culturally acceptable. Participation is also crucial for achieving community ownership and dedication in order to bring about the required behavioural changes. All people must have full and equal access to information concerning sanitation and its effect on their health and environment. Information should be made available through various media and should be translated in all relevant languages and dialects to ensure the greatest possible circulation.”
Acceptability		“Sanitation facilities and services must be culturally acceptable. Personal sanitation is still a highly sensitive issue across regions and cultures and differing perspectives about which sanitation solutions are acceptable must be taken into account regarding design, positioning and conditions for use of sanitation facilities. In many cultures, to be acceptable, construction of toilets will need to ensure privacy. In most cultures, acceptability will require separate facilities for women and men in public places, and for girls and boys in schools. Women’s toilets need to accommodate menstruation needs. Facilities will need to allow for culturally acceptable hygiene practices, such as hand washing and anal and genital cleansing.”

7.1.2 Obligations of State Parties

Right to Adequate Food

The core obligation that State Parties are bound to respect in terms of the right to adequate food is the obligation to ensure “for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger.”²³⁹

In terms of the progressive realization of the right to adequate food, States parties are obliged to take steps:

- to respect existing access to adequate food by not taking any measures that result in preventing such access;
- to protect the right to adequate food by ensuring “that enterprises or individuals do not deprive individuals of their access to adequate food”;
- to fulfil the right to adequate food by pro-actively engaging “in activities intended to strengthen people’s access to and utilization of resources and means to ensure their

livelihood, including food security”, and by directly providing the right to adequate food “whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal.”²⁴⁰

The CESCR has insisted that one measure of implementation of the right to adequate food includes “the adoption of a national strategy to ensure food and nutrition security for all, based on human rights principles that define the objectives, and the formulation of policies and corresponding benchmarks.”²⁴¹ With regard to threats to the right to food caused by climate change, the CESCR has stressed that “even where a State faces severe resources constraints, whether caused by a process of economic adjustment, economic recession, climatic conditions or other factors, measures should be undertaken to ensure that the right to adequate food is especially fulfilled for vulnerable population groups and individuals.”²⁴² This strategy “should address critical issues and measures in regard to all aspects of the food system, including the production, processing, distribution, marketing and consumption of safe food, as well as parallel measures in the fields of health, education, employment and social security” and should “ensure the most sustainable management and use of natural and other resources for food at the national, regional, local and household levels.”²⁴³ In particular, the CESCR has recommended the adoption of benchmarks and framework legislation, the development of monitoring mechanisms, and the provision of effective judicial and other appropriate remedies.²⁴⁴

In terms of international obligations, the CESCR has insisted that State parties “take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required,” as well as to “ensure that the right to adequate food is given due attention” in international agreements and international law, and to “refrain at all times from food embargoes or similar measures which endanger conditions for food production and access to food in other countries.”²⁴⁵ Moreover, the United Nations Framework Convention on Climate Change underscores the importance of ensuring the availability of food, requiring the stabilization of greenhouse gas in the atmosphere to be achieved within a timeframe sufficient to “ensure that food production is not threatened.”²⁴⁶

Right to Adequate Housing

The core obligations that State parties are bound to respect in terms of the right to adequate housing are the obligations to “refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions”,²⁴⁷ and to facilitate “self-help” by affected groups.²⁴⁸ Specifically, States should refrain from restricting the rights to freely organise and assemble, which are crucial for the assertion of demands by residents and tenants groups.

The OHCHR report on climate change and human rights observes that in the context of climate change, States should guarantee:

- (a) adequate protection of housing from weather hazards (habitability of housing);
- (b) access to housing away from hazardous zones;
- (c) access to shelter and disaster preparedness in cases of displacement caused by extreme weather events;

(d) protection of communities that are relocated away from hazardous zones, including protection against forced evictions without appropriate forms of legal or other protection, including adequate consultation with affected persons.²⁴⁹

In terms of the progressive realization of the right to adequate housing, State parties are obliged to take steps:

- to effectively monitor the situation with respect to housing, most notably the full extent of homelessness;²⁵⁰
- to adopt a national housing strategy, developed in consultation with those particularly affected, including the homeless, the inadequately housed and their representatives;²⁵¹
- to ensure that the percentage of housing-related costs is, in general, commensurate with income levels by establishing housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs and by protecting tenants against unreasonable rent levels or rent increases;²⁵²
- to adopt measures “sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources” reflecting “whatever mix of public and private sector measures considered appropriate,” including for instance the public financing of housing or the promotion of “enabling strategies”;²⁵³
- to provide appropriate legal remedies in the following areas: “(a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (d) allegations of any form of discrimination in the allocation and availability of access to housing; and (e) complaints against landlords concerning unhealthy or inadequate housing conditions.”²⁵⁴

The CESCR has also observed that “a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant.”²⁵⁵

Forced evictions

In situations where evictions are justified, the CESCR has specified that State parties must ensure that they are carried out in a manner warranted by a law that is compatible with applicable human rights standards, including the following procedural protections:

- (a) an opportunity for genuine consultation with those affected;
- (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
- (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;

- (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction;
- (e) all persons carrying out the eviction to be properly identified;
- (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
- (g) provision of legal remedies; and
- (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.²⁵⁶

In addition, State parties should ensure that evictions do not result in homelessness or increased vulnerability to the violation of other human rights: “Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”²⁵⁷

Right to Water

The CESCR enumerates specific legal obligations State parties are bound to respect in terms of the right to water, including obligations:

- To ensure access to the minimum essential amount of water that is sufficient and safe for personal and domestic uses to prevent disease;
- To ensure the right of access to water and water facilities and services on a non-discriminatory basis, especially for disadvantaged or marginalized groups;
- To ensure physical access to water facilities or services that provide sufficient, safe and regular water; that have a sufficient number of water outlets to avoid prohibitive waiting times; and that are at a reasonable distance from the household;
- To ensure personal security is not threatened when having to physically access to water;
- To ensure equitable distribution of all available water facilities and services;
- To adopt and implement a national water strategy and plan of action addressing the whole population; the strategy and plan of action should be devised, and periodically reviewed, on the basis of a participatory and transparent process; it should include methods, such as right to water indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all disadvantaged or marginalized groups;
- To monitor the extent of the realization, or the non-realization, of the right to water;
- To adopt relatively low-cost targeted water programmes to protect vulnerable and marginalized groups; and
- To take measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation.²⁵⁸

In terms of the progressive realization of the right to water, State parties are obliged to take steps:

- to respect the right to water by refraining from interfering with its enjoyment, including by “refraining from engaging in any practice or activity that denies or limits equal access to adequate water; arbitrarily interfering with customary or traditional arrangements for water allocation; unlawfully diminishing or polluting water, for

example through waste from State-owned facilities or through use and testing of weapons; and limiting access to, or destroying, water services and infrastructure as a punitive measure, for example, during armed conflicts in violation of international humanitarian law”;²⁵⁹

- to protect the right to water by preventing third parties from interfering in any way with its enjoyment through the adoption of measures to restrain “third parties from denying equal access to adequate water; and polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems”²⁶⁰, and through the establishment of an effective regulatory system to govern the provision of water services by third parties;²⁶¹
- to fulfil the right to water by taking positive measures to assist individuals and communities to enjoy the right; by taking steps to ensure that there is appropriate education concerning the hygienic use of water, protection of water sources, and methods to minimize water wastage; and by providing the right when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal.²⁶²

As with the right to food, States have a general obligation under the ICESCR to cooperate with others to achieve the full realization of this right.²⁶³ This obligation to cooperate is strengthened by the UNFCCC, which requires State parties to give the specific needs of developing countries full consideration²⁶⁴ and to “cooperate in preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture.”²⁶⁵

Right to Sanitation

The Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation observed that States are obliged to invest the “maximum available resources” in the attainment of the right to sanitation under human rights standards. Human rights standards

also require the use of resources in ways that have the greatest possible impact on achieving universal realization of these rights, by prioritizing essential levels of access to the most marginalized. In times of prosperity, spending on water and sanitation has to include planning, independent monitoring, establishment of accountability mechanisms, and operation and maintenance, so as to enable the progressive realization of the rights even during times of crisis, hence preventing slippages and retrogression.²⁶⁶

These requirements imply the mobilisation of fiscal policies and taxes, and the appropriate targeting of available resources.

This right does not, on the other hand, oblige States to provide everyone with access to a sewage system, to provide individual facilities in every home, to provide sanitation free of charge for all, or to prohibit the privatization of sanitation services in certain circumstances. Rather, States must “show that they are taking steps to the maximum of their available resources to ensure at least minimum essential levels of sanitation for all people, and they must ensure that they are not discriminating against certain groups in providing access.”²⁶⁷

Possible Impacts of Climate Change on the Right to an Adequate Standard of Living

Climate change poses several obvious challenges to the fulfillment of the right to an adequate standard of living. Climate change and its effects are progressively threatening livelihoods and food security.²⁶⁸ Extreme weather events, changes in the suitability of arable land, and fluctuations in water supply are projected to reduce agricultural production, thereby affecting the availability of food. Access to food will also be worsened by damage to infrastructure and destruction of livelihoods caused by climate change events, while the stability of the food supply could be affected by increases in food price and a higher dependency on imported foods and food aid. Moreover, the utilization of food could be indirectly influenced by food safety hazards associated with pests and animal diseases, and a greater prevalence of waterborne diseases such as cholera.²⁶⁹

The impact of climate change on the right to adequate food will have a disproportionate effect on the developing world. Climate change is projected to decrease crop productivity at lower latitudes, increasing the risk of hunger and food insecurity in the poorer regions of the world.²⁷⁰ Poor communities living in developing countries are also particularly vulnerable given that they are disproportionately dependent on climate-sensitive resources for their food and livelihoods.²⁷¹

Climate change may also impact upon the right to housing in many ways. A 2009 report by the OHCHR observes that sea level rise and storm surges have had, and will continue to have, a direct impact on a number of coastal settlements, leading to the relocation of communities.²⁷² The report also notes that settlements in low-lying mega-deltas are particularly at risk, “as evidenced by the millions of people and homes affected by flooding in recent years,”²⁷³ and that:

[t]he erosion of livelihoods, partly caused by climate change, is a main ‘push’ factor for increasing rural to urban migration. Many will move to urban slums and informal settlements where they are often forced to build shelters in hazardous areas. Already today, an estimated one billion people live in urban slums on fragile hillsides or flood-prone river banks and face acute vulnerability to extreme climate events.²⁷⁴

Similarly, the IPCC observes that climate change may generate a series of phenomena provoking population migrations, including the disruption of settlements, commerce, transport and societies due to flooding; pressures on urban and rural infrastructure; loss of property; decreased freshwater availability due to saltwater intrusion; power outages causing the disruption of public water supply; contamination of water supply; and withdrawal of risk coverage in vulnerable areas by private insurers²⁷⁵.

Climate change is also projected to have a serious impact on water quantity and quality, and will ultimately have a negative effect on the enjoyment of the right to water. The OHCHR report on climate change and human rights asserts that:

[l]oss of glaciers and reductions in snow cover are projected to increase and to negatively affect water availability for more than one-sixth of the world’s population supplied by melt water from mountain ranges. Weather extremes, such as drought and flooding, will also impact on water supplies. Climate change will thus exacerbate

existing stresses on water resources and compound the problem of access to safe drinking water, currently denied to an estimated 1.1 billion people globally and a major cause of morbidity and disease.²⁷⁶

Water scarcity may also result in the increased cost of water, therefore disproportionately affecting poor segments of the population.

7.2 The Right to an Adequate Standard of Living in the Context of Climate Change Mitigation Policies

Right to Adequate Food

Numerous States have established programmes for the use and development of biofuels in order to reduce the concentration of greenhouse gases in the atmosphere. While such mitigation measures could bring positive benefits for farmers in developing countries, the production of biofuels has already had adverse effects on the enjoyment of the right to adequate food and freedom from hunger²⁷⁷ — contributing to an increase in the price of food commodities due to “the competition between food, feed and fuel for scarce arable land”,²⁷⁸ and leaving poor communities without an adequate supply of food.²⁷⁹

Given the important scale and influence of biofuel investment programmes, it is crucial that they take human rights impacts into account.²⁸⁰ The CESCR has urged States to implement measures to fight climate change that do not have a negative effect on the right to adequate food and freedom from hunger, but rather promote sustainable agriculture.²⁸¹

CASE STUDY: Biofuels in Swaziland

In Swaziland, severe droughts have decreased food crop production by up to 80% in parts of the country.²⁸² In the hope of being able to provide for themselves and their families, farmers started growing non-food crops that are more resistant to droughts, such as cotton, to sell on the market. At the same time, in 2007, the Swazi government leased the remaining scarce arable land to large private companies to grow crops for biofuel export.²⁸³ This included the lease of 500 hectares of land for the production of jatropha, an oil-producing plant known to be invasive,²⁸⁴ risking the destruction of other food sources.

The combination of the increased reliance of local farmers on cash crops and the increased presence of private biofuel companies led to a food shortage and increased food prices, placing bread out of the reach of ordinary Swazis²⁸⁵ and leaving more Swazis severely undernourished. This case shows how uncoordinated mitigation policies can exacerbate food supply in countries already suffering from weak food security.

Right to Adequate Housing

Mitigation actions such as REDD+ projects or the construction of large hydroelectric projects have the potential to seriously impact on the right to housing through displacement and forced evictions.

Reduced emissions from deforestation and forest degradation in developing countries (REDD+) refers to countries' efforts to curb carbon emissions, foster conservation, and enhance forest carbon stocks through payments to developing countries for sustainable forest management. However, while REDD+ programmes could provide significant funding for development, they also have the potential to impact negatively on the rights of Indigenous and local communities. For example, some of the policies and measures adopted by national governments in the context of REDD+ threaten to displace Indigenous peoples living in or near forests and lacking formal property rights to their traditional lands. The OHCHR report on climate change and human rights highlights how REDD+ policies might lead to the displacement of communities.²⁸⁶ The report notes that although compensation provided by REDD+ programmes could benefit Indigenous peoples who depend on those forest resources, Indigenous communities fear expropriation of their lands and displacement.²⁸⁷

In a similar way, large-scale mitigation projects, such as those under the Clean Development Mechanism, also have the potential to interfere with the right to housing through displacement or eviction. In order to ensure that mitigation projects do not infringe on the right to adequate housing, States must ensure that Indigenous and local communities have secure land tenure; that forced evictions are avoided, or carried out only when absolutely necessary and in compliance with international guidelines; and that mitigation policies are developed and implemented in consultation with those communities that might be affected.

CASE STUDY: Juma Sustainable Development Reserve Project

The Amazonas region of Juma in Brazil covers an area of almost 60,000 km² with about 430 families living in and around the reserve. The area is expected to face high deforestation pressures in the future. At the same time, rural Amazonas has one of the highest rates of poverty in Brazil, with more than 90% of the population living without access to basic sanitation, electricity or proper housing.²⁸⁸

The Juma Sustainable Development Reserve Project (JSDR) was created by the Government of Amazonas in 2006 as a financial mechanism for compensating REDD+ activities. Carbon credits generated from the JSDR are sold on the voluntary carbon market. It is projected that the resources raised from the sale of carbon credits will allow the Amazonas authorities to invest in community development and catalyze sustainable forest industries.

The JSDR aims to increase community resilience, including by improving the housing situation in the region.²⁸⁹ The tenure situation in Juma is very clear, as the region is a State Protected Area for sustainable use and belongs to the government of the State of Amazonas. Families are allowed to live in the area and use natural resources according to the management plan.²⁹⁰ The State-level Payment for Ecosystem Services (PES) scheme, *Bolsa*

Floresta, includes a combination of direct monthly payments to families, grants to community associations, investments in social programmes, and the promotion of sustainable income-generating activities, as well as support programmes and administration.²⁹¹ In order to receive *Bolsa Floresta*, beneficiaries must agree not to expand existing crop and meadowland, must ensure that their children attend school, and must maintain fire breaks.²⁹² Finally, investment into community development projects is informed by a participatory process that occurs through workshops comprised of community members.

The JSDR is experiencing an early success. As of 2012, 95 percent of the forests in the Juma area have been preserved, while nearly 2,000 residents have also benefited from the *Bolsa Floresta*, bringing the income of most Juma residents at or above Brazil's average minimum wage. 350 houses also have access to drinkable water, and more than 710 residents have access to light through individual or community power generators.²⁹³

Right to Water

The Clean Development Mechanism (CDM) allows countries with emission-limitation or emission-reduction commitments under the Kyoto Protocol to implement emission reduction projects in developing countries, generating carbon credits that can be used to offset their own emissions. Hydroelectric dam projects comprise the largest proportion of technology programmes under the CDM. Despite the fact that the construction of hydroelectric dams has long raised human rights concerns, including with respect to the right to water, and has important adverse environmental consequences, there are currently few human rights safeguards for hydroelectric dam projects under the CDM.²⁹⁴ As a result, some of these projects have led to decreased water quality²⁹⁵, accumulation of mercury in human tissues²⁹⁶, or the diversion of water resources from entire communities.²⁹⁷

The CDM has yet to adopt adequate safeguards ensuring the active, free and meaningful participation of all relevant stakeholders and requiring adequate human rights impact assessments to consider potential projects' impacts on the right to water, and yet safeguards are key to ensuring the rights of affected communities.

CASE STUDY: Barro Blanco CDM hydroelectric dam project in Panama

Barro Blanco is a heavily contested hydroelectric dam project approved by the CDM to be built on the Tabasara river in the province of Chiriqui, Panama. Serious concerns have been raised with regard to the additionality of the project, the lack of adequate public consultation prior to its approval, and human rights abuses involving GENISA, the project developer.²⁹⁸ If completed, the water reservoir of the Barro Blanco is expected to flood communal lands belonging to the Comarca of the Ngöbe-Buglé, the largest indigenous group in Panama. More than half a dozen townships along the riverbanks will be flooded, displacing thousands of people, and irrevocably impacting the livelihoods of some 5000 Ngöbe farmers that rely on the river for potable water, agriculture and fishing.²⁹⁹

In response to the Barro Banco project and other government plans for mining projects on Indigenous territory, the Ngöbe-Buglé led a wave of protests that culminated in violent clashes with the police, leaving three dead and over a hundred wounded and arrested in early

2012. UN-facilitated peace talks between the Panamanian government and the Ngöbe-Buglé led to an agreement in March 2012 to carry out a review of the project's disputed Environmental Impact Assessment. Environmental groups around the world are currently calling for the withdrawal of the project concession and the suspension from the CDM. They are also calling on banks and companies to freeze their support to the project.³⁰⁰

7.3 The Right to an Adequate Standard of Living in the Context of Climate Change Adaptation Policies

Compared to mitigation policies, much less attention has been given by human rights commentators to the impact of adaptation policies on the right to adequate standards of living.³⁰¹ Nevertheless, inappropriate adaptation planning may result in severe adverse impacts on the rights to food, water and housing, and can lead to 'adaptation apartheid'.³⁰²

Differential human vulnerability of affected populations to climate change impacts must be thoroughly investigated through in-depth participation and consultation mechanisms.³⁰³ Regional and group disparities, intra-household dynamics and the influence of gender on accessibility all need to be understood at the design phase so as to address disparities in adaptive capacity.³⁰⁴

Right to Adequate Food

States' adaptation planning must take into account the impacts of climate change on the right to food across sectors, including agriculture, livestock, and fisheries. Information gathering and sharing is particularly important in order to adapt in the agricultural sector. Farmers need to be educated on future changes in local climatic conditions and given access to diversified crop seeds such as drought-tolerant or salt-tolerant species. In the case of climate-induced migration, States should take into account the added strain on food supply systems in areas where there is an influx of migrants.

CASE STUDY: Tuvalu's NAPA project to introduce salt-resistant crops

National Adaptation Programmes of Action (NAPAs) provide a process for addressing the immediate adaptation needs of LDCs with regard to climate change, including concerns regarding the right to food. LDC parties can submit their NAPAs to the UNFCCC Secretariat to become eligible for funding for the implementation of NAPA projects.

Tuvalu's 2007 NAPA identifies conditions threatening the enjoyment of the right to food within its jurisdiction. Tuvalu is a small island developing State that is particularly at risk from rising sea levels, as the average height of its atolls is less than 2 metres above sea level. It is already experiencing the serious effects of sea level rise, including the destruction of food crops caused by the rising saltwater table. In light of these circumstances, Tuvalu's NAPA highlights the fact that saltwater intrusions³⁰⁵ due to rising sea levels will be worsened by the increasing frequency of extreme events; the combination of saltwater intrusion and rising temperatures will put stress on fruit trees, placing them at greater risk of pest infestation; and the combination of salt water intrusion and increasing frequency of extreme weather events will result in a loss of more than 50% in pulaka, coconut, banana and

breadfruit crops.³⁰⁶ The saltwater intrusions are projected to drastically reduce domestic subsistence agricultural production, directly affecting approximately 60% of the pulaka plantations and making the total destruction of pulaka crops imminent.³⁰⁷

Unless urgent and immediate measures are implemented, this situation will lead to a dependence on imported foods, affecting food security for individuals living in Tuvalu. In order to adapt to the climate change impacts, Tuvalu's NAPA proposes a USD 2.2 million project to introduce Palau pulaka crops, a salt-tolerant species.³⁰⁸

Right to Adequate Housing

Considering the deficit between adaptation needs and constrained resources, States may end up prioritizing action that aids the greatest part of the population whilst having an disproportionately adverse effect on the most vulnerable and marginalized.³⁰⁹ Furthermore, a lack of public consultation of affected populations early on in decision-making processes can lead to unintended consequences and conflicts further down the line. In the context of the right to adequate housing, these concerns are especially apparent with respect to adaptation policies to relocate or resettle communities away from high-risk zones. Such policies may give rise to concerns regarding forced evictions without appropriate forms of legal or other protection. If relocation or resettlement of communities is required, States must therefore ensure that all international guidelines are met, including with respect to the provision of adequate and appropriate housing.

CASE STUDY: Post Tsunami Adaptation Strategies in Maldives

Maldives and its Atolls are threatened by the effects of climate change with the acceleration of coastal erosion, the increased frequency of storms and floods, and rising sea levels. Since land is very scarce and overcrowding is an issue on many islands, these effects are negatively impacting on Maldivians' right to adequate housing.

The government of Maldives has been aware of the country's vulnerability to climate change since the late 1980s and had developed a national climate change adaptation strategy prior to the 2004 Indian Ocean Tsunami.³¹⁰ When Maldives was hit by the tsunami, the government adopted a reconstruction and recovery approach influenced by the long-term threat of the effects of climate change based on their climate change adaptation strategy. The focus of both the climate change adaptation strategy and the reconstruction strategy has been to develop 'resilient islands' and encourage people to relocate to these islands, moving people from smaller, less inhabited and more vulnerable islands to larger islands with better coastal protections. The incentive of better services was offered to individuals deciding to relocate to these 'resilient islands'.

According to the policy, the resettlement has been demand-driven and based on the free choice of the families³¹¹; however, following her official visit in February 2009, the UN Special Rapporteur on the right to adequate housing raised a number of concerns over these tsunami adaptation strategies, including "a lack of participation in the decision making process concerning relocation, the design of the new houses, and the infrastructure, which resulted in new structures that were not always compatible with the livelihood of the

communities”.³¹² She also observed human rights issues related to consolidation strategies of the Maldivian authorities, who forced the displacement of inhabitants from less populated islands to one island in order to achieve economies of scale for costly investments in services and infrastructure in response to climate change. This relocation provoked serious conflicts amongst individuals and communities, and delayed the construction of housing units.³¹³ Indeed, by the end of 2008, there were still approximately 3,700 displaced persons living in temporary accommodations.³¹⁴ Increased migration to the capital has also intensified pressure on housing affordability in Maldives, worsening overcrowding and inadequate living conditions. The Special Rapporteur recommended that the State and international organizations raise awareness at the local level to enhance transparency and public participation in decision-making processes.³¹⁵

Right to Water

As climate change places increased pressure on the right to water, States must ensure that consideration of this right is mainstreamed across all adaptation planning, and takes into account the need for water in the agricultural sector and health sectors, and for hygiene, as well as for consumption.

Safeguarding the right to water also requires adaptation policies and projects that target action at the right scale in order to ensure that one community’s increased access to water resources does not adversely impact downstream communities. Information transfer across regions and project types is key to ensuring that lessons learned are shared.³¹⁶

CASE STUDY: The Pangani River Basin Management Project in Tanzania (2002-2011)

The Pangani river basin covers an area of 43,650 km². 95% of this area is located in Tanzania, and 5% in Kenya. In recent times, factors such as population growth, deforestation, the expansion of cultivated land, and increased livestock production, fishing, mining and hydroelectric activities, combined with cycles of drought and flood exacerbated by climate change have challenged the sustainability of the Pangani river basin. The threat to water security and increasing water demand have led to tensions between various stakeholders within the basin.³¹⁷

In response to these challenges, the Pangani Basin Water Board (PBWB) decided to implement an Integrated Water Resources Management (IWRM) approach in 2002. With the support of a range of international organizations, the PBWB established the Pangani River Basin Management Project to provide a forum for continued dialogue about water management issues and climate threats amongst different stakeholders in the basin. In the context of this project, an environmental flow assessment was carried out by specialists from a range of disciplines to gather information on hydrology and the economic, social and ecological impacts of changes in river flow regimes. Based on this information, numerous scenarios were developed, providing stakeholders with an understanding of the social, economic and environmental impacts of different water allocations.³¹⁸

The IWRM strategy helped stakeholders and water managers adapt to the effects of climate change on the water supply. In addition to increasing the knowledge of water resources and the institutional capacity at the basin level, the process also created a platform for stakeholder dialogue which empowered water users to participate in IWRM and climate change adaptation processes through dialogue and decentralized water governance.³¹⁹

¹⁸⁴ See Matthew Craven, *The International Covenant on Economic, Social and Cultural Rights* (Oxford: Clarendon Press, 1998) at 292-293 (analysis of travaux préparatoires).

¹⁸⁵ See CESCR, *General Comment No 12*, UN Doc E/C.12/1999/5, (12 May 1999) [*General Comment No 12*]; CESCR, *General Comment No 4*, UN Doc E/1992/23, (13 December 1991) [*General Comment No 4*]; CESCR, *General Comment No 7*, UN Doc E/1998/22, (20 May 1997) [*General Comment No 7*]; CESCR, *General Comment No 15*, UN Doc E/C.12/2002/11, (20 January 2003).

¹⁸⁶ Human Rights Council, *Resolution 15/...Human rights and access to safe drinking water and sanitation*, UN Doc A/HRC/15/L.14, (24 September 2010).

¹⁸⁷ *General Reporting Guidelines*, *supra* note 64, Article 11.

¹⁸⁸ ILO World Employment Conference, *Target Setting for Basic Needs* (1976) at 2.

¹⁸⁹ ICESCR, *supra* note 21, Article 11; *Convention on the Rights of the Child*, Article 24(c) [CRC]; *Convention on the Rights of Persons with Disabilities*, Articles 25(f), 28(1) [CRPD]; *Convention on the Elimination of All Forms of Discrimination against Women*, Article 14(2)h [CEDAW]; *International Convention on the Elimination of all Forms of Racial Discrimination*, Article 5(e) [ICERD].

¹⁹⁰ *General Comment No 12*, *supra* note 186 at para 6.

¹⁹¹ *Ibid* at para 4.

¹⁹² *Ibid*.

¹⁹³ *Ibid* at para 6.

¹⁹⁴ *Ibid* (“[t]he availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture” at para 8).

¹⁹⁵ *Ibid* (“[t]he accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights” at para 8).

¹⁹⁶ *Ibid* at para 12.

¹⁹⁷ *Ibid* at para 9.

¹⁹⁸ *Ibid* at para 10.

¹⁹⁹ *Ibid* at para 11.

²⁰⁰ *Ibid* at para 13.

²⁰¹ *Ibid*.

²⁰² ICESCR, *supra* note 21, Article 11. See also *Universal Declaration of Human Rights*, Article 25(1); ICERD, *supra* note 190, Article 5 (e)(iii); CEDAW, *supra* note 190, Article 14(2); CRC, *supra* note 190, Article 27(3); *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, Article 43(1)d; CRPD, *supra* note 190, Articles 9(1)a, 28(1), (2)d).

²⁰³ ICESCR, *supra* note 21, Article 11.

²⁰⁴ *General Comment No 4*, *supra* note 186 at para 7.

²⁰⁵ *Ibid*.

²⁰⁶ *Ibid* at para 8.

²⁰⁷ Council of Europe, *European Social Charter (rev'd)*, 3 May 1996, 2151 UNTS 277 EIFO, (1 July 1999).

²⁰⁸ UN Commission on Human Rights (CHR), *Guiding Principles on Internal Displacement*, UN Doc E/CN.4/1998/53/Add.2, (11 February 1998).

²⁰⁹ United Nations Security Council, *Resolution 1286*, UN Doc S/Res/1286, (19 January 2000).

²¹⁰ UN Commission on Human Rights, *Internally displaced persons*, UN Doc E/CN.4/RES/2004/55, (20 April 2004).

²¹¹ ²¹¹ *Protection of and assistance to IDP*, GA Res 58/177, UN Doc A/RES/58/177, (12 March 2004).

²¹² Human Rights Council, *Adequate housing as a component of the right to an adequate standard of living*, Res 6/27, UN Doc A/HRC/6/22, (14 December 2007).

²¹³ Organization of American States, *American Declaration of the Rights and Duties of Man*, 2 May 1948, OAS Res XXX (1948).

²¹⁴ Organization of American States, *OAS Charter*, 30 April 1948, 119 UNTS 3 EIFO, (13 December 1951).

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- ²¹⁵ *Ibid.*
- ²¹⁶ See CESCR, *General Comment No 7*, UN Doc E/1998/22, (20 May 1997).
- ²¹⁷ CESCR, *General Comment No 4: The right to adequate housing (Art.11 (1))*, UN Doc E/1992/23, (December 13, 1991).
- ²¹⁸ CESCR, *General Comment No 7*, UN Doc E/1998/22, (20 May 1997).
- ²¹⁹ *Ibid* at para 3.
- ²²⁰ *Ibid* at para 4.
- ²²¹ UN Commission on Human Rights, *Forced Evictions*, Res 1993/77, UN Doc E/CN.4/1993/L.11/Add.8, (10 March 1993).
- ²²² *Centre on Housing Rights and Evictions v The Sudan* (Decisions on Merits), Communications Nos. 279/03 & 296/05, African Commission on Human and Peoples' Rights, May 27, 2009 at para 159.
- ²²³ *Political Constitution of the Republic of Colombia*, July 6, 1991.
- ²²⁴ *Constitution of the Republic of South Africa*, No. 108 of 1996, Promulgated December 18th, 1996.
- ²²⁵ See *CEDAW*, *supra* note 190, Article 14(2)h; *CRPD*, *supra* note 190, Article 28(2)a (explicitly referring to access to water services in provisions on an adequate standard of living). See also *CRC*, *supra* note 190, Article 24(2)c (referring to the provision of "clean drinking water" as part of the measures States shall take to combat disease and malnutrition).
- ²²⁶ *General Comment No 15*, *supra* note 58 at para 3.
- ²²⁷ *Ibid* at para 6.
- ²²⁸ *Ibid* at para 2.
- ²²⁹ *Ibid* at para 10.
- ²³⁰ *Ibid* at para 12.
- ²³¹ See Jamie Bartram & Guy Howard, "Domestic water quantity, service level and health: what should be the goal for water and health sectors" (2002) (World Health Organization).
- ²³² Human Rights Council, *Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque*, UN Doc A/HRC/12/24 (1 July 2009).
- ²³³ General Assembly, *Resolution 64/292: The human right to water and sanitation*, UN Doc A/RES/64/292, (28 July 2010).
- ²³⁴ Human Rights Council, *Resolution 15/9: Human rights and access to safe drinking water and sanitation*, UN Doc A/HRC/RES/15/9, (6 October 2010).
- ²³⁵ CESCR, *Statement on the Right to Sanitation*, UN Doc E/C.12/2010/1, (19 November 2010) at para 8.
- ²³⁶ *General Comment No 15*, *supra* note 58 at para 1.
- ²³⁷ Human Rights Council, *Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque*, UN Doc A/HRC/24/44, (11 July 2013) at para 21 [Catarina de Albuquerque].
- ²³⁸ *Ibid* at para. 65-80.
- ²³⁹ *General Comment No 12*, *supra* note 186 at para 14.
- ²⁴⁰ *Ibid* at para 15.
- ²⁴¹ *Ibid* at para 21. See also *ibid* at paras 21-28.
- ²⁴² *Ibid* at para 28.
- ²⁴³ *Ibid* at para 25.
- ²⁴⁴ *Ibid* at paras 29-35.
- ²⁴⁵ *Ibid* at paras 36-37.
- ²⁴⁶ *United Nations Framework Convention on Climate Change*, Article 2. [UNFCCC]
- ²⁴⁷ *General Comment No 7*, *supra* note 186 at para 8.
- ²⁴⁸ *General Comment No 4*, *supra* note 186 at para 10.
- ²⁴⁹ OHCHR *Report on Climate Change and Human Rights*, *supra* note 10 at para 38.
- ²⁵⁰ *General Comment No 4*, *supra* note 186 at para 13.
- ²⁵¹ *Ibid* at para 12.
- ²⁵² *Ibid* at para 8.
- ²⁵³ *Ibid* at para 14.
- ²⁵⁴ *Ibid* at para 17.
- ²⁵⁵ *Ibid* at para 11.
- ²⁵⁶ *General Comment No 7*, *supra* note 186 at para 15.

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- ²⁵⁷ *Ibid* at para 16.
- ²⁵⁸ Adapted from *General Comment No 15, supra* note 58 at para 37.
- ²⁵⁹ *Ibid* at para 21.
- ²⁶⁰ *Ibid* at para 23.
- ²⁶¹ *Ibid* at para 24.
- ²⁶² *Ibid* at para 25.
- ²⁶³ *Ibid* at para 30.
- ²⁶⁴ UNFCCC, *supra* note 247 at Article 3.
- ²⁶⁵ *Ibid*, Article 4.
- ²⁶⁶ Catarina de Albuquerque, *supra* note 238, at para 58.
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8. The Right to the Highest Attainable Standard of Physical and Mental Health

Article 12

- (1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
- (2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - a. The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - b. The improvement of all aspects of environmental and industrial hygiene;
 - c. The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - d. The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

8.1 Understanding the Right to Health

8.1.1 *Concept and Content*

The right to health is closely connected to the notion of human dignity. It is also “related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement.”³²⁰

According to the CESCR, the right to health in Article 12 is not confined to the right to health care, but instead embraces “a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.”³²¹ It also includes “the participation of the population in all health-related decision-making at the community, national and international levels.”³²²

The right to health should not be misconstrued as the right to be *healthy*; rather, it is the right to a number of freedoms and entitlements.³²³ These freedoms include “the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation”, while the entitlements include “the right to a system of health protection which provides equality of opportunity for people to enjoy the highest

attainable level of health.”³²⁴ Finally, as a number of aspects of good health cannot be addressed by the State (for example, genetic factors or the adoption of unhealthy lifestyles), the right to health is understood as “a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health.”³²⁵

The CESCR has further commented on four interrelated and essential elements that constitute the right to health: availability, accessibility, acceptability, and quality.

Availability	“Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party. The precise nature of the facilities, goods and services will vary depending on numerous factors, including the State party's developmental level. They will include, however, the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs, as defined by the WHO Action Programme on Essential Drugs.” ³²⁶	
Accessibility	“Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:	
	Non-discrimination:	health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.
	Physical accessibility:	health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS. Accessibility also implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas. Accessibility further includes adequate access to buildings for persons with disabilities.

	Economic accessibility (affordability):	health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households.
	Information accessibility:	accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality.” ³²⁷
Acceptability	“All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.” ³²⁸	
Quality	“As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, <i>inter alia</i> , skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.” ³²⁹	

8.1.2 Obligations of State Parties

The link between climate change and the right to the highest attainable standard of physical and mental health has been recognized by States for some time. For example, the first line of the original UNFCCC agreement directly mentions the threat to human health posed by climate change. Indeed, obligations of State parties related to climate change under Article 12 of ICESCR intersect with obligations under a number of related international treaties, which will be briefly summarised here. A general declaration on the topic of health can also be found in the UDHR, which states at Article 25 that “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care...”

- **Actively ensuring access to health care services, especially for the most vulnerable.** Article 12 of ICESCR, especially when read in conjunction with articles 7 and 10, guarantees the “creation of conditions which would ensure to all medical service and medical attention in the event of sickness.” Accessibility of quality health care services and medicine is a central aspect of adaptation to climate change. Numerous international conventions emphasize access to medical services, especially

for the most vulnerable. For instance, the Convention on the Rights of Disabled Persons reaffirms the universal protection of the right to adequate health and establishes that the disabled have the right to receive specialised health care services. Articles 10, 11, 12 and 14 of the CEDAW address the right to health for women, including access to family planning and other health services. The CRC contains numerous provisions relating to the life, welfare and health of children (most notably articles 6, 19, 23 and 24). In particular, Article 24 elaborates in great detail the right of children to access health facilities, amongst other aspects. Reducing child and maternal mortality are also encapsulated in targets 4 and 5 of the Millennium Development Goals (MDGs).

- **Combating Malnutrition and Unhealthy Lifestyles.** The right to the highest attainable standard of physical and mental health in Article 12 of the ICESCR implies access to a healthy diet and lifestyle. Malnutrition has long been a focus of international development efforts, and is a growing concern in relation to climate change. For instance, the Universal Declaration on the Eradication of Hunger and Malnutrition states that “every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties.”³³⁰ In addition, the first of the MDGs is to eradicate extreme poverty and hunger, with target 1C being to halve, between 1990 and 2015, the proportion of people who suffer from hunger.
- **Promoting a Healthy Environment.** Article 12.2(b) of the ICESCR mentions the improvement of environmental and industrial hygiene. States have also committed to promoting a healthy environment in a host of Multilateral Environmental Agreements (MEAs), many of which entered into force in the past 20 years. Prominent examples include the UNFCCC (specifically on the topic of climate change), the United Nations Convention on Biological Diversity (UNCBD), and the United Nations Convention to Combat Desertification (UNCCD). Further, concerns about healthy environments and sustainable development more generally are also being integrated into non-environmental treaties. For example, the preamble to the 1994 World Trade Organisation Agreement mentions sustainable development. Numerous Regional Trade Agreements also include provisions relating to the promotion of healthy environments and human health.
- **Obligation to Cooperate against Global Epidemics.** The risk of global pandemics is an increasing concern in relation to climate change. Since 2007, the 194 State parties to the International Health Regulations (IHRs) have been implementing this legally binding document, which provides a new framework for the coordination of the management of events that may constitute a public health emergency of international concern. The objective of the IHRs is to improve the capacity of all countries to detect, assess, notify and respond to public health threats. Each State party has new obligations to prevent and control the spread of disease inside and outside their borders, and to report potential public health emergencies of international concern to the WHO. To this end, States are expected to develop and maintain key disease surveillance capabilities.³³¹

Possible Impacts of Climate Change on the Right to the Highest Attainable Standard of Physical and Mental Health

Climate change involves an increase in a host of health hazards. These include: 1) extreme air temperatures and air pollution leading to cardiovascular and respiratory illnesses, 2) floods, droughts and contaminated water problems that increase the risk of diseases, for example mosquito-borne diseases, 3) heightened risk of malnutrition linked to the deleterious effects of climate change on food production and the loss of certain wild plant and animal species, 4) greater frequency of extreme weather events that destroy lives and livelihoods, 5) health risks linked to forced migrations caused by climate change, and 6) an increase in armed conflicts over natural resources threatening both physical and mental health.

In this context marked by a sharp increase in health risks, governments are challenged to develop flexible strategies in order to ensure accessible health services and medicine on an increasing scale. Such a commitment, clearly articulated in Article 12 of ICESCR, requires innovative strategies, policies and legal frameworks.

8.2 Understanding the Right to Health in the Context of Climate Change Mitigation Policies

There are a number of intersections between climate change mitigation and the right to the highest attainable standard of physical and mental health. For example, switching to cleaner cookstove technologies can not only mitigate climate change by reducing emissions, but also benefit health by reducing levels of indoor air pollution.

Transport, especially in urban centres, can also have an important impact on the right to health. Policies promoting a shift to public transportation and phasing out private motorised transport for commuting have obvious mitigation benefits in terms of reducing carbon emissions, as well as direct health benefits. Indeed, urban air pollution linked to vehicle emissions is a serious health hazard. Public transport policies can also be combined with policies encouraging so-called “active transport” such as cycling and walking, which promote physical and mental health. Active transport and public transport require adequate urban planning, with features such as reserved bus lanes and bicycle paths.

CASE STUDY: The “Lighting a Billion Lives” initiative³³²

Approximately 1.5 billion people in the world lack electricity, and about a quarter of these people live in India. Many are forced to light their homes after sunset with kerosene lamps, dung cakes, firewood and crop residue. These practices lead to indoor air pollution, which is a major cause of respiratory illnesses. Use of kerosene has also been linked to tuberculosis, and kerosene and paraffin lamps lead to a risk of injury.

The Energy and Resource Institute (TERI), a large Indian NGO, began the “Lighting a Billion Lives” initiative to address these issues by providing Indian households with low-energy LED lanterns powered by sunlight. These lanterns can be recharged during the day, and provide 3 to 6 hours of light to a household every night. The initiative was launched in 2007, and within three years the solar lanterns had spread rapidly, reaching 600 villages in 16

Indian states and providing light for 160,000 people. TERI has also established solar photovoltaic charging stations in each village to recharge the lanterns. These charging stations are operated by local entrepreneurs who are selected and trained by TERI and other grassroots partners.

The initiative facilitates socioeconomic development of villages, while also offering local and global environmental benefits. Each solar lantern displaces the use of about 40–60 litres of kerosene a year and an estimated 400–500 litres of kerosene in a lifespan of 10 years, thereby mitigating about 1.45 tonnes of CO₂. Users, particularly women, reported a significant reduction in frequent coughs and eye rashes as a result of replacing kerosene or paraffin lamps with the solar lanterns. They also report fewer accidents and injuries due to toppling of kerosene lamps. At the household level, the initiative helps reduce smoke pollution in rural women's indoor work environment, resulting in fewer complaints of red eyes and heavy headaches.

8.2 Understanding the Right to Health in the Context of Climate Change Adaptation Policies

The right to the highest attainable standard of physical and mental health may also be impacted in critical ways by climate change adaptation actions. Overall, States' adaptation actions should address the social, economic and environmental determinants of health in an integrated manner, across various sectors. For example, adaptation policies relating to food and agriculture, transportation, water quality, land use planning and migration may all have a direct impact on human health. To this end, it will be important to sensitize and mobilise policy makers and the health community to the variety of health challenges posed by climate change. Effective and flexible adaptation will require leadership from within the health sector, for example by direct participation in the elaboration of National Adaptation Plans of Action. Furthermore, a more widespread use of health impact assessments for policymaking could also help strengthen the adaptive capacity of the health system.

³²⁰ *General Comment No 14, supra* note 57 at para 3.

³²¹ *Ibid* at para 4.

³²² *Ibid.*

³²³ *Ibid* at para 8.

³²⁴ *Ibid.*

³²⁵ *Ibid* at para 9.

³²⁶ *Ibid* at para 12(a).

³²⁷ *Ibid* at para 12(b).

³²⁸ *Ibid* at para 12(c).

³²⁹ *Ibid* at para 12(d).

³³⁰ *Universal Declaration on the Eradication of Hunger and Malnutrition*, online: OHCHR <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/EradicationOfHungerAndMalnutrition.aspx>>.

³³¹ See generally, WHO, online: WHO <<http://www.who.int/ihr/en/>>.

³³² Note: this case study was drawn from World Health Organization, *Health in the Green Economy: Health co benefits of Climate Change Mitigation* (Geneva: WHO) at 104, online: <<http://www.who.int/hia/hgehousing.pdf>>.

9. THE RIGHT TO EDUCATION

Article 13

(1) The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

(2) The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

(3) The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

(4) No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its

jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

9.1 Understanding the Right to Education

Article 13 sets out the importance of the right to education and its link to human dignity. It provides that State parties agree that education shall “be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms,” and “enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.” With respect to climate change, the CESCR has noted that “education has a vital role in [...] protecting the environment.”³³³

9.1.1 Concept & Content

The right to education is indispensable to the realization of other rights enshrined in ICESCR:

As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth.³³⁴

The CESCR has affirmed that State parties are obligated to ensure that education conforms to the aims and objectives set out in Article 13(1), as interpreted in light of a number of more recent instruments, including: the *World Declaration on Education for All* (art. 1), the *Convention on the Rights of the Child* (art. 29 (1)), the *Vienna Declaration and Programme of Action* (Part I, para. 33 and Part II, para. 80), and the *Plan of Action for the United Nations Decade for Human Rights Education* (para. 2).³³⁵

Elements of the Right to Receive Education ³³⁶	
Availability	“functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party”
Acceptability	“the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13 (1) and such minimum educational standards as may be approved by the State (see art. 13 (3) and (4))”
Adaptability	“education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their

	diverse social and cultural settings”	
Accessibility	Physical Accessibility	“education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location”
	Economic Accessibility	<ul style="list-style-type: none"> • “education has to be affordable to all”: • while States are obligated to provide free primary education, they are only bound to progressively introduce free secondary and higher education
	Non-Discrimination	“education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds”

These elements apply to education in all its levels and forms. The following specific rights under Article 13 therefore include the elements of availability, accessibility, acceptability and adaptability.

Specific Rights under Article 13	
The right to primary education – Article 13(2)(a)	<ul style="list-style-type: none"> • primary education is defined as ensuring that the basic learning needs of children are satisfied: “essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning.”³³⁷ • primary education must be compulsory and free for all
The right to secondary education – Article 13(2)(b) ³³⁸	<ul style="list-style-type: none"> • secondary school is defined as including “completion of basic education and consolidation of the foundations for life-long learning and human development” and preparing “students for vocational and higher educational opportunities.”³³⁹ • secondary school may be provided “in its different forms”: “thereby recognizing that secondary education demands flexible curricula and varied delivery systems to respond to the needs of students in different social and cultural settings”³⁴⁰ • secondary school “shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education” <ul style="list-style-type: none"> ○ “secondary education is not dependent on a student’s apparent capacity or ability and, secondly, that secondary education will be distributed throughout the State in such a way that it is available on the same basis to all”³⁴¹ ○ “States parties should adopt varied and innovative approaches to the delivery of secondary education in different social and cultural contexts”³⁴² ○ “while States must prioritize the provision of free primary education, they also have an obligation to take concrete

	steps towards achieving free secondary (...) education” ³⁴³
Technical and vocational education	<ul style="list-style-type: none"> • forms part of both the right to education and the right to work (art. 6 (2)) • defined as “all forms and levels of the educational process involving, in addition to general knowledge, the study of technologies and related sciences and the acquisition of practical skills, know-how, attitudes and understanding relating to occupations in the various sectors of economic and social life”³⁴⁴
The right to higher education – Article 13(2)(c)	<ul style="list-style-type: none"> • higher education should also be available “in different forms”³⁴⁵ • higher education “shall be made equally accessible to all, on the basis of capacity”; the “capacity” of individuals should be assessed by reference to all their relevant expertise and experience³⁴⁶ • States have an obligation to take concrete steps towards achieving free higher education³⁴⁷
The right to fundamental education – Article 13(2)(d)	<ul style="list-style-type: none"> • fundamental education is equivalent to basic education as defined above³⁴⁸ • “the right to fundamental education is not confined to those ‘who have not received or completed the whole period of their primary education’, but rather “extends to all those who have not yet satisfied their ‘basic learning needs’”³⁴⁹ • “Fundamental education, therefore, is an integral component of adult education and life-long learning. Because fundamental education is a right of all age groups, curricula and delivery systems must be devised which are suitable for students of all ages.”³⁵⁰
A school system; adequate fellowship system; material conditions of teaching staff – Article 13(2)(e)	<ul style="list-style-type: none"> • requirement that “the development of a system of schools at all levels shall be actively pursued” means that a State Parties are “obliged to have an overall developmental strategy for its school system” encompassing schooling at all levels, but prioritizing primary education³⁵¹ • State Parties are required to establish “an adequate fellowship system” • State Parties are required to ensure that “the material conditions of teaching staff shall be continuously improved”

<p>The right to educational freedom (Articles 13(3) & 13(4))</p>	<ul style="list-style-type: none"> • States parties undertake to respect: <ul style="list-style-type: none"> ○ “the liberty of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions”³⁵² ○ “the liberty of parents and guardians to choose other than public schools for their children, provided the schools conform to ‘such minimum educational standards as may be laid down or approved by the State’” ○ “the liberty of individuals and bodies to establish and direct educational institutions, provided the institutions conform to the educational objectives set out in article 13(1) and certain minimum standards”, relating to “issues such as admission, curricula and the recognition of certificates”
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9.1.2 Obligations of State Parties

The core obligation that State parties are bound to respect in terms of the right to education is the obligation to ensure:

the right of access to public educational institutions and programmes on a non-discriminatory basis; to ensure that education conforms to the objectives set out in article 13 (1); to provide primary education for all in accordance with article 13 (2) (a); to adopt and implement a national educational strategy which includes provision for secondary, higher and fundamental education; and to ensure free choice of education without interference from the State or third parties, subject to conformity with ‘minimum educational standards’ (art. 13 (3) and (4)).³⁵³

In terms of the progressive realization of the right to education, State parties are obliged to take steps:

- “to ensure that curricula, for all levels of the educational system, are directed to the objectives identified in article 13 (1)” and “to establish and maintain a transparent and effective system which monitors whether or not education is, in fact, directed to the educational objectives set out in article 13 (1).”³⁵⁴
- “to respect, protect and fulfil each of the ‘essential features’ (availability, accessibility, acceptability, adaptability) of the right to education”³⁵⁵
- “to prioritize the introduction of compulsory, free primary education”³⁵⁶
- “towards the realization of secondary, higher and fundamental education for all those within its jurisdiction”, including at a minimum the obligation “to adopt and implement a national educational strategy which includes the provision of secondary, higher and fundamental education” which includes “mechanisms, such as indicators and benchmarks on the right to education, by which progress can be closely monitored.”³⁵⁷
- “to ensure that an educational fellowship system is in place to assist disadvantaged groups”³⁵⁸

- “to ensure the direct provision of the right to education in most circumstances”³⁵⁹
- “to establish ‘minimum educational standards’ to which all educational institutions established in accordance with article 13 (3) and (4) are required to conform” and “maintain a transparent and effective system to monitor such standards”

Possible Impacts of Climate Change on the Right to Education

The right of children and adults to education may be disrupted in many ways due to the impact of climate change on government infrastructure and vulnerable populations. The example of Bangladesh is illustrative of how extreme weather events can interfere with the enjoyment of this right. For example:

[I]t is estimated that 63 million children in Bangladesh may become physically and socially vulnerable due to increased frequency and enormity of hazards like floods, cyclones and storm surges, tornadoes, riverbank erosion, drought and sea level rise. Physical vulnerability may include death, injury, diseases, physical abuse, chronic malnutrition and forced labour. Social vulnerability may include loss of parents and family, internal displacement, risk of being trafficked, loss of property and assets, and lack of educational opportunities.

Schools themselves may be washed away by lash flood, tidal flood and rain floods, or destroyed by cyclones. Pupils may be deprived of access to their school because of interference with transportation. Repairs, mitigation, and mitigation strategies may occasion important strains on national budgets and the quality of education. Finally, increased vulnerability of certain populations because of extreme weather events may force certain children out of school and into the workforce before the end of their education. These and similar impacts must be expected in regions that, like Bangladesh, will be affected by an increase in such meteorological phenomena.³⁶⁰

9.2 Understanding the Right to Education in the Context of Climate Change Mitigation Policies

Education is an essential element of the global response to climate change. UNESCO’s Director-General Irina Bokova has stated that “responding to climate change starts with education.”³⁶¹ Since mitigating and adapting to climate change will require profound changes to shift away from carbon-intensive lifestyles, there are thus substantial linkages between climate change and education. Nevertheless, the connection between States’ climate change mitigation policies and potential impacts on the right to education are less obvious.

At the international level, the right to education is one of the few economic, social and cultural rights that have been directly addressed within the UNFCCC. Article 6 of the UNFCCC addresses the issue of climate change related education, training and public awareness, with the aim of developing and implementing educational and training programmes on climate change. Further, in article 10(e) of the Kyoto Protocol, State parties pledge to “cooperate in and promote at the international level, and, where appropriate, using existing bodies, the development and implementation of education and training programmes.” In this respect, the State parties to the UNFCCC adopted the New Delhi Work Programme in 2002. This Programme was a “five-year country-driven work

programme engaging all stakeholders in the implementation of article 6 commitments and recommending a list of Article 6 related activities that could be undertaken at the national level.”³⁶² This programme was extended in 2012 through the Doha work programme on Article 6.

At the national level, education is often absent from national climate policies.³⁶³ One of the reasons for this is the fragmentation between environmental and educational ministries, which hinders the inclusion of climate policies in educational plans. Here, UNESCO’s Climate Change Education for Sustainable Development (CCESD) can be looked upon as an example in helping develop climate education at the national level. The CCESD programme has the objectives of strengthening capacity of Member States to provide quality climate change education for sustainable development at primary and secondary school levels through improved education policy, analysis, research and planning; teacher education and training of education planners; and training on curriculum review.

As economies begin to shift towards low carbon development, States must ensure that education reflects these changes to the economy, helping to prepare students for the new socio-economic landscape. Thus, while ensuring that States meet their core obligations in respect to education, it will be important to consider integrating climate education across programs.

9.3 Understanding the Right to Education in the Context of Climate Change Adaptation Policies

In relation to adaptation, the impacts of climate change should be considered in delivering educational programs, in order to ensure the right to education for all. For example, a recent UNESCO report, citing Pakistan and Uganda as examples, has highlighted that climate-related shocks result in far more girls being taken out of school than boys.³⁶⁴ Increasing natural disasters related to climate change may result in the destruction of infrastructure, social upheaval, and forced migration, which will disrupt access to and the delivery of education. Similarly, slow onset climate events will put new pressures on the fulfilment of this right. As a result, States’ adaptation planning must account for these factors.

Education with respect to climate adaptation should also be developed and integrated within national institutions and educational policies, in order to help people to adapt to the new challenges that climate change brings. It is pertinent to note that climate education is very broad and should occur at all levels of learning from primary education to education amongst the adult population.

CASE STUDY: Education, Climate Change and Children in Kenya

Climate change is already affecting Kenya, resulting in more hot days per year, prolonged droughts, erratic rainfall drying up rivers and streams, and flooding in certain areas. These changes have in turn led to a decline in available drinking water, decreased harvests, food shortages, loss of biodiversity, landslides and soil degradation. By most estimates, these consequences only stand to be exacerbated in the coming years.

In light of these problems, UNICEF recently published a study on how climate education may play a role in helping communities in Kenya adapt to specific challenges posed by climate change. More specifically, it focuses on how education can involve children in climate adaptation and disaster risk reduction programs with a view to improved outcomes.³⁶⁵

With respect to education, the report highlights numerous region-specific adaptation programs that could be integrated within educational programs based on the climate induced physical changes that are predicted. The programs range from running emergency preparedness programs in local schools where the risk of flooding is high, to providing child-friendly schools that focus on education, water, sanitation and hygiene, health, protection of vulnerable children, and community participation. For example, the emergency flood preparedness program is meant to set guidelines for students and teachers for surviving disasters, training in recognizing early warning signs, and the knowledge and skills to survive flooding emergencies.³⁶⁶ The child-friendly schools initiative facilitates access to health through mobile health units that come to schools and provide regular vaccinations and nutritional screening, as well as rain water harvesting in times of low-rainfall. Such a program can act as a 'safety net' for the most vulnerable children affected by climate change.³⁶⁷

³³³ CESCR, *General Comment No 13*, UN Doc E/C.12/1999/10 (8 December 1999) at para 1 [*General Comment No 13*].

³³⁴ *Ibid* at para 1.

³³⁵ *Ibid* at para 5.

³³⁶ *Ibid* at para 6.

³³⁷ *Ibid* at para 9 (World Declaration on Education for All, Article 1).

³³⁸ See CESCR, *General Comment No 11*, UN Doc E/C.12/1999/4, (10 May 1999).

³³⁹ *General Comment No 13*, *supra* note 354 at para 12.

³⁴⁰ *Ibid*.

³⁴¹ *Ibid* at para 13.

³⁴² *Ibid*.

³⁴³ *Ibid* at para 14.

³⁴⁴ *Ibid* at para 16 (*UNESCO Convention on Technical and Vocational Education*, Article 1(a)).

³⁴⁵ *Ibid* at para 18.

³⁴⁶ *Ibid* at para 19.

³⁴⁷ *Ibid* at para 20.

³⁴⁸ *Ibid* at para 22.

³⁴⁹ *Ibid* at para 23.

³⁵⁰ *Ibid* at para 24.

³⁵¹ *Ibid* at para 25.

³⁵² *Ibid* at para 28.

³⁵³ *Ibid* at para 57.

³⁵⁴ *Ibid* at para 49.

³⁵⁵ *Ibid* at para 50.

³⁵⁶ *Ibid* at para 51.

³⁵⁷ *Ibid* at para 52.

³⁵⁸ *Ibid* at para 53.

³⁵⁹ *Ibid*.

³⁶⁰ P. K. Das, *Climate Change and Education*, Bangladesh, March 2010, p. 7, online: <http://www.preventionweb.net/english/professional/publications/v.php?id=16355>.

³⁶¹ UNESCO, Director General, “Education is Key for Responding to Climate Change: Director-General addresses United Nations University” (Lecture delivered at the United Nations University, 26 November 2010), online: UNESCO <http://www.unesco.org/new/en/media-services/single-view/news/education_is_key_for_responding_to_climate_change_director_general_addresses_united_nations_university/#.Um_ICoXuc7A>.

³⁶² UNFCCC, *Report of the Conference of the Parties on its Eight Session, Held at the New Delhi from 23 October to November 1 2002*, UN Doc FCCC/CP/2002/7/Add.1, Decision 11/CP.8 (New Delhi work programme on Article 6 of the Convention).

³⁶³ UNESCO, *The UNESCO Climate Change Initiative, Climate Education for Sustainable Development* (2010) at 6.

³⁶⁴ EFA Global Monitoring, *Report, Reaching the Marginalized* (Oxford: Oxford University Press, 2010) at 10.

³⁶⁵ Nigel Thornton, *Climate Change in Kenya: Focus on Children* (2010) (UNICEF).

³⁶⁶ *Ibid* at 5.

³⁶⁷ *Ibid* at 11.

10. RIGHT TO CULTURE

Article 15

- (1) The States Parties to the present Covenant recognize the right of everyone:
 - (a) To take part in cultural life;
 - (b) To enjoy the benefits of scientific progress and its applications;
 - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
- (2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
- (3) The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
- (4) The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

10.1 Understanding the Right to Culture

10.1.1 *Concept & Content*

The meaning of the term “culture” in Article 15 is defined broadly as “a way of life”³⁶⁸:

Its elements would be language, verbal communication, oral and written literature, song, religion or belief systems which [include] rights and ceremonies, material culture, including methods of production or technology, livelihood, the natural and manmade environment, food, clothing, shelter, the arts, customs and traditions, plus a world view representing the totality of a person’s encounter with the external forces affecting his life and that of his community. Culture mirror[s] and shape[s] the economic, social and political life of the community.³⁶⁹

In General Comment No. 21, the CESCR also recalled that “culture is a broad, inclusive concept encompassing all manifestations of human existence.”³⁷⁰ Accordingly, culture:

encompasses, inter alia, ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they

give to their existence, and build their world view representing their encounter with the external forces affecting their lives.³⁷¹

The cultural rights protected under Article 15 are closely related to freedom of expression, as well as to the right to the full development of the human personality.³⁷² The right to manifest one’s culture is thus conceived as forming a fundamental element of human dignity. In addition, these rights seek to ensure that everyone in society equally enjoys the benefits of scientific progress, which may enhance their enjoyment of other ICESCR rights, including those rights that relate to health and adequate living standards.

In its Reporting Guidelines, the CESCR sets out the following elements in terms of assessing the realization of the right of everyone to take part in cultural life:

- (a) Availability of funds for the promotion of cultural development and popular participation in cultural life, including public support for private initiative.
- (b) The institutional infrastructure established for the implementation of policies to promote popular participation in culture, such as cultural centres, museums, libraries, theatres, cinemas, and in traditional arts and crafts.
- (c) Promotion of cultural identity as a factor of mutual appreciation among individuals, groups, nations and regions.
- (d) Promotion of awareness and enjoyment of the cultural heritage of national ethnic groups and minorities and of indigenous peoples.
- (e) Role of mass media and communications media in promoting participation in cultural life.
- (f) Preservation and presentation of mankind’s cultural heritage.
- (g) Legislation protecting the freedom of artistic creation and performance, including the freedom to disseminate the results of such activities, as well as an indication of any restrictions or limits imposed on the freedom.
- (h) Professional education in the field of culture and art.
- (i) Any other measures taken for the conservation, development and diffusion of culture.³⁷³

Moreover, in its twenty-first General Comment in 2009, the CESCR underscored that “cultural rights may be exercised by a person (a) as an individual, (b) in association with others, or (c) within a community or group, as such.”³⁷⁴ Thus, the right to culture has a strong collective aspect.

The CESCR defines “taking part” as synonymous with “participation,” which includes three main, interrelated components: (a) participation in, (b) access to, and (c) contribution to cultural life.³⁷⁵ The CESCR also identifies five conditions for the realization of the right to take part to cultural life:

Availability	“ <i>Availability</i> is the presence of cultural goods and services that are open for everyone to enjoy and benefit from, including libraries, museums, theatres, cinemas and sports stadiums; literature, including folklore, and the arts in all forms; the shared open spaces essential to cultural interaction, such as parks, squares, avenues and streets; nature’s gifts,
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	such as seas, lakes, rivers, mountains, forests and nature reserves, including the flora and fauna found there, which give nations their character and biodiversity; intangible cultural goods, such as languages, customs, traditions, beliefs, knowledge and history, as well as values, which make up identity and contribute to the cultural diversity of individuals and communities. Of all the cultural goods, one of special value is the productive intercultural kinship that arises where diverse groups, minorities and communities can freely share the same territory;” ³⁷⁶
Accessibility	“ <i>Accessibility</i> consists of effective and concrete opportunities for individuals and communities to enjoy culture fully, within physical and financial reach for all in both urban and rural areas, without discrimination. It is essential, in this regard, that access for older persons and persons with disabilities, as well as for those who live in poverty, is provided and facilitated. Accessibility also includes the right of everyone to seek, receive and share information on all manifestations of culture in the language of the person’s choice, and the access of communities to means of expressions and dissemination.” ³⁷⁷
Acceptability	“ <i>Acceptability</i> entails that the laws, policies, strategies, programmes and measures adopted by the State party for the enjoyment of cultural rights should be formulated and implemented in such a way as to be acceptable to the individuals and communities involved. In this regard, consultations should be held with the individuals and communities concerned in order to ensure that the measures to protect cultural diversity are acceptable to them;” ³⁷⁸
Adaptability	“ <i>Adaptability</i> refers to the flexibility and relevance of strategies, policies, programmes and measures adopted by the State party in any area of cultural life, which must be respectful of the cultural diversity of individuals and communities;” ³⁷⁹
Appropriateness	“ <i>Appropriateness</i> refers to the realization of a specific human right in a way that is pertinent and suitable to a given cultural modality or context, that is, respectful of the culture and cultural rights of individuals and communities, including minorities and indigenous peoples. The Committee has in many instances referred to the notion of cultural appropriateness (or cultural acceptability or adequacy) in past general comments, in relation in particular to the rights to food, health, water, housing and education. The way in which rights are implemented may also have an impact on cultural life and cultural diversity. The Committee wishes to stress in this regard the need to take into account, as far as possible, cultural values attached to, inter alia, food and food consumption, the use of water, the way health and education services are provided and the way housing is designed and constructed.” ³⁸⁰

Finally, the CESCR lists the following aspects with respect to realization of the right of everyone to enjoy the benefits of scientific progress:

- (a) Measures taken to ensure the application of scientific progress for the benefit of everyone, including measures aimed at the preservation of mankind's natural heritage and at promoting a healthy and pure environment and information on the institutional infrastructures established for that purpose.
- (b) Measures taken to promote the diffusion of information on scientific progress.
- (c) Measures taken to prevent the use of scientific and technical progress for purposes which are contrary to the enjoyment of all human rights, including the rights to life, health, personal freedom, privacy and the like.
- (d) Any restrictions which are placed upon the exercise of this right, with details of the legal provisions prescribing such restrictions.³⁸¹

10.1.2 Obligations of State Parties

General Comment No. 21 on the “right of everyone to take part in cultural life” differentiates between four types of State obligations:

1. The “general legal obligations” include in particular “the immediate obligation to guarantee that the right set out in article 15, paragraph 1 (a), is exercised without discrimination, to recognize cultural practices and to refrain from interfering in their enjoyment and development.”³⁸²
2. The “specific legal obligations” are: “(a) the obligation to respect; (b) the obligation to protect; and (c) the obligation to fulfil.”³⁸³
 - a. “The obligation to respect requires States parties to refrain from interfering, directly or indirectly, with the enjoyment of the right to take part in cultural life.”
 - b. “The obligation to protect requires States parties to take steps to prevent third parties from interfering in the right to take part in cultural life. “
 - c. “The obligation to fulfil requires States parties to take appropriate legislative, administrative, judicial, budgetary, promotional and other measures aimed at the full realization of the right enshrined in article 15, paragraph 1 (a), of the Covenant”³⁸⁴
3. The “core obligations” to “ensure the satisfaction of, at the very least, minimum essential levels of each of the rights set out in the Covenant.”³⁸⁵ Regarding the right to take part in cultural life, the core obligations include the obligations:
 - a. “To take legislative and any other necessary steps to guarantee non-discrimination and gender equality in the enjoyment of the right of everyone to take part in cultural life”;

- b. “To respect the right of everyone to identify or not identify themselves with one or more communities, and the right to change their choice”;
 - c. “To respect and protect the right of everyone to engage in their own cultural practices, while respecting human rights which entails, in particular, respecting freedom of thought, belief and religion; freedom of opinion and expression; a person’s right to use the language of his or her choice; freedom of association and peaceful assembly; and freedom to choose and set up educational establishments;”
 - d. “To eliminate any barriers or obstacles that inhibit or restrict a person’s access to the person’s own culture or to other cultures, without discrimination and without consideration for frontiers of any kind;”
 - e. “To allow and encourage the participation of persons belonging to minority groups, indigenous peoples or to other communities in the design and implementation of laws and policies that affect them. In particular, States parties should obtain their free and informed prior consent when the preservation of their cultural resources, especially those associated with their way of life and cultural expression, are at risk.”³⁸⁶
4. The “international obligations”³⁸⁷: “States parties should, through international agreements where appropriate, ensure that the realization of the right of everyone to take part in cultural life receives due attention.”³⁸⁸

States must also ensure the special protection of the cultural rights of particularly vulnerable groups, such as women, children, older persons, persons with disabilities, minorities, migrants, indigenous peoples, and persons living in poverty.³⁸⁹

Finally, as with other rights, the restriction or limitation of cultural rights is possible only in specific circumstances, where such restrictions are unavoidable and necessary. The CESCR highlights this point in General Comment No. 21:

Applying limitations to the right of everyone to take part in cultural life may be necessary in certain circumstances, in particular in the case of negative practices, including those attributed to customs and traditions, that infringe upon other human rights. Such limitations must pursue a legitimate aim, be compatible with the nature of this right and be strictly necessary for the promotion of general welfare in a democratic society, in accordance with article 4 of the Covenant. Any limitations must therefore be proportionate, meaning that the least restrictive measures must be taken when several types of limitations may be imposed. The Committee also wishes to stress the need to take into consideration existing international human rights standards on limitations that can or cannot be legitimately imposed on rights that are intrinsically linked to the right to take part in cultural life, such as the rights to

privacy, to freedom of thought, conscience and religion, to freedom of opinion and expression, to peaceful assembly and to freedom of association.³⁹⁰

Possible Impacts of Climate Change on the Right to Culture

The enjoyment of culture, by majority or minority populations within a State, can be threatened by climate change in numerous ways, particularly insofar as the culture is linked to the natural environment. An illustrative example is the well-known 2005 petition presented by the Inuit Circumpolar Conference against the United States of America before the Inter-American Commission on Human Rights (IACHR). Among other violations, the petitioners alleged that the United States was responsible for the impact of climate change on the right to culture of the Inuit of the Canadian and Alaskan Arctic under Article XIII of the *American Declaration of the Rights and Duties of Man*.³⁹¹

The petitioners' arguments illustrate in a more general way how drought, ecosystem disruption, the disappearance of snow or ice, and other weather modifications can have important impacts on the enjoyments of the right to culture. The petitioners claimed that the Inuit have been severely prejudiced by climate change in that their livelihood, culture and subsistence rely extensively on climatic conditions. The petition affirms that "All aspects of the Inuit's lives depend upon their culture, and the continued viability of the culture depends in turn on the Inuit's reliance on the ice, snow, land and weather conditions in the Arctic."³⁹² More specifically, the petitioners argued that climate change has altered the arctic environment, and provoked "deteriorating ice conditions, decreasing quantity and quality of snow, unpredictable and unfamiliar weather, and a transfigured landscape."³⁹³ They claim that these phenomena have affected the Inuit's subsistence harvest, travel, safety, hunting, capacity to process and store food, capacity to process hides, access to clean drinking water, health and diet, education, homes, cultural sites, and communities. As a result, they claim that climate change has undermined the traditional Inuit way of life and permanently damaged their culture.³⁹⁴

On November 16th, 2006 the IACHR, declared the petition impossible to process. It informed the petitioners that "the information provided does not enable [the IACHR] to determine whether the alleged facts would characterize a violation of rights protected by the American Declaration."³⁹⁵ The IACHR nonetheless granted the petitioners their request to participate in thematic hearings in 2007 on the topic "Global Warming and Human Rights."³⁹⁶

10.2 Understanding the Right to Culture in the Context of Climate Change Mitigation Policies

The protection of cultural rights in mitigation policies is often an issue, in particular when large land use projects (such as REDD-related projects or large hydroelectric projects) affect Indigenous and local communities. For example, hydroelectric projects frequently result in the mass displacement of communities. The dispersal of such communities may negatively impact their enjoyment of the right to culture, particularly in the case of Indigenous peoples, who often have a special cultural and spiritual relationship to their land.

Thus, in the context of mitigation policies, the protection of cultural rights requires that States avoid or minimize policies that could impact these rights. To this end, the protection of cultural rights should be mainstreamed into mitigation policies, and appropriate scoping and risk assessment activities that take cultural rights into account should be undertaken in the context of mitigation actions.

With respect to Indigenous peoples, mitigation actions by the State must respect the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which was adopted by the United Nations General Assembly on 13 September 2007.³⁹⁷ Article 19 of UNDRIP establishes that States must obtain the free, prior and informed consent (FPIC) of Indigenous peoples before adopting measures that may affect them. Whether a “legislative or administrative” measure affects Indigenous peoples is something which must be assessed on a case by case basis. As a matter of guidance, UNDRIP established a non-exhaustive list of specific circumstances in which the right to FPIC applies:

- Before the forcible removal or relocation of Indigenous peoples “from their lands or territories.” (Article 10)
- Before the taking of any “cultural, intellectual, religious and spiritual property”, such as archaeological and historical sites, artefacts designs, ceremonies, technologies and visual and performing arts and literature. (Article 11)
- Before “the lands, territories and resources which [Indigenous peoples] have traditionally owned or otherwise occupied or used” are “confiscated, taken, occupied, used or damaged”. (Article 28)
- Before the “storage or disposal of hazardous materials” in lands or territories. (Article 29)
- Before “the approval of any project affecting [Indigenous peoples] lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.” (Article 32)

CASE STUDY: The Aswan Dam and the International Rescue Nubia Campaign

The International Rescue Nubia Campaign was an international campaign aimed at protecting several archaeological sites of major importance before they were flooded by the reservoir of the Aswan dam. Following the Egyptian revolution in 1952, the Nasser government launched a massive hydroelectric project on the Nile River. The Aswan dam was built between 1960 and 1971, and provides irrigation and electricity. Its reservoir extends over 500 kilometres and spans over 5,000 square kilometres of land, part of which lies in Sudanese territory.

Nubia, the region inundated by the dam’s construction, contains a rich archaeological heritage. It had been “a land of legendary wealth and riches, of gold and exotic goods.”³⁹⁸ A key challenge of the hydroelectric project – and the aim of the International Rescue Nubia Campaign – was to save as many archaeological monuments as possible.

During the construction of the dam in the 1960s, 23 temples were displaced and reconstructed, mostly in neighbouring regions. In addition to preserving existing archaeological sites, the effort to safeguard the cultural heritage of Nubia included forty multidisciplinary missions and “the participants began to survey the region for sites in the reservoir and to undertake excavation as time and effort allowed.”³⁹⁹ Instead of solely preserving the region’s heritage, this campaign “also produced a great deal of interest in the monuments, archaeology and history of Nubia”⁴⁰⁰ and it “has led to decades of archaeological activity everywhere in Egypt that have radically revolutionized our knowledge of Egyptian civilization.”⁴⁰¹

10.3 Understanding the Right to Culture in the Context of Climate Change Adaptation Policies

Cultural rights should also be taken into account in adaptation policies. The CESCR has highlighted that “States parties are obliged to [...] respect and protect cultural heritage of all groups and communities, in particular the most disadvantaged and marginalized individuals and groups, in economic development and environmental policies and programs.”⁴⁰² States’ adaptation activities fall squarely within the scope of such policies and programs.

As with mitigation actions that may result in the inundation of land or the displacement of communities, adaptation actions such as relocation in response to sea level rise or other environmental factors can impact the right to culture, particularly for Indigenous peoples, local communities and other vulnerable groups. For example, relocation can have a particular impact on the right to culture of Indigenous peoples whose cultural and spiritual practices are tied to the land, or for local communities who might lose access to significant sites such as ancestral burial grounds.

This issue was highlighted in a 2007 article written by then Maldivian Prime Minister Apisai Ielemia entitled “A Threat To Our Human Rights: Tuvalu’s Perspective On Climate Change.” Ielemia highlighted the fact that “Tuvalu is a nation with a unique language and culture,” and emphasized that “resettlement would destroy the very fabric of our nationhood and culture.”⁴⁰³ For nations such as Tuvalu and other small island developing States whose way of life is deeply marked by insularity, resettlement poses a serious threat to their continued cultural existence.

³⁶⁸ CESCR, *Report on the Seventh Session*, UNESCO, 1993, Supp No 2, UN Doc E/1993/122/E/C.12/1992/2 at 58.

³⁶⁹ *Ibid.*

³⁷⁰ *Ibid* at para 11.

³⁷¹ *Ibid* at para 13.

³⁷² CESCR, *General Comment No 21: Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights*, UN Doc E/C.12/GC/21, (2009) [*General Comment No 21*].

³⁷³ *General Reporting Guidelines*, *supra* note 64, Article 15.

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- ³⁷⁴ *Ibid* at para 9.
- ³⁷⁵ *General Comment No 21, supra* note 391 at para 15.
- ³⁷⁶ *Ibid* at para 16(a).
- ³⁷⁷ *Ibid* at para 16(b).
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- ³⁷⁹ *Ibid* at para 16(d).
- ³⁸⁰ *Ibid* at para 16(e).
- ³⁸¹ *Ibid*.
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- ³⁸⁴ *Ibid* at para 48.
- ³⁸⁵ *Ibid* at para 55.
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ECONOMIC, SOCIAL & CULTURAL RIGHTS and CLIMATE CHANGE: *A Legal Reference Guide*

Given the serious human rights ramifications of climate change, States are obliged to take all appropriate means to avoid and mitigate climate change and its harmful consequences, as well as assist vulnerable communities in adapting to its consequences. States are also required to ensure that their responses to climate change are consistent with their human rights obligations under domestic and international law. This introductory legal reference guide examines the connections between climate change and human rights, with a particular focus on the *International Covenant on Economic, Social and Cultural Rights*. It seeks to provide policy-makers, advocates, and experts with basic knowledge of obligations and principles related to international economic, social, and cultural rights, along with concrete examples of their relevance to climate change-related policy-making. The guide thus aims to ensure that governments continue to meet their obligations to respect, protect, and fulfil economic, social, and cultural rights in the context of new challenges brought by climate change, as well as to highlight opportunities for policy-makers worldwide.

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