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(p. 861) 13 Article 11: 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.

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Introduction

The scope of Article 11 is immense. It could, in fact, have been even broader, given that initial drafts of the Article drew directly from Article 25(1) of the Universal Declaration of Human Rights, which included the rights to health and social security in its coverage:

Article 25(1)

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 and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.¹

However, early in the drafting process it was made clear that the rights to social security and to health warranted their own separate treatment and so they were duly cleaved off into what were to become, respectively, Articles 9 and 12 of the Covenant. Nonetheless, as we show in this chapter, the conditions concerning ‘adequate standard of living’ that remain in Article 11—especially, when supplemented with stipulations as to how to tackle world hunger—remain both expansive and challenging.

Article 11 is separated into two distinct parts. First, it stipulates that states must recognize and take steps to ensure the realization of the right to an adequate standard of living for individuals and families, and to the continuous improvement of living conditions. It is further specified that such a standard of living requires—but is not restricted to—adequate food, clothing and housing.² Of the contenders for what else such a standard requires, the most significant that is not elsewhere provided for in the Covenant is adequate water, which is widely accepted as being implicit in Article 11 and about which there now exists an impressive and growing body of commentary.

Secondly, the Article highlights the combatting of hunger as a matter of particular concern. In subparagraphs 2(a) and (b), it invokes a vast array of means by which food production, conservation and distribution is to be improved and hunger tackled, including the use of technical and scientific methods, nutritional education, agrarian reform, global trade practices and the economics and politics of the equitable distribution of food.

(p. 863) Flowing throughout the Article, there is also a discernible parallel set of obligations on other states and on the international community as a whole to cooperate, coordinate and seek consent to help states realize the right.

As befits such a grave matter as the very subsistence of life,³ the capacity of Article 11 is wide and deep. But while this scope is both necessary and desirable, it undoubtedly presents a challenge to encapsulate in an instrument designed to bind parties by way of legal obligation.

The tensions between the existential concern of sustaining life and the prosaic matter of how to express it in the form of a legal right capable of implementation and enforcement, are evident in the transcripts of both the UN Commission on Human Rights and the General Assembly’s Third Committee’s deliberations on the draft of the Article. In fact, during the Commission’s first consideration of the Covenant in 1951, a number of states expressed concerns over whether it was at all feasible to draw boundaries around the right, given that the notion of an adequate standard of living would appear to encompass most, if not all, the rights to be included in the Covenant.⁴ And while there was some limited debate on this fundamental question, including whether the right ought instead to be expressed as a general provision within the Covenant (or even in the *Preamble*), ‘unfortunately’, as Mathew Craven notes, ‘no such rationalisation process ever took place’.⁵ This has resulted, as Craven continues, in ‘the somewhat anomalous position of it [Article 11] being a right that appears to have little independent substance’.⁶

The Third Committee’s deliberations on the Article in late January 1957,⁷ though more specific in focus, were no less revealing of the textual tensions involved in translating ambitions into outcomes. For example, delegates debated whether: (a) the ‘family’ should be added alongside the individual (no matter that ‘everyone’ would seem to be sufficient for that task); (b) the second ‘adequate’ was necessary, to underline (it was argued) the adequacy of food, clothing and housing, to securing an adequate standard of living; and (c) the stipulations that there be a ‘continuous improvement of living conditions’ and that states parties be obliged to ‘take appropriate steps to ensure realization’ added anything to the ‘take steps’ and ‘progressive realisation’ of all Covenant rights as pronounced in Article 2(1). In fact, as is evident, all of these additional words and phrases made it into the final version of Article 11, which thereby add to its somewhat complicated and overloaded presentation.

(p. 864) There was also considerable debate during these sessions over the express mention of the need for international cooperation, again, involving arguments that such was already a requirement under Article 2(1). Certainly, it was stressed by a number of delegates that international assistance would be needed if those many states in which the majority of the poor did not enjoy an adequate standard of living were to make any meaningful progress towards fulfilling this right.

24. Mr MONTERO (Chile) said that in view of the fundamental nature of the right recognized in article 11, a reference to international co-operation was essential. As the Japanese representative had pointed out at an earlier meeting (740th meeting), some countries—and in particular the under-developed countries—were, with the best will in the world, physically unable to feed, clothe and shelter their people adequately without international assistance. He therefore appealed to the more advanced countries to accept the provision, in the spirit of international solidarity. The article under consideration was the most suitable place in the draft Covenant for the explicit recognition of the fact that the full realization of human rights could not be the work of any one State but must be achieved by co-operation between all States in accordance with the Purposes, Principles and practice of the United Nations.⁸

So it was on the basis of this and similar arguments that the necessity of international cooperation as expressed in Article 2(1) was here restated in Article 11(1). Perhaps the oddest feature of this specific provision, however, was the addition of the phrase 'based on free consent'. This addition appears to have been first proposed by the Syrian delegate (Mr Mufti), who justified doing so by saying that 'it should be made clear that international co-operation should be given voluntarily and freely in accordance with international law and practice'.⁹ Despite a number of delegates responding that surely such free consent is implied in the very notion of international cooperation,¹⁰ the addition was made and retained. What is odd about this, and what might be safely said to be unintended (the *travaux préparatoires* are unclear on this point), is that by expressly stating the need for 'consent', the phrase may as much provide an 'out' for developed states who do not wish to assist (or, not as much as they are being pressed to), as it does for developing states to demand sufficient say in the way in which international assistance is to be rendered.

While we may conclude that Article 11(1) is a little overstuffed and perhaps unwieldy, the difficulties presented by the demands of Article 11(2) are of a different order altogether. For it is here, with regard to how to combat world hunger, that the above-mentioned tensions between noble aspiration and implementation in practice are most significantly played out.¹¹

(p. 865) When the original drafts of the two subsections (a) and (b) of Article 11(2) were first debated by the Third Committee, these concerns were very evident:

52. Mr POPESCU (Romania) emphasised the seriousness of the problem of poverty and hunger in the world. At a time where some groups of countries were enjoying abundance, and when scientific and technical progress had opened immense horizons, it was intolerable that the number of people suffering from poverty and hunger was continually increasing. That situation was contrary to the clearly understood interests of all countries and must be ended.

53. United Nations statistics indicated that about two-thirds of mankind were undernourished and that a greater number of human beings died of hunger in 1963 than ever before. Professor Jan Tinbergen had stated in a recent work that the amount consumed by the majority of the people of Asia, Africa, and a large part of Latin America was only approximately 10 per cent of that consumed by the people of the developed countries; and that the Report on the World Social Situation 1963 (E/CN.5/375 and Add.1-2) pointed out that malnutrition was especially acute in the Far East. That was, of course, a consequence of the colonialist system to which many of those territories had until recently been subjected and which continued to exist in several countries. Despite the improvement recently noted in the quantity of food, its equality [sic] left much to be desired and protein deficiencies caused a great many illnesses, especially among children.

54. That disquieting situation had aroused world public opinion and led to the adoption of a series of measures. The present level of technical development made victory possible in the battle against hunger, if governments acted jointly with

international organizations. Nevertheless, no action to that end could be fully successful so long as a considerable proportion of material resources and scientific work continued to be devoted to armaments. An effort must be made to divert to economic and social development the resources at present used for military purposes and, above all, to solve the fundamental problem of hunger.

55. Some important measures had already been taken by various international organizations, especially by FAO, which had launched a world campaign against hunger, to include the World Food Programme within its framework. That organization had also taken steps to send food surpluses to countries in which the population is chronically malnourished. Such measures, Mr Jose de Castro, Independent Chairman of the Council for FAO for 1951-1952, had said, hunger could not be combatted effectively by paternalistic measures designed solely to mitigate the gravity of the problem and to avert a revolt of the starving. For an effective remedy to that evil it was essential to accelerate economic development in general and agricultural production in particular. It was therefore essential to carry out effective agrarian reform, to apply modern techniques to the extraction of natural wealth to train technical and administrative personnel in sufficient quantities and, in addition, to inculcate sound nutritional principles in the people.

56. Mr B. R. Sen, the Director-General of FAO, had recently (1232nd meeting) drawn the Committee's attention to the fact that, while the adoption of the Universal Declaration of Human Rights had done much to ensure the observance of civil and political rights, it had not achieved the same success for economic and social rights. The reason might be that the Universal Declaration did not include the right to freedom from hunger among the fundamental human rights. His delegation therefore considered it essential to include in the draft Covenant on Economic, Social and Cultural Rights, provisions setting forth the main methods (p. 866) on which the Freedom From Hunger Campaign could be based, in order to give the necessary legal force to the measures already undertaken in that field.¹²

Aside from the notable correspondence these global concerns have with those that still trouble us more than fifty years later,¹³ the most striking feature of this extract is the highlighting of the omission of a right to be free from hunger in the UDHR, and the perceived need for that to be rectified in this Covenant. It is especially significant, what is more, that the preferred manner by which that end is to be achieved is by focusing on the means of combatting hunger, rather than—as is more usual in human rights instruments generally, including this Covenant—on the clear statement of right, together with, if anything, an indication of certain conditions under which its implementation may be limited.

Indeed, it was this rather unusual foray into the means of delivery (that is, beyond the general conditions in that respect stipulated in Article 2(1)) that prompted some resistant responses from others in the Third Committee to Mr Popescu's support for the proposition advanced by Mr Sen in paragraph 56 of the above extract. Thus, for example, the Netherlands delegate, Mr Beaufort, while empathizing with the manifest need to address the desperate plight of the world's hungry and also acknowledging that Mr Sen's suggestions were indeed the origin of the two proposed subsections to Article 11(2), nevertheless considered them to be misguided and misplaced. In Mr Beaufort's view, the proposals were 'too detailed' and 'too sweeping' (in respect, in particular, to 2(b)), fitting 'more appropriately in a declaration than in a legally binding instrument'. Expanding upon a similar concern raised earlier by Mr Atallah from Pakistan,¹⁴ he also questioned whether the substance of such proposals strayed improperly beyond the competence of the Third Committee (and of the Covenant) into the fields administered by the FAO, the WHO and the World Food Programme. Fundamentally, Mr Beaufort was concerned that '[t]here should be a clear distinction between the enunciation of a right and a summing up of the various means of realizing it, and he doubted whether the latter should be included in the draft Covenant'.¹⁵

Despite other delegates raising similar concerns during debate—notably those from Australia and Austria¹⁶—the additional subparagraphs were adopted overwhelmingly, by eight-eight votes in favour, none against and (p. 867) only one abstention (Pakistan).¹⁷ Aside, therefore, from Mr Atallah of Pakistan—who remained unconvinced of the need or appropriateness of the additional text, believing rather, that '[i]mplementation should be left to Governments'¹⁸—the other sceptics were sufficiently won over to support the motion. As Mr Beaufort of the Netherlands put it, while he retained misgivings as to the 'technical' feasibility of the additional text, 'he wholeheartedly supported the basic purpose of the proposal' and so was content to vote in its favour.¹⁹

As a result, however, what we have in Article 11 is a right (to an adequate standard of living), accompanied by a call to arms in respect of hunger, together with some indications as to how that war might be waged. The full breadth and depth of these provisions have, as we relate throughout this chapter, provided the Committee on Economic, Social and Cultural Rights, as well as other relevant UN bodies, with particular challenges in terms of offering clear guidance to states as to how the right is to be realized and what are the best ways in practice to tackle hunger.²⁰ The acuity of these challenges will certainly increase as the Committee engages with individual complaints of breaches of the Article's terms.

In light of the structure of Article 11 and the explanation behind its formulation, the remainder of this chapter is separated into two parts—the first dealing with food and water, and the second with clothing and shelter.

Rights to Food and Water

The Right to Food

The inclusion of an express reference to the right to food in the Covenant was instigated by China at the Commission stage in 1951. And despite the questions raised against its specific inclusion noted above, it gained sufficiently broad support such that by the time the Article was being considered by the Third Committee in the latter stages of its drafting in 1963, many delegates considered (p. 868) it to be the most important right in the whole Covenant.²¹ The Australian delegate spoke for many when he proclaimed that 'no human right was worth anything to a starving man'.²²

The seminal importance of the right continues to be underscored as evidenced in the Committee's General Comment No. 12 on Article 11 (per paragraphs 1 and 4 below). The following extracts from General Comment No. 12 also reflect the difficulties in determining the precise nature of the legal obligations imposed by the Article. Thus, in paragraph 2, the Committee refers to the identification of 'obstacles' to realization, and the 'principal issues' important 'in relation' to the right to adequate food, and impetus for the General Comment being to obtain 'a better definition of the rights relating to food in Article 11'. Expressly declaring what must be done, what must be achieved and how to measure the outcomes are—at least in the context of a General Comment—bridges too far for the Committee.

Introduction and basic premises

1. The human right to adequate food is recognized in several instruments under international law. The International Covenant on Economic, Social and Cultural Rights deals more comprehensively than any other instrument with this right. Pursuant to article 11.1 of the Covenant, States parties 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', while pursuant to article 11.2 they recognize that more immediate and urgent steps may be needed to ensure 'the fundamental right to freedom from hunger and malnutrition'. The human right to adequate food is of crucial importance for the enjoyment of all rights. It applies to everyone; thus the reference in article 11.1 to 'himself and his family' does not imply any limitation upon the applicability of this right to individuals or to female-headed households.
2. The Committee has accumulated significant information pertaining to the right to adequate food through examination of State parties' reports over the years since 1979. The Committee has noted that while reporting guidelines are available relating to the right to adequate food, only a few States parties have provided information sufficient and precise enough to enable the Committee to determine the prevailing situation in the countries concerned with respect to this right and to identify the obstacles to its realization. This general comment aims to identify some of the principal issues which the Committee considers to be important in relation to the right to adequate food. Its preparation was triggered by the request of Member States during the 1996 World Food Summit for a better definition of the rights relating to food in article 11 of the Covenant, and by a special request to the Committee to give particular attention to the Summit Plan of Action in monitoring the implementation of the specific measures provided for in article 11 of the

Covenant.

...

(p. 869) 4. The Committee affirms 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 enshrined in the International Bill of Human Rights. It is also inseparable from social justice, requiring 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.

...

5. Despite the fact that the international community has frequently reaffirmed the importance of full respect for the right to adequate food, a disturbing gap still exists between the standards set in article 11 of the Covenant and the situation prevailing in many parts of the world. More than 840 million people throughout the world, most of them in developing countries, are chronically hungry; millions of people are suffering from famine as the result of natural disasters, the increasing incidence of civil strife and wars in some regions and the use of food as a political weapon. The Committee observes that while the problems of hunger and malnutrition are often particularly acute in developing countries, malnutrition, under-nutrition and other problems which relate to the right to adequate food and the right to freedom from hunger also exist in some of the most economically developed countries. Fundamentally, the roots of the problem of hunger and malnutrition are not lack of food but lack of access to available food, inter alia because of poverty, by large segments of the world's population.²³

There are two important points to be drawn from paragraph 5 in this extract. First, the sobering fact that, far from a decrease in the number of chronically malnourished, the intervening fifteen years or so have witnessed a slight increase (to 868 million in 2012, according to the FAO),²⁴ at a time that almost exactly corresponds with the life of the *Millennium Development Goals* (2000–2015), the very first of which is to 'eradicate poverty and hunger' by, inter alia, 'halving the proportion of people who suffer from hunger'. The second point highlights a recurring theme in the quest to combat hunger and realize the right to food, namely that it is access to food, not its lack, that is so often the cause of hunger. The problem, in other words, lies with the delivery, not the production.

The OHCHR makes clear this point when addressing 'common misconceptions' about the right to food in its 2010 Fact Sheet (second bullet point extracted below), while also stressing (in the first bullet point) the equal importance of access to the opportunity and means by which to obtain food.

B. Common misconceptions about the right to food

- The right to food is NOT the same as a right to be fed. Many assume that the right to food means that Governments have to hand out free food to anyone who needs it. They conclude that this would not be feasible or might cause dependency. This is a misunderstanding. The right to food is not a right to be fed, but primarily the right to feed oneself in dignity. Individuals are expected to meet their own needs, through their own efforts and using their own resources. To be able to do this, a person must (p. 870) live in conditions that allow him or her either to produce food or to buy it. To produce his or her own food, a person needs land, seeds, water and other resources, and to buy it, one needs money and access to the market. The right to food requires States to provide an enabling environment in which people can use their full potential to produce or procure adequate food for themselves and their families. However, when people are not able to feed themselves with their own means, for instance because of an armed conflict, natural disaster or because they are in detention, the State must provide food directly.
- The denial of the right to food is NOT a result of a lack of food in the world. One might think that people are denied their right to food because there is not enough food to go round. However, according to FAO, the world produces enough food to feed its entire population. The root cause of hunger and malnutrition is not a lack of food but a lack of access to available food. For example, poverty, social exclusion and discrimination often undermine people's access to food, not only in

developing countries but also in some of the most economically developed countries where there is an abundance of food. In the longer term, however, States also have to make efforts to enable a sustainable production of food to ensure the availability of food for future generations, considering factors such as population growth, impact of possible climate change and the availability of natural resources.²⁵

The notion of food 'adequacy' is, of course, central to the right, and has been interpreted by the Economic, Social and Cultural Rights Committee to incorporate the essential elements of the availability and accessibility of food:

Adequacy and sustainability of food availability and access

7. The concept of adequacy is particularly significant in relation to the right to food since it serves to underline a number of factors which must be taken into account in determining whether particular foods or diets that are accessible can be considered the most appropriate under given circumstances for the purposes of article 11 of the Covenant. The notion of sustainability is intrinsically linked to the notion of adequate food or food security, implying food being accessible for both present and future generations. The precise meaning of 'adequacy' is to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions, while 'sustainability' incorporates the notion of long-term availability and accessibility.

8. The Committee considers that the core content of the right to adequate food implies:

The 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;

The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.

[...the General Comment expands on these two elements as follows:]

(p. 871) 12. 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.

13. Accessibility encompasses both economic and physical 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. Economic accessibility applies to any acquisition pattern or entitlement through which people procure their food and is a measure of the extent to which it is satisfactory for the enjoyment of the right to adequate food. Socially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through special programmes.

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. Victims of natural disasters, people living in disaster-prone areas and other specially disadvantaged groups may need special attention and sometimes priority consideration with respect to accessibility of food. A particular vulnerability is that of many indigenous population groups whose access to their ancestral lands may be threatened.²⁶

Here it is evident that by determining what constitutes the right to adequate food, the Committee is also pointing to the nature of the responsibilities to realize the right. These, it makes clear, are borne by the state, by way both of the general obligation to realize under Article 2(1) (together with Article 11(1)) and the specific instructions in Article 11(2)). In the remainder of this General Comment, the Committee expands on a number of salient features of states' (and, briefly, international organizations') obligations.²⁷ It details what 'implementation at the national level' requires (paragraphs 21 to 28)—including noting that while the 'appropriate ways and means of

implement[ation]...will inevitably vary significantly from one state to another' (paragraph 21), the obligation to ensure the right to adequate food 'especially for vulnerable population groups and individuals', remains, 'even where a state faces severe resource constraints' (paragraph 28). It points to the importance of adopting national strategies and policies for food security (paragraph 21), and a 'framework law' for their implementation that comprises suitable benchmarks (paragraph 29), and monitoring mechanisms (paragraph 31), as well as 'effective judicial or other appropriate remedies' in the event of non-fulfilment (paragraph 32).

The Committee also points to circumstances in which states would be seen as violating their Covenant obligations in respect of the right to food. Two in particular (p. 872) stand out, not least because both are likely to cause jurisprudential challenges for the Committee if and when they are claimed by victims under cover of the Optional Protocol complaints system. The first of these is that failure 'to ensure the satisfaction of, at the very least, the minimum essential level required to be free from hunger' is a violation, but only, the Committee adds, where the state is 'unwilling' to comply²⁸ (paragraph 17). Where it is unable, then the Committee offers a let-out provided that the state 'demonstrates that every effort has been made to use all the resources at its disposal [including soliciting international support] in an effort to satisfy, as a matter of priority, those minimum obligations' (paragraph 17).²⁹

Responsibilities of the private sector

The second points to what might be referred to as 'ancillary duty-bearers'. The General Comment expressly recognizes the state's obligations not only to ensure that its 'direct' actions are compliant, but also those of non-state entities over which it has regulatory authority (paragraph 19):

20. While only States are parties to the Covenant and are thus ultimately accountable for compliance with it, all members of society individuals, families, local communities, nongovernmental organizations, civil society organizations, as well as the private business sector have responsibilities in the realization of the right to adequate food. The State should provide an environment that facilitates implementation of these responsibilities. The private business sector—national and transnational—should pursue its activities within the framework of a code of conduct conducive to respect of the right to adequate food, agreed upon jointly with the Government and civil society.³⁰

The lines between compliance and violation within each of these two provisions are, and will continue to be, difficult to determine. Perhaps on a case-by-case basis, it will be possible to say with some degree of clarity and certainty when a state has been truly unable to realize the right to adequate food, but in practice that will likely be much more dependent on political, economic and even cultural analyses, than legal. Furthermore, while it may seem reasonable to suggest that the private sector (and especially the private business sector) *should* have responsibilities to respect the right to adequate food, this appears to fall short by failing to follow through with details of how and why. For by not stating what precisely are these private sector responsibilities, including their extent and enforceability, it would seem that mere lip-service is being paid to corporate accountability. Oddly, the very mechanism by which such aspiration can be (and is) translated into legal obligation is not here invoked—that is, the direction under Article 2(1) of the Covenant that a state is under a duty to ensure by (p. 873) all appropriate means—including legislative regulation of private actors within its jurisdiction—the protection, promotion and fulfilment of all rights in the Covenant.³¹

The matter of the role and responsibilities of the corporate sector in the area of the right to an adequate standard of living has been of particular interest to both incumbents of the position of UN Special Rapporteur on the right to food which was established in 2000. Jean Zeigler, who held the position from 2000 to 2008, first pointed to the need for corporations to recognize their obligations regarding the right to food in his 2003 and 2004 Reports to the Commission on Human Rights.³²

B. Mechanisms to monitor and demand accountability of transnationals

Under the traditional application of human rights law, it is usually only possible to hold a Government to account for violations of human rights; it is still not well understood how a corporation could be held to account for human rights violations. However, new

developments are occurring within human rights law. It is now increasingly understood that there are two key ways of holding corporations to respect human rights—one indirect, the other direct. Corporations can be held to account indirectly, by Governments which have a duty to protect their citizens against any negative impacts on the right to food of third parties. This means that Governments are required to monitor and regulate corporations. Corporations can also be held to account for human rights directly, through the development of direct human rights obligations, intergovernmental instruments and voluntary codes of conduct...³³

Here again, the reference to corporations being held *directly* is qualified, in the sense that neither is it made clear whether their being 'held to account' is by legal or other means, and if the former, what those means are at the level of international law. In fact, the timing and context is important here, because it was at this very time that a set of so-called human rights 'norms' for transnational corporations and other business enterprises was being advanced by the UN Commission on Human Rights' Sub-Commission on the Promotion and Protection of Human Rights. These norms included an express reference to corporations providing 'workers with remuneration that ensures an adequate standard of living for them and their families...[and that] ...[s]uch remuneration shall take due account (p. 874) of their needs for adequate living conditions with a view towards progressive improvement.'³⁴ And while Mr Ziegler (among others), 'urge[d] the Commission to adopt these norms',³⁵ the norms attracted considerable controversy and were in effect dropped by the Commission.³⁶ They were replaced with a six-year process whereby a newly appointed Special Representative of the Secretary-General (SRSG) on Human Rights and Transnational Corporations and other Business Enterprises engaged with businesses, civil society and governments, leading to the formulation of a set of Guiding Principles on Business and Human Rights. While these Guiding Principles were adopted by the UN Human Rights Council in 2011, they neither expressly identify specific human rights for which corporations may be responsible for protecting, nor make any claim that corporations might be held directly accountable under international human rights laws for any breaches.³⁷

Notwithstanding these broader developments in business and human rights, the specific question of the impact of the private sector on realization of the right has grown in importance and prominence. The second Special Rapporteur on the right to food, Olivier de Schutter, who has held the position since 2008, has invested considerable energy and effort into exposing the significance of this matter and seeking to understand what can and should be done to ensure the right is better protected.

II. The changing context

6. Food systems are currently undergoing deep transformations. The renewed interest in agriculture, from both the public and the private sector, led to foreign direct investment in agriculture rising from an average of US\$ 600 million annually in the 1990s, to an average of US\$ 3 billion in 2005–2007. The increase in direct investment is part of a larger transformation of the global supply chain in the agrifood sector. Commodity buyers (wholesalers) are larger and more concentrated than previously, and they seek to respond to the requirements of their food industry clients by increased vertical coordination, tightening their control over suppliers. The processing industry is rapidly consolidating, after an initial period during the 1980s and early 1990s during which the parastatal large-scale processors were dismantled. This sector is increasingly globalized and dominated by large transnational corporations. Global retailers and fast-food chains are expanding to reach China, India, Russia, Viet Nam, and increasingly southern and eastern Africa, and diversifying from processed foods to semi-processed foods and, increasingly, fresh produce.

7. In this process of expansion and consolidation, the procurement system too has been modernized: in addition to public standards, private standards have gained increased (p. 875) importance, often imposed through codes of conduct adopted by retailers. Vertical integration has increased, with wholesalers and retailers seeking to secure stability of supply by the use of explicit contracts (long-term arrangements with producers) or techniques such as preferred supplier lists. Procurement is increasingly centralized, as the procurement shed (the area from which companies source) expands from the national to the regional and thence to global networks.

8. As a result of these developments, concentration in the food production and

distribution chains has been significantly increasing over the past years. The resulting market structure gives buyers considerable bargaining strength over their suppliers, with potentially severe implications for the welfare both of producers and consumers. Current measures adopted to encourage companies to act responsibly are unable to tackle this structural dimension. Concentration in buying markets is particularly worrying, and even more so than concentration in selling markets, because dominance in buying markets can be achieved with a relatively small market share; for instance, the United Kingdom Groceries Market Investigation concluded in 2000 that retail grocers with as little as 8 per cent of the total retail market have substantial buyer power over sellers.

9. Due to the deeply unequal bargaining positions of food producers and consumers on the one hand, and buyers and retailers on the other hand, the latter can continue to pay relatively low prices for crops even when the prices increase on regional or international markets, and they can continue to charge high prices to consumers even though prices fall on these markets. Thus, one main reason why prices in developing countries have remained high despite the bursting of the bubble in the commodities markets in July 2008—in a number of countries, prices were higher in July 2009 than they were a year earlier—is because of the dominant position of certain traders in these countries. These imbalances of power in the food systems must be corrected. The Special Rapporteur is convinced that the relationships between the actors concerned cannot any longer be based solely on their relative bargaining strength. Instead, they must be collaborative, and based on other modes of communication than price signals.

...

C. The role of employers in respecting the right to food

21. Employers have a responsibility to respect the right to food, even where laws are insufficiently protective of agricultural workers or where the existing labour legislation is inadequately monitored. At present, the globalization of the food economy increases the competitive pressure exercised on suppliers, pushing them to lower wages and downgrade other working conditions, and weakening the ability of unions to resist this downward trend. This can and must be reversed. Its responsibility to respect the right to food implies that a company must not contribute, directly or indirectly, to human rights abuses through its relationship with suppliers. Agribusiness corporations operating at a global level should use their influence on suppliers to ensure that wages and working conditions improve, rather than degrade, as a result of their suppliers joining global value chains. Agribusiness companies could make unilateral undertakings to monitor compliance with certain social standards in the supply chain. They may conclude international framework agreements with global unions. These tools are not a substitute for the enforcement of protective regulatory standards by the State, but they can improve situations that, otherwise, would be even worse.³⁸

(p. 876) Mr de Schutter's repeated references in paragraph 21 above to the actions that corporations *ought* to take in order to respect the right to food is underscored and indeed extended elsewhere in the same report where he talks of the need for major corporate food buyers that are driving the 'supermarketization' of food supply chains worldwide to assist smallholders to comply with the standards they set rather than simply allowing them to be driven out of business (paragraph 37). This entails: (i) the development of appropriate product standards and certification codes such as 'fair trade' within the agricultural sector that promote sustainable smallholder enterprise (paragraphs 38 to 42 and 46 to 48); and (ii) support for 'contract farming', whereby small farmers are 'provided with credit, inputs, and technical assistance by a buyer who typically commits to buy predefined volumes at certain prices, thus ensuring that the producer will have a market and that the investments will pay back' (paragraphs 43 to 45). De Schutter considers his arguments and proposals to be representations of how the principles expounded in the SRSG's 2008 'Protect, Respect and Remedy Framework' for business and human rights can be applied to both states and corporations in the specific circumstance of the right to food.³⁹

Food insecurity

Indeed, further on that last point, while the Special Rapporteur has been keen to stress the

important role and responsibilities of agribusinesses in the production, accessibility and distribution of food, he has also been careful not, thereby, to overlook the elemental role and responsibilities of states under the Covenant for the protection, respect and fulfilment of the rights it contains. Thus, while it is acknowledged that the heightened focus on the private sector was in part precipitated by the severe and prolonged spike in the cost of staple food commodity prices in 2008, the threats posed by the crisis for the food security not only of those already facing hunger, but also those many more who have barely enough to eat, was a matter that had, ultimately, to be addressed by states, including through their regulation of relevant business entities.

In his earlier, 2008 Report extracted below, Mr de Schutter first places the problem of food insecurity in its wider context and then seeks to define how a human rights approach to the issue (and one especially concerned with the right to food) might achieve greater state accountability for food production, distribution and accessibility, thereby achieving better levels of respect and protection of the right. In this way, de Schutter addresses directly the key questions raised in Article 11(2) of adequate food production and its equitable distribution.

4. It is equally clear that efforts aimed at limiting the increase in prices on international markets are not sufficient. Even before the current crisis, an estimated 852 million people were food-insecure. The current crisis shows that the mismatch between supply of and (p. 877) solvent demand for agricultural products may in the future further worsen this situation by making food even less affordable for people whose entitlements are insufficient to allow them to procure sufficient food. The world population, now at 6.7 billion, increases by some 75 million each year; in 2025, there will be 8 billion living on the planet, and 9.2 billion in 2050. It has been estimated that the production of food will have to increase by 50 per cent by 2030, and double by 2050, if an increase growth in demand is to be met. But if a response to the current crisis is sought exclusively in a rise in the overall production of agricultural commodities in order to address the imbalance between the supply and the demand for food as a source of tension on the global commodities markets, it will largely miss its target. This is not only because tackling food insecurity and increasing agricultural investment do not explicitly tackle malnutrition, which affects 2 billion people in the world who suffer from micronutrient deficiency. It is also, and even more importantly, overconsumption and wastage by some, and insufficient purchasing power for the many others, [that is] the main problem, not food shortage. Producing more food will not alleviate the hunger of those who lack the purchasing power required to gain access to the food which is available. Moreover, speaking in aggregate terms obfuscates distributional questions. We need to produce food in order to raise not just the supply of food, but also the purchasing power of those who produce it.

5. In addressing the global food crisis, we should therefore constantly remind ourselves of who the food insecure are, in order to target our efforts at increasing their purchasing power. Most of the food insecure live in rural areas. Agricultural workers are among the most vulnerable, owing due to the often informal character of their employment, depriving them of legal protection from their employers. They amount to 450 million, and represent 40 per cent of the world's agricultural work force. Another important category of food-insecure people are the small-hold farming households. Unless carefully tailored to increase the purchasing power of this category, measures to boost production may lead to investments in large-scale agricultural exploitations, working with technologies and providing markets not accessible to small-holders. There are approximately 500 million small-holder households, totalling 1.5 billion people, living on two hectares of land or less. Many are facing an unprecedented increase in the price of inputs, as a result of the increase of the price of oil and, for livestock farmers, of crops, at the very same moment that, as net food buyers, they are spending larger amounts of their budgets on food. International market price increases will benefit some, particularly in India and China, but not many others, particularly in sub-Saharan Africa. Higher food prices do not always trickle down to the farm-gate, where many poor farmers must sell. To increase their yield, they need access to credit to pay for fertilizer, seeds, and tools. They need access to technology to boost productivity. They will be helped, not by being provided food, but by being supported to produce food, and to sell it at a remunerative price and thus, from their position as net food buyers, become net food sellers. For them, the alternative is clear: to live from farming their

small plots, or to join the rapidly expanding slums of the larger cities.

...

8. Adopting a human rights framework can help achieve this objective, because it may guide the redefinition of the policy priorities triggered by the current crisis. The question 'for whose benefit?' is at least as important as the question 'how to produce more?' But there is a risk, in the current situation, that the latter question will be treated as the most pressing and that we focus on solutions that promote the supply of more food, without (p. 878) paying sufficient attention to the question of who produces, at what price and for whom. This would be a mistake with far-reaching consequences. One of the opportunities created by the current crisis is that investment in agriculture, which has been neglected for many years both in the definition of priorities of official development assistance and in national budgets, will be given in the future the priority it deserves. But how the investments will be channelled, towards whom, and for which purpose, deserves close scrutiny. If, guided by a sense of urgency and a mistaken diagnosis about the challenges facing us, investment is planned exclusively with a view to increasing the supply of food, it could result in the wrong choices. Instead, investment should be guided by the need to promote sustainable forms of agricultural production, benefiting small-holders who are most in need of support, and where the impact on poverty alleviation will be greatest.⁴⁰

Having identified agricultural workers and small land holders as groups that are especially vulnerable to food insecurity, de Schutter proceeds to articulate a number of key features of any state programme aimed at promoting food security and better realizing the right to food—namely, the establishment of relevant legal entitlements to adequate food, the security of land tenure, and the particular needs and rights of women in respect of food.

B. Improving accountability

17. Mapping threats to food security alone does not suffice, however. The human rights approach also leads to an understanding of the requirement of food security in terms of legal entitlements and accountability mechanisms. Ensuring that everyone has access to adequate food is not enough. It is also important that they have so as a matter of right, and that corresponding obligations be imposed on public and private actors who may have an impact on the enjoyment of that right. By ensuring that the hungry and the malnourished have legal claims against those whose actions or inactions have an impact on their situation, this framework creates security, backed by institutional mechanisms. It helps to create the conditions ensuring that people can feed themselves. Ensuring that they can do so as a matter of right rather than as a matter of policy choice is especially important if we take into consideration the capacity to influence decision-makers of the respective groups concerned with food insecurity. It is well known that, in developing countries, small-scale farmers form a large but geographically dispersed group, with little or no access to resources for political lobbying, and face prohibitive transaction costs in the organization of collective action. Urban groups, in contrast, find it easier to mobilize through public protests; so do farmers in industrial economies. With such disparity in access to political influence, a rights-based approach constitutes a necessary insurance against the risk of public policies being biased in favour of the most influential and well-organized interest groups, when they should instead address the needs of those at greatest risk, whether in urban or rural populations.

18. As part of their national strategies, States should adopt a framework legislation ensuring that the right to food is justiciable before national courts or that other forms of redress are available, so that in situations such as the current one, when the prices of food undergo a sudden increase, the other branches of government will not be allowed to remain passive, and so that, in the adoption of measures aimed at realizing the right to (p. 879) food, any discrimination in access to food or means for its procurement will be effectively prohibited. By defining in a framework law the obligations corresponding to the right to adequate food with a greater degree of precision, courts or other monitoring mechanisms, such as human rights institutions, will be encouraged to contribute to ensure compliance with the right to

adequate food. Such accountability mechanisms may therefore contribute to ensure that, where macro-economic or social policies are misguided or are not well targeted (for instance, because they underestimate the needs of certain segments of the population or of certain regions), this will be identified at an early stage and corrected.

...

C. Securing rights related to the use of land

21. To the extent that the emphasis is on increasing the production of food, the responses to the current global food crisis could, however, lead to new threats to security of land tenure. One danger in the current situation is that, as a result of the renewed interest in agriculture and the race towards the production of agrofuels, competition will increase for land in what has been described as 'an uneven playing field—in many cases between large-scale investors and local land users who often hold no statutory rights over the land they use'. The development of transnational investment in agricultural land, by which countries seek to ensure their food security by buying land abroad, and the development of monocultures for exports increase such pressure even further. In this context, developing countries should be encouraged to ensure security of tenure for all land users. While landowners may gain from the increase in the price of land, it constitutes a threat for landless labourers or for those whose title to the land they cultivate is insecure, and it may make it impossible for small holders to acquire more land in order to increase production. Securing land rights would encourage investors seeking to produce crops for export to opt for contract farming with small-holders, thus contributing to a better livelihood for the producers concerned.

...

D. Women's rights

23. Elsewhere, the previous Special Rapporteur on the right to food explored why the full respect for women's rights is crucial to the enjoyment of the right to adequate food, particularly in its nutritional aspects. As noted by the World Bank, 'in many societies, women bear the primary responsibility for feeding the family, yet without having control of family resources. In many countries, women and girls are also frequently less favoured in the intra-household distribution of food.' The Comprehensive Framework for Action is explicit on this issue. There is a high degree of consensus, therefore, on the need to strengthen women's rights, particularly in rural areas as required under article 14 of the Convention on the Elimination of All Forms of Discrimination against Women, and on the contribution this could make to food and nutrition security. However, many obstacles remain in the implementation at the national level, owing to discriminatory laws or customs. States should be encouraged to move further in this direction by making women's rights an explicit component of their national strategies to respond to the food crisis.⁴¹

(p. 880) Responsibilities of governments

According to the broadly couched terms in Article 11(2), the requirements of states to improve methods of production, conservation and distribution of food, as well as to develop and reform agrarian systems to be more efficient, are to be achieved by states both 'individually and through international co-operation'. For states individually, the Committee on Economic, Social and Cultural Rights has outlined its expectations, including, as noted earlier, that states adopt appropriate strategies, policies, monitoring and accountability mechanisms. As noted in the following extracts, a number of Special Rapporteur reports have expanded on these expectations by way of further details and examples of good state practice.

26. The primary obligation to realize the right to food rests with national Governments. The key focus of the guidelines should therefore be national obligations to respect, protect and fulfil the right to food of its own citizens. The first step should be to set up a national strategy for the implementation of the right

to food. This would imply a comprehensive review of existing government policies and legislation with respect to the protection of the right to food, before producing an overall policy and framework legislation to ensure comprehensive protection. Examples of good practice and illustrations of the different State obligations to respect, protect and fulfil the right to food could be included in the guidelines to guide the development of a national strategy. A gender-based perspective should also be incorporated into any national strategy. Special attention should be paid to ensuring that national strategies include policies and resources to cope with natural and other disasters, to guard against famine.⁴²

At its most basic, the matter of state practice in upholding the right to food can be regarded in two ways—one censorious, the other commendatory. In his 2006 Report to the General Assembly, Mr Zeigler reflects upon both these perspectives, first by explaining his role in dealing with bad state practices, and then offering examples of what he considers to be good (or at least improved) state practice.

9. As the Special Rapporteur's mandate requires him to receive and respond to information on the right to food submitted by governmental and non-governmental organizations (NGOs), the Special Rapporteur has sent out 28 communications to Governments over the last year asking for further information regarding specific allegations of violations of the right to food. The Special Rapporteur views this process as an important means of cooperation with Member States, as it opens a constructive dialogue about specific cases that can be remedied. This year, the majority of the communications were sent jointly with other relevant thematic or country-based special procedures, and were addressed to the Governments of Australia, Brazil, Chile, Colombia, the Democratic Republic of the Congo, the Democratic People's Republic of Korea, Ecuador, India, Indonesia, Israel, the Lao People's Democratic Republic, Mexico, Myanmar, the Philippines, the Republic of Moldova, the Sudan and the United States of America. Communications were also sent to (p. 881) the European Union. Approximately half related to allegations of violations of the obligation to respect the right to food on the part of State agents, for example, forced evictions from land that inhibited peoples' access to food. The remaining communications related to allegations that relevant authorities failed to protect or fulfil the right to food. The Special Rapporteur appreciated receiving constructive replies, in particular from Australia, Colombia, the Lao People's Democratic Republic, Indonesia and the Philippines, which have either resolved the concerns or initiated a debate about actions that could be taken.

...

II. Positive developments with respect to the right to food

A. Guatemala

13. Following his visit to Guatemala in February 2005, the Special Rapporteur welcomes the commitment of the Government to fight malnutrition and food insecurity and to promulgate a new National Law on Food Security. This Law, which was passed by Congress in May 2005, recognizes the right to food. Its definition of the right to food is grounded in general comment No. 12 of the Committee on Economic, Social and Cultural Rights. It identifies violations of the right to food and establishes a national system for the protection and progressive realization of the right to food. The Law also recommends the strengthening of the Office of the Ombudsman to monitor the protection and progressive realization of the right to food. The Special Rapporteur welcomes the work of the Office of the High Commissioner for Human Rights in Guatemala, FAO and the Grupo Interagencial de Seguridad Alimentaria y Nutricional (Inter-Agency Group on Food and Nutritional Security) on including the right to food in current strategies and programmes.

B. India

14. The Special Rapporteur also welcomes developments in India which he

learned about during his visit in August 2005. He was impressed by the full awareness of state and central Governments of their obligations to respect, protect and fulfil human rights, including the right to food. India implements the largest public food distribution system in the world. It has also made a great deal of progress in ensuring access to justice for securing respect for the right to food through decisions of the Supreme Court. In the last 15 years, in its decisions the Court has upheld the right to water of Dalits facing discrimination by the upper castes, the right to a livelihood of traditional fisherpeople struggling against the shrimp industry and the right to a livelihood of members of Scheduled Tribes threatened by the acquisition of land by a private company. More recently, to fulfil the right to food and prevent deaths from starvation, the Court directed all State Governments to fully implement the existing food-based schemes of the central Government [...]. The Special Rapporteur welcomed the opportunity to attend the national Judicial Colloquium on the Right to Food held in Delhi at the initiative of the Right to Food Campaign which brought together 70 senior judges from across India to discuss the right to food.

C. Brazil

15. The Special Rapporteur would also like to bring to the attention of the Assembly developments in Brazil, where the Government's Zero Hunger programme is serving as an important example for worldwide efforts to fight hunger. He welcomes the re-establishment of the National Food and Nutrition Security Council with a specific mandate to combat hunger and malnutrition in Brazil. A new draft law providing for a National Food and Nutrition System, approved in August 2006 by the Federal Commission on Constitution, (p. 882) Justice and Citizenship, recognizes the right to food and the obligations of the Government to respect, protect, promote, monitor, finance and fulfil the right to food. It also calls for the creation of mechanisms to ensure accountability for meeting these obligations. The Special Rapporteur has been impressed by the participation of the Ministério Público and Brazilian civil society in this process. He believes that the initiative of NGOs to establish the post of a national Special Rapporteur on the right to food within Brazil has had a profound effect on the growing recognition of the right to food as a human right in the country, and serves as an important example for civil society in other countries. He welcomes the holding of the International Conference on Agrarian Reform and Rural Development organized by the Government and FAO in Porto Alegre in March 2006. In the Final Declaration of this conference 95 States recognize that one important way to ensure the fulfilment of the right to food is to establish appropriate land reform to secure access to land for marginalized and vulnerable groups, and to adopt adequate legal frameworks and policies to promote traditional and family agriculture.⁴³

The Committee also, unsurprisingly, spends time in its Concluding Observations on states parties' periodic reports relaying its concerns or criticisms of the failures of states (both wealthy and poor) adequately to protect the right to food. Malnutrition (especially among children), absent or ineffective food assistance programmes, including discrimination regarding access to food aid, and the expropriation of farm lands are common problems in many developing countries as the following extracts of Concluding Observations in respect of Angola and Colombia demonstrate. Notably, however, food security problems are not absent in developed states such as Canada, as shown in the extracts below from the Concluding Observations regarding that country.

Angola:

29. The Committee is concerned about the high incidence of acute malnutrition and chronic malnutrition in all the provinces of the State party, particularly affecting children. The Committee notes with concern the reports of widespread hunger in Lunda provinces due to the expropriation of farmlands for the purpose of commercial diamond mining.

The Committee recommends that the State party effectively implement and allocate sufficient resources to relevant programmes and funds to ensure physical and economic access for everyone, especially those from the most disadvantaged social groups, to the minimum essential food, which is sufficient, nutritionally adequate

and safe, to ensure freedom from hunger, in line with the Committee's general comment No. 12 (1999) on the right to adequate food as well as its Statement on the world food crisis (E/C.12/2008/1). The Committee also urges the State party to ensure that expropriations of farmer lands do not have a negative impact on the right to food of those who have been expropriated.⁴⁴

Colombia:

21. The Committee is concerned about the high malnutrition rate which affects a considerable number of children and women, in particular among internally displaced groups, as well as persons living in rural areas.

(p. 883) The Committee firmly recommends that the State party adopt an effective national food policy to combat hunger and malnutrition, in particular among children, women, internally displaced persons and persons living in rural areas.

22. The Committee is concerned that the policy encouraging agro-exporting goods, such as agro-fuels, may deprive peasants from cultivating their lands. The Committee is also concerned about the unequal distribution of lands owned by a minority of the population, as well as about the absence of a genuine agrarian reform, as recommended in the previous concluding observations of the Committee (art. 11).

The Committee recommends that the State party develop agricultural policies which prioritize the production of food; implement programmes that protect national food production with incentives for small producers; and ensure the restitution of lands taken from indigenous and Afro-Colombian peoples, as well as peasant communities.⁴⁵

Canada:

[105] Of concern is the evidence of hunger in Canada and the reliance on food banks operated by charitable organizations.

...

[107] The Committee has learned from non-governmental organizations of widespread discrimination in housing against people with children, people on social assistance, people with low incomes, and people who are indebted. Although prohibited by law in many of Canada's provinces, these forms of discrimination are apparently common. A more concerted effort to eliminate such practices would therefore seem to be in order.

...

[112] The Committee is concerned to learn that, in a few cases, courts have ruled that the right to security of the person in the Charter does not protect Canadians from social and economic deprivation, or from infringement of their rights to adequate food, clothing and housing.

[113] The Committee is concerned that provincial human rights legislation has not always been applied in a manner which would provide improved remedies against violations of social and economic rights, in particular concerning the rights of families with children, and the right to an adequate standard of living, including food and housing.

...

E. Suggestions and recommendations

[115] The Committee recommends concerted Government action to eliminate the need for food banks.⁴⁶

Alongside the work of the Committee and of the Special Rapporteurs on the right to food, the UN Food and Agriculture Organization (FAO) has established itself as a leader in the field. In particular, the FAO's 'Voluntary Guidelines to (p. 884) support Member States' efforts to achieve the progressive realization of the right to adequate food' (2004)⁴⁷ have come to be seen as a practicable amplification of the 'ways and means' of state implementation that the Committee broadly indicates in paragraphs 21 to 28 of its General Comment No. 12 (as referred to above).

The Guidelines are designed to help states build and maintain an enabling environment for the realization of the right to food and the promotion of food security within their individual jurisdictions. In particular, the Guidelines stress the importance of good governance (Guideline 1) and effective policy formulation and administrative practices (Guideline 3) in the delivery of these objectives. In so doing, the Guidelines underscore both the importance of recognizing that it is the *accessibility* of food, more often than its adequacy, that creates a barrier to feeding the hungry, and that in terms of human rights, civil and political rights are vital to the realization of economic, social and cultural rights.

Guideline 1: Democracy, good governance, human rights and the rule of law

...

1.2 States should promote democracy, the rule of law, sustainable development and good governance, and promote and protect human rights and fundamental freedoms in order to empower individuals and civil society to make demands on their governments, devise policies that address their specific needs and ensure the accountability and transparency of governments and state decision-making processes in implementing such policies. States should, in particular, promote freedom of opinion and expression, freedom of information, freedom of the press and freedom of assembly and association, which enhances the progressive realization of the right to adequate food in the context of national food security.

Food should not be used as a tool for political and economic pressure.

...

Guideline 3: Strategies

3.1 States, as appropriate and in consultation with relevant stakeholders and pursuant to their national laws, should consider adopting a national human-rights based strategy for the progressive realization of the right to adequate food in the context of national food security as part of an overarching national development strategy, including poverty reduction strategies, where they exist.

3.2 The elaboration of these strategies should begin with a careful assessment of existing national legislation, policy and administrative measures, current programmes, systematic identification of existing constraints and availability of existing resources. States should formulate the measures necessary to remedy any weakness, and propose an agenda for change and the means for its implementation and evaluation.

(p. 885) 3.3 These strategies could include objectives, targets, benchmarks and time frames; and actions to formulate policies, identify and mobilize resources, define institutional mechanisms, allocate responsibilities, coordinate the activities of different actors, and provide for monitoring mechanisms. As appropriate, such strategies could address all aspects of the food system, including the production, processing, distribution, marketing and consumption of safe food. They could also address access to resources and to markets as well as parallel measures in other fields. These strategies should, in particular, address the needs of vulnerable and disadvantaged groups, as well as special situations such as natural disasters and emergencies.

3.4 Where necessary, States should consider adopting and, as appropriate, reviewing a national poverty reduction strategy that specifically addresses access to adequate food.

3.5 States, individually or in cooperation with relevant international organizations, should consider integrating into their poverty reduction strategy a human rights perspective based on the principle of non-discrimination. In raising the standard of living of those below the poverty line, due regard should be given to the need to ensure equality in practice to those who are traditionally disadvantaged and between women and men.

...

3.7 States are encouraged, inter alia and in a sustainable manner, to increase productivity and to revitalize the agriculture sector including livestock, forestry and fisheries through special policies and strategies targeted at small-scale and traditional fishers and farmers in rural areas, and the creation of enabling conditions for private sector participation, with emphasis on human capacity development and the removal of constraints to agricultural production, marketing and distribution.

3.8 In developing these strategies, States are encouraged to consult with civil society organizations and other key stakeholders at national and regional levels including small-scale and traditional farmers, the private sector, women and youth associations, with the aim of promoting their active participation in all aspects of agricultural and food production strategies.

3.9 These strategies should be transparent, inclusive and comprehensive, cut across national policies, programmes and projects, take into account the special needs of girls and women, combine short-term and long-term objectives, and be prepared and implemented in a participatory and accountable manner.

3.10 States should support, including through regional cooperation, the implementation of national strategies for development, in particular for the reduction of poverty and hunger as well as for the progressive realization of the right to adequate food.⁴⁸

The practicability of the work of the FAO has long been a feature of interaction with states. Examples of FAO monitoring of, as well as cooperation and assistance with, states are apparent in many state reports to the Committee, as well as in the Committee's concluding observations, including in respect of Cambodia,⁴⁹(p. 886) Czechoslovakia,⁵⁰ the Dominican Republic,⁵¹ Jordan,⁵² Republic of Congo,⁵³ Mongolia,⁵⁴ Solomon Islands⁵⁵ and Togo.⁵⁶ The FAO's Special Programme for Food Security (SPFS), which was established in 1994, and its more recent strategic-oriented Capacity Development Framework,⁵⁷ have been central to the organization's endeavours to aid the most food-insecure states to improve food production, distribution and access.⁵⁸ Both initiatives are designed to bolster target countries' agricultural infrastructure, technical knowledge and management structure, at both micro and macro levels, and as such, can be seen as integral to those countries' efforts to fulfil the demands of Article 11(2). Thus, for example, in respect of Congo:

217. The Committee supports the request by the Government addressed to the United Nations Food and Agriculture Organization (FAO) for a Special Programme for Food Security (SPFS) to facilitate access to food through small-scale low-cost agricultural projects. The Committee notes that a new project formulation mission is planned for the near future to support the national team in the initial preparations for such a programme. The Republic of the Congo can also take advantage of the FAO South-South Cooperation Initiative, which involves the exchange of knowledge, expertise and experience between developing countries.⁵⁹

Examples of recognition by states themselves of their cooperation with the FAO are to be found in the state reports of Cameroon and Argentina:

Cameroon:

Objectives and specific measures...

151. As a poverty reduction measure for the rural areas, FAO launched in Cameroon in 1999 the 'Téléfood' initiative, aimed at financing small development projects with funds (p. 887) collected during a broadcast organized in connection with the World Food Day on 16 October of every year. In the period 2000–2005, the total cost of projects thus funded amounted to approximately CFAF 77, 530, 000.

Improvement of the protection of the health of the child...

506. For the implementation of initiatives in this area, the Government has received support from various international and national partners (UNAIDS, WHO, UNICEF, Global Fund to Fight AIDS, Tuberculosis and Malaria, European Union, UNFPA, FAO, WFP, African Synergy, AWARE, USAID, CARE, MSP, HKI, GTZ, Rotary International, Plan Cameroon, CIDA, FOREDEN, ADAMS, AAFEC,

AUPAES, Chantal Biya Foundation and Cameroon Red Cross). NGOs, associations and traditional chiefs also contributed to mobilizing the population for participation in informal educational discussions.

(a) Enhancing the scope of the education offered...

603. In 2006, activities were carried out on the basis of a partnership among MINPROFF, UNICEF, FAO/WFP, UNFPA150, MINEDUB and MINAS in order to eliminate disparities between boys and girls. Such activities vary among the formal, non-formal and specialized education system.⁶⁰

Argentina:

497. The availability of food in Argentina, as measured by the food balance sheets of the Food and Agriculture Organization of the United Nations (FAO), has historically presented values very close to or in excess of 3,000 kcal. a day per inhabitant. In the most recent period (1997-2001), availability has been 3,174 calories per inhabitant, or 30 per cent more than the average requirement of the population. Apparent consumption of protein is also high (over 100 grams a day per person), while calcium is one of the few nutrients whose availability falls short of the recommended average.⁶¹

Enforcing the right to food

In terms of meeting the legal obligations imposed by Article 11, the formulation and implementation of policies on food adequacy and access by states is often only half the battle. Enshrining the right in domestic law or otherwise in a format that permits legal enforcement is considered to be an essential complement to any policy initiative. The right to food is incorporated in many national legal systems, sometimes in 'ordinary' law, and sometimes in the constitution. It is also potentially enforceable through instruments of the African and Inter-American human rights systems.

According to the current Special Rapporteur on the right to food, some twenty-four states have incorporated the right explicitly into their constitutions,⁶² and many more have constitutional provisions from which one can infer a right (p. 888) to food.⁶³ Thus, for example, express provisions are to be found in the constitutions of South Africa (Article 27(1)), Ecuador (Article 13), Brazil (Article 6, as amended in 2010), and Nepal (Interim Constitution 2063 (2007), Article 18) and, implicitly, in the constitutions of India (under Article 21 on the right to life), and Ghana (Article 36(1) on the state's duty to provide welfare and an adequate standard of livelihood), or under constitutionally enshrined Directive Principles of State Policy, as with India (Article 47) and Sri Lanka (Article 27(c)).

Many of these countries—as a well as a number of others who have neither explicit nor implicit constitutional provisions on food—have also enacted framework laws that direct policy and practice across government with a view to securing the right to food. Together, all of these countries can be considered to have adopted what might broadly be called human rights approaches to tackling hunger. Examples include: Brazil's National Food and Nutrition Security Framework Law (2009); Nicaragua's Food Sovereignty, Food Security and Nutrition Law (2009); and Malawi's draft Food Security Bill (2013). Also, in India, a long-debated National Food Security Act 2013 was finally enacted by Parliament in September 2013, following its breakthrough approval by Executive Order in July 2013. The statute institutes a right to food in the form of access to heavily subsidized food grains for some two-thirds of India's population, as part of a broad-based programme of social protection.⁶⁴

State-based enforcement

Ideally, what should follow these constitutional guarantees, statutory provisions and framework laws for the protection of the right to food are effective mechanisms for their implementation and enforcement. And, indeed, there is now a growing body of domestic jurisprudence on the matter of enforcement. A common theme running through this body of case law—and one that echoes the concerns aired above that often the obstacles to combatting hunger are more to do with access than adequacy—has been complaints raised as to the ineffectiveness or inefficiency of government processes by which food is provided or distributed to those in most need. Thus, in the landmark case of *People's Union for Civil Liberties v Union of India* (2001),⁶⁵ the Supreme Court of India held that there existed an implied right to food in the Indian Constitution, and that the state had

violated that right by failing adequately to address the dire need for food of millions suffering from a recent severe drought. The state had stockpiled enormous quantities of staple grains, but the public system of distribution of essential foodstuffs had broken down such that it was unable to deliver to those most in (p. 889) need. As a consequence, and over a series of Supreme Court orders spread across many years, the state was compelled to provide immediate, free relief to those in drought-affected communities, to raise the levels of food entitlements generally, and to increase the subsidization of essential foods. What is remarkable about these orders—which thereby obtained the status of legal entitlements enforceable against the state—is the specificity of executive actions demanded by the Court. Significantly, they also contributed to the pressure that led eventually to the enactment of the above-mentioned National Food Security Act in 2013. The following is the text of one of its most significant initial orders issued by the Supreme Court in the case:

After hearing learned counsel for the parties, we issue, as an interim measure, the following directions:

1. TARGETED PUBLIC DISTRIBUTION SYSTEM (TPDS)

- (i) It is the case of the Union of India that there has been full compliance with regard to the allotment of foodgrain in relation to the TPDS. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.
- (ii) The States are directed to complete the identification of BPL families, issuing of cards and commencement of distribution of 25 kgs. grain per family per month latest by 1st January, 2002.
- (iii) The Delhi Govt. will ensure that TPDS application forms are freely available and are given and received free of charge and there is an effective mechanism in place to ensure speedy and effective redressal of grievances.

2. ANTYODAYA ANNA YOJANA

- (i) It is the case of the Union of India that there has been full compliance with regard to the allotment of foodgrain in relation to Antyodaya Anna Yojana. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.
- (ii) We direct the States and the Union Territories to complete identification of beneficiaries, issuing of cards and distribution of grain under this Scheme latest by 1st January, 2002.
- (iii) It appears that some Antyodaya beneficiaries may be unable to lift grain because of penury. In such cases, the Centre, the States and the Union Territories are requested to consider giving the quota free after satisfying itself in this behalf.

3. MID DAY MEAL SCHEME (MDMS)

- (i) It is the case of the Union of India that there has been full compliance with regard to the Mid Day Meal Scheme (MDMS). However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.
- (ii) We direct the State Governments/ Union Territories to implement the Mid-Day Meal Scheme by providing every child in every Government and Government assisted Primary Schools with a prepared mid day meal with a minimum content of 300 (p. 890) calories and 8-12 grams of protein each day of school for a minimum of 200 days. Those Governments providing dry rations instead of cooked meals must within three months start providing cooked meals in all Govt. and Govt. aided Primary Schools in all half the Districts of the State (in order of poverty) and must within a further period of three months extend the provision of cooked meals to the remaining parts of the State.
- (iii) We direct the Union of India and the FCI to ensure provision of fair average quality grain for the Scheme on time. The States/Union Territories

and the FCI are directed to do joint inspection of food grains. If the food grain is found, on joint inspection, not to be of fair average quality, it will be replaced by the FCI prior to lifting.

4. NATIONAL OLD AGE PENSION SCHEME (NOAPS)

(i) It is the case of the Union of India that there has been full compliance with regard to the National Old Age Pension Scheme. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.

(ii) The States are directed to identify the beneficiaries and to start making payments latest by 1st January, 2002.

(iii) We direct the State Govts. / Union Territories to make payments promptly by the 7th of each month.

5. ANNAPURNA SCHEME

The States/Union Territories are directed to identify the beneficiaries and distribute the grain latest by 1st January, 2002.

6. INTEGRATED CHILD DEVELOPMENT SCHEME (ICDS)

(i) We direct the State Govts. / Union Territories to implement the Integrated Child Development Scheme (ICDS) in full and to ensure that every ICDS disbursing centre in the country shall provide as under:

(a) Each child up to 6 years of age to get 300 calories and 8-10 gms of protein;

(b) Each adolescent girl to get 500 calories and 20-25 grams of protein;

(c) Each pregnant woman and each nursing mother to get 500 calories & 20-25 grams of protein;

(d) Each malnourished child to get 600 calories and 16-20 grams of protein;

(e) Have a disbursement centre in every settlement.

(ii) It is the case of the Union of India that there has been full compliance of its obligations, if any, under the Scheme. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.

7. NATIONAL MATERNITY BENEFIT SCHEME (NMBS)

(i) We direct the State Govts. / Union Territories to implement the National Maternity Benefit Scheme (NMBS) by paying all BPL pregnant women Rs. 500/- through the Sarpanch 8-12 weeks prior to delivery for each of the first two births.

(p. 891) (ii) It is the case of the Union of India that there has been full compliance of its obligations under the Scheme. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.

8. NATIONAL FAMILY BENEFIT SCHEME (NFBS)

(i) We direct the State Govts. / Union Territories to implement the National Family Benefit Scheme and pay a BPL family Rs. 10, 000/- within four weeks through a local Sarpanch, whenever the primary bread winner of the family dies.

9. We direct that a copy of this order be translated in regional languages and in English by the respective States/ Union Territories and prominently displayed in all Gram Panchayats, Govt. School Buildings and Fair Price Shops.

10. In order to ensure transparency in selection of beneficiaries and their access to these Schemes, the Gram Panchayats will also display a list of all beneficiaries

under the various Schemes. Copies of the Schemes and the list of beneficiaries shall be made available by the Gram Panchayats to members of public for inspection.

11. We direct Doordarshan and AIR to adequately publicise various Schemes and this order. We direct the Chief Secretaries of each of the States and Union Territories to ensure compliance of this order. They will report compliance by filing affidavits in this Court within 8 weeks from today with copies to the Attorney General and counsel for the petitioner.

We grant liberty to the Union of India to file affidavit pursuant to the order of this Court dated 21st November, 2001. List the matter for further orders on 11th February, 2002. In the meanwhile, liberty is granted to the parties to apply for further directions, if any.⁶⁶

The Supreme Court's implication of the right to food was made in respect of the express right to life provided under Article 21 of the Indian Constitution ('no person shall be deprived of his life or personal liberty except according to procedure established by law'), and supported by two Constitutional Directive Principles under Article 39(a) ('the State shall...direct its policy towards securing that the citizen, men and women equally, have the right to an adequate means of livelihood...') and Article 47 ('the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties...').

The reasoning behind the adoption of this stance was succinctly expressed by the National Human Rights Commission of India during one of the many hearings that comprised the case: (*NHRC*) in *the Proceedings of a hearing held on 17 January 2003*:

Article 21 of the Constitution of India guarantees a fundamental right to life and personal liberty. The expression 'Life' in this Article has been judicially interpreted to mean a life with human dignity and not mere survival or animal existence. In the light of this, the (p. 892) State is obliged to provide for all those minimum requirements which must be satisfied in order to enable a person to live with human dignity, such as education, health care, just and humane conditions of work, protection against exploitation, etc. In the view of the Commission, the Right to Food is inherent to a life with dignity, and Article 21 should be read with Articles 39(a) and 47 to understand the nature of the obligation of the State in order to ensure the effective realization of this right. Article 39(a) of the Constitution enunciated as one of the Directive Principles, fundamental in the governance of the country, requires the State to direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. Article 47 spells out the duty of the State to raise the level of nutrition and the standard of living of its people as a primary responsibility. The citizen's right to be free from hunger enshrined in Article 21 is to be ensured by the fulfillment of the obligation of the State set out in Articles 39(a) and 47. The reading of Article 21 together with Articles 39(a) and 47 places the issue of food security in the correct perspective, thus making the Right to Food a guaranteed Fundamental Right which is enforceable by virtue of the constitutional remedy provided under Article 32 of the Constitution.⁶⁷

In subsequent cases, the right to food has been further iterated and constitutionally embedded within the right to life. Thus, in *Laxmi Mandal v Deen Dayal Harinagar Hospital et al* (2010),⁶⁸ the Delhi High Court underscored the importance of the implied rights to food and to health within the Constitution's expressly declared right to life—what the Court termed, 'two inalienable survival rights that form part of the right to life' (paragraph 2). Again, this case concerned the failure of the state to provide access to adequate food for the poorest and most vulnerable, as well as denying them access to basic health care facilities, such that their very right to life is threatened. After overviewing the objectives and deficiencies of the four schemes covering child and maternal welfare that formed the subject matter of the litigation, the Court highlighted the significance of the growing jurisprudence surrounding what constitutes the right to life.

19. ...the Supreme Court has time and again emphasised the importance of the effective implementation of the above schemes meant for the poor. [It] underscore[s] the interrelatedness of the 'right to food' which is what the main PUCL Case was about, and the right to reproductive health of the mother and the right to health of the infant child. There could not be a better illustration of the indivisibility of basic human rights as enshrined in the Constitution of India. Particularly in the context of a welfare State, where the central focus of these

centrally sponsored schemes is the economically and socially disadvantaged sections of society, the above orders of the Supreme Court have to be understood as preserving, protecting and enforcing the different facets of the right to life under Article 21 of the Constitution. As already noted, these...petitions focus on two inalienable survival rights that form part of the right to life. One is the right to health, which would include the right to access government (public) health facilities and receive a minimum standard of treatment and care. In particular this would include the enforcement of the reproductive (p. 893) rights of the mother and the right to nutrition and medical care of the newly born child and continuously thereafter till [sic] the age of about six years. The other facet is the right to food which is seen as integral to the right to life and right to health.⁶⁹

In countries with Constitutions that expressly protect the right to food such as Nepal, the path for litigants to argue and the courts to order that the state provide adequate food at all times is more obvious and direct. But even here, the courts may underline the fundamental importance of the right not only with reference to the intersection of the rights to food and to life, but also by direct appeal to relevant international human rights instruments. Thus, in the case of *Prakash Mani Sharma et al on behalf of Forum for Protection of Public Interest (Pro Public) v Prime Minister and Office of Council of Minister et al* (2008),⁷⁰ the Supreme Court of Nepal held that the state had breached not only its obligations under the Interim Constitution 2007 in respect of the right to food and to life,⁷¹ but also Nepal's obligations under the ICESCR, the CRC and the CEDAW. As the following extracts show, after confirming the constitutional basis upon which the right to food exists, and the nature of the obligations thereby imposed on the state—that it must facilitate access to adequate food, rather than necessarily provide it free of charge—the Court concludes by emphasizing the government's additional responsibilities under the relevant international human rights instruments to which it is signatory.⁷²

Article 18(3) of the Constitution has provided every person with the right to food regime. The realization of the right to food is not limited only to the availability of food, it is equally important to have access to it. [296]

...

There is no room for dispute that every citizen has the right to food along with the right to live a dignified life. The right to food, however, does not mean that the state is liable to feed morning and evening meals...which is impossible. The right to food is not the right to be fed. In a country like ours which has a mixed and liberal economy imagined by...the Constitution, the states cannot feed both meals free of cost...The state plays the role of just a facilitator and regulator to have access to food. Everyone should be capable to stand on his own as per his needs and aspirations. For this the person, either through the enjoyment of freedom of occupation or producing food himself...made available because of the right economic policy formulated the state...[through, for example]...the duty of the state to provide for seed, fertilizer, irrigation, market, pricing etc for the right under Article 18(3) thereby making the food available and ensuring food security. [297-8]

(p. 894) The Government should be held responsible not to create any sorts of food crisis in any parts of the country may it be of natural disaster or any other reasons. Nepal is a member signatory of ICESCR and the declarations and conventions like the UDHR (Article 25), CEDAW, the CRC etc, and our own Constitution provides the right to live a dignified life and a right to food regime to every individual as fundamental rights [sic]. [304-5]

Enforcement under regional regimes

Neither the American Convention on Human Rights (1969) nor the African Charter on Human and Peoples' Rights (1986) contains a provision for the right to food in their original formats. The supervisory organs of both, however, have expressly recognized the right in subsequent related instruments, and, what is more, the case law relating to each treaty has been developed so as to read the right to food into other rights (notably the right to life) contained in the relevant instrument.

In the following case of the *Yakye Axa indigenous community of the Enxet-Lengua people v Paraguay* (2005), the Inter-American Court of Human Rights, like the Indian Supreme Court, articulates how the right to food must necessarily be implicated in the right to life, as here provided under the American Convention on Human Rights (ACHR). In so doing, it invokes the reasoning of the UN Committee on Economic, Social and Cultural Rights' General Comments on

health (General Comment No. 14), food (General Comment No. 12) and water (General Comment No. 15). In the extracts of the judgment below, the Court also refers to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) 1988, Article 12 of which expressly recognizes the right to food in much the same way as Article 11 of the ICESCR.⁷³

The case was based on claims made by the indigenous Yakye Axa Community that the 'extremely precarious and poor material and economic living conditions' in which its people existed were due in large measure to their access to ancestral lands being denied by the actions of the state. In particular, the state's processing of a land claim lodged by the Community in 1993 had been continually delayed and was not yet settled (paragraph 158(c) of the judgment). Consequently, it was argued (in paragraph 2 of the judgment) that a number of provisions under the ACHR had been infringed, including Articles 4 (Right to Life), 8 (Right to Fair Trial), 21 (Right to Property) and 25 (Judicial Protection) of the American Convention, in combination with the obligations set forth in Articles 1(1) (p. 895) (Obligation to Respect Rights) and 2 (Domestic Legal Effects). In respect of the right to life, it was alleged that:

...the right to life is a basic right, whose protection depends on realization of the other rights. In view of this, the States are under the obligation to ensure the establishment of conditions required for full enjoyment and exercise of that right. This entails positive protection measures by the State. Not taking such measures may create or foster conditions that lead to the death of individuals...⁷⁴

And further, that:

...the right to life has also been abridged, to the detriment of the Community and of its members, by not allowing them to fully exercise the right to access to conditions that would enable each of them to live a decent life. The precarious material conditions and the poverty in which they live today explicitly reflect the lack of full and effective enjoyment of such basic rights as the right to health, the right to food and the right to education. This shortcoming does not allow the Community and its members to enjoy decent living conditions...⁷⁵

In reaching its conclusion that Paraguay had indeed violated Article 4 of the Convention on the right to life (paragraph 241(3)), the court used the following lines of reasoning that highlighted the range of rights—including the right to food—upon which the right to life necessarily depends.

160. Article 4(1) of the Convention establishes that:

[e]very person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

161. This Court has asserted that the right to life is crucial in the American Convention, for which reason realization of the other rights depends on protection of this one. When the right to life is not respected, all the other rights disappear, because the person entitled to them ceases to exist. Due to the basic nature of this right, approaches that restrict the right to life are not admissible. Essentially, this right includes not only the right of every human being not to be arbitrarily deprived of his life, but also the right that conditions that impede or obstruct access to a decent existence should not be generated.

162. One of the obligations that the State must inescapably undertake as guarantor, to protect and ensure the right to life, is that of generating minimum living conditions that are compatible with the dignity of the human person and of not creating conditions that hinder or impede it. In this regard, the State has the duty to take positive, concrete measures geared toward fulfillment of the right to a decent life, especially in the case of persons who are vulnerable and at risk, whose care becomes a high priority.

163. In the instant case, the Court must establish whether the State generated conditions that worsened the difficulties of access to a decent life for the members of the Yakye Axa Community and whether, in that context, it took appropriate positive measures to fulfill (p. 896) that obligation, taking into account the especially vulnerable situation in which they were placed, given their different manner of life (different worldview systems than those of Western culture, including

their close relationship with the land) and their life aspirations, both individual and collective, in light of the existing international corpus juris regarding the special protection required by the members of the indigenous communities, in view of the provisions set forth in Article 4 of the Convention, in combination with the general duty to respect rights, embodied in Article 1(1) and with the duty of progressive development set forth in Article 26 of that same Convention, and with Articles 10 (Right to Health); 11 (Right to a Healthy Environment); 12 (Right to Food); 13 (Right to Education) and 14 (Right to the Benefits of Culture) of the Additional Protocol to the American Convention, regarding economic, social, and cultural rights, and the pertinent provisions ILO Convention No. 169.

164. In the chapter on proven facts...the Court found that the members of the Yakye Axa Community live in extremely destitute conditions as a consequence of lack of land and access to natural resources, caused by the facts that are the subject matter of this proceeding, as well as the precariousness of the temporary settlement where they have had to remain, waiting for a solution to their land claim. This Court notes that, according to the statements of Esteban López, Tomás Galeano and Inocencia Gómez during the public hearing held in the instant case... the members of the Yakye Axa Community could have been able to obtain part of the means necessary for their subsistence if they had been in possession of their traditional lands. Displacement of the members of the Community from those lands has caused special and grave difficulties to obtain food, primarily because the area where their temporary settlement is located does not have appropriate conditions for cultivation or to practice their traditional subsistence activities, such as hunting, fishing, and gathering. Furthermore, in this settlement the members of the Yakye Axa Community do not have access to appropriate housing with the basic minimum services, such as clean water and toilets. [Paraguay ratified the Additional Protocol to the American Convention on Human Rights regarding Economic, Social and Cultural Rights on June 3, 1997. The Protocol entered into force internationally on November 16, 1999].

165. These conditions have a negative impact on the nutrition required by the members of the Community who are at this settlement...Furthermore, as has been proven in the instant case...there are special deficiencies in the education received by the children and lack of access to health care for the members of the Community for physical and economic reasons.

166. In this regard, the United Nations Committee on Economic, Social, and Cultural Rights, in General Comment 14 on the right to enjoy the highest attainable standard of health, pointed out that:

[i]ndigenous peoples have the right to specific measures to improve their access to health services and care. These health services should be culturally appropriate, taking into account traditional preventive care, healing practices and medicines [...].

[I]n indigenous communities, the health of the individual is often linked to the health of the society as a whole and has a collective dimension. In this regard, the Committee considers that [...] denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health.

167. Special detriment to the right to health, and closely tied to this, detriment to the right to food and access to clean water, have a major impact on the right to a decent existence and (p. 897) basic conditions to exercise other human rights, such as the right to education or the right to cultural identity. In the case of indigenous peoples, access to their ancestral lands and to the use and enjoyment of the natural resources found on them is closely linked to obtaining food and access to clean water. In this regard, said Committee on Economic, Social and Cultural Rights has highlighted the special vulnerability of many groups of indigenous peoples whose access to ancestral lands has been threatened and, therefore, their possibility of access to means of obtaining food and clean water [in General Comment 12 (para.13), and General Comment 15 (para.16), respectively].

168. In the previous chapter [of the judgment], this Court established that the State did not guarantee the right of the members of the Yakye Axa Community to communal property. The Court deems that this fact has had a negative effect on the

right of the members of the Community to a decent life, because it has deprived them of the possibility of access to their traditional means of subsistence, as well as to use and enjoyment of the natural resources necessary to obtain clean water and to practice traditional medicine to prevent and cure illnesses. Furthermore, the State has not taken the necessary positive measures to ensure that the members of the Yakye Axa Community, during the period in which they have been without territory, have living conditions that are compatible with their dignity, despite the fact that on June 23, 1999 the President of Paraguay issued Decree No. 3.789 that declared a state of emergency in the Community...⁷⁶

In terms of remedial action, the Court ordered that Paraguay had to identify and grant to the Yakye Axa Community suitable traditional land within three years of the judgment,⁷⁷ and that in the meantime, or for as long as the community remained landless, 'the State must provide them with the basic services and goods required for their subsistence'.⁷⁸

In light of the growing awareness and promotion of the right to food since at least the early 1980s, it is somewhat curious that no express provision for the right was made in the African Charter on Human and Peoples' Rights, as promulgated in 1986. That said, however, the existence of the right to food has been both inferred in the Charter itself, and has been expressly provided in supplementary human rights instruments to the Charter. In respect of the latter, the African Charter on the Rights and Welfare of the Child (1990) recognizes the right within the context of states' obligations to provide health care and health care services under Article 14(2)(c) and (d):

Article 14 Health and Health Services

...

2. States Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures:

...

- (c) to ensure the provision of adequate nutrition and safe drinking water;
- (p. 898) (d) to combat disease and malnutrition within the framework of primary health care through the application of appropriate technology...⁷⁹

Furthermore, Article 15 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) protects the right to food security by requiring states to:

- (a) provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food;
- (b) establish adequate systems of supply and storage to ensure food security.⁸⁰

The implication of the right to food in the Charter itself was established by the African Commission on Human and Peoples' Rights in the ground breaking case of *The Social and Economic Action Rights Centre (SERAC) v Nigeria*.⁸¹ The case involved multiple claims by the indigenous Ogoni communities from the Niger Delta of human rights violations regarding the rights to life, health and non-discrimination, property, a 'satisfactory environment', and the free disposition of wealth and resources, perpetrated directly by state authorities, or as 'condoned or facilitated' by the state through the actions of its joint venture partners (including a local subsidiary of Royal Dutch Shell Plc) in respect of oil exploration and production in the Delta. In particular, it was alleged that by failing to 'monitor...operations of the oil companies [regarding] safety measures that are standard procedure within the industry',⁸² and 'by placing the legal and military powers of the State at the disposal of the oil companies',⁸³ the Nigerian Government caused or permitted the razing of a number of Ogoni villages, leaving thousands of people homeless and without the means to sustain their livelihoods.⁸⁴ Regarding the right to food specifically, the Commission noted the allegations that:

...the Nigerian government has destroyed and threatened Ogoni food sources through a variety of means. The government has participated in irresponsible oil development that has poisoned much of the soil and water upon which Ogoni farming and fishing depended. In their raids on villages, Nigerian security forces have destroyed crops and killed farm animals. The security forces have created a state of terror and insecurity that has made it

impossible for many Ogoni villagers to return to their fields and animals. The destruction of farmlands, rivers, crops and animals has created malnutrition and starvation among certain Ogoni Communities.⁸⁵

(p. 899) The Commission concluded that Nigeria had indeed violated all the rights mentioned above, including the implied right to food. In respect of the latter, it did so by way of the following reasoning:

64. The Communication argues that the right to food is implicit in the African Charter, in such provisions as the right to life (Art. 4), the right to health (Art. 16) and the right to economic, social and cultural development (Art. 22). By its violation of these rights, the Nigerian Government trampled upon not only the explicitly protected rights but also upon the right to food implicitly guaranteed.

65. The right to food is inseparably linked to the dignity of human beings and is therefore essential for the enjoyment and fulfilment of such other rights as health, education, work and political participation. The African Charter and international law require and bind Nigeria to protect and improve existing food sources and to ensure access to adequate food for all citizens. Without touching on the duty to improve food production and to guarantee access, the minimum core of the right to food requires that the Nigerian Government should not destroy or contaminate food sources. It should not allow private parties to destroy or contaminate food sources, and prevent peoples' efforts to feed themselves.

66. The government's treatment of the Ogonis has violated all three minimum duties of the right to food. The government has destroyed food sources through its security forces and State Oil Company; has allowed private oil companies to destroy food sources; and, through terror, has created significant obstacles to Ogoni communities trying to feed themselves. The Nigerian government has again fallen short of what is expected of it as under the provisions of the African Charter and international human rights standards, and hence, is in violation of the right to food of the Ogonis.⁸⁶

The Right to Water

The conceptualization of the right to water is a relatively new endeavour, with its genesis in the modern era of international human rights being no earlier than the establishment of the Covenant itself—the right to water having never been considered, the *travaux préparatoires* reveal, during the Covenant's formative deliberations.⁸⁷ Despite having omitted expressly to include the right to water in the text of Article 11, or anywhere else in the Covenant, considerable effort has since been invested in making clear its necessary implication, not only in Article 11 of the Covenant, but in other international provisions as well. The opening paragraphs of the Committee on Economic, Social and Cultural Rights' 2002 General Comment No. 15, as extracted below, make clear the patent need and importance of such a right, the nature of the right and its various locations in international law texts, including (and especially) alongside the right to food, as an essential component to the right to an adequate standard of living.

1. Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a (p. 900) prerequisite for the realization of other human rights. The Committee has been confronted continually with the widespread denial of the right to water in developing as well as developed countries. Over one billion persons lack access to a basic water supply, while several billion do not have access to adequate sanitation, which is the primary cause of water contamination and diseases linked to water. The continuing contamination, depletion and unequal distribution of water is exacerbating existing poverty. States parties have to adopt effective measures to realize, without discrimination, the right to water, as set out in this general comment.

The legal bases of the right to water

2. The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking,

personal and domestic hygienic requirements.

3. Article 11, paragraph 1, of the Covenant specifies a number of rights emanating from, and indispensable for, the realization of the right to an adequate standard of living 'including adequate food, clothing and housing'. The use of the word 'including' indicates that this catalogue of rights was not intended to be exhaustive. 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. Moreover, the Committee has previously recognized that water is a human right contained in article 11, paragraph 1, (see General Comment No. 6 (1995)). The right to water is also inextricably related to the right to the highest attainable standard of health (art. 12, para. 1) and the rights to adequate housing and adequate food (art. 11, para. 1). The right should also be seen in conjunction with other rights enshrined in the International Bill of Human Rights, foremost amongst them the right to life and human dignity.

4. The right to water has been recognized in a wide range of international documents, including treaties, declarations and other standards. For instance, Article 14, paragraph 2, of the Convention on the Elimination of All Forms of Discrimination Against Women stipulates that States parties shall ensure to women the right to 'enjoy adequate living conditions, particularly in relation to [...] water supply'. Article 24, paragraph 2, of the Convention on the Rights of the Child requires States parties to combat disease and malnutrition 'through the provision of adequate nutritious foods and clean drinking-water'.⁸⁸

Having implicated the right to water within a number of existing (express) rights in the Covenant and elsewhere, the Committee sought to follow that up with a statement as to the supposed 'normative content' of the right. Thus, in paragraph 10 of General Comment No. 15, the Committee declares that:

The right to water contains both freedoms and entitlements. The freedoms include 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. By contrast, the entitlements include the right to a system (p. 901) of water supply and management that provides equality of opportunity for people to enjoy the right to water.⁸⁹

By invoking the Covenant's umbrella prohibition against discrimination in Article 2(2), the Committee, in paragraphs 13 to 16 of the General Comment, stresses the importance of states ensuring equal access to water for all within their respective jurisdictions, especially women and children, disabled people, refugees, indigenous, nomadic and rural communities, and the poor generally, who, the Committee notes, too often lose out when investment in water services 'disproportionately favour expensive water supply services and facilities that are accessible only to a small, privileged fraction of the population' (paragraph 14).⁹⁰

In any event, the stipulated freedoms and entitlements contained in the right to water must have corresponding duties. As such, and in the absence of any statement as to these duties in the body of the Covenant itself, General Comment No. 15 devotes a considerable amount of its text to describing the precise nature of states' obligations, how they should meet them, and what remedies they ought to provide whenever breaches do occur.

In Part III of the General Comment, the Committee outlines states parties' obligations.⁹¹ First, in terms of their general legal obligations, states must pursue the progressive realization of the right, by way of measures that are expeditious, effective, non-retrogressive and to the maximum of their available resources. Secondly, in terms of their obligations to *respect* the right to water, states must 'refrain from interfering directly or indirectly with the enjoyment of the right to water', by, for example, denying or limiting access to adequate water, diminishing or polluting water or limiting access to, or destroying, water services.⁹² What is more, under international humanitarian law, these obligations extend to situations of armed conflict and other emergency circumstances. Thirdly, states must *protect* the right to water by preventing third parties, such as 'individuals, groups, corporations and other entities as well as agents acting under their authority', from interfering in any way with the enjoyment of the right.⁹³ Significantly, given the prevalence and partiality of (p. 902) privatization in the water sector, the Committee expands on this form of obligation as follows:

Where water services (such as piped water networks, water tankers, access to rivers and

wells) are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable, and physical access to sufficient, safe and acceptable water. To prevent such abuses an effective regulatory system must be established, in conformity with the Covenant and this General Comment, which includes independent monitoring, genuine public participation and imposition of penalties for non-compliance.⁹⁴

Fourthly, regarding their obligations to *fulfil*, the Committee notes that states must institute measures that 'assist individuals and communities to enjoy the right', including 'education concerning the hygienic use of water', the promotion of methods to minimize water wastage, underwriting the affordability of water and ensuring everyone's access to adequate sanitation, all within the domestic political and legal regime that accords 'sufficient recognition' of the right. In reflection of the requirements of Article 11(1) of the Covenant, such recognition should be 'preferably by way of legislative implementation; adopting a national water strategy and plan of action to realize this right; ensuring that water is affordable for everyone; and facilitating improved and sustainable access to water, particularly in rural and deprived urban areas'.⁹⁵ The Committee expands on these aspects of national level implementation in Part V of the General Comment,⁹⁶ adding that states must establish targets for supplying and improving adequate access to water, monitor performances in reaching those targets, and provide access to appropriate remedies for those who suffer from failed or inadequate delivery, or from other breaches of the right to water. An important feature of this aspect of state obligations concerns the directions provided by the Committee as to the indicators and benchmarks they ought to institute and abide by:

Indicators and benchmarks

53. To assist the monitoring process, right to water indicators should be identified in the national water strategies or plans of action. The indicators should be designed to monitor, at the national and international levels, the State party's obligations under articles 11, paragraph 1, and 12. Indicators should address the different components of adequate water (such as sufficiency, safety and acceptability, affordability and physical accessibility), be disaggregated by the prohibited grounds of discrimination, and cover all persons residing in the State party's territorial jurisdiction or under their control. States parties may obtain guidance on appropriate indicators from the ongoing work of WHO, the Food and Agriculture Organization of the United Nations (FAO), the United Nations Centre for Human Settlements (Habitat), the International Labour Organization (ILO), the United Nations Children's Fund (UNICEF), the United Nations Environment Programme (UNEP), the United Nations Development Programme (UNDP) and the United Nations Commission on Human Rights.

(p. 903) 54. Having identified appropriate right to water indicators, States parties are invited to set appropriate national benchmarks in relation to each indicator. During the periodic reporting procedure, the Committee will engage in a process of 'scoping' with the State party. Scoping involves the joint consideration by the State party and the Committee of the indicators and national benchmarks which will then provide the targets to be achieved during the next reporting period. In the following five years, the State party will use these national benchmarks to help monitor its implementation of the right to water. Thereafter, in the subsequent reporting process, the State party and the Committee will consider whether or not the benchmarks have been achieved, and the reasons for any difficulties that may have been encountered (see General Comment No. 14 (2000), para. 58). Further, when setting benchmarks and preparing their reports, States parties should utilize the extensive information and advisory services of specialized agencies with regard to data collection and disaggregation.⁹⁷

Fifthly, the General Comment stresses the importance that 'states parties recognize the essential role of international cooperation and assistance' to the full realization of the right.⁹⁸ And, finally, the Committee articulates in paragraph 37 of the General Comment what it considers to be the core obligations of states in specific respect of the right to water:

Core obligations

37. In General Comment No. 3 (1990), the Committee confirms that States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant. In the Committee's view, at least a number of core obligations in relation to the right to water can be identified, which are of immediate effect:

- (a) To ensure access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease;
- (b) To ensure the right of access to water and water facilities and services on a non-discriminatory basis, especially for disadvantaged or marginalized groups;
- (c) 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;
- (d) To ensure personal security is not threatened when having to physically access to water;
- (e) To ensure equitable distribution of all available water facilities and services;
- (f) 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;
- (g) To monitor the extent of the realization, or the non-realization, of the right to water;
- (p. 904) (h) To adopt relatively low-cost targeted water programmes to protect vulnerable and marginalized groups;
- (i) To take measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation.

The extent to which the General Comment fills in where the text of the Covenant is silent in respect of the right to water has been a matter of some academic and legal debate.⁹⁹ The fact is, however, that the right is now sufficiently established in various legal formats¹⁰⁰ such that it is widely accepted as an enforceable right in both international and domestic jurisdictions. Certainly, it is instructive to note in this respect both how often the Committee has raised the right to water in its Concluding Observations on states' periodic reports, and what have been the states' responses. For as Takele Soboka Bulto observes, 'it is clear that the CESCR has taken the silence on the part of *ICESCR* states parties in the face of CESCR's criticisms of their domestic implementation (or violation) of the human right to water as indicative of tacit assent by states to the fact that the *ICESCR* contains the human right to water and consequent state obligations'.¹⁰¹ References to the obligations of states to ensure access to adequate water and sanitation are now a common feature of the Committee's Concluding Observations in respect of the periodic reports of many states. The Committee makes frequent criticism of the absence or inadequacy of water services for significant portions of society in certain countries, especially for those people living in slums or shanty towns, as illustrated by the following, fairly typical, extracts from Concluding Observations on the reports of Afghanistan, Angola and Brazil.

Afghanistan:

35. The Committee notes with concern that a high percentage of the population in Afghanistan lack basic services such as drinking water, waste removal, sanitary facilities and electricity, and that due to the lack of sewage systems, water sources are contaminated and unsafe, thus causing serious health problems (art. 11). The Committee urges the State (p. 905) party to provide rural and urban communities with appropriate systems for ensuring access to drinking water and to adequate sanitation infrastructure, in line with the Committee's general comment No. 15

(2002) on the right to water, in particular for low-income, disadvantaged and marginalized individuals and groups, if necessary by seeking international cooperation and assistance.¹⁰²

Angola:

30. The Committee is concerned about the large proportion of the population living in slum conditions and about the lack of effective measures to provide social housing for low-income, vulnerable and marginalized individuals who are living in informal settlements and are frequently deprived of affordable access to adequate water and sanitation.

The Committee recommends that the State party adopt a comprehensive housing plan and policies, and allocate sufficient budgetary resources to ensure its implementation, especially for low-income groups and marginalized individuals and groups. The Committee also recommends that the State party take immediate measures to ensure safe access to adequate water and sanitation in informal settlements in Luanda and other big cities in line with the Committee's general comment No. 15 (2002) on the right to water.¹⁰³

Brazil:

25. The Committee notes with concern that more than 6 million people in the State party live in precarious urban settlements, that there is a large number of homeless people and that significant migration inflows into urban areas have exacerbated the housing shortage. The Committee is further concerned about the absence of adequate measures to provide social housing for low-income families and disadvantaged and marginalized individuals and groups, while acknowledging the State party's efforts in this regard. (art. 11, para. 1)

The Committee recommends that the State party adopt additional measures to deal with the problem of homelessness, ensure adequate access to housing for low-income families, disadvantaged and marginalized individuals and groups and improve the water and sanitation facilities of existing housing units.¹⁰⁴

More particularly, the committee has also urged states to enshrine the right to water in domestic law so that it becomes a legal entitlement and not merely a desirable policy goal,¹⁰⁵ it has criticized inadequate control by states of the prices charged by private corporations for water services such that significant numbers of people are unable to afford them,¹⁰⁶ and it has taken states to task over their discriminatory behaviour regarding access to water whether within their own territories or in respect of water sources that cross international boundaries.¹⁰⁷

(p. 906) From a policy, and indeed philosophical, point of view, it is not hard to see why so great an effort has been made to retrofit the right to water into the structure and content of the ICESCR. 'Water is', as the United Nations' Fact Sheet 35 on the Right to Water declares in its opening lines, 'the essence of life. Safe drinking water and sanitation are indispensable to sustain life and health, and fundamental to the dignity of all.' The World Health Organization (WHO) adds that:

...without water, human beings cannot live for more than a few days. It plays a vital role in nearly every function of the body, protecting the immune system—the body's natural defences—and helping remove waste matter. But to do this effectively, water must be accessible and safe. Lack of safe water is a cause of serious illnesses such as diarrhoeal diseases, which kill over 2 million people every year (the vast majority children, mostly in developing countries). Contaminated water, whether drunk or used to cook food, harms people's health. Water is also essential for hygiene, growing food, keeping animals, rest, exercise and relaxation and for a variety of social and cultural reasons.¹⁰⁸

Access to safe, sufficient and clean water is also considered by the MDGs to be vital for the prospects for development of most of the world's population, more than one-third (ie 2.6 billion) of which, it is estimated by UNICEF, live without sufficient access to clean water or minimally adequate sanitation services.¹⁰⁹

In striving to achieve MDG 7: 'to ensure environmental sustainability', one of the goal's proclaimed, constitutive targets (Target 7(c)), together with the indicators by which its achievement has been measured, is as follows:

Target 7.C: Halve, by 2015, the proportion of the population without sustainable access to safe drinking water and basic sanitation

- The world has met the target of halving the proportion of people without access to improved sources of water, five years ahead of schedule.
- Between 1990 and 2010, more than two billion people gained access to improved drinking water sources.
- The proportion of people using an improved water source rose from 76 per cent in 1990 to 89 per cent in 2010.
- Over 40 per cent of all people without improved drinking water live in sub-Saharan Africa.
- Eleven per cent of the global population—783 million people—remains without access to an improved source of drinking water and, at the current pace, 605 million people will still lack coverage in 2015.
- Access to improved sanitation facilities increased from 36 per cent in 1990 to 56 per cent in 2010 in the developing regions as a whole. The greatest progress was achieved in Eastern and Southern Asia.

(p. 907) • Despite progress, 2.5 billion in developing countries still lack access to improved sanitation facilities.¹¹⁰

While, however, not disputing the value of such a goal generally, and the above target specifically, the means by which it is envisaged they are to be met have not been without criticism from a human rights perspective. For example, the Office of the High Commissioner for Human Rights UN Fact Sheet No. 25 on The Right to Water argues, in respect of Target 7(c):

While the content of the MDGs partly resembles some aspects of human rights, a systematic human rights-based approach to understanding and achieving the MDGs remains an unmet challenge. Human rights have not yet played a significant role in supporting and influencing MDG-related activities. In addition, human rights standards require States to ensure that all persons have access without discrimination to safe drinking water and sanitation.

Even if the MDG targets were to be achieved in full, it is important to note that there would still be more than 800 million people without safe drinking water and 1.8 billion people without basic sanitation in 2015.

The United Nations Millennium Project's Task Force on Water and Sanitation has affirmed that access to safe drinking water is a human right and highlighted its importance for achieving the majority of MDGs.¹¹¹

Also, the Special Rapporteur on water and sanitation has criticized the MDG's 'blindspot' regarding discrimination:

[31]. ...the Millennium Development Goals are silent on discrimination, inequalities and unjustifiable disparities. At least in theory, many of the targets can be achieved without benefiting a single person with a disability, a single person belonging to an ethnic minority, or a single person living in poverty because their focus on average attainments creates a blind spot in the achievement of equality.

[32]. In her country missions, the Special Rapporteur has noted that specific groups are excluded from access to water and sanitation, often reflecting patterns of discrimination, marginalization and limited political will to ensure substantive equality. These groups can be identified along ethnicity and socioeconomic divides. In some countries, indigenous peoples living on reserves do not have access to water or sanitation services. Dalits often suffer discrimination in accessing water and sanitation, while Roma are most disadvantaged in many European countries. Moreover, the Special Rapporteur's attention has repeatedly been drawn to vast gender inequalities and multiple discrimination, or the compounded impact of various grounds of discrimination on the same individual or group. For instance, women and girls are overwhelmingly tasked with collecting water and are physically and sexually threatened when they fetch water. Persons with disabilities are also disproportionately represented among those who lack access to safe drinking water and sanitation.¹¹²

(p. 908) Measuring 'adequacy'

Determining what is 'adequate' in order to satisfy the requirements of the right to water is critical, albeit challenging. The WHO has developed the chart¹¹³ shown in Figure 13.1, below, to provide some guidance as to what adequacy means in practical terms.

► [View full-sized figure](#)

Service level	Distance/time	Likely volume of water collected	Needs met	Intervention priority and actions
No access	More than 1 kilometre/more than 30 minutes round trip	Very low (often below 5 litres per capita per day)	Consumption cannot be assured Hygiene practice compromised Basic consumption may be compromised	Very high Provision of basic level service
Basic access	Within 1 kilometre/within 30 minutes round trip	Average unlikely to exceed approximately 20 litres per capita per day	Consumption should be assured Hygiene may be compromised Laundry may occur off-plot - i.e. away from house	High Hygiene education Provision of intermediate level of service
Intermediate access	Water provided on-plot through at least one tap (yard level)	Average of approximately 50 litres per capita per day	Consumption assured Hygiene should not be compromised Laundry likely to occur on-plot - i.e. within the confines of the household	Low Hygiene promotion and youth health gains Encourage optimal access
Optimal access	Supply of water through multiple taps within the house	Average of 100-200 litres per capita per day	Consumption assured Hygiene should not be compromised Laundry will occur on-plot	Very low Hygiene promotion and youth health gains

Source: Howard G. Barton, J. Dorothea, water quantity, service level and health, Geneva, World Health Organization, 2003.

Table 13.1 Service level and quantity of water collected

In addition to the WHO, the quest to understand the nature and extent of the obligations of the right to water, and how best to achieve their fulfilment, has also been promoted by the UN Human Rights Council as well as its predecessor, the Commission on Human Rights. In 2000, the Sub-Commission of the latter established a Special Rapporteur on the right to drinking water supply and sanitation—a position that was held by Mr El Hadji Guissé until 2005. In his final report of July that year, Mr Guissé produced a set of Draft Guidelines for the Realization of the Right to Drinking Water and Sanitation,¹¹⁴ which 'highlight (p. 909) the main and most urgent components of the right to water and sanitation',¹¹⁵ and that were 'intended to assist government policymakers, international agencies and members of civil society working in the water and sanitation sector to implement the right...'.¹¹⁶ Article 1 of the Draft Guidelines laid down a definition of the right to water, which although not intended to be 'an exhaustive legal definition of the right',¹¹⁷ is nevertheless one that has been widely adopted as a working version of such:

1. The right to water and sanitation

- 1.1 Everyone has the right to a sufficient quantity of clean water for personal and domestic uses.
- 1.2 Everyone has the right to have access to adequate and safe sanitation that is conducive to the protection of public health and the environment.
- 1.3 Everyone has the right to a water and sanitation service that is:
 - (a) Physically accessible within, or in the immediate vicinity of the household, educational institution, workplace or health institution;
 - (b) Of sufficient and culturally acceptable quality;
 - (c) In a location where physical security can be guaranteed;
 - (d) Supplied at a price that everyone can afford without compromising their ability to acquire other basic goods and services.¹¹⁸

Following this proclamation of what the right entails, the Draft Guidelines proceed to outline:

- State actions to implement the right to water and sanitation (Article 2)
- Preventing discrimination and addressing the needs of vulnerable or marginalized groups (Article 3)
- Availability and equitable distribution of water (Article 4)
- Improving access to drinking water supply (Article 5)
- Affordability (Article 6)
- Water quality (Article 7)
- Participatory rights (Article 8)

- Remedies and monitoring (Article 9)
- International obligation and duty of solidarity (Article 10)

Drawing on the broad base established by Mr Guissé, and expanding upon the Draft Guidelines, the UN Human Rights Council, in 2008, appointed an Independent (p. 910) Expert (IE) on the Right to Safe Drinking Water and Sanitation (which position was, in 2011, transformed into the Special Rapporteur on the right to safe drinking water and sanitation). In her first report as the IE, Catarina de Albuquerque highlighted the issue of sanitation as a primary concern, noting that not only did its lack or inadequacy threaten the lives, livelihood and health of some 40 per cent of people worldwide, but also undermined the educational capacities of children and the economic fundamentals of many national economies (through increased health and welfare costs and lost productivity of workers).¹¹⁹ As such, the IE mapped out how and why sanitation is vital to a number of human rights broadly (and the right to water specifically), as well as flagging her intentions in addressing the challenges it poses.

30. The independent expert considers it crucial to explore and identify the human rights obligations regarding sanitation. Human rights law offers a framework by which duty bearers may better understand their obligations and rights holders may be able to better claim their rights. In fact, sanitation can be related to human rights in at least three different ways. First, the enjoyment of a large number of human rights—civil, cultural, economic, political and social—hinges on access to sanitation. Secondly, lack of access to sanitation is frequently a consequence of larger societal discrimination, inequality and exclusion, fundamentally inconsistent with human rights protection. Thirdly, and more fundamentally, lack of access to sanitation constitutes, in itself, a serious human rights concern, as it relates to the inherent dignity of the human being. Sanitation is undoubtedly a matter of human rights and it is the link between the two that the independent expert wishes to further explore, in accordance with her mandate, in the course of 2009.

31. Although lack of access to sanitation is at the origin of the non-realization of basic human rights, the area of sanitation has not been adequately analysed from a human rights perspective. Cultural barriers and the taboo nature of the topic are a serious challenge to examining sanitation. As was stated by the Chairman of the United Nations Secretary-General's Advisory Board on Water and Sanitation (UNSGAB), 'it is time to break through the taboo, to call a spade a spade or a toilet a toilet and start doing something about this unacceptable killer'. The international community cannot shy away from this subject simply because it is uncomfortable, unmentionable, unpopular, or just because it is a very private matter that can be challenging to consider publicly. Sanitation and the human rights obligations concerning this subject must in fact be addressed in a direct and open manner. The independent expert hopes to contribute to this endeavour.¹²⁰

(p. 911) Having elaborated an argument for why adequate sanitation is a necessary element of the right to water, Ms de Albuquerque then constructs a set of criteria for how to define adequate sanitation in human rights terms, and thereby provide the basis upon which to realize it. It is significant—and, it must be said, both bold and beneficial—that in so doing she articulates what is to be reasonably expected of states to meet the obligation to provide adequate sanitation, and, equally, what is not expected.

A. Defining sanitation in human rights terms

62. Understanding the human rights obligations related to sanitation requires a working definition of sanitation in human rights terms. This definition is drawn from elements related to sanitation as addressed under international human rights law. The independent expert considers that this definition may evolve as the understanding of the human rights obligations related to sanitation continues to develop.

63. The independent expert is of the view that sanitation can be defined as a system for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene. States must ensure without discrimination that everyone has physical and economic access to sanitation, in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures

dignity.

64. States are obliged to respect, protect and fulfil human rights as they relate to sanitation.

More concretely, States must, inter alia:

- Refrain from measures which threaten or deny individuals or communities existing access to sanitation. States must also ensure that the management of human excreta does not negatively impact on human rights.
- Ensure that non-State actors act in accordance with human rights obligations related to sanitation, including through the adoption of legislative and other measures to prevent the negative impact of non-State actors on the enjoyment of sanitation. When sanitation services are operated by a private provider, the State must establish an effective regulatory framework.
- Take steps, applying the maximum of available resources, to the progressive realization of economic, social and cultural rights as they relate to sanitation. States must move as expeditiously and effectively as possible towards ensuring access to safe, affordable and acceptable sanitation for all, which provides privacy and dignity. This requires deliberate, concrete and targeted steps towards full realization, in particular with a view to creating an enabling environment for people to realize their rights related to sanitation. Hygiene promotion and education is a critical part of this obligation.
- Carefully consider and justify any retrogressive measures related to the human rights obligations regarding sanitation.
- Take the necessary measures directed towards the full realization of economic, social and cultural rights as they relate to sanitation, inter alia, by according sufficient recognition of human rights obligations related to sanitation in the national political and legal systems, and by immediately developing and adopting a national sanitation strategy and plan of action.

(p. 912) • Provide effective judicial or other appropriate remedies at both the national and international levels in cases of violations of human rights obligations related to sanitation. Victims of violations should be entitled to adequate reparation, including restitution, compensation, satisfaction and/or guarantees of non-repetition.¹²¹

Paragraphs 65 and 66 of the Report then stress that 'states must realize their human rights obligations related to sanitation in a non-discriminatory manner', in accordance with the terms established generally in respect of the right to water (in paragraphs 13 to 16 of General Comment No. 15), as discussed above, and that all 'concerned individuals and communities' are fully informed and participate in decisions over sanitation and hygiene matters that directly concern them.

67. It is important to state clearly what is not required when considering sanitation in human rights terms:

- States are not obliged to provide everyone with access to a sewerage system. Human rights law does not aim to dictate specific technology options, but instead calls for context-specific solutions.
- States are not obliged to provide individual facilities in every home. This will also depend on the context—sometimes a safe and otherwise adequate facility in the close proximity would suffice as an intermediate step towards full realization of related rights.
- States are not obliged to construct toilets, rather they must create an enabling environment. In fact, it is often argued that demand-led sanitation projects enjoy considerable success. Only in certain conditions, such as extreme poverty or natural disasters, when people, for reasons beyond their control, are genuinely unable to access sanitation through their own means, is the State obliged to actually provide sanitation services.
- States are not obliged to provide sanitation free of charge—those who are in a position to pay must contribute financially or in kind, for example by

offering labour for the construction of sanitation systems. Only when people are genuinely unable to pay for sanitation is the State obliged to provide sanitation services free of charge.

- States may decide to privatize sanitation services, but in that case must ensure—through adequate regulation, including effective and accessible complaints procedures—that private actors do not adopt approaches which result in human rights violations.
- States are not required to ensure the full implementation of their human rights obligations related to sanitation immediately. Rather, they 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.¹²²

(p. 913) The questions of the nature, extent and form of states' obligations lie at the heart of all of international human rights law, and so it is with the right to water. It is no surprise, therefore, that so much attention is focused on delineating the practical implications of these questions in an effort thereby to devise measures against which states' performances in meeting the obligations can be gauged. The position of IE/SR on the right to water has been a key figure providing states, individuals and the Economic Social and Cultural Rights Committee itself with guidance in this regard. Extrapolating from her initial remarks on and guidance as to states' obligations as discussed above, the IE later devised a more detailed 'framework for assessing good practices from a human rights perspective, using five normative criteria (availability, quality/safety, acceptability, accessibility and affordability) and five cross-cutting criteria (nondiscrimination, participation, accountability, impact and sustainability).'¹²³ This was followed in 2011 by a compilation of examples of good practices from across a range of stakeholders (state bodies, international agencies, private service providers and civil society), which act, in effect, as illustrative examples of how the framework works in practice when assessing the merits of legislation, policy planning, service delivery and advocacy, as well as capacity-building, monitoring and litigation.¹²⁴

While, on the one hand, the framework criteria are 'aimed at delineating more clearly the concrete requirements that enable the classification of a certain practice as good',¹²⁵ the IE nonetheless stresses that they have been made 'deliberately broad, flexible and adaptable', for, in her view, 'human rights law does not prescribe a particular choice of policy or technology, but instead calls for context-specific solutions'.¹²⁶

There are, further, two key systemic features of the realization of the right to water, which by the combined force of economics and political philosophy, have come to dominate discussions of the means by which the right is implemented. One concerns the respective roles and responsibilities of states and non-state actors (especially corporations) in the provision of adequate water and related services, especially in circumstances where the utility has been fully, or partially, privatized. The other relates to the critical matter of how water and sanitation systems are financed: by whom (public and/or private sponsors), under what conditions and with what levels of accountability? While it true to say that traditionally human rights law professes not to prescribe a particular economic or political philosophy, it is nevertheless neither agnostic, nor neutral, as to the outcomes that result from any particular philosophy that is adopted. Thus, there can (p. 914) be no denying that economic, social and political tensions exist between 'human rights and private sector involvement in the water and sanitation sectors'.¹²⁷ The human rights implications of financing of water services and their privatization have both been matters upon which the IE/SR has pronounced.¹²⁸ In fact, the two matters often intersect. The financing of the building and delivery of water and sanitation utilities, for example, may be obtained—wholly or, more usually, in part—by way of the privatization of the service. This has become an increasingly popular method for states across the globe to underwrite the costs of all kinds of public services, including water, as well as, it is claimed, improving the efficiency and effectiveness of the service. Be that as it may, under international human rights law, states remain responsible for the relevant human rights implications of such undertakings. In the case of the right to water, this amounts to an obligation to implement 'specific measures to regulate service provision and to maintain affordable access for all'.¹²⁹

Indeed, as with the right to food, the involvement of the private sector in the provision of adequate access to, and supply of, water and sanitation services has become a matter of great significance for human rights accountability. In her report on non-state provision of water

services, Ms de Albuquerque echoes many of the concerns expressed above by the Special Rapporteur on the right to food. That is, while certainly there is an important and growing awareness at the international level of the broader social responsibilities of corporations, including in respect of human rights, through such initiatives as the United Nations' Global Compact,¹³⁰ and the Guiding Principles on Business and Human Rights,¹³¹ and the OECD's Guidelines for Multinational Enterprises,¹³² it is the states themselves that bear directly the obligations imposed on them under the international human rights treaties.

B. State obligations

18. The State cannot exempt itself from its human rights obligations by involving non-State actors in service provision. Irrespective of responsibilities of the latter, the State remains the primary duty-bearer for the realization of human rights.

...

(p. 915) 21. When non-State actors are involved in service provision, there is a shift to a stronger focus on the obligation of the State to protect. At the same time, the obligation to fulfil retains its significance with the aim of creating an enabling environment. States have a duty to regulate and monitor providers that they involve in service delivery. Moreover, they may need to adopt supplementary measures depending on the circumstances, for instance to ensure the affordability of services. A comprehensive approach is needed: non-State service providers can be involved, but the State has the obligation to develop an overall (short, medium and long-term) strategy on how to fully realize the rights to water and sanitation. When the State does not directly provide services, its role nevertheless remains obligatory and critical.¹³³

Certainly, therefore, states are required to regulate the operations of private sector water providers within their own separate jurisdictions, but they must also encourage, contribute to and obtain guidance from various international initiatives covering business and human rights generally, and the right to water specifically. In respect of the latter, for example, ILO Convention No. 161 (1985) on Occupational Health Services 'underlines the responsibility of employers for the health and safety of their workers, which includes access to safe drinking water and sanitation'.¹³⁴ And AquaFed, the International Federation of Private Water Operators, expressly recognizes and supports the human rights to water and sanitation as one of the major challenges faced by its members in their operations in and with states worldwide.¹³⁵ More broadly, The CEO Water Mandate, developed under the aegis of the UN Global Compact, addresses not just private sector providers of water services, but also, crucially, water users in both industry and agriculture. Established in 2007, the Mandate is a 'public-private initiative designed to assist companies in the development, implementation, and disclosure of water sustainability policies and practices'.¹³⁶

Implementation and enforcement of the right to water

The right to water is expressly recognized in a number of state constitutions, notably those of Argentina (Article 41 (implicitly)), Belgium (Article 23 (implicitly)), Bolivia (Article 16), the Democratic Republic of Congo (Article 48), Ecuador (Article 12), Kenya (Article 43(1)(d)), the Maldives (Article 23(a)), Nicaragua (Article 105), the Niger (Article 20), South Africa (Art 27(b) (1)) and Uruguay (Article 47). Further, a right to water and, in some cases, sanitation, has been (p. 916) recognized (expressly or implicitly) in legislation in other countries, including Algeria, Brazil, France, Hungary, Peru, Uganda and Ukraine. Regulations and policies in many other states, while falling short of enshrining the right to water, nonetheless prioritize access to water and/or sanitation for all, or at least for those in greatest need.¹³⁷

At the domestic level, one of the most significant bodies of jurisprudence on the right to water has been developed by the Indian courts, despite the fact that the right is not expressly recognized in the Indian Constitution. In reasoning parallel to that relating to the right to food discussed above, the Indian courts have interpreted Article 21 of the Constitution, protecting the right to life, as necessarily encompassing both the right to water and to proper sanitation.

The right to life, as courts, including the Supreme Court, have repeatedly stated, entails a life worth living. Adequate food, water and (as we discuss below) housing are all essential considered components of that minimum standard. In *Attakoya Thangal v Union of India*,¹³⁸ the High Court of the state of Kerala pronounced that the right to 'sweet' (ie clean) water was one of 'the

attributes of the right to life, for these are the basic elements which sustain life itself'.¹³⁹ Interpreted as implying a right to water in Article 21 of the Constitution, subsequent judgments of states' High Courts and the Supreme Court have reiterated and expanded the manner and form of the implication, in respect, for example, to the obligation on public authorities to protect against the pollution of water (the Supreme Court in *M C Mehta v Union of India*),¹⁴⁰ and the overuse of groundwater by private sector industry (*Perumatty Grama Panchayat v State of Kerala*),¹⁴¹ and the state's duty to maintain basic levels of water sanitation in fulfillment of the Constitutional right to life, per *Suo Muto v State of Rajasthan* (noting relevant prior cases):

3. Relying on the decision in *Municipal Council, Ratlam's case* (AIR 1980 SC 1622) (supra), the Supreme Court in *Dr. B.L. Wadehra v. Union of India*, AIR 1996 SC 2969, directed the Municipal Corporation Delhi and the New Delhi Municipal Council to perform its statutory duties of scavenging and cleaning the city. The Supreme Court did not accept the grounds of inadequacy of funds or insufficiency of machinery for non-performance of their statutory obligations.

4. Due to failure of the civic authorities and other bodies to discharge their duties under Article 21 of the Constitution and statutory provisions the quality of life in the city has gone down tremendously. Civic bodies and other authorities have been taking refuge under the puerile excuse that they do not have funds to perform their duties. The (p. 917) plea of lack of finances is a poor alibi for not performing their statutory duties. The law must be enforced and the fragile plea of lack of finances must be rejected. Inaction of the authorities cannot be tolerated, as that will make mockery of Article 21 of the Constitution and the statutory provisions under which they are obliged to carry out their duties, including duty to provide and maintain civic amenities which make life worth living.¹⁴²

The same insistence on their being immutable minimum standards of water supply and sanitation are also apparent in case law of other countries. Thus, for example, the Belgian Court of Arbitration invoked the right to the protection of a healthy environment under Article 23 of the Constitution to establish that there existed a right of everyone to a minimum supply of drinking water.¹⁴³ And courts in both Argentina and South Africa have held that constitutional guarantees of access to adequate water prevent private sector water providers from cutting off supply to customers in the event of the latter's inability to pay for the service.¹⁴⁴

As with the right to food, provision for the right to water under the regional human rights regimes is indistinct. Neither the American Convention on Human Rights (1969) nor the African Charter on Human and Peoples' Rights (1986) contains an express guarantee of the right to water, although both have developed bodies of jurisprudence that uphold the right by way of its implication in associated rights. Similarly, the Revised European Social Charter (1996) is understood to capture the right to water by way of it being read into the requirement under Article 11 that states ensure the right to the protection of health.¹⁴⁵ This Article stipulates that states must afford such protection by removing 'as far as possible the causes of ill-health', which requirement necessarily entails provision of access to adequate water and sanitation.¹⁴⁶ While the European Convention on Human Rights (1950) covers only civil and political rights, it has been used in (p. 918) ways that indirectly uphold the right to water. In *Zander v Sweden*,¹⁴⁷ for example, the European Court of Human Rights found that Sweden had breached elements of the right to a fair trial under Article 6(1) of the Convention by denying claimants access to a legal remedy for the threatened pollution to a water source they used for drinking purposes.¹⁴⁸

The path traced by the right to water under the African Union's human rights regime is coterminous with that of the right to food. As discussed earlier in this chapter, while neither right is explicitly provided for in the African Charter, both have been inferred in it, and both have also been expressly proclaimed in the Charter's supplementary instruments regarding children's rights and the rights of women. In the seminal case of *SERAC v Nigeria* (2002),¹⁴⁹ the African Commission on Human and Peoples' Rights found that among the many rights that the Nigerian Government had breached by way of its military operations in and around the operations of the Shell Oil company in the Niger Delta was the right to water as embedded in the Charter's rights to health and a clean environment. The Commission did so by upholding the following assertions of the complainants, and with reference to both the terms of the ICESCR (to which Nigeria is a party) and the African Charter:

50. The Complainants allege that the Nigerian government violated the right to health and the right to clean environment as recognized under Articles 16 and 24 of the African Charter by failing to fulfill the minimum duties required by these rights.

This, the Complainants allege, the government has done by—

- Directly participating in the contamination of air, water and soil and thereby harming the health of the Ogoni population,
- Failing to protect the Ogoni population from the harm caused by the NNPC Shell Consortium but instead using its security forces to facilitate the damage,
- Failing to provide or permit studies of potential or actual environmental and health risks caused by the oil operations.

Article 16 of the African Charter reads:

‘(1) Every individual shall have the right to enjoy the best attainable state of physical and mental health.

(2) States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.’

Article 24 of the African Charter reads:

‘All peoples shall have the right to a general satisfactory environment favourable to their development.’

(p. 919)

51. These rights recognise the importance of a clean and safe environment that is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual. As has been rightly observed by Alexander Kiss, ‘an environment degraded by pollution and defaced by the destruction of all beauty and variety is as contrary to satisfactory living conditions and the development as the breakdown of the fundamental ecologic equilibria is harmful to physical and moral health.’

52. The right to a general satisfactory environment, as guaranteed under Article 24 of the African Charter or the right to a healthy environment, as it is widely known, therefore imposes clear obligations upon a government. It requires the State to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Nigeria is a party, requires governments to take necessary steps for the improvement of all aspects of environmental and industrial hygiene. The right to enjoy the best attainable state of physical and mental health enunciated in Article 16(1) of the African Charter and the right to a general satisfactory environment favourable to development (Article 16(3)) already noted obligate governments to desist from directly threatening the health and environment of their citizens. The State is under an obligation to respect the just noted rights and this entails largely non-interventionist conduct from the State for example, not from carrying out, sponsoring or tolerating any practice, policy or legal measures violating the integrity of the individual.¹⁵⁰

In the specific respect of the right to water, the SERAC case was in fact following on from the African Commission’s earlier determination in *Free Legal Assistance Group et al v Zaire*,¹⁵¹ in which it held that the failure to provide safe drinking water constituted a violation of the right to health under Article 16 of the Charter. The implication of the right to water within the terms of the right to health has been further underscored in the 2005 case of *Centre of Housing Evictions and Human Rights (COHRE) v Sudan*,¹⁵² in which the African Commission held that ‘the destruction of homes, livestock and farms as well as the poisoning of water sources, such as wells’ by state-backed militia during the conflict in Darfur¹⁵³ amounted to a violation of Sudan’s obligations under Article 16 of the African Charter.

Most recently, the African Commission has expanded the foothold that the right to water and sanitation occupies within the African Charter by expressly referring to it in a pair of ‘Guideline’ documents. First, in a set of ‘implementation’ principles and guidelines (akin to the purpose of the CESCR’s General Comments), the Commission reflects upon the importance and embeddedness of the right throughout the Charter, and takes considerable care to specify what is (p. 920) required of states regarding their broad policy approach to the matter and their handling of particular

practical problems of implementation:

I—The right to water and sanitation (Articles 4, 5, 15, 16, 22 and 24)

71. While the African Charter does not directly protect the right to water and sanitation, it is implied in the protections of the right to life, the right to dignity, the right to work, the right to health, the right to economic, social and cultural development and the right to a satisfactory environment.

72. The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.

73. The right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. The entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water. Water should be treated as a social and cultural good, and not primarily as an economic good.

74. Everyone has the right to have access to adequate and safe sanitation that is conducive to the protection of public health and the environment. Sanitation comprises at least, a clean toilet or latrine, along with collection, disposal and treatment of human excreta, wastewater, solid waste and storm water removal and hygiene education.

75. The right to water and sanitation imposes the following obligations, among others, on States parties to:

(i) Adopt a national strategy or plan of action to realize the right to water and sanitation

(ii) Adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations. Such strategies may include: (a) reducing depletion of water resources through unsustainable extraction, diversion and damming; (b) reducing and eliminating contamination of watersheds and water-related ecosystems; (c) monitoring water reserves; (d) ensuring that proposed developments do not interfere with access to adequate water; (e) assessing the impacts of actions that may impinge upon water availability and natural ecosystem watersheds; (g) reducing water wastage in its distribution; (h) response mechanisms for emergency situations; and (i) establishing competent institutions and appropriate institutional arrangements to carry out the strategies and programmes.

(iii) Formulate and implement national water and sanitation strategies and plans of action that should respect, inter alia, the principles of non-discrimination and ensure the right of everyone to participate in decision-making affecting their right to water and sanitation. Communities have the right to determine what type of water and sanitation services they require and how those services should be managed and, where possible, to choose and operate their own services with assistance from the State.

(p. 921) (iv) Improve access to, and promote sustainable use of, water resources and their allocation among users.

(v) Ensure that water, and adequate water and sanitation facilities and services, are within safe physical reach for all sections of the population. Sufficient, safe and acceptable water must be physically accessible within, or in the immediate vicinity, of each household, educational institution, workplace or health institution in a location where physical security can be guaranteed. Sufficient water means water supply for each person that is sufficient and continuous for personal and domestic uses, which normally include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene. Safe water is water that, in particular, is

free from hazardous substances (micro-organisms, chemical substances and radiological hazards) that could endanger human health, and whose colour, odour and taste are acceptable to users.

(vi) Ensure that all water and sanitation facilities and services are of sufficient quality, culturally appropriate and meet the needs of all groups, including women, children and the elderly. Physical security should not be threatened during access to water and sanitation facilities and services. Water as well as water and sanitation facilities and services, must be affordable for all. These must be accessible to all, including members of vulnerable and disadvantaged groups. These services must be accessible to all.

(vii) Ensure that all levels of government have the necessary resources and skills to discharge their responsibilities. No one should be denied access to water and sanitation because of their housing or land status. Informal human settlements should be upgraded through the provision of water and sanitation services and through assistance with the construction of their own water and sanitation facilities.

(viii) Ensure appropriate water and sanitation pricing policies, including through flexible payment schemes and cross-subsidies from high-income users to low-income users. Subsidize water and sanitation services for low-income households and poor areas that lack the means to secure access to such services. Subsidies should normally be used for connection to distribution networks or for the construction and maintenance of small-scale water supply and sanitation facilities, such as wells, boreholes and latrines.

(ix) Take steps to ensure that local government authorities, and other governance entities not part of central government manage water and sanitation services in their own areas, and under their authority so as to facilitate universal access to water and sanitation in sufficient quantity, quality and continuity, and at an affordable and equitable price. States should promote pro-active citizen involvement in defining water and sanitation policies at the local level in a democratic and inclusive manner. In this regard states parties should increase financing for local water and sanitation infrastructure to address the needs of poor persons and peoples lacking access to water and sanitation; and contribute to developing local government capacity to improve effective water supply and sanitation services.

(x) Ensure that the private ownership of water and sanitation services, or any privatization of water and sanitation services, does not take place in the absence of a clear and efficient regulatory framework that ensures sustainable access to safe, sufficient, physically accessible and affordable water and sanitation. States are obligated to regulate and monitor private water and sanitation providers to ensure that they do not violate the right to access to water and sanitation.

(p. 922) (xi) Ensure that procedures for the disconnection of water and sanitation services are reasonable and only occur after timely and full disclosure of information and include legal recourse and remedies as well as legal assistance.

(xii) Procedures for the disconnection of water must take into account the individual's ability to pay and therefore disconnections for non-payment should not result in a person being denied access to a minimum amount of safe drinking water where that person proves that he or she is unable to pay for these basic services. The quantity of safe drinking water a person can access may be reduced, but full disconnection may only be permissible if there is access to an alternative source which can provide a minimum amount of safe drinking water needed to prevent disease.

(xiii) Progressively extend safe sanitation services, particularly to rural and deprived urban areas, taking into account the needs of women and children.

(xiv) Ensure that disadvantaged and marginalized farmers, including women farmers, have equitable access to water and water management systems,

including sustainable rain harvesting and irrigation technology.

(xv) Ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of peoples, including indigenous communities and populations.

(xvi) Take steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions.

(xvii) Ensure that natural water resources are protected from contamination by harmful substances and pathogenic microbes. This includes strict controls of the use and pollution of water resources for industrial purposes, and especially of extractive industries in rural areas.

(xviii) Monitor and combat situations where aquatic eco-systems serve as a habitat for vectors of diseases wherever they pose a risk to human living environments.

(xix) Ensure access to the minimum essential amount of water that is sufficient and safe for personal and domestic uses to prevent disease.

(xx) Ensure that imprisoned and detained persons have access to sufficient, safe and acceptable water and sanitation. In addition to sufficient water prisoners and detainees should be allowed to bath every day and should be provided with soap, sheets, and detergents for clothes.¹⁵⁴

The second set of guidelines complement the first, being focused on what is expected of states parties in meeting their reporting obligations under the Charter, including in respect of their regulation and control of private sector water services:

Right to Water and Sanitation

(i) Indicate what legislative and other measures have been taken to ensure access to the minimum essential amount of water, which is sufficient and safe for personal and domestic use, including for preventing disease, together with access to adequate sanitation.

(p. 923) (ii) Indicate what legislative and other measures have been taken to ensure safe physical access to water facilities or services that provide sufficient, safe and regular water; that have an adequate number of water outlets to avoid prohibitive waiting times; and that are at a reasonable distance from the household, educational institution, workplace or health institution.

(iii) Indicate what legislative and other measures have been taken to ensure that the obligations set out in paras 92 (iv) to (xv) have been complied with, particularly with reference to the obligations to ensure:

(a) That the private ownership of water and sanitation services, or their privatisation, complies with a clear and efficient regulatory framework that ensures sustainable access to safe, sufficient, physically accessible and affordable water and sanitation.

(b) That procedures for the disconnection of water and sanitation services are reasonable and only occur after timely and full disclosure of information and include legal recourse and remedies as well as legal assistance.

(c) That natural water resources are protected from contamination by harmful substances and pathogens. This includes strict controls of the use and pollution of water resources for industrial purposes, and especially of extractive industries in rural areas.¹⁵⁵

In the absence of an express right to water under the American Convention on Human Rights, the adjudicatory organs of the Convention have sought to instantiate it within the terms of the rights to life (Article 4) and to humane treatment (Article 5).¹⁵⁶ In the *Yakye Axa* case, as discussed and extracted above, the implication of the right to water was constructed alongside that of the right to food in respect of its adequate access for this particular Paraguayan indigenous community.¹⁵⁷ Further, in its Advisory Opinion on the *Legal Status of the Rights of the Child*,¹⁵⁸ the Inter-American Court of Human Rights determined that, for children, Article 4 comprises the 'obligation to provide measures required for life to develop under decent conditions',¹⁵⁹ including,

necessarily, the basic means of food and water by which life is sustained. In another case involving children—the *Panchito López Case*¹⁶⁰—the Court extended this notion by holding that the right to a ‘dignified’ life for children (and, by implication, adults too) required that even (p. 924) in a juvenile detention centre, conditions that are ‘grossly inadequate’, including deprivation of detainees’ access to adequate water and sanitation, amounted to breaches both of the right to life and the right to humane treatment under the Convention.¹⁶¹

As under the European Convention on Human Rights, the right to water has also been upheld in the Inter-American system indirectly, by way of application of a state’s obligation to provide a remedy for human rights breaches under Article 25(2) of the Convention. In the case of *Mapuche Paynemil and Kaxipayiñ Communities*, the Inter-American Commission on Human Rights found Argentina to be in breach of Article 25(2) by not complying with national court orders (and an agreement reached under the auspices of the Commission itself) to supply safe and permanent drinking water to the Paynemil Mapuche community whose water sources had been contaminated with heavy metals, including lead and mercury.¹⁶²

Clothing and Housing

Clothing

While the rights to food and water concern the essential means of human sustenance, those of housing and clothing are concerned with basic protections against nature’s elements. Their apparently equal place within the context of securing an adequate standard of living under Article 11 is somewhat belied by the practice towards the right to clothing. During the Covenant’s formative debates, clothing was considered an imperative, with, for example, Mr Cheng Paonan, the Chinese delegate, maintaining that the right is critical for people living in least developed states, especially ones whose economies were predominantly agrarian.¹⁶³ However, since then, the right to clothing has largely failed to maintain an independent status, being either overlooked or effectively subsumed within the right to shelter generally and the right to housing specifically. The need for people to be adequately clothed has not diminished, rather the instance of its lack is no longer considered widespread or critical, at least in relation to the other deprivations that are typically endured by the poor and destitute. Notably, while there now exist separate UN agencies for the rights to food, water and housing, there is none for the right to clothing.

(p. 925) In terms of the Committee itself, the situation has been summed up by Mathew Craven in his remark that ‘the impression given is that clothing is not a matter in which the State may exercise a great deal of control, nor one that the Committee feels is of great importance’.¹⁶⁴ This is reflected in our survey of the Committee’s Concluding Observations on states’ reports, in which the few references made to clothing were mostly in the relatively early days of the Committee, and predominantly directed at information gathering—asking states to provide data on and evidence of their implementation of the right. It was as if the Committee was itself trying to work out what the content and meaning of the right might be in practice.¹⁶⁵

In the last twenty years or so, the right was referred to hardly at all by the Committee other than simply being listed alongside the other two rights (to food and housing) specified in Article 11. The instances in which the Committee has referred to the right in terms of it being more or less a freestanding right have been few and far between. These include, for example, a brief reference in the Committee’s 1998 Concluding Observations regarding Sri Lanka to the plight of some 800, 000 displaced persons due to the conflict with the Tamil Tigers, which had resulted in many of them ‘living in temporary shelters for the past 15 years...lack[ing] basic sanitation, education, food, clothing and health care’.¹⁶⁶ In General Comment No. 5 on Persons with Disabilities, the Committee notes (without further elaboration) that ‘the right to adequate clothing...assumes a special significance in the context of persons with disabilities who have particular clothing needs, so as to enable them to function fully and effectively in society’.¹⁶⁷ And, finally, in General Comment No. 19 on the right to social security,¹⁶⁸ the Committee notes in respect of family and support benefits that these would be expected to ‘ordinarily cover food, clothing, housing, water and sanitation, or other rights as appropriate’.¹⁶⁹

Other international human rights instruments also make tangential references to the right to clothing, including: the Convention on the Rights of the Child (1989), Article 27(3) of which instructs states to assist parents and guardians in providing children with ‘nutrition, clothing and housing’ when the need arises;¹⁷⁰(p. 926) the Convention on Rights of Persons with Disabilities (2006), where Article 28 (echoing ICESCR, Article 11) proclaims that ‘States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their

families, including adequate food, clothing and housing';¹⁷¹ and under the United Nations' Standard Minimum Rules for the Treatment of Prisoners,¹⁷² states are required to ensure that detainees' clothing is clean and hygienic and 'adequate to keep him [or her] in good health...[and] that such clothing shall in no manner be degrading or humiliating' (paragraph 17).¹⁷³ Neither the American Convention on Human Rights¹⁷⁴ nor the African Charter on Human and Peoples' Rights makes explicit reference to the right to clothing,¹⁷⁵ although, in respect of the former, the Inter-American Court of Human Rights has implied the right in the 'special measures' provision regarding the rights of the child contained in Article 19 of the Convention.

Finally, the formulations in which the right is found in domestic legal systems is much less determinate than with other rights. Where there exists a constitutional guarantee, then, typically, the right is implied in other, expressly protected rights, such as the right to life (in India (Article 21) and Ireland (Article 40)), the right to work (in Colombia (Article 25)) or a combination of a number of 'democratic' rights, as in Switzerland.¹⁷⁶ Additional protection is also sometimes afforded by the (non-binding) principles of state policy that exist in certain constitutions such as in Bangladesh (Article 15) and Pakistan (Article 38), as well as India (implied in Article 39).

Right to Housing

In contrast to the diminished importance of the right to clothing, the right to housing has risen markedly in prominence. The principal reason for this lies in the nature of the right itself. Housing—a place of shelter and to live in—is fundamental to many aspects of our existence, also being keenly associated with a number of other human rights,¹⁷⁷ including, especially, its 'companion' rights to food and water within Article 11. Housing, as Jessie Hohmann observes, connotes (p. 927) the essential elements of space, privacy and identity in the social existence of individual human beings. That is, a house, or even just shelter, is somewhere and that space, if adequate, should provide at least a base level of privacy, and through one's association with it, also constitute a primary component in the construction of an individual's social identity.¹⁷⁸ Unsurprisingly, therefore, the right to housing is reiterated in other international human rights instruments, including (as noted in the extract immediately following) the CERD, the CEDAW and the Convention on the Rights of the Child, as well as, since 2000, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Article 43(1)(d)) and the Convention on the Rights of Persons with Disabilities (Articles 9 and 28).¹⁷⁹

The right has indeed attracted considerable attention from the Committee, academics, commentators and specialist housing NGOs, and has done so for three decades or more.¹⁸⁰ It has been the subject of two General Comments, and a Special Rapporteur on adequate housing as a component of the right to an adequate standard of living was established in 2000 by the then UN Commission on Human Rights. The original mandate of the Special Rapporteur, which has been extended repeatedly, is suitably broad in scope:

Commission on Human Rights Resolution 2000/9 (17 April 2000); extracts from para. 7

...

(c) To appoint, for a period of three years, a special rapporteur whose mandate will focus on adequate housing as a component of the right to an adequate standard of living, as reflected in article 25, paragraph 1, of the Universal Declaration of Human Rights, article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, and article 27, paragraph 3, of the Convention on the Rights of the Child, and on the right to non-discrimination as reflected in article 14, paragraph 2(h) of the Convention on the Elimination of All Forms of Discrimination against Women, and article 5(e) of the International Convention on the Elimination of All Forms of Racial Discrimination;

(d) To request the Special Rapporteur, in the fulfilment of her/his mandate:

(i) To report on the status, throughout the world, of the realization of the rights that are relevant to the mandate, in accordance with the provisions of the relevant instrument, and on developments relating to these rights, including on laws, policies and good practices most beneficial to their enjoyment and difficulties and obstacles encountered (p. 928) domestically and internationally, taking into account information received from Governments, organizations and bodies of the United Nations system, other relevant international organizations and non-governmental organizations;

- (ii) To promote, as appropriate, cooperation among and assistance to Governments in their efforts to secure these rights;
- (iii) To apply a gender perspective in her/his work;
- (iv) To develop a regular dialogue and discuss possible areas of collaboration with Governments, relevant United Nations bodies, specialized agencies, international organizations in the field of housing rights, inter alia, the United Nations Centre for Human Settlements (Habitat), non-governmental organizations and international financial institutions, and to make recommendations on the realization of the rights relevant to the mandate;
- (v) To identify possible types and sources of financing for relevant advisory services and technical cooperation;
- (vi) To facilitate, where appropriate, the inclusion of issues relating to the mandate in relevant United Nations missions, field presences and national offices;
- (vii) To submit to the Commission an annual report covering the activities relating to the mandate...

The two General Comments—one, a basal description of the right to housing,¹⁸¹ the other, an examination of the specific matter of forced evictions¹⁸²—have been vital in defining the scope and content of the right.

General Comment No. 4 in 1991 sets the tone of the right's significance by stating that the right to housing is 'of central importance for the enjoyment of all economic, social and cultural rights' (paragraph 1), and even by 1991, the Committee was able to say (in paragraph 2) that it has already 'accumulate[d] a large amount of information pertaining to this right' drawn from numerous reports of UN bodies and other international organizations as well as from its own assessments of states' periodic reports. No matter this amount of data, and the frequent reaffirmations of importance and necessity of full respect for the right, the Committee laments that 'there remains a disturbingly large gap between the standards set in Article 11(1) of the Covenant and the situation prevailing in many parts of the world' (paragraph 4). In noting that approximately 100 million people worldwide are homeless and that over 1 billion are inadequately housed, the Committee points out that by no means all of these are in developing nations, as 'significant problems of homelessness and inadequate housing also exist in some of the most economically developed societies' (paragraph 4).

What is perhaps even more disturbing is that today, more than twenty years later and despite apparently enormous efforts to address the problem, the situation (p. 929) is estimated to have become worse, not better. Although these figures are very hard to calculate with any degree of accuracy, the corresponding figures for today are that homelessness remains at around 100 million, but that the number of inadequately housed has now ballooned to some 1.6 billion.¹⁸³

In this sobering light, the Committee's efforts in General Comment No. 4 to articulate the unconditional nature of the right and the 'seven factors' that constitute housing adequacy are especially poignant.

6. The right to adequate housing applies to everyone. While the reference to 'himself and his family' reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitations upon the applicability of the right to individuals or to female-headed households or other such groups. Thus, the concept of 'family' must be understood in a wide sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2 (2) of the Covenant, not be subject to any form of discrimination.

7. In the Committee's view, 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. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. This 'the inherent dignity of the

human person' from which the rights in the Covenant are said to derive requires that the term 'housing' be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in article 11(1) must be read as referring not just to housing but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: 'Adequate shelter means... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities—all at a reasonable cost'.

8. Thus the concept of adequacy is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute 'adequate housing' for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following:

(a) Legal security of tenure. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. 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 (p. 930) threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;

(b) 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;

(c) 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. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials;

(d) 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. The Committee encourages States parties to comprehensively apply the Health Principles of Housing prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;

(e) Accessibility. Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to

adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement;

(f) 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. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. 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;

(p. 931) (g) 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.¹⁸⁴

These seven factors set, and remain, the benchmark for realization of the right to housing. Although they largely speak for themselves, they reflect a number of critical aspects of the right. First, in stressing the legal security of tenure, the Committee underscores the importance of securing one's place of abode—whether by legal ownership, rental, leasehold or cooperative arrangement—and the need for redress if eviction is threatened or executed. The significance of this factor, together with its all too frequent violation, was key to the Committee's subsequent work on, and publication of, General Comment No. 7 on forced evictions (see below). Secondly, it is clear that the Committee does not interpret the right to mean that the state is to take the central role in the *provision* of housing. Rather, it is envisaged that state is to construct and implement the policy framework within which the housing provided by the private sector (as supplemented by the state's, mainly, welfare or 'safety net' housing programmes) is made 'affordable' and 'accessible'. Thirdly, the fulfilment of the right to housing requires more than just shelter. As a number of the seven enumerated factors indicate, adequate housing must comprise the provision of essential facilities (such as power, water and sanitation), must be habitable (offering protection against the elements), must be located within reasonable reach of work opportunities and essential social services (for example, regarding health and education), and must be culturally appropriate (in terms of construction and location).

Regarding states' obligations to implement and enforce the right, General Comment No. 4 stresses that 'there are certain steps that must be taken immediately', including, and especially, 'abstention by the Government from certain practices and a commitment to facilitating "self-help" by affected groups' (paragraph 10). Further, as the following extracts from the General Comment relate, states must develop strategies and policies that prioritize the housing needs of the most vulnerable in society, and they must adequately fund, monitor and enforce the implementation of their policies.

11. States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others. The Committee is aware that external factors can affect the right to a continuous improvement of living conditions, and that in many States parties overall living conditions declined during the 1980s. However, as noted by the Committee in its General Comment 2 (1990) (E/1990/23, annex III), despite externally caused problems, the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic (p. 932) contraction. It would thus appear to the Committee 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.

12. While the most appropriate means of achieving the full realization of the right to adequate housing will inevitably vary significantly from one State party to another, the Covenant clearly requires that each State party take whatever steps are necessary for that purpose. This will almost invariably require the adoption of a national housing strategy which, as stated in paragraph 32 of the Global Strategy for Shelter, 'defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals and the most cost-effective way of using them and sets out the responsibilities and time-frame for the implementation of the necessary measures'. Both for reasons of relevance and effectiveness, as well as in order to ensure respect for other human rights, such a strategy should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives. Furthermore, steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations under article 11 of the Covenant.

13. Effective monitoring of the situation with respect to housing is another obligation of immediate effect. For a State party to satisfy its obligations under article 11(1) it must demonstrate, inter alia, that it has taken whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of homelessness and inadequate housing within its jurisdiction. In this regard, the revised general guidelines regarding the form and contents of reports adopted by the Committee (E/C.12/1991/1) emphasize the need to 'provide detailed information about those groups within...society that are vulnerable and disadvantaged with regard to housing'. They include, in particular, homeless persons and families, those inadequately housed and without ready access to basic amenities, those living in 'illegal' settlements, those subject to forced evictions and low-income groups.

14. Measures designed to satisfy a State party's obligations in respect of the right to adequate housing may reflect whatever mix of public and private sector measures considered appropriate. While in some States public financing of housing might most usefully be spent on direct construction of new housing, in most cases, experience has shown the inability of Governments to fully satisfy housing deficits with publicly built housing. The promotion by States parties of 'enabling strategies', combined with a full commitment to obligations under the right to adequate housing, should thus be encouraged. In essence, the obligation is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.

15. Many of the measures that will be required will involve resource allocations and policy initiatives of a general kind. Nevertheless, the role of formal legislative and administrative measures should not be underestimated in this context. The Global Strategy for Shelter (paras. 66-67) has drawn attention to the types of measures that might be taken in this regard and to their importance.

16. In some States, the right to adequate housing is constitutionally entrenched. In such cases the Committee is particularly interested in learning of the legal and practical (p. 933) significance of such an approach. Details of specific cases and of other ways in which entrenchment has proved helpful should thus be provided.

17. The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to: (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. In some legal systems it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness.¹⁸⁵

[NB. the reference in paragraph 15 above to the 'Global Strategy for Shelter' is to a report of the UN Commission on Human Settlements in 1988, which urged states (in paragraphs 66 and 67) to enact appropriate legislation and regulations 'which enables them to produce shelter efficiently and effectively'. The Commission produced a number of subsequent reports, the last of which was in 1997.]

Forced evictions

Reflecting both the importance placed on security of tenure by General Comment No. 4 (as the first of the seven factors, and also in paragraph 18 which states that forced eviction 'can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law'), and the continuing and often alarming instances of mass, forced evictions, the Committee published General Comment No. 7 in 1997. Indeed, the Committee observes (in paragraph 4) that:

4. The practice of forced evictions is widespread and affects persons in both developed and developing countries. Owing to the interrelationship and interdependency which exist among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of 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.¹⁸⁶

The Committee notes that 'women, children, youths, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction',¹⁸⁷ and that two (p. 934) especially common causes or reasons for forced evictions are armed conflict (paragraph 6) and (somewhat ironically) economic development (paragraph 7):¹⁸⁸

6. Many instances of forced eviction are associated with violence, such as evictions resulting from international armed conflicts, internal strife and communal or ethnic violence.¹⁸⁹

7. Other instances of forced eviction occur in the name of development. Evictions may be carried out in connection with conflict over land rights, development and infrastructure projects, such as the construction of dams or other large-scale energy projects, with land acquisition measures associated with urban renewal, housing renovation, city beautification programmes, the clearing of land for agricultural purposes, unbridled speculation in land, or the holding of major sporting events like the Olympic Games.

In paragraph 1 of General Comment No. 7, the Committee explains its overall purpose: namely, that 'having considered a significant number of reports of forced evictions in recent years, including instances in which it has determined that the obligations of States parties were being violated, the Committee is now in a position to seek to provide further clarification as to the implications of such practices in terms of the obligations contained in the Covenant'. Such clarification the Committee provides by way of first a reiteration of various pronouncements by international organizations on the matter and the particular difficulties encountered in trying to define the term, and then, by the interesting means of explaining the circumstances and conditions under which forced evictions might be considered permissible.

The Committee presents the base prohibition of forced evictions as follows:

9. ...it is clear that legislation against forced evictions is an essential basis upon which to build a system of effective protection. Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply to all agents acting under the authority of the State or who are accountable to it. Moreover, in view of the increasing trend in some States towards the Government greatly reducing its responsibilities in the housing sector, States

parties must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies...¹⁹⁰

In its resolve to make clear to states the seriousness of the matter and the necessity of its regulatory control, the Committee reviews the pronouncements of others on the issue and some of the conceptual and practical problems one encounters in addressing it:

2. The international community has long recognized that the issue of forced evictions is a serious one. In 1976, the United Nations Conference on Human Settlements noted that (p. 935) special attention should be paid to 'undertaking major clearance operations should take place only when conservation and rehabilitation are not feasible and relocation measures are made'. In 1988, in the Global Strategy for Shelter to the Year 2000, adopted by the General Assembly in its resolution 43/181, the 'fundamental obligation [of Governments] to protect and improve houses and neighbourhoods, rather than damage or destroy them' was recognized. Agenda 21 stated that 'people should be protected by law against unfair eviction from their homes or land'. In the Habitat Agenda Governments committed themselves to 'protecting all people from, and providing legal protection and redress for, forced evictions that are contrary to the law, taking human rights into consideration; [and] when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided'. The Commission on Human Rights has also indicated that 'forced evictions are a gross violation of human rights'. However, although these statements are important, they leave open one of the most critical issues, namely that of determining the circumstances under which forced evictions are permissible and of spelling out the types of protection required to ensure respect for the relevant provisions of the Covenant.

3. The use of the term 'forced evictions' is, in some respects, problematic. This expression seeks to convey a sense of arbitrariness and of illegality. To many observers, however, the reference to 'forced evictions' is a tautology, while others have criticized the expression 'illegal evictions' on the ground that it assumes that the relevant law provides adequate protection of the right to housing and conforms with the Covenant, which is by no means always the case. Similarly, it has been suggested that the term 'unfair evictions' is even more subjective by virtue of its failure to refer to any legal framework at all. The international community, especially in the context of the Commission on Human Rights, has opted to refer to 'forced evictions', primarily since all suggested alternatives also suffer from many such defects. The term 'forced evictions' as used throughout this general comment is defined 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. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.¹⁹¹

As then, to situations where forced evictions may be justifiable, the Committee points to such examples as 'in the case of persistent non-payment of rent or of damage to rented property without any reasonable cause'.¹⁹² The Committee expands on the necessary conditions that must accompany any such action as follows:

5. ...Even in situations where it may be necessary to impose limitations on such a right, full compliance with article 4 of the Covenant is required so that any limitations imposed must be 'determined by law only insofar as this may be compatible with the nature of these [i.e. economic, social and cultural] rights and solely for the purpose of promoting the general welfare in a democratic society'.

...

(p. 936) 8. ...The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions (as defined in paragraph 3 above). Moreover, this approach is reinforced by article 17.1 of the International Covenant on Civil and Political Rights which complements the right not to be forcefully evicted without adequate protection. That provision recognizes, inter alia, the right to be protected against 'arbitrary or unlawful

interference' with one's home. It is to be noted that the State's obligation to ensure respect for that right is not qualified by considerations relating to its available resources.

...

10. ...The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.

...

13. States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected. In this respect, it is pertinent to recall article 2.3 of the International Covenant on Civil and Political Rights, which requires States parties to ensure 'an effective remedy' for persons whose rights have been violated and the obligation upon the 'competent authorities (to) enforce such remedies when granted'.

14. In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality. In this regard it is especially pertinent to recall General Comment 16 of the Human Rights Committee, relating to article 17 of the International Covenant on Civil and Political Rights, which states that interference with a person's home can only take place 'in cases envisaged by the law'. The Committee observed that the law 'should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances'. The Committee also indicated that 'relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted'.

15. Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (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 (p. 937) 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.

16. Evictions should not result in individuals being rendered homeless or vulnerable 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.¹⁹³

So, in sum, while the Committee is adamant that states should prohibit forced evictions as far as is possible, where they do occur the Committee stresses the necessity of the fundamental legal safeguards of: non-arbitrariness, non-discrimination, due process and procedural fairness, including consultation and participation in decision-making, access to remedies, compensation and the provision of adequate rehousing. Such safeguards and conditions have been endorsed and elaborated in the Basic Principles and Guidelines on Development-Based Evictions and Displacement developed by the Special Rapporteur on adequate housing.¹⁹⁴

The Committee also reserved special attention in the General Comment (paragraphs 17 and 18) for the mass (and often forced) evictions that were, and to a lesser extent still are, occasioned by large-scale development projects backed by international aid agencies like the World Bank. Such projects, typically concern dam building and other major power and utility projects. These were especially controversial during their heyday in the 1970s to the 1990s when not uncommonly tens of thousands of people were removed from their lands and homes.¹⁹⁵ Indigenous and remote communities, already among the most marginalized in many states, were often the most severely affected. 'In this regard', the Committee notes, 'its General Comment No. 2 (1990)...states, *inter alia*, that "international agencies should scrupulously avoid involvement in projects which, for example...promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are duly taken into account"'.¹⁹⁶

(p. 938) Implementation of the right to housing

From early in its history, the position of the Special Rapporteur on adequate housing has focused on practical means by which the right can be realized. Resolution 2001/28 of the Commission on Human Rights requested that the Special Rapporteur 'give particular emphasis to practical solutions with regard to the implementation of the rights relevant to the mandate, on the basis of pertinent information, notably on best practices, including on domestic legal enforcement of these rights, from Governments, relevant United Nations agencies and non-governmental organizations'.¹⁹⁷ And in order to draw upon such 'best practices', the Commission further called upon states 'to give full effect to housing rights, including through domestic development policies at the appropriate level of government and with international assistance and cooperation, giving particular attention to the individuals, most often women and children, and communities living in extreme poverty, and to security of tenure'.¹⁹⁸

In fact, there is significant coverage of the right in domestic legal regimes. More than fifty states make provisions for the right or associated governmental obligations in their constitutions,¹⁹⁹ while others provide protection for housing rights through ordinary legislation and policy means.

But no matter these apparently extensive legal protections, significant practical problems remain in terms of their implementation. Both incumbents of the Special Rapporteur post (Miloon Kothari (2000 to 2008) and Raquel Rolnik from 2008) have highlighted a number of recurring challenges that seriously hamper realization of the right to adequate housing.²⁰⁰ We here concentrate on three of these issues—namely, affordability, discrimination and the consequences of conflict.

Affordability—the privatization and financialization of housing

A major cause of homelessness or inadequate housing in many countries continues to be the prohibitive affordability of housing, both within countries and across (p. 939) countries. In his 2005 Report to the Commission on Human Rights, the Special Rapporteur noted further that:

...even where developing countries have successfully attracted a large increase in private capital flows, the rapid growth of cities typically outpaces the provision of adequate housing, resulting in an increased number of the poor living in squatter settlements with no security or civic services. This situation is further aggravated when urban authorities or private operators clear such settlements for commercial use or high-income housing. Moreover, increasing trends towards privatization of housing services and markets typically result in land speculation and the commodification of housing, land and water. The application of user fees for goods such as water, sanitation and electricity, and the repeal of land ceiling and rent control legislation further exacerbate the problem, resulting in increased marginalization of the poor.²⁰¹

The 'financialization' of housing continues to be a matter of concern as reflected in the Special Rapporteur's 2012 Report to the Human Rights Council, in which she notes how the growth of microcredit, especially in developing countries, has made housing finance so much more accessible to the poor. But this newfound 'bankability of the poor' has come at a price. The cost of borrowing through microcredit programmes (though considerably less than through loan sharks) is typically much higher than the interest rates that are normally available in Western countries, and is certainly beyond the means of the very poorest who are most in need of assistance. Even with access to credit, there are still major questions regarding housing affordability, for while:

...housing microfinance borrowers increase their housing expenditure substantially...even after the improvements their dwellings tend to remain segregated from health and education services and employment opportunities and, without secure tenure, they may eventually find themselves evicted (without compensation or relocation) from their improved homes.²⁰²

A key factor in the increases of both the need and availability of housing finance for the poor has been the massive and worldwide growth in the urbanization of populations, as noted by the Special Rapporteur:

The majority of the urban poor live in unplanned and unserved urban settlements and self-produce their habitat incrementally, mobilizing their own material and financial resources. In 2005, over one third (37 per cent) of the urban population in developing countries lived in slums and UN-Habitat estimates that by 2020 the world slum population will reach almost 1 billion.²⁰³

Above all, there has been a global change in the nature of the state's role in respect of housing, whereby housing is now seen less as a social good and more (p. 940) as a financial commodity. And, as such, the affordability of housing becomes not merely a casualty of financial shocks, but also, as reflected in the 2007/08 global financial crisis, a central cause of the crisis in the first place.

10. Housing finance is now perceived not only as a tool for promoting access to adequate housing but also as critical to the development of the financial sector, and has become a central pillar of the financial market, expanding the terrain for global capital. The deregulation, liberalization and internationalization of finance that started in the 1980s had major implications for housing and urban development. Funds for mortgage lending now derive from national and international capital markets and not solely from existing savings and retail finance. These developments have been characterized as the 'financialization' of housing.

11. This process has been accompanied by the conceptual transformation of adequate housing from a social good into a commodity and a strategy for household wealth accumulation and welfare security. Housing has become a financial asset ('real estate'), and housing markets are increasingly regulated so as to promote the financial aspects rather than the social aspects of housing. The real estate sector is perceived as a potential driving force for continued and sustainable economic growth.

12. Yet, market-based housing finance has contributed to a widespread bubble in real estate prices and a decrease in affordability and has done little to promote access to affordable adequate housing for the poorest. Between 1997 and 2004 average housing prices grew by 149 per cent in Spain, 139 per cent in the United Kingdom, 187 per cent in Ireland, 112 per cent in Australia, 65 per cent in the United States and 227 per cent in South Africa. As real estate prices and rents increased and came to be financed through global instead of local financial surpluses, more households faced difficulties in accessing adequate housing in the market. Many observers have pointed to the negative impacts of housing asset dispersion on social stratification and inequality, and the uneven spatial impact of these processes within cities, regions and globally.

13. The affordability crisis was compounded by the erosion, neglect and liberalization of non-market mechanisms for allocating housing resources. Even countries with a long tradition of broad-based social rental housing have redefined their systems to promote ownership, 'free market' principles and competition policies. Thus, there has been a significant reduction in the construction of adequate housing for the poor and most vulnerable groups along with decreasing national budgets and available public funds. In the United States, the budget of the Department of Housing and Urban Development was cut from \$83 billion in 1978 to \$18 billion in 1983 and between 1996 and 2001, no funding was allocated to public housing construction. The constant reduction in public housing has resulted in long waiting lists, keeping a large number of people in inadequate housing conditions (A/HRC/13/20/Add.4, para. 21; see also A/HRC/10/7). Even in the former Soviet countries, which did not experience a shortage of housing in the short term (following mass privatization), low-income households were soon faced with a huge

affordability problem.²⁰⁴

(p. 941) Discrimination and housing

Discrimination in respect of housing and habitat is a recurrent problem in many countries. Its consequences are suffered disproportionately by minority and/or marginalized groups, including indigenous peoples, ethnic minorities, refugees and non-nationals, and women. In some cases, the discrimination may be direct in that there exist policies or practices that actively promote housing preferences for certain groups while denying access to housing to others. But, equally, discrimination can be indirect, as is often the case with women whose position may be as 'invisible' as it is precarious (or desperate) in terms of housing. The Special Rapporteur has stressed this point repeatedly, as for example in 2005:

46. The factors which increase women's vulnerability to homelessness are multifaceted, and their exact nature varies with differences found in local cultural, economic and legal structures. Structural aspects related to securing the right to adequate housing render invisible the full extent of homelessness, including the threat of homelessness. Addressing women and vulnerability to homelessness must first start with access to the skills, resources and place in the community that allow for the securing of adequate housing. In many places the lack of educational and employment opportunities for women often necessitates economic reliance on family, informal support networks, or a partner or spouse. Such dependence deprives women of the ability to make real choices concerning a range of issues in their lives intimately linked to their well-being, including where and with whom they live. This type of dependency also leaves many women vulnerable to exploitation. Fear of homelessness motivates many women to make life choices they would not otherwise make.

47. Legal provisions and their interpretation increase women's vulnerability to homelessness in many places. A lack of security of tenure as well as the failure to recognize women's property rights inside, outside and upon dissolution of marriage or domestic partnership is a major contributing factor. In situations where women are economically dependent on their partner, and where there are no legal provisions which adequately recognize women's individual interests or joint interests in family assets, including the family home, women can be left vulnerable to homelessness. Even where laws are in place to recognize the interests of women, where one partner is seeking to dissolve a marriage or domestic partnership, women often lack the means to retain adequate legal counsel or access the courts to protect their personal interests. In jurisdictions offering some form of legal aid, this too is often restricted to criminal matters and fails to address family law, systematically disadvantaging women.²⁰⁵

And again, building on these points, in 2011 when the Special Rapporteur stressed the importance of social and cultural attitudinal changes to go hand-in-hand with legislative and policy pronouncements:

53. Legislation and gender-sensitive housing law, policy and programming are only the first step. Even where good laws and policies are in place, an important challenge remains in translating them fully into practice. Unfortunately, in terms of implementation, progress (p. 942) has remained slow. Indeed, during the consultation process for this report, it became clear that even in places where good laws exist, discriminatory social and customary norms continue to hinder the enjoyment of women's right to adequate housing.

54. The existing gaps are complex and difficult to overcome as they are deeply rooted in culture, discriminatory social attitudes and practices, as well as weak or gender-blind systems which delay progress in the realization of the right, and fail to effectively make visible the existing barriers. Those challenges require more than ordinary efforts to enforce laws and put policies into practice; additional actions directed to provoke those changes in cultural patterns are required, and this can be obtained particularly through the combination of awareness-raising and public education, as well as through legal enforcement and legal aid, and provision of appropriate resources through the adoption of specific budgetary measures.²⁰⁶

In terms of matters of discrimination on wider grounds, the conditions advocated by the Special

Rapporteur in 2002 that states ought to abide by remain apposite:

46. ...[The] Special Rapporteur respectfully recommends that Governments and other concerned parties:

- (a) Enact or strengthen legislative measures that prohibit racial discrimination in all areas of the public and private sectors, including housing, planning and land policies and provision of building materials, services and housing finance;
- (b) Ensure that policies, programmes, and budgetary and financial allocations are carried out in good faith to promote equal access to civic services essential to the realization of the right to adequate housing—including potable water, electricity and sanitation—repeal policies and programmes that promote discriminatory access;
- (c) Guarantee access to judicial remedies for violations of the right, such as forced evictions, deliberate denial of civic services, including reparations for damages suffered, in accordance with article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination;
- (d) Develop national institutions with adequate resources and mandates to monitor legislative, judicial and administrative services, including to receive complaints, and the capacity and authority to undertake follow-up action;
- (e) Undertake affirmative action to diminish, eliminate and compensate for conditions that cause or help to perpetuate discrimination in the realization and retention of the right to adequate housing;
- (f) Eliminate barriers to the enjoyment of the right to adequate housing that are disproportionately faced by ethnic and racial minorities and indigenous peoples living in life-threatening and health-threatening housing conditions; special attention needs to be given to particularly vulnerable groups, i.e. persons affected by HIV/AIDS, so that they do not suffer from discrimination in housing;
- (p. 943) (g) Remove legal, administrative and social obstacles to women's full and equal right to own land and other property and their right to adequate housing, including through exercise of the right to inheritance, with particular attention to women who face double discrimination, including women with disabilities, HIV/AIDS, minority or other vulnerable status, as well as women who have faced forced evictions;
- (h) Ensure in particular that no child will be subjected to discrimination with regard to his or her right to adequate housing on the grounds of his or her parents' race, colour, national or ethnic origin, sex, property or other status, and that special protection and assistance be provided to children living in the streets and those temporarily or permanently deprived of a family environment;
- (i) Institutionalize inter-ministerial coordination so as to ensure that the formulation and implementation of economic globalization policies, such as those in the areas of trade, investment, finance, structural adjustment and debt, do not cause the State to contravene covenanted human rights obligations and aggravate living conditions for those people and communities facing discrimination and segregation with regard to housing, land and access to related civic services;
- (j) Address the multiple discrimination facing minority, indigenous and distinctly low-income communities the habitability of whose housing is made hazardous by the environmental degradation of the areas where they live, often adjacent to an environmentally degraded workplace;
- (k) Institutionalize ethical housing, land-use and planning practices, including the preparation of city and regional master plans, such that segregated residential patterns and discrimination in facilities do not form based on group identity of race, colour, descent, national and ethnic origin—as well as religion. Moreover, it is essential that in the formulation and implementation of these plans, residents enjoy the right to participation,

including through participatory budgetary processes, on a basis of non-discrimination and equality;

(l) Provide domestic remedies for violations of the right to adequate housing, including facilities, training for legal practitioners, regulations and procedures, policy guidance, efficient administration of justice, equal court access and public education towards improved prosecution, litigation and other forms of dispute resolution with judicial effect;

(m) Strengthen the efforts to monitor the living conditions of marginalized racial and ethnic groups, particularly with regard to fundamental economic, social and cultural indicators, including housing, and efficiently collect and disaggregate data according to different criteria such as gender, age, ethnicity, etc.; and

(o) Protect and promote economic, social and cultural rights, keeping in mind the interests of the whole population such that no group suffers from discrimination, especially in the particularly odious practice of population transfer and the implantation of alien settlers.²⁰⁷

(p. 944) Conflict and the consequences for housing

Situations of conflict seriously impact on housing both directly (through destruction or eviction) and indirectly (by way of targeted deprivation of housing and related essential services such as power, water and sanitation). The Special Rapporteur provides examples of these effects in the following extracts from a 2005 report:

C. Homelessness as a result of conflict situations

35. The Special Rapporteur has witnessed the effects of conflicts first hand during some of his country missions. In Afghanistan, over two decades of conflicts have resulted in severe destruction and have left houses, public buildings, sanitation and other systems across the country in ruins. As a result, homelessness has become a reality for many. At the same time, urban areas have seen a dramatic growth in population due to the return of refugees, the presence of internally displaced persons who cannot return to their areas of origin, as well as an influx from rural areas of Afghans hoping for better employment possibilities and improved economic and social conditions in general (see E/CN.4/2004/48/Add.2, paragraphs 39–43).

36. Demolition of homes and destruction of property, including land and crops, is not always merely an indirect result of conflict. Housing and land have increasingly become strategic targets. The Special Rapporteur has repeatedly expressed his concern about the demolition of

Palestinian houses and other buildings and the confiscation of Palestinian land becoming a common and widespread measure used by Israel in the occupied Palestinian territories (see E/CN.4/2003/5/Add.1). These acts have left thousands of residents homeless and have harmed the livelihood of thousands more. During 2004, Israel is reported to have demolished 181 homes in the Occupied Territories as a means of punishment and 1,357 homes on the claim of military necessity. These demolitions left an estimated 11,500 Palestinians homeless. Since 1987, Israel is reported to have demolished 4,100 homes, rendering an estimated 28,000 Palestinians homeless.

37. Systematic destruction of private homes, agricultural crops and land and water sources, together with pillage and looting, have also been one of the main features of the human rights violations taking place in Darfur, Sudan, resulting in displacement and homelessness (see E/CN.4/2005/3, paragraphs 70–73). Until security and protection are fully ensured people will not be able to return to their villages. Addressing security considerations must be matched with efforts to ensure the realization of the right to adequate housing, through compensation and reconstruction schemes.

38. In a press briefing on 10 May 2004 regarding the prevailing humanitarian crisis in Colombia, the United Nations Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator stated that among Colombia's nearly 300,000 internally displaced, many were forced into urban slums and shantytowns, living in

a 'sea of sewerage and garbage'. Others find themselves entirely homeless and destitute. The crisis of internal displacement is also a crisis of security. The internally displaced constitute a new recruitment base for the guerrilla, paramilitary forces and the drug mafias.²⁰⁸

(p. 945) The complexity of these circumstances, together with the urgent need to address their impact on housing, is often somewhat similar to the situations following natural or man-made disasters.²⁰⁹ In recognizing these factors, the Special Rapporteur has sought to identify the particular needs of the homeless or displaced, and the expected responses of states in these circumstances.

7. The impacts of both conflicts and disasters for the individuals, families and communities affected can be devastating. These include the loss of life and livelihoods; destruction of homes, property and infrastructure; disruption or termination of essential services; and the prolonged and sometimes even permanent forced displacement from land, home and community. Although wealth and power do not offer any immunity from these impacts, it is in most cases the poor and socially disadvantaged who are worst affected; and it is also they who are least able to withstand economic shocks and so generally take the longest to recover.

8. The poor often stand to lose most in disaster contexts because they often have to settle on fragile and exposed land that is highly susceptible to the effects of disasters. When a disaster strikes, their pre-existing vulnerabilities are exacerbated, with women, children and marginalized groups bearing the brunt of the impact. After the disaster, the poor often also find their attempts to return to their homes officially denied on the grounds that return would be unsafe, and/or not permissible as they did not have official proof of a right to live there in the first place. This can have dramatic consequences for the livelihoods of individuals, families and entire communities. In the case of conflicts, the displacement and dispossession of specific groups are often deliberate strategies of one group or side in the conflict against another. This can result in the total destruction and/or secondary occupation of their lands and homes, and obstruction of their attempts to return and reclaim what was theirs.

9. In addition to facing serious humanitarian problems and challenges, victims of disasters and conflicts are often exposed to grave human rights violations, invariably including the right to adequate housing. Humanitarian crises are human rights crises. Notwithstanding, given the concentration of international and national attention, resources and effort they often receive, such crises can also present important human rights opportunities. The World Bank has noted that '... while conflicts unleash horror and suffering, they also destabilize old ways of doing things and create new openings for poor people to get ahead. However, there is a narrow window of opportunity in the aftermath of conflict before old barriers begin to surface' (World Bank, 'Life After Conflict: Surprising Opportunities for Poor People to Escape Poverty,' press release No. 2010/222/SDN (11 January 2010)).²¹⁰

In this respect, the Special Rapporteur adds (later in the same report), that 'the long-term success of post-disaster and post-conflict responses to a great extent (p. 946) depends on a properly informed understanding of the local context' (paragraph 36). This requires not just 'high levels of consultation with and direct involvement of the people directly affected in the process of relief and reconstruction' (paragraph 36), but also the appropriate and effective marshalling, coordination and expenditure of 'resources from within countries, bilateral and multilateral international donors, relief agencies and NGOs etc' (paragraph 56). Only thereby will the critical issues of 'security of tenure, location, cultural adequacy and availability of services, facilities and infrastructure' (paragraph 57) be addressed in a manner that will secure both short-term relief and long-term sustainability in terms of housing needs.²¹¹

States' reports and the Committee's Concluding Observations

These observations of the Special Rapporteurs have been echoed and added to by the Committee's Concluding Observations on states' periodic reports under the Covenant. The malign consequences of conflict for peoples' housing has been highlighted in Committee reports on Afghanistan, Iraq, the Democratic Republic of Congo and Sri Lanka, as well as the perverse effects that conflict, or its threat, can have on state budget allocations, as noted in the

Committee's criticism of Angola's defence budget being forty times larger than that of the housing sector, despite the country's urgent need to 'address the acute housing shortage'.²¹² Furthermore, the Committee remains critical of the seemingly relentless tendency of states to effect or permit forced evictions without adequate safeguards, such as, for example, in its Concluding Observations regarding Afghanistan,²¹³ Bolivia,²¹⁴ Cambodia,²¹⁵ China,²¹⁶ Israel,²¹⁷ Nigeria and Zimbabwe.²¹⁸

Overall, the right to housing is by far the most common matter of concern raised by the Committee in the context of Article 11's right to an adequate standard of living, being mentioned in respect of very nearly every state. Indeed, in our review of all the Committee's Concluding Observations over the past twenty-five years, housing was mentioned in the context of states' obligations (p. 947) under Article 11 more than three times that of food. And while this is, of course, a crude measure of relative importance, there is no doubting the significance that the Committee invests in the protection of the right to housing. A common and recurring theme in the Committee's deliberations is the matter of the affordability and adequacy of housing for the poor and marginalized in nearly all countries, to greater or lesser extents. Criticisms as well as some commendations are repeatedly made of the adequacy of states' housing policies and programmes in terms of the quantity and quality of housing stock, its relative availability for rural and urban communities as well as its affordability—either directly through provision of low-cost public housing and indirectly, through rent controls and access to low-interest-rate loans.

The state's role is certainly critical in providing or otherwise making available adequate and inexpensive housing, but it is equally clear that there is no political or economic path that will guarantee these ends, as illustrated by the contrasting examples of the Ukraine and Belgium. The experience of the Ukraine over the past twenty-five to thirty years shows how difficult it is to make housing affordable and at the same time adequate. During its time as a republic within the USSR, the Ukraine claimed that as 'State housing was provided free of charge, and that rents did not exceed a third of the real maintenance costs incurred by the State, [t]here were [therefore] no homeless in the Ukraine'.²¹⁹ This statement notwithstanding, questions were still asked by the Committee 'concerning housing and difficulties encountered with respect to the continuous improvement of living conditions' (paragraph 104). Following independence in 1990, and the rapid replacement of the communist planned economy with a democratic capitalist state, problems of housing scarcity and affordability arose, especially for the poor and marginalized. These developments are evident in the Committee's Concluding Observations regarding the Ukraine in 1995,²²⁰ 2001 and 2008.²²¹ In the latter report, the Committee had this to say:

23. The Committee notes with concern that 28 per cent of the population reportedly live below the official poverty line.

24. The Committee is concerned that, in spite of the efforts undertaken by the State party to resettle and integrate formerly deported persons such as Crimean Tatars in the Autonomous Republic of Crimea, most Crimean Tatars have been excluded from the land privatization process, that only a limited number of Crimean Tatars have obtained plots of land, mainly outside areas that were traditionally settled by them, while others face criminal sanctions for squatting on land, and that many Crimean Tatars live in settlements lacking basic infrastructures.

(p. 948) 25. The Committee notes with concern that many Roma live in informal settlements and camps which lack basic infrastructures and services such as safe water, electricity, gas, heating, sewage, garbage disposal and roads, without legal security of tenure and under constant threat of eviction.

26. The Committee is deeply concerned about reports on substandard living conditions and overcrowding in prisons, pre-trial detention centres and centres for refugees and asylum-seekers, including in medical wards for inmates and detainees suffering from tuberculosis.

...

45. The Committee urges the State party to allocate sufficient funds for the implementation of the State Programme to Combat Child Homelessness and Neglect (2006-2010), increase the capacity of and open new centres for homeless children and day centres for street children, ensure access to adequate food, health care and social protection for street children and children deprived of parental care, adopt urgent measures to provide these children and young persons leaving school orphanages with education, accommodation and adequate employment opportunities, and intensify its efforts to improve the living conditions in

orphanages and seek alternative solutions for children placed in orphanages, such as foster families or family-type children's homes, and by ensuring an effective procedure of adoption by families.

46. The Committee recommends that the State party allocate sufficient funds for the implementation of its poverty eradication strategy, ensure the full integration of economic, social and cultural rights in the strategy, and specifically address the needs of unemployed persons, women, families with children, pensioners, the rural population, ethnic minorities and other disadvantaged and marginalized individuals and groups. In this regard, the State party is referred to the Committee's Statement on 'Poverty and the International Covenant on Economic, Social and Cultural Rights' (E/C.12/2001/10). The State party is requested to include in its next periodic report updated statistical data, on an annual basis, on the percentage of the population living in poverty, disaggregated by gender, age, number of children per household, number of single-parent households, rural/urban population, and ethnic group.

47. The Committee recommends that the State party allocate sufficient funds for the implementation of the Programme for the Resettlement and Integration of Formerly Deported Persons and ensure that formerly deported persons have equal access to suitable plots of land and adequate housing and to effective remedies for claiming such land and housing. It also recommends that the State party proceed with the adoption of the draft law on compensation of formerly deported persons. The State party should consider repealing the recent law threatening illegal land occupants with several years' imprisonment. It should also ensure that Crimean Tatars living in settlements enjoy legal security of tenure and access to basic infrastructures, including safe water, electricity, gas, heating, sewage and garbage disposal, and roads.

48. The Committee urges the State party to ensure, by legalizing and intensifying its efforts to improve the infrastructures of Roma settlements or through social housing programmes, that all Roma have access to adequate and affordable housing, legal security of tenure, safe water, electricity, gas, heating, sewage and garbage disposal, and roads. The State party should ensure that adequate alternative housing is provided whenever forced (p. 949) evictions take place, in line with the Committee's general comment No. 7 (1997), and include in its next report disaggregated statistical data, on an annual basis, on the number of forced evictions.²²²

The experience of Belgium shows that, despite long-standing democratic governance, relative wealth and more recently, constitutional protection of housing rights, shortages can still be a chronic problem. Thus, in 1994 the Committee commented:

Moreover the Committee, while noting with satisfaction that the right to housing has been inscribed in the recently revised Constitution of Belgium, expresses concern at the adequacy of the measures taken to actually enforce that constitutional provision.²²³

Fourteen years later, the situation did not, in the Committee's view, appear to have substantially improved:

The Committee remains concerned, in spite of the various initiatives undertaken by the State party to increase the supply of social housing units, about the continuing shortage of social housing units for low-income households and other disadvantaged and marginalized individuals and groups, and about the continuing increase of rents in the private rental sector.²²⁴

The matter of discrimination in terms of housing rights has also been a constant in many Committee observations of states' practices. Thus, in respect of Bolivia, the Committee relayed its concern over 'the large housing shortage, the incidence of forced evictions with respect to peasants and indigenous populations in favour of mining and lumber concessions, and the absence of effective measures to provide social housing for low-income, vulnerable and marginalized groups'.²²⁵ In respect of China, the Committee lamented the fact that despite the country's rapid economic development, inadequate living standards, including housing, still afflicted the rural poor and inland provinces in particular, and that impact on housing of massive infrastructure projects was especially detrimental. Thus, for example, in its 2005 report on China, the Committee

declared that it was:

...concerned about the reports of forced evictions and insufficient measures to provide compensation or alternative housing to those who have been removed from their homes in the context of urban development projects as well as of rural development projects such as the Three Gorges Project. The Committee is concerned about the number of forced evictions and demolitions that have occurred in anticipation of the 2008 Olympic Games to be hosted by the State party. The Committee further expresses concern about the lack of effective consultations and legal redress for persons affected by forced evictions and demolitions, including those of historic structures, buildings and homes in Lhasa, Tibet. The Committee also regrets that insufficient information was provided on the extent and causes of homelessness in the State party.²²⁶

(p. 950) Housing discrimination and lack of adequate consultation on grounds both of poverty and race were also concerns for the Committee with regard to France.

21. The Committee is deeply concerned that persons belonging to racial, ethnic and national minorities, especially migrant workers and persons of immigrant origin, are disproportionately concentrated in poor residential areas characterized by large, low-quality and poorly maintained housing complexes, limited employment opportunities, inadequate access to health care facilities and public transport, under-resourced schools and high exposure to crime and violence.

...

41. The Committee urges the State party to take all appropriate measures, in close consultation with the population concerned, to reduce the phenomenon of residential segregation based on racial, ethnic and national origin, as well as its negative consequences on the living conditions of the affected individuals and groups. In particular, the Committee recommends that the State party take all appropriate measures, in order to:

- (a) Improve housing and living conditions in residential areas that are currently racially segregated by facilitating the renovation of existing housing complexes and improving their infrastructures, access to services and employment opportunities;
- (b) Support the development of new public housing complexes outside poor, racially segregated areas; and
- (c) Ensure the effective implementation of existing legislation to combat discrimination in housing, including discriminatory practices carried out by private actors.

The parlous housing circumstances of the Roma in Europe and the failure of states adequately to address them is also a regular object of the Committee's comments, in respect not just of France (paragraph 24 of the above report), but also Italy²²⁷ and Hungary—in relation to which it has stated:

22. The Committee is deeply concerned that one-fifth of the Roma in the State party [Hungary] live in slum settlements, often without access to running water, adequate sewerage or located close to municipal dumpsites, and that Roma are frequently denied access to social housing, e.g. on the ground that they previously occupied accommodation without legal title or as a result of the distribution of social housing by local governments through public auction at high prices. It is particularly concerned about the increasing number of forced evictions of Roma, often without provision of adequate alternative housing, and about the Constitutional Court's ruling that the need to implement eviction orders takes precedence over the right of children not to be separated from their families and placed in the State care system.

...

(p. 951) 45. The Committee urges the State party to adopt and implement remedial measures relating to infrastructure in Roma settlements, extend the application of the Roma Housing and Social Integration Programme to all communities concerned, effectively enforce anti-discrimination legislation in the housing sector, refrain from distributing social housing through public auction at high prices; and

increase the availability of social housing, in particular for the Roma. It also urges the State party to ensure that the rights of affected individuals, including children, are safeguarded and that alternative housing is provided whenever forced evictions take place, in line with the Committee's general comment No. 7 (1997) on the right to adequate housing, and to include disaggregated data on the extent of homelessness, the number of forced evictions and arrangements for alternative housing in its next periodic report.²²⁸

Implementation and compliance indicators

In addition to some general guidance on states' reporting obligations in General Comment No. 7,²²⁹ the specific recommendations provided by the Committee to each state in its Concluding Observations and other communications with individual states, a set of 'practical and operational tools to promote, monitor and implement the human right to adequate housing' has also been developed by the Special Rapporteur on the adequate housing. Prompted by one of the targets in the Millennium Development Goals (Goal 7 on environmental sustainability) which declares that by 2020 states will collectively have 'achieved a significant improvement in the lives of at least 100 million slum dwellers,' the Special Rapporteur formulates three separate instruments.²³⁰ First, a set of Basic Principles and Guidelines on Development-Based Evictions and Displacement, which consolidates and expands the conditions regarding forced evictions discussed earlier in this chapter. Secondly, a Questionnaire on Women and Adequate Housing, which targets the removal of provisions and practices that discriminate against women regarding, in particular, legal security of tenure of land, access to public goods and services, participation in decision-making processes, and access to remedies. And thirdly, a List of Indicative Indicators on the Right to Adequate Housing²³¹ as follows:(p. 952)

Table 13.2 List of illustrative indicators on the right to adequate housing (Article 11(1) ICESCR;* MDG indicators)

Type of Indicator	Habitability	Accessibility to services	Housing affordability	Security of tenure
Structural	<ul style="list-style-type: none"> International human rights instruments, relevant to the right to adequate housing, ratified by the State Date of entry into force and coverage of the right to adequate housing in Supreme Law/Constitution/Bill of Rights Date of entry into force and coverage of domestic laws relevant to the implementation of the right to adequate housing Number of registered/operational civil society organizations involved in the promotion and protection of the right to adequate housing 			
	<ul style="list-style-type: none"> Time frame and coverage of national housing policy statement/strategy for the progressive implementation of measures for the right to adequate housing at different levels of Government, as applicable Time frame and coverage of national policy on rehabilitation and resettlement 			<ul style="list-style-type: none"> Date of entry into force and coverage of legislation on security of tenure, equal inheritance and protection against forced eviction
Process	<ul style="list-style-type: none"> Number of complaints on the right to adequate housing received, investigated and adjudicated by the national human rights institution/human rights ombudsperson/specialized institution and other administrative mechanisms (created to protect the interests of specific populations groups) in the reporting period Public expenditure on reconstruction and rehabilitation of displaced persons as a proportion of public development budget Net ODA for housing received/provided as proportion of public expenditure on housing/gross national income* 			

	<ul style="list-style-type: none"> • Proportions of habitations (cities, towns and villages) covered under provisions of building codes and by-laws • Share of public development budget spent on social/community housing • Increase in habitable area effected through reclamation, including of hazardous sites and change in land use pattern • Addition to habitable area earmarked for social/community housing during the reporting period 	<ul style="list-style-type: none"> • Proportion of household budget spent on access to utilities, including water supply, sanitation, electricity and garbage disposal • Proportion of vulnerable households dependent on private sources for water supply • Share of public development budget spent on provision and maintenance of sanitation, water supply, electricity and physical connectivity of habitations 	<ul style="list-style-type: none"> • Proportion of households that receive public housing assistance, including those living in subsidized rented housing and households subsidized for ownership • Proportion of households in self-owned, publicly provided housing and squatter settlements • Average rent of bottom three income deciles as a proportion of the top three 	<ul style="list-style-type: none"> • Average time taken to settle disputes related to housing and land rights in courts and tribunals • Number of legal appeals aimed at preventing planned evictions/ demolitions through the issuance of court-ordered injunctions over the reporting period • Number of legal procedures seeking compensation following evictions over the reporting period • Proportion of displaced or evicted persons rehabilitated/resettled annually over the reporting period
Outcome	<ul style="list-style-type: none"> • Proportion of population (persons per room or rooms per household) with sufficient living space/ average number of persons per room among targeted households • Proportion of households living in permanent structures in compliance with building codes and by-laws • Proportion of habitations/households living near hazardous sites 	<ul style="list-style-type: none"> • Proportion of urban population living in slums • Proportion of (rural and urban) population with sustainable access to an improved water source* • Proportion of (rural and urban) population with access to improved sanitation* 	<ul style="list-style-type: none"> • Proportion of households spending more than 'x' % of their monthly income/expenditure on housing • Annual average of homeless persons per 100, 000 population • Proportion of homeless population using public and community-based shelters 'x' being defined normatively for the country context 	<ul style="list-style-type: none"> • Reported cases of 'forced evictions' per 100, 000 population (e.g. as reported to United Nations special procedures) over the reporting period • Proportion of households with legally enforceable, contractual, statutory or other protection providing security of tenure/proportion of households with access to secure tenure* • Proportion of women among individuals with titles to land/house

(p. 953)

(p. 954) Housing rights litigation

In addition to Article 11 in the ICESCR, the right to housing is also referred to in the Convention on the Elimination of all Forms of Racial Discrimination (1965) (Article 5(d)(v)) and the Convention to Eliminate all Forms of Discrimination Against Women (1979) (Article 16(h)). In addition, while the Convention Against Torture (1984) does not mention housing, the Convention's Committee has pronounced on individual complaints that have substantially concerned gross violations of the right to housing that contribute to violations of the torture convention. A number of these cases have been recognized by the Special Rapporteur on adequate housing to be of especial significance—one involving the treatment of Roma in the former Yugoslavia, and another concerning Israel's settlement policy in the Occupied Palestinian Territories.

80. An individual case recently dealt with by the Committee against Torture (CAT) concerns the expulsion and destruction of houses of a Roma settlement in Montenegro (Hajrizi Dzemajl et al. v. Serbia and Montenegro) [Communication No.

161/2000: Yugoslavia, CAT/C/29/D/161/2000, 2 December 2002]. The complainants were 65 persons, all of Romani origin and then nationals of the Federal Republic of Yugoslavia, claiming that articles 1, paragraph 1 and 2, and paragraphs 1, 12, 13, 14 and 16, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had been violated. The destruction of the Roma settlement was a result of the acts of a large mob of several hundred non-Roma, who 'with stones and other objects, first broke windows of cars and houses belonging to Roma and then set them on fire. The crowd also destroyed and set fire to the haystacks, farming and other machines, animal feed sheds, stables, as well as other objects belonging to the Roma', including with explosive devices. Allegedly, police officers were present at the scene, but did not intervene and failed to act in accordance with legal obligations. The Committee concluded that the incident constituted a breach by the State of article 16 of the Convention, i.e. the incidents were labelled as cruel, inhuman or degrading treatment.

81. It should be noted that an individual opinion was issued by two of the members of the Committee, stating that 'the illegal incidents for which the Yugoslav State is responsible constitute "torture" within the meaning of article 1, paragraph 1, of the Convention, not merely "cruel, inhuman or degrading treatment" as covered by article 16. The failure of the State authorities to react to violent evictions, forced displacement and the destruction of homes and property by individuals amounts to unlawful acquiescence which, in our judgement violates article 1, paragraph 1, particularly when read in conjunction with article 2, paragraph 1, of the Convention'. When arguing this point, the two members underline that the suffering inflicted on the victims was 'severe enough to qualify as "torture"', including since the inhabitants 'were forced to abandon their homes in haste given the risk of severe personal and material harm', and since no compensation had been given to the victims. The two reserving members conclude that 'the above amounts to a presumption of "severe suffering", certainly "mental" but also inescapably "physical" in nature even if the victims were not subjected to direct physical aggression' and should therefore have been defined as torture.

82. The Special Rapporteur welcomes the link continuously being made by CAT between forced evictions and breaches of the Convention, including, for example, in the Committee's concluding observations on Israel where it states that 'policies on house demolitions [...] may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment'. (p. 955) [Conclusions and recommendations of the Committee against Torture: Israel, CAT/C/XXVII/Concl.5, 23 November 2001]
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At the regional level, none of the principal human rights instruments (namely, the European Convention on Human Rights (1950), the American Convention on Human Rights (1969) and the African Charter on Human and Peoples' Rights (1981)) expressly provide protection for the right to housing. Rather, protection for the right has been derived from other rights that are expressly provided for in these instruments, including, in particular, the rights to privacy, property,²³³ health and protection of the family. In addition, several supplementary instruments in the European and African jurisdictions do explicitly refer to the right to housing—that is, the European Convention on the Legal Status of Migrant Workers (1977) (Article 13), the revised European Social Charter (1996) (Part I(31)) and the African Charter on the Rights and Welfare of the Child (1990) (Article 20(2)(a)).

In the case of *Social and Economic Rights Action Centre (SERAC) v Nigeria* (2002),²³⁴ the African Commission on Human and Peoples' Rights made clear the integrated and derivative nature of the right to housing under the African Charter, while also drawing on the relevance of Article 11 of the ICESCR. The case—as described and extracted above in respect of the rights to food and water—concerned the human rights violations of the Ogoni people by the government of Nigeria.

60. Although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, cited under Article 16 [...], the right to property [Article 14], and the protection accorded to the family [Article 18] forbids the wanton destruction of shelter because when housing

is destroyed, property, health, and family life are adversely affected. It is thus noted that the combined effect of Articles 14, 16 and 18(1) reads into the Charter a right to shelter or housing which the Nigerian Government has apparently violated.

61. At a very minimum, the right to shelter obliges the Nigerian government not to destroy the housing of its citizens and not to obstruct efforts by individuals or communities to rebuild lost homes. The State's obligation to respect housing rights requires it, and thereby all of its organs and agents, to abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the integrity of the individual or infringing upon his or her freedom to use those material or other resources available to them in a way they find most appropriate to satisfy individual, family, household or community housing needs. Its obligations to protect obliges it to prevent the violation of any individual's right to housing by any other individual or non-state actors like landlords, property developers, and land owners, and where such infringements occur, it should act to preclude further deprivations as well as guaranteeing access to legal remedies. The right to shelter even goes further than (p. 956) a roof over one's head. It extends to embody the individual's right to be let alone and to live in peace- whether under a roof or not.

62. The protection of the rights guaranteed in Articles 14, 16 and 18(1) leads to the same conclusion. As regards the earlier right, and in the case of the Ogoni People, the Government of Nigeria has failed to fulfil these two minimum obligations. The government has destroyed Ogoni houses and villages and then, through its security forces, obstructed, harassed, beaten and, in some cases, shot and killed innocent citizens who have attempted to return to rebuild their ruined homes. These actions constitute massive violations of the right to shelter, in violation of Articles 14, 16, and 18(1) of the African Charter.

63. The particular violation by the Nigerian Government of the right to adequate housing as implicitly protected in the Charter also encompasses the right to protection against forced evictions. The African Commission draws inspiration from the definition of the term 'forced evictions' by the Committee on Economic Social and Cultural Rights which defines this term as 'the permanent removal against their will of individuals, families and/or communities from the homes and/or which they occupy, without the provision of, and access to, appropriate forms of legal or other protection'. Wherever and whenever they occur, forced evictions are extremely traumatic. They cause physical, psychological and emotional distress; they entail losses of means of economic sustenance and increase impoverishment. They can also cause physical injury and in some cases sporadic deaths...Evictions break up families and increase existing levels of homelessness. In this regard, General Comment No. 4 (1991) of the Committee on Economic, Social and Cultural Rights on the right to adequate housing states that 'all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats' (E/1992/23, annex III. Paragraph 8(a)). The conduct of the Nigerian government clearly demonstrates a violation of this right enjoyed by the Ogonis as a collective right.²³⁵

The African Commission has also pronounced on the matter of States' compliance with the Charter when involved in forced evictions, once again drawing directly on the Committee on Economic Social and Cultural Rights' General Comment Nos. 4 and 7 to support its findings. For example, out of the wide-ranging claims of systematic human rights violations in the case of Sudan Human Rights Organisation and Another v Sudan (2009),²³⁶ the Commission held that Sudan had, by commission and omission, violated the rights to property under Article 14 of the Charter of the indigenous black African tribes in the Darfur region (Western Sudan) by failing to:

refrain [...] from the eviction, or demolition of victims' houses and other property. It did not take steps to protect the victims from the constant attacks and bombings, and the rampaging attacks by the Janjaweed militia. It doesn't matter whether they had legal titles to the land, the fact that the victims cannot derive their livelihood from what they possessed for generations means they have been deprived of the use of their property under conditions which are not permitted by article 14.²³⁷

In the case of *Centre for Minority Rights Development et al v Kenya* (2009),²³⁸ the African Commission held that despite the constitutional safeguard of the right to (p. 957) property and housing, the Kenyan Government had violated the Charter-protected right to property (Article 14)

by forcibly removing the indigenous Endorois from their ancestral lands in the West of the country to make way for game reserves. And despite the fact that the Endorois had established, and, for centuries, practised a sustainable way of life which was inextricably linked to their ancestral land, the state had not provided adequate compensation or suitable alternative land to them.

The right to housing jurisprudence established under the African Charter has both contributed to and, especially, drawn from the development of domestic case law. Thus, for example, the Constitutional Court of South Africa in the watershed case of *Republic of South Africa v Grootboom* (2000)²³⁹ ruled that the protection of the right to housing under the Constitution was violated by the government in respect of its actions regarding the forcible eviction of occupants (including Irene Grootboom) of temporary shelters erected on a local sports field, the destruction of their shacks and possessions, and the inadequacy of plans for, and implementation of, programmes for alternative means of shelter. Section 26 of the Constitution of South Africa provides that everyone has the right of access to adequate housing and that the state has an obligation to take reasonable legislative and other measures to ensure the progressive realization of the right within its available resources. In addition, section 28(1)(c) provides a specific right of shelter to children.

In reaching its determination that the government had failed in its obligations under section 26 (in the particular instance of this case, it effectively subsumed section 28(1)(c)'s right of children to shelter under the broader section 26),²⁴⁰ the Constitutional Court stressed the interconnectedness of civil and political rights with economic and social rights under the Constitution and the undoubted justiciability of the latter:

[24] The right of access to adequate housing cannot be seen in isolation. There is a close relationship between it and the other socio-economic rights. Socio-economic rights must all be read together in the setting of the Constitution as a whole. The state is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing. Their interconnectedness needs to be taken into account in interpreting the socio-economic rights, and, in particular, in determining whether the state has met its obligations in terms of them.²⁴¹

Under the South African Constitution, the Court is directed to consider relevant international law in its interpretation and application of rights guaranteed by the Constitution. Despite South Africa having only signed, but not ratified, the Covenant, the Court nonetheless confirmed that it considered the notion of 'progressive realization' under the Constitution to be substantially the same as (and in fact (p. 958) was drawn from) that contained in Article 2(1) of the Covenant. Nevertheless, while the Court was both cogniscent of, and keen to use, relevant reports and commentary on ICESCR, Article 11, it was not prepared to endorse the Economic, Social and Cultural Rights Committee's notion of a minimum core obligation in respect of the right to housing, due principally, it declared, to the sheer difficulty of doing so with any degree of precision (paragraphs 31 to 33). Furthermore, it sought to distinguish the slightly different wording used in respect of housing in the two instruments.

[35] The right delineated in section 26(1) [of the Constitution] is a right of 'access to adequate housing' as distinct from the right to adequate housing encapsulated in the Covenant. This difference is significant. It recognises that housing entails more than bricks and mortar. It requires available land, appropriate services such as the provision of water and the removal of sewage and the financing of all of these, including the building of the house itself. For a person to have access to adequate housing all of these conditions need to be met: there must be land, there must be services, there must be a dwelling. Access to land for the purpose of housing is therefore included in the right of access to adequate housing in section 26. A right of access to adequate housing also suggests that it is not only the state who is responsible for the provision of houses, but that other agents within our society, including individuals themselves, must be enabled by legislative and other measures to provide housing. The state must create the conditions for access to adequate housing for people at all economic levels of our society. State policy dealing with housing must therefore take account of different economic levels in our society.

[36] In this regard, there is a difference between the position of those who can afford to pay for housing, even if it is only basic though adequate housing, and those who cannot. For those who can afford to pay for adequate housing, the state's primary obligation lies in unlocking the system, providing access to housing

stock and a legislative framework to facilitate self-built houses through planning laws and access to finance. Issues of development and social welfare are raised in respect of those who cannot afford to provide themselves with housing. State policy needs to address both these groups. The poor are particularly vulnerable and their needs require special attention. It is in this context that the relationship between sections 26 and 27 and the other socio-economic rights is most apparent. If under section 27 the state has in place programmes to provide adequate social assistance to those who are otherwise unable to support themselves and their dependents, that would be relevant to the state's obligations in respect of other socio-economic rights.

[37] The state's obligation to provide access to adequate housing depends on context, and may differ from province to province, from city to city, from rural to urban areas and from person to person. Some may need access to land and no more; some may need access to land and building materials; some may need access to finance; some may need access to services such as water, sewage, electricity and roads. What might be appropriate in a rural area where people live together in communities engaging in subsistence farming may not be appropriate in an urban area where people are looking for employment and a place to live.

[38] Subsection (2) speaks to the positive obligation imposed upon the state. It requires the state to devise a comprehensive and workable plan to meet its obligations in terms of the subsection. However subsection (2) also makes it clear that the obligation imposed upon the state is not an absolute or unqualified one. The extent of the state's obligation is defined by three key elements that are considered separately: (a) the obligation to 'take reasonable (p. 959) legislative and other measures'; (b) 'to achieve the progressive realisation' of the right; and (c) 'within available resources.'²⁴²

Aside from these invaluable jurisprudential pointers provided by this case, perhaps the most telling feature of Yacoob J.'s reasoning on behalf of the Court was his careful placing of constitutional interpretation in the context of the economic and administrative realities of a still-developing state like South Africa.

[94] I am conscious that it is an extremely difficult task for the state to meet these obligations in the conditions that prevail in our country. This is recognised by the Constitution which expressly provides that the state is not obliged to go beyond available resources or to realise these rights immediately. I stress however, that despite all these qualifications, these are rights, and the Constitution obliges the state to give effect to them. This is an obligation that courts can, and in appropriate circumstances, must enforce.

[95] Neither section 26 nor section 28 entitles the respondents to claim shelter or housing immediately upon demand...However, section 26 does oblige the state to devise and implement a coherent, co-ordinated programme designed to meet its section 26 obligations. The programme that has been adopted and was in force in the Cape Metro [the relevant administrative authority] at the time that this application was brought, fell short of the obligations imposed upon the state by section 26(2) in that it failed to provide for any form of relief to those desperately in need of access to housing.²⁴³

The limits of the rights to both property and housing have also been subject to analysis in the case of *Leite v Government of Seychelles*,²⁴⁴ in which the Seychelles Constitutional Court in effect used the 'public interest' in the right to housing under Article 34 of the Constitution as a justification to compulsorily acquire land owned by Mr Leite. The Court dismissed the petitioner's claims that under Article 26 of the Constitution his right to property was protected against such acquisition. It argued that provided Mr Leite was fully compensated (and he did not dispute that he had been), then the state had the power under Article 26(3)(b) to acquire land when in the public interest to do so. In this case, this was substantially satisfied by the plans to build thirty-six housing units on the land intended in part to advance the state's fulfilment of its duty under Article 34 to assist those in need of housing.²⁴⁵

Come what may, however, appropriate consultation with, and provision of information to, those affected by actions that compel people to leave their abode is a strict minimum legal requirement. Thus, for example, in *Sesana et al v Attorney-General*,²⁴⁶ the High Court of Botswana found

against the Government for failing to consult with the applicants before summarily terminating the provision of essential services (power, water and sanitation) to their dwellings, on the grounds, in part, that to do so violated their constitutionally protected right to life.²⁴⁷

The case law of the American Convention on Human Rights regarding housing has been marked by concerns over the displacement and discriminatory treatment (p. 960) of indigenous peoples as a consequence of dispossession, conflict or land acquisitions for commercial uses, such as logging, large-scale farming, hydro-electricity generation and mineral exploration. These cases have usually centered on alleged violations of rights to property (Article 21), life (Article 4) or fair trial (Articles 8 and 25), and have drawn out both the often dire consequences of forced evictions and what governments can do to try to remedy the damage caused.

In two separate cases against Paraguay brought by the Yakye Axa Indigenous Community (in 2005) and the Sawhoyamaya Indigenous Community (in 2006),²⁴⁸ the Inter-American Court on Human Rights condemned the government for permitting ancestral lands to be acquired by corporations without due process in terms of adequate reparation and access to remedies, which actions resulted in both communities living in circumstances of squalor without adequate food, clean water, medical care or proper sanitation, and with no access to even basic education services. It held in both cases that Paraguay had violated its obligations to protect the indigenous communities' rights to property (Article 21) and fair trial (Articles 8 and 25), and additionally, in respect of the Sawhoyamaya, their rights to life and children's rights. The Court ordered the Paraguayan Government to compensate the two communities accordingly, to provide the adequate housing and related services, including and especially medical and sanitation 'necessary for survival', and to 'enact into its domestic laws and within a reasonable time the legislative, administrative or other measures necessary to establish a mechanism to claim restitution of the ancestral lands of the members of indigenous communities, that be efficient in enforcing [sic] their rights over traditional lands'.²⁴⁹

In other land, property and housing-related cases, agreements have been reached between the parties before the dispute reached the Court. Thus, in *Community of San Vicente Los Cimientos v Guatemala* (2003), after nearly 700 indigenous families had fled their homes, lands and livestock due to repeated military conflicts across the 1980s and 1990s, a 'friendly settlement' was concluded between the Community and the Government of Guatemala before the Inter-American Commission on Human Rights in which the Government agreed, among other things, 'to provide humanitarian assistance, minimal housing, and basic services through the appropriate official agencies'.²⁵⁰ In *Mercedes Julia Huenteao Beroiza et al v Chile* (2004), members of the Mapuche Pehuenche people disputed the terms and conditions under which they were to be expelled from their traditional lands in advance of the building of a hydroelectric plant. Their contentions (p. 961) included particular concerns regarding housing and led to the following being included in a Memorandum of Understanding registered with the Inter-American Commission between the Government and the Mapuche Pehuenche:

The Government, through the Ministry of Housing and Urban Development, and in accordance with the legal framework in force, shall implement a Housing Program whereunder it shall grant housing subsidies for the construction of homes for the Pehuenche property owners here present, who are relocated as a consequence of the agreed land swaps, as well as for their families...²⁵¹

Another relevant right covered by the Convention is that to free movement and residence (Article 22). Although this right might at first appear similar to the right to housing under Article 11 of the ICESCR, it is in fact peculiarly associated with the freedom of movement under the American Convention. Article 22(1) reads: 'Every person lawfully in the territory of a State Party has the right to move about in it and reside in it, subject to the provisions of the law.' That said, this provision has at times been utilized in a manner that comes close to the constructive protection of the right to adequate housing. In *Ituango Massacres v Colombia* (2006),²⁵² the government was held responsible for acquiescing to, or assisting, paramilitary groups in their theft of livestock and the destruction of homes in the El Aro and La Granja areas of Colombia and thereby violating its obligations under Article 22, as well as Article 11 (right to privacy and protection against arbitrary interference with one's private life, family and home). In formulating its reasoning, the Court cited with approval the policy requirements of General Comment No. 4 of the Committee on Economic, Social and Cultural Rights, in stating that since many of the inhabitants of the affected areas had lost their homes, 'the state must implement a housing program to provide appropriate housing to the surviving victims'.²⁵³

The Inter-American Court has also considered a number of cases concerning the conditions

endured by prisoners and other detainees in several South American states. Once again, while undoubtedly pertaining to the right to be adequately housed in a general sense, the Court's deliberations have focused on the related rights to life (Article 4) and human treatment (Article 5), as well as the right to fair trial (Articles 8 and 25). In the case of *Juvenile Re-education Institute v Paraguay* (2004),²⁵⁴ the Court held that Paraguay had violated, inter alia, Articles 4 and 5 of the Convention, as well as Article 19 (which protects the rights of children and minors), for failing to ensure that all the inmates at the institute (the vast majority of whom were not convicted but on remand awaiting trial) had decent living conditions, by exposing inmates to cruel, (p. 962) inhuman and degrading treatment, and by omitting to take the special measures of protection that were required of it where children are concerned.²⁵⁵ Similarly, in *López Álvarez v Honduras* (2006),²⁵⁶ the Inter-American Court determined that by detaining Mr López Álvarez in overcrowded prisons, failing to provide him with adequate food, water and hygienic conditions, failing to separate him from convicted inmates, and persisting in detaining him for three months after an appellate court's confirmation of his acquittal, Honduras had violated its obligations under Article 5, as well as Article 7 (right to personal liberty) and Articles 8 and 25 (rights to fair trial and judicial protection respectively).²⁵⁷

The European Convention on Human Rights (1950) obliges states to protect everyone's 'right to respect for his private and family life, his home and his correspondence' under Article 8. The reference to respect for one's home, however, has only limited overlap with the notion of the right to adequate housing under the ICESCR. The European Court of Human Rights has indicated that the provision does protect the physical security of the home and one's belongings—so, for example, the destruction of the homes of Greek Cypriots by the Turkish military constituted a violation of Article 8²⁵⁸—but it has also indicated that the provision does not encompass the right to a home.²⁵⁹

The extent to which Article 8 protects against eviction has also been tested. In *Connors v United Kingdom* (2004), the European Court of Human Rights held that a local authority's forced eviction of gypsies from a caravan site where they had set up home was contrary to Article 8.²⁶⁰ The Court's concern in this case was with the manner in which the eviction had been executed (by force using sheriffs and the police), and not with the fact that despite permission to establish residence having been granted, the local authority claimed that the conditions of that permission had been broken. In another case involving the accommodation of travellers in the United Kingdom, however, the Court made clear that there exist justifiable limits that a state can place on people establishing residences, noting, specifically, that refusing planning permission to a gypsy to establish a home in a particular area did not amount to a breach of Article 8 provided that the procedure for so determining was fair and reasonable.²⁶¹

The most direct protection of housing rights under the Council of Europe's human rights regime is provided in the Revised European Social Charter. The original European Social Charter of 1961 contained no express provision (p. 963) for housing,²⁶² but under its revision in 1996, a new Article 31 was added, which reads:

Article 31—The right to housing

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard;
2. to prevent and reduce homelessness with a view to its gradual elimination;
3. to make the price of housing accessible to those without adequate resources.

The nature and extent of this obligation was investigated in the case of *FEANTSA v France* (2008), which concerned a collective complaint brought by the European Federation of National Organisations Working with the Homeless (FEANTSA) against France regarding the adequacy of the government's housing policies and practices in terms of access to and allocation of housing, habitability standards, and eviction protocols and re-housing programmes. In a wide-ranging and unanimous decision, the Charter's overseeing authority—the European Committee on Social Rights—held that violations had occurred in respect of the following grounds:²⁶³

- (i) ...of insufficient progress as regards the eradication of substandard housing and lack of proper amenities of a large number of households;
- (ii) ...of unsatisfactory implementation of the legislation on the prevention of evictions and the lack of measures to provide rehousing solutions for evicted

families;

(iii) ...that measures currently in place to reduce the number of homeless are insufficient, both in quantitative and qualitative terms;

(iv) ...of insufficient supply of social housing accessible to low-income groups;

(v) ...of the malfunctioning of the social housing allocation system, and the related remedies;

(vi) ...of the deficient implementation of legislation on stopping places for Travellers. ²⁶⁴

In response, it should be noted, the French Government indicated that it had already

...taken measures to bring the situation into conformity with the revised Charter and undertakes to follow these up by taking into account the said report, namely by implementing the Act on the enforceable right to housing of 5 March 2007... :

- which establishes an effective appeal in cases of the refusal of social housing to persons in a priority situation;
- which has led to an order issued by the *juge des référés* of the Paris administrative court dated 20 May 2008, in which, for the first time, a mother living with her two (p. 964) children in an emergency accommodation and social reintegration centre has obtained the suspension of a decision of a mediation commission which had considered that her request for social housing did not have 'priority' nor was it 'urgent';
- and which foresees an important programming of budgetary resources to protect against exclusion the most vulnerable persons in a priority situation, such as the homeless or evicted persons of good faith. ²⁶⁵

In terms then of both the stance of the European Committee on Social Rights and the response of the French Government, this case reflects an apparently much deeper willingness to address the precise policy and practice dimensions of a state's housing programme than is possible either under the ECHR or was possible under the old European Social Charter.

Some of the most influential judgments in domestic law involving housing have been made by the Supreme Court of India concerning the meaning and extent of right to life as protected under Article 21 of the Indian Constitution. The Supreme Court has developed a line of jurisprudence that emphasizes the critical importance of the various elements that make up a life worth living, and not just being alive. Thus, in *Olga Tellis v Bombay Municipal Corporation*,²⁶⁶ for example, the Court held that:

The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes like liveable, must be deemed to be an integral component of the right to life.²⁶⁷

In reaching this conclusion that the right to livelihood is an essential element to the right to life, the Court relied on the Indian Constitution's so-called 'Directive Principles of State Policy', which though not themselves enforceable, are nonetheless considered constitutive of the right to life which is binding on the state. Specifically, Article 39 states:

39. Certain principles of policy to be followed by the State.

- The State shall, in particular, direct its policy towards securing—

- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

- (p. 965) (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- (d) that there is equal pay for equal work for both men and women;
- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

The Supreme Court continued, in its judgment in *Olga Tellis*:

The principles contained in Articles 39(a) and 41 [a Directive Principle regarding just and humane working conditions] must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer panderism to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21.²⁶⁸

In terms specifically, of the right to housing, or indeed even a right to reside in a public place, the Court has been circumspect. Thus, in *Olga Tellis*, it condemned only the summary nature of the eviction of the pavement dwellers and the lack of any adequate provision for their subsequent rehousing and general welfare. It stopped short, however, of stipulating that the state is under a positive obligation to provide housing to the homeless or otherwise needy:

No one has the right to make use of a public property for a private purpose without the requisite authorisation and, therefore, it is erroneous to contend that the pavement dwellers have the right to encroach upon pavements by constructing dwellings thereon. Public streets, of which pavements form a part, are primarily dedicated for the purpose of passage and, even the pedestrians have but the limited right of using pavements for the purpose of passing and trespassing. So long as a person does not transgress the limited purpose for which pavements are made, his use thereof is legitimate and lawful. But, if a person puts any public property to a use for which it is not intended and is not authorised so to use it, he becomes a trespasser.²⁶⁹

As such, the Court concluded, the local authority was entitled to remove the pavement dwellers. So, while this oft-cited case is important in its recognition of the wide compass of the right to life, the role that the right to adequate housing plays in that endeavour is limited.

(p. 966) In the subsequent case of *Shantistar Builders v Narayan Khimalal Totame* (1990), the Indian Supreme Court demonstrated a greater willingness to embrace a right to 'reasonable accommodation' as one of the essential elements of the right to life (under Article 21 of the Constitution), and thereby be more prepared to instruct governmental authorities over how they ought to realize that right. In this case, the court required the state authority to attend to the needs of the 'weaker sections'²⁷⁰ of society as indeed its policy formally obliged it to do.

9. Basic needs of man have traditionally been accepted to be three—food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect—physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable

house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud-built fire-proof accommodation.

10. With the increase of population and the shift of the rural masses to urban areas over the decades the ratio of poor people without houses in the urban areas has rapidly increased. This is a feature which has become more perceptible after independence. Apart from the fact that people in search of work move to urban agglomerations, availability of amenities and living conveniences also attract people to move from rural areas to cities. Industrialisation is equally responsible for concentration of population around industries. These are feature which are mainly responsible for increase in the homeless urban population. Millions of people today live on the pavements of different cities of India and a greater number live animal like existence in jhuggis.

11. The Planning Commission took note of this situation and was struck by the fact that there was no corresponding rise in accommodation with the growth of population and the shift of the rural people to the cities. The growing realisation of this disparity led to the passing of the Act and acquisition of vacant sites for purposes of housing. Considerable attention has been given in recent years to increasing accommodation though whatever has been done is not at all adequate. The quick growth of urban population overshadows all attempts of increasing accommodation. Sections 20 and 21 of the Act vest power in the State Governments to exempt vacant sites from vesting under the Act for purposes of being taken over if housing schemes are undertaken by owners of vacant urban lands. Section 21 specifically emphasises upon [sic] weaker sections of the people.²⁷¹

All that said, however, India, like many developing countries, continues to struggle to accommodate the slum-dwelling, urban poor in particular, who flock to cities in search of work and opportunity. Thus, despite the official policy (and (p. 967) sometimes because of it), coercion and its consequences are too often resorted to, or permitted, by government authorities. Indeed, the Special Rapporteur on adequate housing noted 'with grave concern' in a 2005 Report:²⁷²

...that Governments continue the practice of mass evictions in cities as a means of creating 'world-class cities', lured by the prospect of international investment. Economic globalization has created competition amongst cities that is to the detriment of the poor. The example of Mumbai, India, is very recent. Between December 2004 and January 2005, 80, 000 homes were demolished rendering 300, 000 people homeless. For the vast majority of those evicted there was no advance notice, the evictions were violently carried out, and the belongings, including identity cards, of many were damaged or burnt. Those evicted have not been offered alternative accommodation, clearly exacerbating the situation of homelessness in Mumbai. The Chief Minister explained these brutal demolitions as the only way to create a 'world-class' city in the future.

International Cooperation

Although the ICESCR lacks any general stipulation as to jurisdiction of a sort equivalent to that contained in Article 2(1) of the ICCPR,²⁷³ it does make clear its intention that states should cooperate in the fulfilment of the rights contained within it. Thus, Article 2(1) of the ICESCR, as discussed in the chapter on that provision, provides that states shall take steps towards the progressive realization of the Covenant's rights by various means, including 'international assistance and co-operation'. Similar words are used in respect of a number of individual rights, including the right to an adequate standard of living, under Article 11 which in subparagraph (1) refers to the 'essential importance of international co-operation based on free consent' in the realization of the right, and in subparagraph (2) stresses the need for 'international co-operation' in the design and implementation of programmes to combat hunger globally.

While the subject of the potential for arguing that the ICESCR generally, and Article 11 specifically, impose upon states extra-territorial responsibilities has gathered pace in recent years, the fact remains that in terms of legal obligation the Covenant, the Committee and the relevant Special Rapporteurs talk mainly in hope rather than expectation. Certainly, this is a field ripe for debate and development, but it is one which, at present, is dominated more by questions (p. 968) than answers. As Langford, Coomans and Isa perceptively note, '[e]ven if duties do exist, what sort of obligations flow from the duty in a world of mass poverty and deprivation with limited global resources? Can they be identified with any precision? Who is the duty-bearer when different

States have the capacity to assist?'²⁷⁴

That said, considerable effort is being invested in delineating just what expectations might legitimately be made of states in terms of their international assistance and cooperation, and why such actions are so important in respect of Article 11. Regarding the right to food, for example, the Economic, Social and Cultural Rights Committee proclaimed in its Statement on the World Food Crisis in 2008²⁷⁵ that the crisis 'represents a failure to meet the obligations to ensure an equitable distribution of world food supplies in relation to need. The food crisis also reflects failure of national and international policies to ensure physical and economic access to food for all'.²⁷⁶ It was necessary, therefore, in the opinion of the Committee, that all states take action both to address the immediate causes of the food crisis, individually through national measures, as well as internationally through international cooperation and assistance,²⁷⁷ and 'to pay attention to the longer-term structural causes of the crisis and to focus attention on the gravity of the underlying causes of food insecurity, malnutrition and undernutrition, that have persisted for so long'.²⁷⁸

Reflecting the programmatic nature of the obligations imposed on states by Article 11(2) in respect of addressing world hunger, the Committee pursued both of its above appeals to immediate and long-term needs by providing (in paragraphs 11 and 13 respectively) specific suggestions as to what it expects states to do:

11. The Committee therefore urges States to take urgent action, including by:

- Taking immediate action, individually and through international assistance, to ensure freedom from hunger through, inter alia, the provision and distribution of emergency humanitarian aid without discrimination. Humanitarian aid should be provided in cash resources wherever possible.
- Where food aid is provided, care should be taken to ensure that food is purchased locally wherever possible and that it does not become a disincentive for local production. Donor countries should prioritize assistance to States most affected by the food crisis;
- Limiting the rapid rise in food prices by, inter alia, encouraging production of local staple food products for local consumption instead of diverting prime arable land suitable for food crops for the production of agrofuels, as well as the use of food crops (p. 969) for the production of fuel, and introducing measures to combat speculation in food commodities;
- Establishing an international mechanism of coordination to oversee and coordinate responses to the food crisis and to ensure the equitable distribution of food supplies according to need, and that the policy measures adopted will respect, protect and fulfill the realization of the right to adequate food and freedom from hunger.

...

13. The Committee urges States parties to address the structural causes at the national and international levels, including by:

- Revising the global trade regime under the WTO to ensure that global agricultural trade rules promote, rather than undermine, the right to adequate food and freedom from hunger, especially in developing and net food-importing countries;
- Implementing strategies to combat global climate change that do not negatively affect the right to adequate food and freedom from hunger, but rather promote sustainable agriculture, as required by article 2 of the United Nations Framework Convention on Climate Change;
- Investing in small-scale agriculture, small-scale irrigation and other appropriate technologies to promote the right to adequate food and freedom from hunger for all, including implementing the recommendations of the International Assessment of Agricultural Science and Technology for Development (IAASTD) of 2008.
- Introducing and applying human rights principles, especially those relating to the right to adequate food and freedom from hunger, by undertaking ex ante impact assessments of financial, trade and development policies at both the national and international levels, to ensure that their bilateral and

multilateral financial, trade and development commitments do not conflict with their international human rights obligations, particularly under the Covenant.

- Applying and reinforcing the FAO's 'Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security', ²⁷⁹ in the light of the present food crisis. ²⁸⁰

In its General Comment No. 12 (1999), the Committee separates the various forms of international assistance and cooperation into what states parties ought to do bilaterally and multilaterally, either through their joint and several responsibilities under Articles 55 and 56 of the UN Charter, or their commitments to other relevant international organizations, such as the World Food Programme (p. 970) and the Food and Agriculture Organization, as well as the World Bank and the IMF:

International obligations

States parties

36 ...States parties should 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.

37. States parties should refrain at all times from food embargoes or similar measures which endanger conditions for food production and access to food in other countries. Food should never be used as an instrument of political and economic pressure...

States and international organizations

38. States have a joint and individual responsibility, in accordance with the Charter of the United Nations, to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons...

39. Food aid should, as far as possible, be provided in ways which do not adversely affect local producers and local markets, and should be organized in ways that facilitate the return to food self-reliance of the beneficiaries...

The United Nations and other international organizations

41. The international financial institutions, notably the International Monetary Fund (IMF) and the World Bank, should pay greater attention to the protection of the right to food in their lending policies and credit agreements and in international measures to deal with the debt crisis... ²⁸¹

The Special Rapporteur on the right to food has been forthright in urging states to take seriously their obligations to cooperate by taking actions that positively promote the provision of and access to food, and refraining from actions that negatively impact on the same goals. In so doing, the Special Rapporteur adopted a broad perspective as to what these actions entail, encompassing, that is, not only states' responsibilities regarding the actions of their own agencies, but also their regulation of the operations of relevant non-state entities that affect food security in other countries.

29. It is certainly clear that in an increasingly globalized world, the actions of one Government can often have repercussions (positive and negative) on the right to food of people in another country (e.g. in the case of agricultural trade). Governments should therefore have a responsibility to ensure that national policies do not have negative effects on the right to food of people in other countries. In the context of extranational obligations, to respect the right to food means that States must not take actions that negatively impact on the right to food of people in another country, (e.g. refrain from food embargoes, or from using food as an instrument of political and economic pressure, or ensuring that their trade relations do not violate the right to food of people in other countries). The obligation to protect implies that States have a duty to regulate their companies and corporations that operate in other countries to prevent violations. The obligation to facilitate access to food requires the State to build a social and (p. 971)

international order in which the right to food can be fully realized. States should also take account of their 'extra-national obligations' in their deliberations in multilateral organizations, including the IMF, World Bank and the World Trade Organization (WTO).

30. Therefore, Governments should also have the obligation to refrain from taking action that negatively affects the right to food in other countries. The Committee on Economic, Social and Cultural Rights has stated, for example, that international obligations under the right to food mean that States 'should refrain at all times from food embargoes or similar measures which endanger conditions for food production and access to food in other countries. Food should never be used as an instrument of political and economic pressure.' In the 1993 Vienna Declaration and Programme of Action, States reaffirmed that 'food should not be used as a tool for political pressure'. The long-standing unilateral embargo against Cuba could be seen as a violation of this obligation. Although Cuba has been allowed to import some food from the United States since the disaster of Hurricane Michelle in November 2001, the embargo is nonetheless creating severe problems for the import of adequate foodstuffs to feed Cuba's population. This is the opinion of the General Assembly which, on 12 November 2002, for the eleventh year in a row, condemned the unilateral sanctions of the United States against Cuba and reiterating that these constitute a violation of the Charter of the United Nations and international law. The Special Rapporteur has been invited to make an official visit to Cuba to verify the impact of the embargo on the right to food.²⁸²

Furthermore, and in respect specifically of international cooperation in development aid, the Special Rapporteur has promoted a human-rights-based approach that would, he argues, not only enhance the level of engagement between donor and target states, but also assure more effective developmental results.²⁸³

27. The current reform process of international aid is based on the principles of ownership, alignment, harmonization, managing for results, and mutual evaluation, which are made explicit in the Paris Declaration on Aid Effectiveness. An explicit endorsement of a human rights framework for the implementation of these principles could make them more concrete and operational. At a general level, human rights-based approaches to development cooperation recognize people 'as key actors in their own development, rather than passive recipients of commodities and services': they emphasize participation as both a means and a goal; they seek to empower, and thus should combine top-down and bottom-up approaches; both outcomes and processes should be monitored and evaluated, following the adoption of measurable goals and targets in programming; all stakeholders should be involved in analysis; and the programmes should focus on marginalized, disadvantaged, and excluded groups, and aim at reducing disparity. The human right to adequate food in particular should be guiding countries' choices of development strategies, and provide an objective benchmark to evaluate the effectiveness of development efforts, thus improving the accountability of both donors and partners.

(p. 972) A further example of such exhortation to cooperate is to be found in the recently established Food Assistance Convention (2012),²⁸⁴ which aims to improve food security between and within countries, by pursuing the following goals:

Article 1

Objectives

The objectives of this Convention are to save lives, reduce hunger, improve food security, and improve the nutritional status of the most vulnerable populations by:

- (a) addressing the food and nutritional needs of the most vulnerable populations through commitments made by the Parties to provide food assistance that improves access to, and consumption of, adequate, safe and nutritious food;
 - (b) ensuring that food assistance provided to the most vulnerable populations is appropriate, timely, effective, efficient, and based on needs and shared principles;
- and

(c) facilitating information-sharing, cooperation, and coordination, and providing a forum for discussion in order to improve the effective, efficient, and coherent use of the Parties' resources to respond to needs.

Overall, however, it remains the case that while the core content of what the right to food entails is increasingly well defined, the precise jurisdictional boundaries of states' obligations, especially in respect of their extra-territorial responsibility for the actions of corporations within their jurisdiction, remain unclear.²⁸⁵

Similar sentiments are echoed in respect of the right to water under Article 11, in respect of which, the Committee's General Comment No. 15 stresses states' responsibilities regarding the extra-territorial actions of private actors (including corporations) over which they have jurisdiction, and in their capacities as members of relevant international organizations, the need for states to promote the right to water in the policy formulation and practices of those bodies. In addition, however, and in recognition of the fundamental imports for the right to water of the transboundary management of rivers, lakes and other water sources and repositories, the General Comment also stresses states' duties to assist other states to realize the right to water and, especially, to refrain from actions that inhibit such realization:

International obligations

30. Article 2, paragraph 1, and articles 11, paragraph 1, and 23 of the Covenant require that States parties recognize the essential role of international cooperation and assistance and take joint and separate action to achieve the full realization of the right to water.

31. 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 (p. 973) 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.

32. States parties should refrain at all times from imposing embargoes or similar measures, that prevent the supply of water, as well as goods and services essential for securing the right to water.* Water should never be used as an instrument of political and economic pressure. In this regard, the Committee recalls its position, stated in its General Comment No. 8 (1997), on the relationship between economic sanctions and respect for economic, social and cultural rights.

* In General Comment No. 8 (1997), the Committee noted the disruptive effect of sanctions upon sanitation supplies and clean drinking water, and that sanctions regimes should provide for repairs to infrastructure essential to provide clean water.

33. Steps should be taken by States parties to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries. Where States parties can take steps to influence other third parties to respect the right, through legal or political means, such steps should be taken in accordance with the Charter of the United Nations and applicable international law.

34. Depending on the availability of resources, States should facilitate realization of the right to water in other countries, for example through provision of water resources, financial and technical assistance, and provide the necessary aid when required. In disaster relief and emergency assistance, including assistance to refugees and displaced persons, priority should be given to Covenant rights, including the provision of adequate water. International assistance should be provided in a manner that is consistent with the Covenant and other human rights standards, and sustainable and culturally appropriate. The economically developed States parties have a special responsibility and interest to assist the poorer developing States in this regard.²⁸⁶

35. States parties should ensure that the right to water is given due attention in international agreements and, to that end, should consider the development of

further legal instruments. With regard to the conclusion and implementation of other international and regional agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to water. Agreements concerning trade liberalization should not curtail or inhibit a country's capacity to ensure the full realization of the right to water.

36. States parties should ensure that their actions as members of international organizations take due account of the right to water. Accordingly, States parties that are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should take steps to ensure that the right to water is taken into account in their lending policies, credit agreements and other international measures.²⁸⁷

(p. 974) The General Comment adds further a specific exhortation directed at a wide range of such international organizations to cooperate, aid and assist states in the implementation of the right to water:

60. United Nations agencies and other international organizations concerned with water, such as WHO, FAO, UNICEF, UNEP, UN-Habitat, ILO, UNDP, the International Fund for Agricultural Development (IFAD), as well as international organizations concerned with trade such as the World Trade Organization (WTO), should cooperate effectively with States parties, building on their respective expertise, in relation to the implementation of the right to water at the national level. The international financial institutions, notably the International Monetary Fund and the World Bank, should take into account the right to water in their lending policies, credit agreements, structural adjustment programmes and other development projects (see General Comment No. 2 (1990)), so that the enjoyment of the right to water is promoted. When examining the reports of States parties and their ability to meet the obligations to realize the right to water, the Committee will consider the effects of the assistance provided by all other actors. The incorporation of human rights law and principles in the programmes and policies by international organizations will greatly facilitate implementation of the right to water. The role of the International Federation of the Red Cross and Red Crescent Societies, International Committee of the Red Cross, the Office of the United Nations High Commissioner for Refugees (UNHCR), WHO and UNICEF, as well as non-governmental organizations and other associations, is of particular importance in relation to disaster relief and humanitarian assistance in times of emergencies. Priority in the provision of aid, distribution and management of water and water facilities should be given to the most vulnerable or marginalized groups of the population.²⁸⁸

As regards the right to adequate housing, the emphasis has been on the assistance that can and ought to be rendered to states by intergovernmental organizations, and the scope for international cooperation between such organizations and states concerning the promotion of the right generally, and preventing forced evictions in particular. Thus, General Comment No. 4 (1991) provides in paragraph 19:

Finally, article 11 (1) concludes with the obligation of States parties to recognize 'the essential importance of international cooperation based on free consent'. Traditionally, less than 5 per cent of all international assistance has been directed towards housing or human settlements, and often the manner by which such funding is provided does little to address the housing needs of disadvantaged groups. States parties, both recipients and providers, should ensure that a substantial proportion of financing is devoted to creating conditions leading to a higher number of persons being adequately housed. International financial institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing. States parties should, when contemplating international financial cooperation, seek to indicate areas relevant to the right to adequate housing where external financing would have the most effect. Such requests should take full account of the needs and views of the affected groups.²⁸⁹

(p. 975) And in the Basic Principles and Guidelines on Development-Based Evictions and Displacement developed by the Special Rapporteur on adequate housing in 2007, Part VIII states:

VIII. Role of the international community, including international organizations

71. The international community bears an obligation to promote, protect and fulfil the human right to housing, land and property. International financial, trade, development and other related institutions and agencies, including member or donor States that have voting rights within such bodies, should take fully into account the prohibition on forced evictions under international human rights law and related standards.

72. International organizations should establish or accede to complaint mechanisms for cases of forced evictions that result from their own practices and policies. Legal remedies should be provided to victims in accordance with those stipulated in these guidelines.

73. Transnational corporations and other business enterprises must respect the human right to adequate housing, including the prohibition on forced evictions, within their respective spheres of activity and influence.²⁹⁰

While the promotion of international cooperation and assistance in respect of all the rights covered by the Covenant is certainly a desirable goal, it falls short imposing a clear obligation on states. Thus, the Optional Protocol to the Covenant (OP) offers little by way of defining the nature of the responsibilities imposed on states by the requirement that they ought to provide international assistance and cooperation as per the Covenant's Articles 2(1) and 11(1). As a matter of fact, the relevant provision in the OP (Article 14) focuses more on the responsibilities of the Committee than the duties of the states in this regard, save a rather cryptic reiteration of states' obligation in sub-paragraph 4 of Article 14.

Article 14 International assistance and cooperation

1. The Committee shall transmit, as it may consider appropriate, and with the consent of the State Party concerned, to United Nations specialized agencies, funds and programmes and other competent bodies, its views or recommendations concerning communications and inquiries that indicate a need for technical advice or assistance, along with the State Party's observations and suggestions, if any, on these views or recommendations.

2. The Committee may also bring to the attention of such bodies, with the consent of the State Party concerned, any matter arising out of communications considered under the present Protocol which may assist them in deciding, each within its field of competence, on the advisability of international measures likely to contribute to assisting States Parties in achieving progress in implementation of the rights recognized in the Covenant.

3. A trust fund shall be established in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, with a view to providing expert and technical assistance to (p. 976) States Parties, with the consent of the State Party concerned, for the enhanced implementation of the rights contained in the Covenant, thus contributing to building national capacities in the area of economic, social and cultural rights in the context of the present Protocol.

4. The provisions of the present article are without prejudice to the obligations of each State Party to fulfil its obligations under the Covenant.

Certainly, the jurisdictional limitation in the communications provision in Article 2 of the OP to the Covenant, does not appear to envisage any avenue for individuals (or groups) from one state to submit a communication against another state claiming that by the latter's actions their human rights have been infringed upon.²⁹¹ It is, therefore, somewhat optimistic in this regard to argue that because Article 2(1) of the Covenant makes no mention of jurisdiction (but rather does refer to international assistance and cooperation), then thereby there is 'no justification to include a jurisdictional limitation in the text of the Optional Protocol'.²⁹²

The 2011 Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights also have little to add in respect of international cooperation and assistance, as their focus is on delineating the extent of the extraterritorial obligations of

individual states in the field. But, they do reiterate the various formulations of states' cooperative duties stipulated in relevant human rights instruments (including the ICESCR) and agreements establishing relevant international organizations (see principles 15 to 18 and 32), and they make particular mention of the expectations made of states that require assistance (they have an 'obligation to seek international assistance': principle 34) and states that receive such requests, or are otherwise able to assist (they 'must provide international assistance': principle 33).²⁹³

The end result is that despite all of these initiatives, efforts and exhortations for more effective international cooperation, the responsibilities of states remain more moral than mandatory. As Margot Salomon puts it, '[i]nsofar as this fact reflects the shortcomings of international law, it must first point to nothing more abstruse than a lack of political will, ' which lack, it must be said, invariably marks the difference between the protection of human rights and their denial.²⁹⁴ And so it is with the right to an adequate standard of living under the Covenant.

Footnotes:

- ¹ UNGA Res. 217 A(III), Universal Declaration of Human Rights (10 December 1948), Article 25.
- ² The original draft separated out the right to an adequate standard of living and the specific rights to food, clothing and housing into two Articles, but under a series of amendments submitted by a host of states, the two were merged: see UNGA Third Committee, A/3525 (9 February 1957), [120]-[144]
- ³ A point underlined by several delegates during the drafting of the Article; thus, for example, Mr Ahmed (Pakistan) referred to the rights in Article 11 as lying 'at the root of all civilized existence', and Mr Tsuruoka (Japan) reasoned that 'article 11 had a place distinct from other articles, for it was concerned with matters of life and death': UNGA Third Committee, A/C.3/SR.742 (25 January 1957), [31] and [39], respectively.
- ⁴ See, in particular, UN Commission on Human Rights, E/CN.4/SR.222 (Mr Yu (China)), [17], and E/CN.4/SR.223 (Mr Valenzuela (Chile)), [5], (Mr Cassin (France)), [6], (Mr Metha (India)), [7].
- ⁵ Matthew Craven, *The International Covenant on Economic, Social, and Cultural Rights: A Perspective on Its Development* (Clarendon Press, Oxford, 1995) ('*The ICESCR*'), 292.
- ⁶ Craven, *The ICESCR*, 293.
- ⁷ UNGA Third Committee, A/C.3/SR.740-743 (24-28 January 1957).
- ⁸ UNGA Third Committee, A/C.3/SR.742 (25 January 1957), [24].
- ⁹ UNGA Third Committee, A/C.3/SR.742 (25 January 1957), [31] (per Mr Mufti (Syria)).
- ¹⁰ UNGA Third Committee, A/C.3/SR.742 (25 January 1957), [39] (per Mr Tsuruoka (Japan)).
- ¹¹ The somewhat haphazard and unusually hasty drafting process that spawned Article 11(2) yielded, 'not surprisingly', in the words of Philip Alston (a former Chair of the Committee on Economic, Social and Cultural Rights), 'a relatively confused, and by no means all-embracing mixture of means and ends': Philip Alston, 'International Law and the Human Right to Food' in Philip Alston and Katarina Tomaševski (eds), *The Right to Food* (Martinus Nijhoff Publishers, Dordrecht, 1984), 34.
- ¹² UNGA Third Committee, A/C.3/SR.1266 (18 November 1963), [52]-[56].
- ¹³ That is, except in respect of the numbers of undernourished people worldwide. According to the Food and Agricultural Organization, the number of people chronically undernourished measured across 2010-12 is 868 million (approximately 12.5 per cent of the world's population), and the prevalence of food inadequacy stands at 19.1 per cent of across the globe (that is, some 1.3 billion people): see Food and Agricultural Organization, 'Food Security Indicators', <http://www.fao.org/fileadmin/templates/ess/foodsecurity/Food_Security_Indicators.xlsx>.
- ¹⁴ UNGA Third Committee, A/C.3/SR.1264 (15 November 1963), [4]; whose particular concern was that in this respect the Third Committee may be engaging in matters that are properly the subject of the UNGA Second ('Economic and Financial') Committee.
- ¹⁵ UNGA Third Committee, A/C.3/SR.1266 (18 November 1963), [57]-[63].
- ¹⁶ UNGA Third Committee, A/C.3/SR.1267 (18 November 1963), [8] (per Mr Gilchrist (Australia)), and UNGA Third Committee, A/C.3/SR.1268 (18 November 1963), [8] (per Mr Herndl (Austria)).
- ¹⁷ UNGA Third Committee, A/C.3/SR.1269 (19 November 1963), [2].

- ¹⁸ UNGA Third Committee, A/C.3/SR.1269 (19 November 1963), [9].
- ¹⁹ UNGA Third Committee, A/C.3/SR.1269 (19 November 1963), [5].
- ²⁰ As Mr Quiambao (Philippines) remarked: 'It was hard to predict what practical effect a provision of that kind would have...'; UNGA Third Committee, A/C.3/SR.1267 (18 November 1963), [6]. Certainly, even from the perspective of obtaining an adequate standard of living as one of the consequences of the alleviation of extreme poverty, the scale and complexity of the issues involved is immense. In their articulation of this perspective, the UN Guiding Principles on Extreme Poverty and Human Rights make the point abundantly clear by stressing the fact that an adequate standard of living is 'an overarching right that encompasses elements essential for human survival, health and physical and intellectual development': Human Rights Council, Final draft of the guiding principles on extreme poverty and human rights, submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, A/HRC/21/39 (18 July 2012), [73]-[74].
- ²¹ See, eg, Mr Yapou (Israel), who referred to the right as being of 'paramount importance': UNGA Third Committee, A/C.3/SR.1264 (15 November 1963), [7]; and Mr Zalamea (Colombia), who saw the right to be free from hunger as critical, hunger being the 'basic cause of unhappiness and strife in the world': UNGA Third Committee, A/C.3/SR.1267 (18 November 1963), [10].
- ²² UNGA Third Committee, A/C.3/SR.1267 (18 November 1963), [8].
- ²³ CESCR, General Comment No. 12, The right to adequate food (Article 11), E/C.12/1999/5 (12 May 1999) ('General Comment No.12'), [1]-[2], [4]-[5].
- ²⁴ See n. 13 above.
- ²⁵ Office of the UN High Commissioner for Human Rights (OHCHR), 'The Right to Adequate Food', Fact Sheet 34, 2010, 3-4 (footnotes omitted), <<http://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>>.
- ²⁶ CESCR, General Comment No. 12, [7]-[8] and [12]-[13] (emphasis added).
- ²⁷ CESCR, General Comment No. 12, [35]-[41].
- ²⁸ CESCR, General Comment No. 12, [17].
- ²⁹ At first this may seem to contradict the provision in para. 28 of the General Comment, as we describe it in the text above, but it seems that the essential difference is that whereas the latter talks merely of 'severe resource constraints', paragraph 17 is triggered only where, in effect, those constraints become such that the state is demonstrably unable (even while willing) to provide protection for the right to adequate food.
- ³⁰ CESCR, General Comment No. 12, [20].
- ³¹ Although in an earlier paragraph in General Comment No. 12, the Committee does state: 'The obligation to protect requires measures by the State to ensure that *enterprises* or individuals do not deprive individuals of their access to adequate food' (emphasis added) (CESCR, General Comment No. 12, [15]), without explicitly referring to either Article 2(1) or Article 11(1) (insofar as it repeats the demands of Article 2(1)).
- ³² UN Commission on Human Rights: Report submitted by the Special Rapporteur on the right to food, Jean Ziegler, E/CN.4/2003/54 (10 January 2003), [32]; UN Commission on Human Rights: Report submitted by the Special Rapporteur on the right to food, Jean Ziegler, E/CN.4/2004/10 (9 February 2004), [41]-[52], respectively. See also UNGA, Interim report of Mr Jean Ziegler, Special Rapporteur of the Commission on Human Rights on the right to food, A60/350 (12 September 2005), [33].
- ³³ UN Commission on Human Rights: Report on the right to food, E/CN.4/2004/10 (9 February 2004), [41].
- ³⁴ UN Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, E/CN.4/Sub.2/2003/12/Rev.2 (26 August 2003), [8].
- ³⁵ UN Commission on Human Rights: Report on the right to food, E/CN.4/2004/10 (9 February 2004), Summary.
- ³⁶ See David Kinley, Justine Nolan and Natalie Zerial, 'The Politics of Corporate Social Responsibility: Reflections on the United Nations Human Rights Norms for Corporations' (2007) 25(1) *Company and Securities Law Journal*, 30-42.
- ³⁷ See further, text at, and content of, n. 39 below.

- ³⁸ HRC, Report of the Special Rapporteur on the right to food, Olivier De Schutter, *Agribusiness and the right to food*, A/HRC/13/33 (22 December 2009), [6]–[9], [21].
- ³⁹ Human Rights Council, *Protect, Respect and Remedy: A Framework for Business and Human Rights: Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*, John Ruggie, A/HRC/8/5 (7 April 2008), [2]–[3]. The Framework was the precursor to the SRSG’s Guiding Principles mentioned above, text at n. 37.
- ⁴⁰ HRC, Report on the right to food, Olivier de Schutter, *Building resilience: a human rights framework for world food and nutrition security* A/HRC/9/23 (8 September 2008), [4]–[5] and [8].
- ⁴¹ HRC, Report on the right to food, A/HRC/9/23 (8 September 2008), [17]–[18], [21] and [23]. The wide-ranging implications of land tenure, and the attendant obligations on states, are also recognized in the UN’s Guiding Principles on Extreme Poverty, formulated by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona: *Human Rights Council, Final draft of the guiding principles on extreme poverty and human rights*, A/HRC/21/39 (18 July 2012), [79]–[80].
- ⁴² UN Commission on Human Rights: Report on the right to food, E/CN.4/2003/54 (10 January 2003), [26].
- ⁴³ UNGA, *Interim report of Special Rapporteur on the right to food*, A/61/306 (1 September 2006), [9] and [13]–[15].
- ⁴⁴ CESCR, *Concluding observations: Angola*, E/C.12/AGO/CO/3 (1 December 2008), [29].
- ⁴⁵ CESCR, *Concluding observations: Colombia*, E/C.12/COL/CO/5 (7 June 2010), [21]–[22].
- ⁴⁶ CESCR, *Concluding observations: Canada*, E/1994/23 (10–28 May 1993, 22 November–10 December 1993), [105], [107], [112]–[113] and [115].
- ⁴⁷ As endorsed by Human Rights Council Res. 13/4, *The right to food*, A/HRC/RES/13/4 (14 April 2010), [41].
- ⁴⁸ Council of the Food and Agriculture Organisation of the United Nations (127th Session), *Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security*, November 2004.
- ⁴⁹ CESCR, *Concluding Observations: Cambodia*, E/C.12/KHM/CO/1 (22 May 2009), [15].
- ⁵⁰ CESCR, *Concluding Observations: Czechoslovakia*, E/C.12/1987/5 (29 October 1986), [166].
- ⁵¹ CESCR, *Concluding Observations: Dominican Republic*, E/C.12/1990/8 (26 November–14 December 1990), [236].
- ⁵² CESCR, *Concluding Observations: Jordan*, E/C.12/1987/5 (26 November–14 December 1990), [81].
- ⁵³ CESCR, *Concluding Observations: Republic of Congo*, E/C.12/1/Add.45 (23 May 2000), [20].
- ⁵⁴ CESCR, *Concluding Observations: Mongolia*, E/C.12/1/Add.47 (1 September 2000), [14].
- ⁵⁵ CESCR, *Concluding Observations: Solomon Islands*, E/C.12/1/Add.33 (14 May 1999), [28].
- ⁵⁶ CESCR, *Concluding Observations: Togo*, E/C.12/1/Add.61 (21 May 2001), [22].
- ⁵⁷ Launched in 2010; see Food and Agriculture Organization of the United Nations, ‘Corporate Strategy on Capacity Development’ (25 October 2010), <http://www.fao.org/fileadmin/user_upload/capacity_building/Summary_Strategy_PR_E_01.doc>.
- ⁵⁸ As of January 2009, sixteen National Programmes for Food Security—established and run in cooperation with the FAO as part of the SPFS—were operational and almost fifty more were in various stages of planning and formulation. See Food and Agriculture Organization of the United Nations, ‘National and Regional Programmes for Food Security’ (January 2009), <<ftp://ftp.fao.org/docrep/fao/011/i0765e/i0765e04.pdf>>. The Capacity Development Framework has focused on increasing long-term sustainability in Africa, emphasizing national ownership and leadership of projects to increase capacity: Food and Agriculture Organization of the United Nations, ‘Corporate Strategy on Capacity Development’, 1–2. Between 2004 and 2010, the Food and Agriculture Organization implemented over 3,000 field projects in sub-Saharan Africa with budgets of more than US\$1 million each: Food and Agriculture Organization of the United Nations, *Evaluation of FAO’s Activities on Capacity Development in Africa: Final Report* (March 2010), 7, <http://www.fao.org/fileadmin/user_upload/capacity_building/PC104-5EvaluationCapacityDevelopmentAfricaK8635E.pdf>.
- ⁵⁹ CESCR, *Concluding Observations: Republic of Congo*, E/2001/22 (25 April–12 May 2000),

[217].

- ⁶⁰ CESCR, State Report: Cameroon, E/C.12/CMR/2-3 (19 July 2010), [151], [506] and [603].
- ⁶¹ CESCR, State Report: Argentina, E/C.12/ARG/3 (26 January 2011), [497].
- ⁶² UN Special Rapporteur on the right to food, Olivier de Schutter, Countries tackling hunger with a right to food approach: significant progress in implementing the right to food at national scale in Africa, Latin America and South Asia, Briefing Note No. 1, May 2010, 5.
- ⁶³ The FAO calculates that thirty-three states have constitutions whose recognition of broader rights—such as adequate standard of living—are considered to ‘include’ the right to food: Lidija Knuth and Margret Vidar, Food and Agriculture Organisation of the United Nations, *Constitutional and Legal Protection of the Right to Food around the World* (FAO, Rome, 2011), 21.
- ⁶⁴ Available at <http://egazette.nic.in/WriteReadData/2013/E_29_2013_429.pdf>.
- ⁶⁵ *People’s Union for Civil Liberties v Union of India*, 28 November 2001, Petition (Civil) No. 196/2001.
- ⁶⁶ *People’s Union for Civil Liberties v Union of India*.
- ⁶⁷ As reprinted in Colin Gonsalvez, P. Ramesh Kumar and Anup Kumar Srivastava, (eds), *Right to Food* (2nd edn, New Delhi, Human Rights Law Network, 2005), 404–21.
- ⁶⁸ *Laxmi Mandal v Deen Dayal Harinagar Hospital et al* [2010] INDLHC 2983; decided jointly with *Jaitun v Maternity Home MCD, Jangpura et al*.
- ⁶⁹ *Laxmi Mandal*, [19].
- ⁷⁰ *Prakash Mani Sharma et al on behalf of Forum for Protection of Public Interest (Pro Public) v Prime Minister and Office of Council of Minister et al*, 28 November 2008, Writ Petition No. 0065-w0-149 of 2065 BS (2008): while judgment was delivered in 2008, the judgment and reasons were not published until 2011.
- ⁷¹ Interim Constitution of Nepal 2007, Article 12(1) provides that: ‘Every person shall have the right to live with dignity...’ and Article 18(3) provides: ‘Every citizen shall have the right to food sovereignty as provided for in the law.’
- ⁷² Supreme Court of Nepal, *Some Decisions of the Supreme Court, Nepal*, Volume 12 (2012), 296, 297–8 and 304–5.
- ⁷³ In notably more direct and economical terms than those employed by its ICESCR cousin, Article 12 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (adopted 17 November 1988, OAS Treaty Series No. 69 (1988), entered into force 16 November 1999) (‘San Salvador Protocol’), reads: ‘1. Everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development. 2. In order to promote the exercise of this right and eradicate malnutrition, the States Parties undertake to improve methods of production, supply and distribution of food, and to this end, agree to promote greater international cooperation in support of the relevant national policies.’
- ⁷⁴ *Case of the Indigenous Community Yakye Axa v Paraguay*, 17 June 2005, IACHR (Ser. C) No. 125, [158(a)].
- ⁷⁵ *Yakye Axa v Paraguay*, [158(e)].
- ⁷⁶ *Yakye Axa v Paraguay*.
- ⁷⁷ *Yakye Axa v Paraguay*, [241(6)] and [211]–[217].
- ⁷⁸ *Yakye Axa v Paraguay*, [241(7)] and [221].
- ⁷⁹ African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force 29 November 1999), Article 14.
- ⁸⁰ Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (adopted 11 July 2003).
- ⁸¹ *Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria* (Communication No. 155/96), (2001) AHRLR 60, 27 October 2001, (African Commission on Human and Peoples’ Rights).
- ⁸² *SERAC and CESR v Nigeria*, [4].
- ⁸³ *SERAC and CESR v Nigeria*, [2].

- ⁸⁴ *SERAC and CESR v Nigeria*, [7]-[8].
- ⁸⁵ *SERAC and CESR v Nigeria*, [9].
- ⁸⁶ *SERAC and CESR v Nigeria*, [64]-[66].
- ⁸⁷ For discussion of this apparent silence, see Matthew Craven, 'Some Thoughts on the Emergent Right to Water' in Eibe Riedel and Peter Rothen (eds), *The Human Right to Water* (Berliner Wissenschafts Verlag, Berlin, 2006), Chapter 2.
- ⁸⁸ CESCR, General Comment No. 15, The right to water (Articles 11 and 12), E/C.12/2002/11 (20 January 2003) ('General Comment No. 15'), [1]-[4].
- ⁸⁹ CESCR, General Comment No. 15, [15].
- ⁹⁰ CESCR, General Comment No. 15, [14]. The Special Rapporteur on the right to safe drinking water and sanitation has subsequently expanded on the nature of these types of discrimination, how levels can be measured, and what actions might be taken to combat the discrimination, in UNGA, Report of Catarina de Albuquerque, Special Rapporteur on the human right to safe drinking water and sanitation A/7/270 (8 August 2012), Part IV, [51]-[74]. See also and further, the Special Rapporteur's companion Report to the Human Rights Council (A/HRC/21/24, 2 July 2012), which 'emphasizes that States cannot fully realize the human rights to water and sanitation without addressing stigma as a root cause of discrimination and other human rights violations', Summary, 1.
- ⁹¹ CESCR, General Comment No. 15, E/C.12/2002/11 (20 January 2003), [17]-[38]. Part IV of the General Comment No. 15 covers 'violations', [39]-[44]. As these violations, naturally, correspond closely with the failing to meet the obligations outlined in Part III, we do not here discuss them further.
- ⁹² CESCR, General Comment No. 15, E/C.12/2002/11 (20 January 2003), [21].
- ⁹³ CESCR, General Comment No. 15, [23].
- ⁹⁴ CESCR, General Comment No. 15, [24].
- ⁹⁵ CESCR, General Comment No. 15, [26].
- ⁹⁶ CESCR, General Comment No. 15, [45]-[59].
- ⁹⁷ CESCR, General Comment No. 15, [53]-[54].
- ⁹⁸ We deal further with the international obligations of the right to an adequate standard of living generally in the last section of the current chapter.
- ⁹⁹ See, eg, the debate between Stephen Tully and Malcolm Langford across the following four articles: Stephen Tully, 'A Human Right to Access Water? A Critique of General Comment No 15' (2005) 23 (1) *Netherlands Quarterly of Human Rights* 35; Malcolm Langford, 'Ambition That Overleaps Itself—A Response to Stephen Tully's Critique of the General Comment on the Right to Water' (2006) 24(3) *Netherlands Quarterly of Human Rights* 433; Stephen Tully, 'Flighty Purposes and Deeds: A Rejoinder to Malcolm Langford' (2006) 24(3) *Netherlands Quarterly of Human Rights* 461; Malcolm Langford, 'Expectation of Plenty: Response to Stephen Tully' (2006) 24(3) *Netherlands Quarterly of Human Rights* 473.
- ¹⁰⁰ Including a UN General Assembly resolution adopted in 2010 which expressly 'recognized the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights'; UNGA Res.64/292 The human right to water and sanitation (3 August 2010).
- ¹⁰¹ Takele Soboka Bulto, 'The Emergence of the Human Right to Water in International Human Rights Law: Invention or Discovery?' (2011) 12 *Melbourne Journal of International Law* 290, 306. Bulto notes Eibe Riedel's research, which showed that even in the ten years immediately prior to the adoption of General Comment No. 15 (ie 1993-2002), some 29 per cent of all Concluding Observations (33 out of a total 114), addressed the right to water.
- ¹⁰² CESCR, Concluding Observations: Afghanistan, E/C.12/AFG/CO/2-4 (7 June 2010), [35].
- ¹⁰³ CESCR, Concluding Observations: Angola, E/C.12/AGO/CO/3 (1 December 2008), [30].
- ¹⁰⁴ CESCR, Concluding Observations: Brazil, E/C.12/BRA/CO/2 (12 June 2009).
- ¹⁰⁵ See CESCR, Concluding Observations: Canada, E/C.12/CAN/CO/4, E/C.12/CAN/CO/5 (22 May 2006), [30].
- ¹⁰⁶ See CESCR, Concluding Observations: Kenya, E/C.12/KEN/CO/1 (1 December 2008), [30].
- ¹⁰⁷ See, in respect of water restrictions imposed upon Palestinians and Bedouins: CESCR,

Concluding Observations: Israel, E/C.12/1/Add.27 (4 December 1998), [21]-[28]; Israel, E/C.12/1/Add.90 (26 June 2003), [19]-[27] and [40]-[43].

108 WHO, 'The Right to Water' (2003),

<http://www.who.int/water_sanitation_health/en/righttowater.pdf>, 6.

109 Human Rights Council, Human rights and access to safe drinking water and sanitation, A/HRC/15/L.14 (24 September 2010), Preamble.

110 UN, The Millennium Development Goals, Target 7(c),

<<http://www.un.org/millenniumgoals/environ.shtml>>. See also UN, The Millennium Development Goals Report 2013, 46-8, <<http://www.un.org/millenniumgoals/pdf/report-2013/mdg-report-2013-english.pdf>>.

111 OHCHR, The Right to Water, Fact Sheet 25, August 2010, 29-30,

<<http://www.ohchr.org/Documents/Publications/FactSheet35en.pdf>>.

112 UNGA, Report of the Special Rapporteur on the human right to safe drinking water and sanitation, A/67/270 (8 August 2012), [31]-[32]

113 WHO, 'The Right to Water' (2003),

<http://www.who.int/water_sanitation_health/en/righttowater.pdf>, 29.

114 UN Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Realization of the right to drinking water and sanitation: Report of the Special Rapporteur, El Hadji Guissé, E/CN.4/Sub.2/2005/25 (11 July 2005).

115 UN Commission on Human Rights, E/CN.4/Sub.2/2005/25 (11 July 2005), [3], Introduction.

116 UN Commission on Human Rights, E/CN.4/Sub.2/2005/25 (11 July 2005), [2], Introduction.

117 UN Commission on Human Rights, E/CN.4/Sub.2/2005/25 (11 July 2005), [3].

118 UN Commission on Human Rights, E/CN.4/Sub.2/2005/25 (11 July 2005), [1].

119 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, A/HRC/10/6 (25 February 2009), [22]-[25]. In her Second Report in July 2009, the IE expanded the breadth of rights she saw as impacted by sanitation, and deepened her reasons for believing so: see 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, A/HRC/12/24 (1 July 2009), [13]-[54]. Further, the IE ventures the argument of the right to sanitation as a distinct right, on the principle basis that its denial threatens to strip an individual of their dignity, and as such strikes at the core of what human rights stand for [55]-[59].

120 Human Rights Council, Report of the IE on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque, A/HRC/10/6 (25 February 2009), [30]-[31].

121 Human Rights Council, Report of the IE on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque, A/HRC/10/6 (25 February 2009), [62]-[64].

122 Human Rights Council, Report of the IE on the issue of human rights obligations related to access to safe drinking water and sanitation (25 February 2009), [67].

123 Human Rights Council, Report of the IE on the issue of human rights obligations related to access to safe drinking water and sanitation (1 July 2010).

124 Human Rights Council, Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, A/HRC/18/33/Add.1 (29 June 2011).

125 Human Rights Council, Report of the IE on the issue of human rights obligations related to access to safe drinking water and sanitation (1 July 2010), [11].

126 Human Rights Council, Report of the IE on the issue of human rights obligations related to access to safe drinking water and sanitation (1 July 2010), [13].

127 Sharmila Murthy, 'The Human Right(s) to Water and Sanitation: History, Meaning and the Controversy Over Privatization' 31(1) (2013) *Berkeley Journal of International Law* 89, 91.

128 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, A/HRC/15/31 (9 June 2010); and UNGA, Report of the Special Rapporteur on the human right to safe drinking water and sanitation, A/66/255 (3 August 2011).

- 129 UNGA, Report of the Special Rapporteur on the human right to safe drinking water and sanitation, [65].
- 130 See <<http://www.unglobalcompact.org>>.
- 131 Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, A/HRC/17/31 (21 March 2011), Annex.
- 132 OECD Guidelines for Multinational Enterprises (2011)—see <<http://www.oecd.org/daf/inv/mne/48004323.pdf>>.
- 133 Human Rights Council, Report of the IE on the issue of human rights obligations related to access to safe drinking water and sanitation (9 June 2010), [18] and [21].
- 134 This is the implication made by the OHCHR, The Right to Water, Fact Sheet 35, August 2010, 31, <<http://www.ohchr.org/Documents/Publications/FactSheet35en.pdf>>.
- 135 See <<http://www.aquafed.org/page-5-59.html>>.
- 136 The CEO Water Mandate, <<http://ceowatermandate.org/about/>>. Although the Mandate does not explicitly refer to human rights in its text, human rights matters have nonetheless been raised in its governance meetings: see Human Rights Council, Report of the IE on the issue of human rights obligations related to access to safe drinking water and sanitation (9 June 2010), n. 21.
- 137 See Human Rights Council, Report of the IE on the issue of human rights obligations related to access to safe drinking water and sanitation (25 February 2009), [18]; Human Rights Council, Report of the Special Rapporteur on the human right to safe drinking water and sanitation (29 June 2011), [13]–[23]. For a continually updated compendium of constitutional or legislative guarantees to the right to water in state jurisdictions, see the Information Portal for the Rights to Water and Sanitation: <<http://www.righttowater.info/progress-so-far/national-legislation-on-the-right-to-water/>>.
- 138 (1990) I KLT 580.
- 139 *Attakoya Thangal*, 583.
- 140 *M C Mehta v Union of India* (2004) 12 SCC 118.
- 141 *Perumatty Grama Panchayat v State of Kerala* (2004) 1 KLT 731 (Kerala High Court).
- 142 *Suo Muto v State of Rajasthan* [2005] AIR Raj 82 (Rajasthan High Court), [3]–[4].
- 143 *Commune de Wemmel, Moniteur Belge*, Arrêt no. 36/98 (24/4/98).
- 144 For Argentina, see: *Villavechia de Pérez Lasala, Teresa c/ Obras Sanitarias de Mendoza S.E., s'acción de inconstitucionalidad*, 5 February 1990, Case 45525 (Supreme Court of Mendoza), in which the court upheld a reading of the right to a healthy environment under Article 41 of the Constitution as entailing a non-derogable right to access to adequate water; and *Quevedo, Miguel Angel y otros c/ Aguas Cordobesas S.A., s'acción Amparo Cordoba City*, 8 April 2002 (Civil and Commercial First Instance Court), in which the court held that a private company could not deny water to poor residents in Cordoba merely because they could not pay. For South Africa, see *Residents of Bon Vista Mansions v Southern Metropolitan Local Council* (2002) 6 BCLR 625 (W), in which the Witwatersrand Division of the High Court upheld this extent of the guarantee of the right to water under Article 27(1)(a) of the Constitution.
- 145 Revised European Social Charter (adopted 3 May 1996, CETS 163, entered into force 1 July 1999).
- 146 The Council of Europe's Committee of Ministers that oversees the implementation of the Charter and hears 'collective complaints' lodged under it has also inferred access to adequate water and sanitation in Article 31 of the Charter, which requires states to 'promote housing of an adequate standard'; see *European Roma Rights Centre (ERRC) v Portugal* (Collective Complaint No. 61/2010), Merits, 30 June 2011 (European Committee of Social Rights). See also the Council of Europe's European Charter on Water Resources (adopted 17 October 2001), which focuses on the need to use water resources responsibly and sustainably, and Article 5 of which confirms the right of everyone to sufficient water for their basic needs.
- 147 *Zander v Sweden* (App. 14282/88), 25 November 1993, (1994) 18 EHRR 175.
- 148 *Zander v Sweden*, [25]–[29].
- 149 *Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria* (Communication No. 155/96), (2001) AHRLR 60, 27 October 2001.

- 150 *SERAC and CESR v Nigeria*, [50]–[52].
- 151 *Free Legal Assistance Group et al v Zaire*, African Commission Communications 25/89, 47/90, 56/91, 100/93, (1997) 4 IHRR 89, (2000) AHRLR 74 (4 April 1996).
- 152 *Sudan Human Rights Organisation and Centre of Housing Evictions and Human Rights (COHRE) v Sudan*, African Commission Communications 296/05, (May 2009), (2009) AHRLR 154.
- 153 *Sudan Human Rights Organisation and COHRE v Sudan*, [212].
- 154 African Commission on Human and Peoples' Rights (48th Session), The Principles and Guidelines on the Implementation of the Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (The Nairobi Guidelines), Nairobi, adopted 26 May 2010.
- 155 African Commission on Human and Peoples' Rights (50th Ordinary Session), State Party Reporting Guidelines for Economic, Social and Cultural Rights in the African Charter on Human And Peoples' Rights (Tunis Reporting Guidelines), Banjul, 24 October–7 November 2011.
- 156 American Convention on Human Rights (adopted 22 November 1969, 1144 UNTS 143, entered into force 18 July 1978).
- 157 *Case of the Indigenous Community Yakye Axa v Paraguay*, 17 June 2005, IACHR (Ser. C) No. 125, [167]–[168].
- 158 *Juridical Condition and Human Rights of the Child*, Advisory Opinion, 28 August 2002, OC-17/02.
- 159 *Juridical Condition and Human Rights of the Child*, Advisory Opinion, 28 August 2002, OC-17/02, [80].
- 160 *Case of Children's Rehabilitation v Paraguay* ('Panchito López case'), 2 September 2004, IACHR (Ser. C) No. 63.
- 161 *Panchito López case*, [170]. The Inter-American Commission on Human Rights has also underscored the obligation of states to respect the right to water in another detention case: *Victor Rosario Congo v Ecuador* (Case 11.427), Report on the Merit No. 63/99, 13 April 1999. This case involved the death of an adult detainee in Ecuador who, while on remand, was assaulted and then left alone in a cell for 'approximately forty days...without food or water' [73]. As a result, the Commission found that Ecuador had breached the right to life under Article 4 of the Convention [84].
- 162 *Mapuche Paynemil and Kaxipayiñ Communities*, Case No. 12.010 (5 February 2013) (Inter-American Commission on Human Rights).
- 163 UN Commission on Human Rights, E/CN.4/SR.294 (1952), (Cheng Paonan (China)), 5.
- 164 Craven, *The ICESCR*, 394.
- 165 Nonetheless, some have criticized the neglect of the right as 'baffling given its obvious importance for human well-being': see Stephen James, 'A Forgotten Right? The Right to Clothing in International Law' (2008), unpublished conference paper from the Australian and New Zealand Society of International Law (ANZSIL) Conference: 'Security, Scarcity, Struggle: The Dilemmas of International Law', Canberra, 26–8 June 2008, 1, available at <<http://anzsil.anu.edu.au/Conferences/2008/Stephen%20James.pdf>>.
- 166 CESCR, Concluding Observations: Sri Lanka, E/C.12/1/Add.24 (16 June 1998), [7].
- 167 CESCR, General Comment No. 5, Persons with disabilities, E/1995/22 (25 November 1994), Annex IV [33].
- 168 CESCR, General Comment No. 19, The right to social security (Article 19), E/C.12/GC/19 (4 February 2008) ('General Comment No. 19').
- 169 CESCR, General Comment No. 19, [18].
- 170 Convention on the Rights of the Child (adopted 20 November 1989, 1577 UNTS 3, entered into force 2 September 1990), Article 27(3).
- 171 UN Convention on Rights of Persons with Disabilities (adopted 13 December 2006, 2515 UNTS 3, entered into force 3 May 2008), Article 28.
- 172 UN, Standard Minimum Rules for the Treatment of Prisoners, amended E/5988 (13 May 1977).
- 173 UN, Standard Minimum Rules for the Treatment of Prisoners, [18], [26] and [17] respectively.

- ¹⁷⁴ American Convention on Human Rights (adopted 22 November 1969, 1144 UNTS 143, entered into force 18 July 1978).
- ¹⁷⁵ African Charter on Human and Peoples' Rights (adopted 27 June 1981, 1520 UNTS 217, entered into force 21 October 1986).
- ¹⁷⁶ See reasoning in *V. v Einwohnergemeinde X und Regierungsrat des Kantons Bern* (BGE/ATF 121 1367) (Swiss Federal Court), [2(b)].
- ¹⁷⁷ This includes civil and political, as well as economic, social and cultural, rights. Mathew Craven lists the following rights as ones the Committee has 'stressed' as being important to the fulfilment of the right to housing: 'freedom of expression, freedom of association, freedom to take part in public decision-making, freedom to choose one's residence, and freedom from arbitrary and unlawful interference with one's privacy, family, home or correspondence' (Craven, *The ICESCR*, 330).
- ¹⁷⁸ Jessie Hohmann, *The Right to Housing: Laws, Concepts, Possibilities* (Hart, Oxford, 2013), Chapters 6, 7 and 8, which deal with the conceptual perspectives of housing as privacy, identity and space, respectively. As Hohmann puts it, in respect of 'identity', 'the way identity is recognized, socially and legally, is often mediated through relationships with the house and home, both as a physical thing and as an ideological construct' (167).
- ¹⁷⁹ For a full list of all international human rights instruments that protect the right to housing, including the regional regimes, see UN Office of the High Commissioner for Human Rights and UN Habitat, 'The Right to Adequate Housing', Fact Sheet No. 21/Rev.1, 11-13.
- ¹⁸⁰ Even by the early 1990s Matthew Craven could state confidently that 'the Committee has dedicated more attention to the right to housing than any other right': Craven, *The ICESCR*, 329.
- ¹⁸¹ CESCR, General Comment No. 4, The right to adequate housing (Article 11(1)), E/1992/23 (25 November-13 December 1992) ('General Comment No. 4'), Annex III.
- ¹⁸² CESCR, General Comment No. 7, The right to adequate housing (Article 11.1 of the Covenant): forced evictions, E/1998/22 (14 May 1997) ('General Comment No. 7'), Annex IV.
- ¹⁸³ Habitat for Humanity International, FY Annual Report 2012, <<http://www.habitat.org/sites/default/files/annual-report-2012.pdf>>.
- ¹⁸⁴ CESCR, General Comment No. 4, Annex III, [6]-[8].
- ¹⁸⁵ CESCR, General Comment No. 4, Annex III, [11]-[17].
- ¹⁸⁶ CESCR, General Comment No. 7, Annex IV, [4].
- ¹⁸⁷ CESCR, General Comment No. 7, Annex IV, [10].
- ¹⁸⁸ CESCR, General Comment No. 7, Annex IV, [6]-[7].
- ¹⁸⁹ In this regard, the Committee adds, in paragraph 12, that forced evictions and house demolition 'as a punitive measure' are inconsistent with the Covenant, as well as those parts of the Geneva Conventions of 1949 (and 1977 Protocols) that prohibit the displacement of the civilian population and the destruction of private property during times of armed conflict.
- ¹⁹⁰ CESCR, General Comment No. 7, Annex IV, [9].
- ¹⁹¹ CESCR, General Comment No. 7, Annex IV, [2]-[3].
- ¹⁹² CESCR, General Comment No. 7, Annex IV, [11].
- ¹⁹³ CESCR, General Comment No. 7, Annex IV, [5], [8], [10], [13] and [16].
- ¹⁹⁴ Human Rights Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, A/HRC/4/18 (11 June 2007), Annex 1, see especially [22], [32], [37], [38], [52], and [55].
- ¹⁹⁵ As noted by the Special Rapporteur on adequate housing, some 20 per cent of the World Bank's entire portfolio of operations in the early 2000s involved projects 'affecting 2.6 million people through physical or economic displacement': Commission on Human Rights, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, E/CN.4/2004/48 (8 March 2004), [30]. Further, see the civil-society-sponsored *Manibeli Declaration* (1994) calling for a moratorium on World Bank funding of large dams, due to—among many reasons—the hundreds of thousands of forcibly displaced persons caused by dam-building; <<http://www.internationalrivers.org/es/resources/manibeli-declaration-4334>>.
- ¹⁹⁶ CESCR, General Comment No. 7, Annex IV, [17].

- 197** Commission on Human Rights, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, E/CN.4/RES/2001/28 (20 April 2001), [5(a)].
- 198** Commission on Human Rights, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, E/CN.4/RES/2001/28 (20 April 2001), [10(a)].
- 199** The OHCHR's Fact Sheet No. 25 on 'Forced Evictions and Human Rights' quotes the following states in this category: 'Afghanistan, Argentina, Bahrain, Bangladesh, Belgium, Bolivia, Brazil, Burkina Faso, Cambodia, Colombia, Costa Rica, Democratic People's Republic of Korea, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Fiji, Finland, Greece, Guatemala, Guyana, Haiti, Honduras, Iran (Islamic Republic of), Italy, Kenya, Lithuania, Mali, Mexico, Nepal, Netherlands, Nicaragua, Nigeria, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Russian Federation, Sao Tome and Principe, Seychelles, Slovenia, South Africa (draft Constitution), Spain, Sri Lanka, Suriname, Sweden, Turkey, Ukraine, Venezuela and Viet Nam', 26, fn 8.
- 200** For a compilation of all reports of the Special Rapporteur, see <<http://www.ohchr.org/EN/Issues/Housing/Pages/AnnualReports.aspx>>.
- 201** Commission on Human Rights Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, E/CN.4/2005/48 (3 March 2005), [25].
- 202** UN General Assembly, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Raquel Rolnik, A/67/286 (10 August 2012), [57].
- 203** UN General Assembly, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Raquel Rolnik, A/67/286 (10 August 2012), [49], quoting UN-Habitat, 'State of the World's Cities 2010/2011: Cities for All: Bridging the Urban Divide', Nairobi, 2010, xii.
- 204** UN General Assembly, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Raquel Rolnik, A/67/286 (10 August 2012), [10]-[13].
- 205** Commission on Human Rights, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, E/CN.4/2005/48 (3 March 2005), [46]-[47].
- 206** Human Rights Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, A/HRC/19/53 (26 December 2011), [53]-[54].
- 207** Commission on Human Rights: Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, E/CN.4/2002/59 (1 March 2002), [46].
- 208** Commission on Human Rights, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, E/CN.4/2005/48 (3 March 2005), [35]-[38].
- 209** The Special Rapporteur has also conducted a review of the specific housing challenges posed by climate-change events, including the habitat impacts of flooding, landslides, deforestation, drought, spoiled harvests, and access to clean and adequate water: see Human Rights Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Raquel Rolnik, A/64/255 (6 August 2009).
- 210** Human Rights Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, A/HRC/16/42 (20 December 2010).
- 211** The matter of 'tenure insecurity' has also been the subject of scrutiny and analysis by the Special Rapporteur, which she considers to be at a crisis point globally, with 'many millions of people [living] under the daily threat of eviction, or in an ambiguous situation where their tenure status can be challenged by authorities or private actors at any time': Human Rights Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, A/HRC/22/46 (24 December 2012), [1].

- 212 CESCR, Concluding Observations: Algeria, E/C.12/DZA/CO/4 (7 June 2010), [18].
- 213 CESCR, Concluding Observations: Afghanistan, E/C.12/AFG/CO/2-4 (7 June 2010), [39].
- 214 CESCR, Concluding Observations: Bolivia, E/C.12/BOL/CO/2 (8 August 2008), [14(h)] and [27(h)].
- 215 CESCR, Concluding Observations: Cambodia, E/C.12/KHM/CO/1 (12 June 2009), [30]-[31].
- 216 CESCR, Concluding Observations: China, E/C.12/1/Add.107 (13 May 2005), [31] and [61].
- 217 CESCR, Concluding Observations: Israel, E/C.12/ISR/CO/3 (16 December 2011), [26]-[27].
- 218 CESCR, Concluding Observations: Nigeria, E/C.12/1/Add.23 (16 June 1998), [27]; see also Zimbabwe, E/C.12/1/Add.12 (20 May 1997), [13] and [21].
- 219 Economic and Social Council Official Records, Ukrainian Soviet Socialist Republic, E/C.12/1987/5 (29 October 1986), [105].
- 220 CESCR, Concluding Observations: Ukraine, E/C.12/1995/15 (28 December 1995), [27].
- 221 CESCR, Concluding Observations: Ukraine, E/C.12/1/Add.65 (24 September 2001), [9]; E/C.12/UKR/CO/5 (4 January 2008).
- 222 CESCR, Concluding Observations: Ukraine, E/C.12/UKR/CO/5 (4 January 2008), [23]-[26], [45]-[47].
- 223 CESCR, Concluding Observations: Belgium, E/C.12/1994/7 (31 May 1994), [11].
- 224 CESCR, Concluding Observations: Belgium, E/C.12/BEL/CO/3 (4 January 2008), [20].
- 225 CESCR, Concluding Observations: Bolivia, E/C.12/1/Add.60 (21 May 2001), 54 [276].
- 226 CESCR, Concluding Observations: Peoples Republic of China, E/C.12/1/Add.107 (13 May 2005), [31].
- 227 CESCR, Concluding Observations: Italy, E/C.12/1/Add.43 (23 May 2000), [10] and [23]; Italy, E/C.12/1/Add.103 (14 December 2004), [24]-[26] and [45]-[48].
- 228 CESCR, Concluding Observations: Hungary, E/C.12/HUN/CO/3 (16 January 2008), [22] and [45].
- 229 CESCR, General Comment No. 7, Annex IV, paragraph 19 of which stipulates: 'In accordance with the guidelines for reporting adopted by the Committee, State parties are requested to provide various types of information pertaining directly to the practice of forced evictions. This includes information relating to (a) the "number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction", (b) "legislation concerning the rights of tenants to security of tenure, to protection from eviction" and (c) "legislation prohibiting any form of eviction"'.
- 230 All three are contained in Annexes to the Report to the Human Rights Council of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, A/HRC/4/18 (7 February 2007), 13-34.
- 231 Human Rights Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, A/HRC/4/18 (7 February 2007), Annex II, 27-8.
- 232 Commission on Human Rights, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, E/CN.4/2004/48 (8 March 2004), [80]-[82].
- 233 The right to property is enshrined in the American Convention on Human Rights (adopted 22 November 1969, 1144 UNTS 143, entered into force 18 July 1978), Article 21; the African Charter on Human and Peoples' Rights (adopted 27 June 1981, 1520 UNTS 217, entered into force 21 October 1986), Article 14; and the Charter of Fundamental Rights of the European Union (adopted 7 December 2000, OJ C 364/01, entered into force 1 December 2009), Article 17.
- 234 *SERAC and CESR v Nigeria* (2001) AHRLR 60, 27 October 2001.
- 235 *SERAC and CESR v Nigeria*, [60]-[63].
- 236 *Sudan Human Rights Organisation and COHRE v Sudan*, (2009) AHRLR 154.
- 237 *Sudan Human Rights Organisation and COHRE v Sudan*, [205].
- 238 *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* (Communication No. 276/2003), (2009) AHRLR 75, 4 February 2010.

- ²³⁹ *Republic of South Africa v Grootboom et al* (Case CCT 11/00), 2000 (11) BCLR 1169 (CC), 4 October 2000. The Court's judgment was provided by Yacoob J.
- ²⁴⁰ In respect of section 26, see [69], [88] and [93]; and for reasoning regarding section 28, see [70]-[79].
- ²⁴¹ *South Africa v Grootboom*, [24].
- ²⁴² *South Africa v Grootboom*, [35]-[38].
- ²⁴³ *South Africa v Grootboom*, [94]-[95].
- ²⁴⁴ *Leite v Government of Seychelles and Another* (2003) AHRLR 222 (SyCC 2002), 11 June 2002.
- ²⁴⁵ *Leite v Government of Seychelles and Another*, [21]-[22].
- ²⁴⁶ *Sesana et al v Attorney-General* (2006) AHRLR 183 (BwHC 2006), 13 December 2006.
- ²⁴⁷ *Sesana et al v Attorney-General*, [28]-[29].
- ²⁴⁸ *Case of the Indigenous Community Yakye Axa v Paraguay*, 17 June 2005, IACHR (Ser. C) No. 125; *Sawhoyamaya Indigenous Community v Paraguay*, 29 March 2006, IACHR (Ser. C), No. 146, respectively.
- ²⁴⁹ *Sawhoyamaya v Paraguay*, [248(12)]. A similar order was made by the Court in *Yakye Axa v Paraguay*, [242(6)-(14)].
- ²⁵⁰ Section 9 of the Agreement, as appended to *Community of San Vicente los Cimientos v Guatemala* (Petition No. 11.197), Friendly Settlement Report No. 68/93, Inter-American Court of Human Rights, 10 October 2003, [36].
- ²⁵¹ Memorandum of Understanding in Friendly Settlement, *Mercedes Julia Huenteao Beroiza et al v Chile* (Petition 4617/02), Friendly Settlement Report No. 30/04, Inter-American Court of Human Rights, 11 March 2004, [34(7)].
- ²⁵² *Ituango Massacres v Colombia*, 1 July 2006, IACHR (Ser. C), No. 148.
- ²⁵³ *Ituango Massacres v Colombia*, [407].
- ²⁵⁴ *Juvenile Re-education Institute v Paraguay*, 2 September 2004, IACHR (Ser. C), No. 112.
- ²⁵⁵ *Juvenile Re-education Institute v Paraguay*, 91-8.
- ²⁵⁶ *López Álvarez v Honduras*, 1 February 2006, IACHR (Ser. C), No. 141.
- ²⁵⁷ *López Álvarez v Honduras*, [225].
- ²⁵⁸ *Cyprus v Turkey* (App. 25781/94), 10 May 2001, (2002) 35 EHRR 731.
- ²⁵⁹ In *Chapman v United Kingdom* (App. 27238/95), 18 January 2001, in which the Court effectively removed the whole question from its purview by stating that 'whether the State provides funds to enable everyone to have a home is a matter for political not judicial decision' (at [99]).
- ²⁶⁰ *Connors v United Kingdom* (App. 66746/01), 27 May 2004, (2005) 40 EHRR 189.
- ²⁶¹ *Buckley v United Kingdom* (App. 20348/92), 25 September 1996, (1997) 23 EHRR 101.
- ²⁶² Although Article 16 of the 1961 Charter provided that in 'ensuring the necessary conditions for the full development of the family...Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as...[inter alia] provision of family housing...' This Article remains unchanged in the Revised Charter.
- ²⁶³ *European Federation of National Organisations Working with the Homeless (FEANTSA) v France* (Complaint No. 39/2006), Merits, 5 December 2007 (European Committee of Social Rights).
- ²⁶⁴ In respect of housing laws and practices that overtly discriminate against travellers, or Roma, specifically, the European Committee on Social Rights has also condemned Greece, Italy and Bulgaria, in similar fashions—see, respectively: *European Roma Rights Centre v Greece* (Complaint No. 15/2003), Merits, 8 December 2004; *European Roma Rights Centre v Italy* (Complaint No. 27/2004), Merits, 7 December 2005; *European Roma Rights Centre v Bulgaria* (Complaint No. 31/2005), Merits, 18 October 2006.
- ²⁶⁵ Report from the European Committee of Social Rights to the Committee of Ministers in relation to *FEANTSA v France*.
- ²⁶⁶ (1985) 3 SCC 545.

- 267 *Olga Tellis v Bombay Municipal Corp*, [79].
- 268 *Olga Tellis v Bombay Municipal Corp*, [55].
- 269 *Olga Tellis v Bombay Municipal Corp*, [59].
- 270 A term expressly used in Article 46 of the Constitution which comprises a Directive Principle of State Policy to 'promote with special care the educational and economic interests of the weaker sections of the people'.
- 271 *Shanti Star Builders v Narayan K Totame* (1990) 1 SCC 520, [9]-[11].
- 272 Commission on Human Rights, Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kathari, Report to the Commission on Human Rights, Miloon Kothari, E/CN.4/2005/48 (3 March 2005), [27].
- 273 Which provides: 'Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory *and subject to its jurisdiction* the rights recognized in the present Covenant...' (emphasis added). The Human Rights Committee, in General Comment No. 31 (2004), has interpreted these terms to mean that states are required 'to respect and to ensure the Covenant rights to all persons who may be within their territory *and* to all persons subject to their jurisdiction': HRC, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13 (26 May 2004), [10] (emphasis added). 'This means', the Committee continues, 'that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party' [10].
- 274 Malcolm Langford, Fons Coomans and Felipe Gómez Isa, 'Extra-Territorial Duties in International Law' in Malcolm Langford, Wouter Vandenhoe, Martin Scheinin and Willem van Genugten (eds), *Global Justice, State Duties: The Extra-Territorial Scope of Economic, Social and Cultural Rights in International Law* (Cambridge University Press, New York, 2013), 52.
- 275 CESCR, Statement: The World Food Crisis, E/C.12/2008/1 (20 May 2008).
- 276 CESCR, Statement: The World Food Crisis, E/C.12/2008/1 (20 May 2008), [9].
- 277 CESCR, Statement: The World Food Crisis, E/C.12/2008/1 (20 May 2008), [10].
- 278 CESCR, Statement: The World Food Crisis, E/C.12/2008/1 (20 May 2008), [12].
- 279 Part III of which provides explanations of the importance and role of international cooperation generally, as well as more specific guidance on cooperation in respect of international trade, external debt management, aid coordination, partnerships with civil society and the private sector, and the provision of technical expertise: see Council of the Food and Agriculture Organisation of the United Nations (127th Session), Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, November 2004, 33-7.
- 280 CESCR, Statement: The World Food Crisis, E/C.12/2008/1 (20 May 2008), [11], [13].
- 281 CESCR, General Comment No. 12, E/C.12/1999/5 (12 May 1999), [36]-[41].
- 282 Commission on Human Rights: Report of the Special Rapporteur on the right to food, Mr Jean Ziegler, E/CN.4/2003/54 (10 January 2003), [29]-[30].
- 283 Human Rights Council, Report of the Special Rapporteur on the right to food, Mr Olivier De Schutter, The role of development cooperation and food aid in realizing the right to adequate food: moving from charity to obligation, A/HRC/10/5 (11 February 2009), [27].
- 284 Which came into force in January 2013. As of June 2013, the Convention had been signed by fourteen parties and ratified by eight (namely: Austria, Canada, Denmark, the European Union, Finland, Japan, Switzerland and the United States).
- 285 See Smita Narula, 'The Right To Food: Holding Global Actors Accountable Under International' 44 (2006) *Columbia Journal of Transnational Law* 691.
- 286 To this end, the Committee emphasizes that 'it is particularly incumbent on States parties, and other actors in a position to assist, to provide international assistance and cooperation, especially economic and technical which enables developing countries to fulfil their core obligations indicated in paragraph 37 above [that is, a state's "minimum core obligations"]', [38]. Paragraph 37 of General Comment No. 15 is extracted above, text at n. 98.
- 287 CESCR, General Comment No. 15, E/C.12/2002/11 (20 January 2003), [30]-[36].
- 288 CESCR, General Comment No. 15, [60].

289 CESCR, General Comment No. 4, E/1992/23 (25 November–13 December 1992), Annex III, [19].

290 Annex 1 to Report to the Human Rights Council of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, A/HRC/4/18 (7 February 2007) [71]–[73].

291 Article 2 of the OP states: ‘Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.’

292 As advanced by Christian Courtis and Magdalena Sepúlveda, ‘Are Extra-Territorial Obligations Reviewable under the Optional Protocol to the ICESCR’ (2009) 27(1) *Nordic Journal of Human Rights* 54, 57.

293 The Principles are a product of the deliberations of non-state experts and while authoritative in terms of their provenance, are nonetheless merely persuasive in respect of the interpretation of the ICESCR rather than binding, having not been formally endorsed by states.

294 Margot E. Salomon, ‘Deprivation, Causation and the Law of International Cooperation’ in Langford et al, *Global Justice, State Duties*, 296.