HUMAN RIGHTS FOR HUMAN DIGNITY

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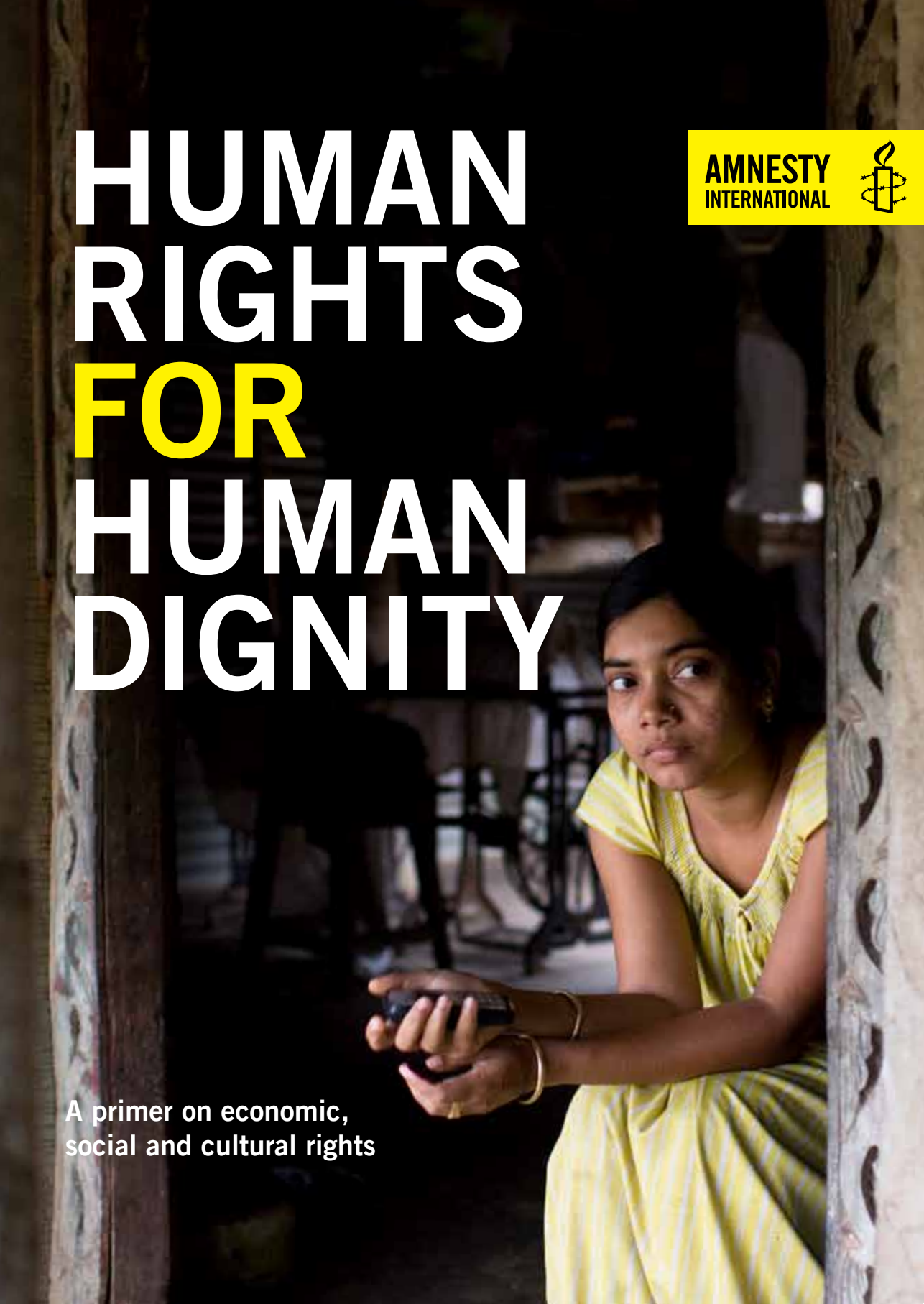

A primer on economic, social and cultural rights

HUMAN RIGHTS FOR HUMAN DIGNITY

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A primer on economic, social and cultural rights
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Cover image: A woman looks on while villagers discuss their rights to their land in the village of Dhinkia in Orissa, India, June 2008. © Sanjit Das

Amnesty International is a global movement of more than 3.2 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

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A woman carries a heavy load and a child in Mugu district, Nepal, 2013. For some women in Nepal, working as porters, even when pregnant, is their only source of income. Carrying heavy loads during or soon after pregnancy increases the risk of uterine prolapse – a painful, debilitating yet largely preventable condition suffered by many women in Nepal. © Amnesty International

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Glossary

AAAS
American Association for the Advancement of Science

ACHPR
African Commission on Human and Peoples' Rights

CEDAW
Convention on the Elimination of All Forms of Discrimination against Women

CEE Bankwatch Network
Central and Eastern European Bankwatch Network

CEJIL
Center for Justice and International Law

CEKOR
Centre for Ecology and Sustainable Development

CESCR
Committee on Economic, Social and Cultural Rights

CESR
Center for Economic and Social Rights

CPN
Communist Party of Nepal

CRC
Convention on the Rights of the Child

EBRD
European Bank for Reconstruction and Development

ECHR
European Convention on Human Rights

ECSR
European Committee of Social Rights

EIB
European Investment Bank

ESCR-Net
An international network for the promotion of economic, social and cultural rights

FIAN International
Food First Information and Action Network

Guiding Principles
UN Guiding Principles on Internal Displacement

HURIDOCS
Human Rights Information and Documentation Systems, International

IBP
International Budget Partnership

ICCPR
International Covenant on Civil and Political Rights

ICEFI
Instituto Centroamericano de Estudios Fiscales, based in Guatemala

ICERD
International Convention on the Elimination of All Forms of Racial Discrimination

ICESCR or the Covenant
International Covenant on Economic, Social and Cultural Rights

ICJ
International Commission of Jurists

ICRC
International Committee of the Red Cross

IDF
Israel Defense Forces

IDPs
Internally displaced peoples

IFI
International financial institutions

ILO
International Labour Organization

IMF
International Monetary Fund

Interights
International Centre for the Legal Protection of Human Rights

LGBTI
Lesbian, gay, bisexual, transgender or intersex

LMDGP
Lagos Metropolitan Development and Governance Project

Maputo Protocol
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

MDGs
UN Millennium Development Goals

MMR
Maternal mortality ratio – deaths of mothers per 100,000 live births

MUDAH
Movement of Dominico-Haitian Women Inc

NGO
Non-governmental organization

OHCHR
Office of the UN High Commissioner for Human Rights

OPT
Occupied Palestinian Territories

PSC
Parliamentary Select Committee

RTI Act
Indian Right to Information Act

TAC
Treatment Action Campaign

UDHR
Universal Declaration of Human Rights

UN-DESA
UN Department of Economic and Social Affairs

UNDP
UN Development Programme

UNESCO
UN Educational, Scientific and Cultural Organization

UNFPA
UN Population Fund

UNHCHR
UN High Commissioner for Human Rights

UNICEF
UN International Emergency Children's Fund

UNMIK
UN Interim Mission in Kosovo

UNPD
UN Procurement Division

WHO
World Health Organization

Domestic workers march on International Human Rights Day 2012 in Phnom Penh, Cambodia. At first the police blocked them from marching to the Ministry of Labour, but allowed them to proceed after negotiation.
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INTRODUCTION

“If ours is the generation that can end poverty, there should be no deferring this essential mission, no shrinking away from the task. In a world of great wealth and technological advances, no person anywhere should be left behind. No person should go hungry, lack shelter or clean water and sanitation, face social and economic exclusion or live without access to basic health services and education. These are human rights, and form the foundations for a decent life.”

Ban Ki-moon, UN Secretary-General[1]

Across the world, 842 million people are undernourished and do not have sufficient food to eat.[2] Each year nearly 6.6 million children die before they reach the age of five.[3] Sixty-one million children (more than half of them girls) have no access to education, even at primary level.[4] The number of people living in slums worldwide continues to grow and based on the current rate, the total population in slums is expected to reach 889 million in 2020.[5] This is not just an unfortunate reality of life. It is a human rights scandal of shocking proportions. There is therefore a responsibility to respond – a responsibility rooted not only in the demands of human decency, but also in legally binding international human rights obligations.

Gross economic and social inequality is an enduring reality in countries of all political colours, and all levels of development. In the midst of plenty, many are still unable to access even minimum levels of food, water, sanitation, education, health care and housing. This is the result not only of a lack of resources, but also of unwillingness, negligence and discrimination by governments and others. Many groups are specifically targeted because of who they are; those on the margins of society are often overlooked altogether.

The full realization of economic, social and cultural rights – including rights to food, housing, health, education and work – requires significant human, economic, technological and other resources. Yet limited resources are not the principal cause of widespread violations of economic, social and cultural rights, and cannot be used as an excuse to deny specific individuals and groups these rights. In many countries, ethnic minorities, Indigenous Peoples, women, members of opposition or religious groups, people living with HIV/AIDS or disabilities and others risk deprivation as a result of discrimination and injustice.

Even wealthy and powerful governments have manifestly failed to meet their obligations to end hunger and preventable disease, and to eliminate illiteracy and homelessness in their own countries as well as internationally. Despite expressions of concern and statements of good intent, the international community has stood by while individual governments have disregarded the human rights of millions of people.

FORCED EVICTIONS IN ZIMBABWE

In May 2005, the government of Zimbabwe launched Operation Murambatsvina (which can be roughly translated as "drive out the rubbish"), a programme of mass forced evictions and demolitions of homes and informal businesses. In less than three months, more than 700,000 people lost their homes, livelihoods or both. The evictions were carried out without adequate notice, due process, and legal or court orders, and without providing people with any compensation or alternatives to enable them to resettle elsewhere. They were carried out despite the government's acknowledgement that the country already faced a severe housing shortage. In the few cases where human rights groups helped people to obtain court orders barring evictions, these were ignored.

In response to international pressure, the government set up Operation Garikai/Hlalani Kuhle in June 2005, ostensibly to remedy the negative impact of Operation Murambatsvina. However, Operation Garikai was hurriedly put together without consulting the people affected; it was seriously underfunded and covered only a relatively small number of victims. Some of those who benefited from the programme were allocated unfinished houses with no access to water, sanitation, roads or other services. Most of the beneficiaries were allocated bare plots of land which had no services, where they erected makeshift plastic shelters with assistance from humanitarian organizations. People were required to make regular payments to the Ministry of Local Government as payment for the lease of this land and those who failed to pay were at risk of losing their plots. However, during the mass forced evictions the victims also lost their livelihoods as market stalls and informal shops were also destroyed. By 2014, the majority of the residents were still living in these makeshift structures. The government had offered no other assistance to the hundreds of thousands of victims.

A makeshift community school created and run by the residents of Hopley, a settlement on the outskirts of Harare, 2010. The emergence of unregistered schools at Hopley in 2010 was a direct response to a need arising after the Zimbabwean government failed to plan adequately for the education of children affected by the 2005 mass forced evictions during Operation Murambatsvina (Drive out the rubbish). The quality of education being received by children at informal schools set up by the communities at Hopley is far from adequate. There is a severe shortage of trained teachers, furniture, stationery, textbooks and shelter, and there is no supervision by the Ministry of Education.
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People living in the Garikai settlements still lack access to services, such as education and health. In 2010, Amnesty International recorded a high incidence of newborn deaths at Hopley, a settlement created by the government under Operation Garikai. The deaths were attributed to the lack of maternal and newborn health care services in the settlement. Pregnant women and girls are forced to give birth in shacks because of the barriers they face in accessing health care, including the prohibitive costs of health services and lack of transport to the nearest maternity clinic.[6]

Operation Murambatsvina disrupted the primary and secondary education of an estimated 222,000 children aged between five and 18. Although the government did not carry out any official monitoring, many of these children are believed to have lost several years of education or to have dropped out of the education system permanently. The government also failed to set up schools in Garikai settlements, and children who live in them face numerous barriers to accessing even primary education. In 2011, Amnesty International found that the cost of education, the distance of schools from the children's homes and the resistance of school officials to enrolling children from Garikai settlements have led to children in some of the settlements attending unregistered schools run by community volunteers.

The negative impact of forced evictions on the right to education has also played out in gender-specific ways. During focus group discussions, Amnesty International heard that girls – some as young as 13 – were entering into sexual relationships with older men or getting married as a way of escaping the poverty at home. Young women and girls also reported feeling forced by their circumstances to earn money through sex work to support family members. All the girls who spoke to Amnesty International attributed their early marriages to the forced evictions and the government's failure to support them in re-enrolling in school.[7]

In early 2014, most of those who were allotted land under Operation Garikai were at risk of being forcibly evicted once again, as they were unable to pay the fees required to renew their leases.

(Amnesty International has been monitoring the situation in Zimbabwe since the evictions in 2005. For more information please see Amnesty International, *Zimbabwe: No justice for the victims of forced evictions* (Index: AFR 46/005/2006); *Zimbabwe: Six years on victims of Operation Murambatsvina still struggling to survive* (Index: AFR 46/012/2011); *No chance to live: Newborn deaths at Hopley Settlement, Zimbabwe* (Index: AFR 46/018/2010); and *Left behind: The impact of Zimbabwe's mass forced evictions on the right to education* (Index: AFR 46/019/2011).)

Governments keen to encourage investment have often failed to ensure that big business respects human rights. They have exposed the population to danger through pollution, and to exploitation through denial of the right to a fair wage and decent working conditions. Acting alone or through international financial institutions, governments have supported large-scale development projects which have resulted in widespread homelessness and violations of Indigenous Peoples' rights.

Violations of economic, social and cultural rights are not just a matter of inadequate resources; they are a matter of policy.[8]

Human rights are indivisible – all rights are of equal value and cannot be separated. Violations of economic, social and cultural rights – such as failure to protect the land rights of Indigenous Peoples, denying minorities' education rights, and inequitable provision of health care – are often linked with civil and political rights violations in patterns of denial. No human right can be realized in isolation from other rights. Just as full enjoyment of the right to freedom of expression requires concerted efforts to realize the right to education, so the right to life requires steps to reduce infant mortality, epidemics and malnutrition.[9]

In adopting the Universal Declaration of Human Rights in 1948, the international community recognized that human beings can only achieve freedom from fear and want, as well as freedom of speech and belief, if conditions are created whereby all people can enjoy all human rights. Despite this commitment to the indivisibility of human rights, international attention has largely concentrated on certain violations of civil and political rights such as torture and ill-treatment, extrajudicial killings, enforced disappearances and abuses of the right to fair trial. For more than 40 years, Amnesty International has played a leading role in putting these issues on the international agenda.

Since the end of the Cold War, however, the persistent denial of economic, social and cultural rights has raised increasing international concern. In all states, excluded or marginalized people still face barriers to realizing even minimum levels of their economic, social and cultural rights. Given this reality, campaigners are increasingly pointing to the imperative to recognize and combat such obstacles as human rights issues.

In 2001, Amnesty International broadened its mission to enable it to work on all human rights in order to realize the universality and indivisibility of all human rights in concrete terms, and to be more effective in combating human rights abuses by a diverse range of non-state actors. Engaging with economic, social and cultural rights has enabled Amnesty International to address complex human rights problems in a more holistic and comprehensive manner. For example, the organization's longstanding work on abuses in the Occupied Palestinian Territories was broadened to address the impact of curfews and closures on the right to work and the right to health of the Palestinian population.[10] Another example is the need to address the interrelated nature of violations suffered by people living in slums and informal settlements. Amnesty International's work has highlighted how lack of security of tenure leaves people living in slums in Nairobi, Kenya, at risk of forced evictions and leads to the denial of even basic levels of sanitation and policing that respects human rights. As in many other situations, the impact of these violations affects women disproportionately.[11]

"The arbitrary deprivation of life is not limited to the illicit act of homicide; it extends itself to the deprivation of the right to live with dignity. This outlook conceptualizes the right to life as belonging, at the same time, to the domain of civil and political rights, as well as economic, social and cultural rights, thus illustrating the interrelation and indivisibility of all human rights."

Antônio Cançado Trinidade, President of the Inter-American Court of Human Rights[12]

DENIAL OF MATERNAL HEALTH CARE IN THE USA

"It keeps startling me that at the beginning of this 21st century, at a time when we can… explore the depths of the seas and build an international space station, we have not been able to make childbirth safe for all women around the world… This is one of the greatest social causes of our time."

Thoraya Obaid, Executive Director of the United Nations Population Fund[13]

The USA spends more on health care than any other country in the world, but women in the USA face a greater risk of maternal death compared with Canada, most European countries, and several countries in Asia and the Middle East. Between 1990 and 2008, maternal mortality fell globally; there was a decline in maternal mortality ratio (deaths per 100,000 live births) in 147 countries but the USA was among just 23 countries where the UN reported an increase.[14] In 2012, UN data showed that 45 countries have a lower maternal mortality ratio than the US.[15]

Women in the USA face a range of obstacles in obtaining the services they need. Amnesty International documented multiple failures in the health care system, including: language barriers and financial barriers to accessing health care; lack of information about maternal care and family planning options; lack of care protocols; inadequate postpartum care; and a lack of accountability and oversight.[16]

Government data shows that, for 2005-2007, the maternal mortality ratio was highest among non-Hispanic black women (34 per 100,000 live births), followed by American Indian/Alaska Native women (16.9), Asian/Pacific Islanders (11.0), non-Hispanic white women (10.4), and Hispanic women (9.6).[17]

Half of all maternal deaths in the USA are preventable.[18] Maternal deaths and injury are not just a public health issue but a human rights issue. The USA has ratified or signed several human rights treaties which provide that health care services should be available, accessible, acceptable and of good quality. In addition, the health care system must be accountable, free from discrimination, and ensure the active participation of women in decision-making.

On 23 March 2010, President Obama signed into law the Patient Protection and Affordable Care Act of 2010, the most sweeping health care reform to be enacted in the USA in decades, which promises to improve health coverage substantially. A number of provisions start to address the barriers to obtaining quality health care, which Amnesty International documented in its report *Deadly delivery: The maternal health care crisis in the USA*, though significant gaps and obstacles remain. The expanded access to care mandated by the legislation continues to be at risk of not being fully implemented.[19]

During 2013 a number of pieces of legislation were introduced into Congress to address US maternal health, each reflecting key recommendations in *Deadly delivery*. More work must be done to pass this legislation and to ensure that all women have access to health care throughout their lives, that health disparities are addressed and eliminated, and that the government is accountable for ensuring improvements in the quality of maternal care for all women in the USA.

Campaigners around the world have mobilized since the mid-1980s in international networks to advance economic, social and cultural rights, sharing skills and experience learned over many years and in all parts of the world. Their efforts have led to improvements for certain individuals and groups who have been denied economic, social and cultural rights, recognition of the particular barriers faced by some groups within society, and greater awareness of the importance of these rights to the achievement of human dignity.

Economic, social and cultural rights are not mere aspirations, or goals to be achieved progressively over time. Under international law, states have immediate, as well as longer-term obligations. Regardless of their stage of development, states must take action to fulfil economic, social and cultural rights (including reviewing their laws and policies), and must refrain from violating these rights. States must ensure that there is no discrimination, whether direct or indirect, in the realization of these rights. Governments must also regulate the behaviour of private individuals, businesses and other non-state actors to ensure that they respect human rights.

"The dignity of an individual cannot and should not be divided into two spheres – that of civil and political and that of economic, social and cultural. The individual must be able to enjoy freedom from want as well as freedom from fear. The ultimate goal of ensuring respect for the dignity of an individual cannot be achieved without that person's enjoying all of his or her rights."

Circle of Rights: Economic, Social & Cultural Rights Activism: A Training Resource[20]

Amnesty International, along with the rest of the international community, recognizes that all human rights are universal, indivisible, interdependent and interrelated,[21] and that it is important to campaign to secure respect, protection and fulfilment of all human rights for all people. This primer outlines some of the key features of economic, social and cultural rights. It presents an overview of these rights, outlines their scope and content, and gives examples of violations and what can be done to address them. It also highlights not only the obligations of governments within their own countries, but also their obligations to people beyond their borders, and the human rights responsibilities of other actors, including international organizations and corporations.

The first edition of *Human rights for human dignity* was published in 2005. Since then, there have been a number of significant developments in advancing economic, social and cultural rights, many of which are reflected in this second edition. These include the further elaboration of rights such as the right to work and the right to culture, as well as standards on issues such as business and human rights and extraterritorial obligations; the coming into force in May 2013 of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the first dedicated international complaints mechanism for economic, social and cultural rights[22]; a renewed effort to integrate human rights into the post-2015 development agenda; and expanding case law at both national and international level. At the same time, sadly, many of the challenges highlighted in the first edition remain, whether these are the struggles of victims to obtain effective remedies for violations or simply the scale of poverty and inequality that millions of people around the world continue to endure on a daily basis.

Human dignity requires respect for all human rights of all people: there can be no higher priority than ensuring that everyone is able to live free and equal in dignity and rights.

NOTES _ INTRODUCTION

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Newly arriving refugees from the Nuba Mountains in Sudan line up under a bare tree at a refugee registration centre outside the Yida Refugee camp, South Sudan, April 2012.
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CHAPTER 1
RECLAIMING ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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Economic, social and cultural rights were marginalized for large parts of the 20th century, despite the recognition of the indivisibility of rights in the Universal Declaration of Human Rights. The polarization of the world during the Cold War had a major impact on human rights. On one side, the achievement of economic, social and cultural rights was presented as requiring a political commitment to socialism. On the other, civil and political rights were portrayed as a luxury that could only be afforded once a certain level of economic development had been achieved.

Reclaiming economic, social and cultural rights as human rights has been achieved mainly through the action of a large number of social activists around the world. Their messages gained greater resonance during the 1980s as global politics began to thaw and as concern grew at the collapse in social conditions and the prioritization of economic development over human dignity.

The origins of economic, social and cultural rights

Although economic, social and cultural rights are often described as "new" or "second-generation" rights, they have in fact been recognized for centuries. Both the French and American national rights declarations in the late 18th century included concepts such as "the pursuit of happiness" and "égalité et fraternité" (equality and brotherhood), and the rights to form trade unions, to collective bargaining and to safe labour conditions. The first global human rights institution, the International Labour Organization (ILO), has protected workers' rights and a broader compass of human rights since 1919. Its constitution recognizes that "universal and lasting peace can be established only if it is based upon social justice".[23]

The Universal Declaration of Human Rights[24] reiterated that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world".[25] It went on to place a number of economic, social and cultural rights side by side with civil and political rights.

These include:

- the right to work, to just and fair conditions of employment, and to protection against unemployment
- the right to form and join trade unions
- the right to a standard of living adequate for health and well-being, including food, clothing, housing, medical care and social services, as well as security in the event of loss of livelihood, whether because of unemployment, sickness, disability, old age or any other reason
- the right to education, which shall be free and compulsory in its "elementary and fundamental" stages
- the right to participate in cultural and scientific life.

From 1948 to 1966 the international community struggled to agree an international covenant on human rights to turn this declaration into binding international law. Ultimately, the intense ideological cleavages of the time led to the adoption of two separate covenants, one on economic, social and cultural rights and the other on civil and political rights. Differing approaches were taken in each. While states are required to "respect and ensure" civil and political rights, they are required only to "achieve progressively the full realization of" economic, social and cultural rights. Nevertheless, as shown below, both contain immediate obligations and obligations to be achieved progressively.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966, enshrines the economic, social and cultural rights contained in the Universal Declaration of Human Rights in more developed and legally binding form.[26] By the beginning of 2014, 161 states had become parties to the Covenant.[27]

The Covenant was, and remains, the most complete international standard on economic, social and cultural rights. However, international standards developed at around the same time in specialized agencies, such as the ILO and the UN Educational, Scientific and Cultural Organization (UNESCO), detailed specific human rights within their mandates. Also, since 1965 the international community has developed standards on rights relating to specific groups within society, for example, racial and ethnic groups, women, Indigenous Peoples, children, migrant workers, and people with disabilities. These standards contain relevant provisions on the application of economic, social and cultural rights to these groups. Regional human rights treaties in Africa, the Americas and Europe also provide protection for certain economic, social and cultural rights, as does a revised Arab Charter on Human Rights.

After the Cold War

Recognition and understanding of economic, social and cultural rights has strengthened, particularly in the last three decades, in response to grassroots and broader civil society action. Social movements around the world increasingly mobilized from the mid-1980s against the stark social impact of rapid economic reform programmes, large-scale infrastructure projects, corruption and the unsustainable debt burden. Structural Adjustment Programmes promoted by international financial institutions, such as the World Bank, encouraged aid recipient countries to reduce social spending in sectors such as health and education and to devote a significant portion of their budget to managing their international debt. Countries instituted "cost-sharing" mechanisms that required people to pay for social services (often regardless of their ability to pay), resulting in collapses in primary school enrolment and obstructing access to health care. Claims opposing these policies were articulated in terms of social justice and, ultimately, human rights.

In the 1960s and 1970s, certain civil and political rights violations quickly caught the imagination of politically conscious professionals – who were among those most affected. Similarly, the denial of economic, social and cultural rights required articulation by those most affected – by definition those with little access to political platforms – before being commonly understood as a human rights issue. During the late 1980s and the 1990s

local and national activists were joined by international non-governmental organizations (NGOs) devoted to defending economic, social and cultural rights. An emerging movement culminated in global social forums and an international network where civil society organizations, committed to an array of social justice concerns, gathered to share experiences and build alliances.

Reclaiming rights as entitlements through public action gives legitimacy to calls for social justice. It stresses the accountability of a range of actors and duty-bearers, and has the power to mobilize global activism. Where the marginalized and dispossessed cannot look to their own government to respect, protect and fulfil these entitlements, duties of international co-operation and assistance demand action from those states that are in a position to assist.

The late 1980s also saw the establishment by the UN of an independent committee of experts to monitor states' compliance with the ICESCR, some 10 years later than the equivalent committee for the International Covenant on Civil and Political Rights (ICCPR). The Committee on Economic, Social and Cultural Rights (CESCR) analyses states' reports, makes recommendations for change, and issues General Comments on the scope of rights and obligations under the treaty.[28] General Comments aid international understanding of the nature of these rights and the obligations of states that have agreed to be bound by the Covenant.

Following the entry into force of the Optional Protocol to the Covenant in May 2013, the Committee was given the mandate to consider complaints of violations and provide an international remedy for victims who are denied remedies at the national level.

Under the Protocol, states can opt in to the inquiry procedure. Once they have done so, the Committee can carry out inquiries into situations relating to that country if it receives reliable information alleging grave or systematic violations. Similarly, an interstate complaints procedure permits one state to make complaints against another if both have opted into this procedure.[29]

Recognition of economic, social and cultural rights is not limited to grassroots campaigners, human rights defenders or UN bodies. Nobel Prize-winning economist Amartya Sen, for example, defines famine in terms of a lack of entitlements. He considers that the right of access to food and to the productive resources (such as land) that allow people to feed themselves, is essential to combating famine; food may be available, or even abundant, but often is still not accessible to all.[30]

Economic, social and cultural rights are now widely recognized as enforceable in the courts (justiciable) under both national and international law. In public interest litigation before the Supreme Court of India, the right to life has been broadly interpreted to cover rights including those to education, health and freedom from the harmful effects of environmental degradation. Likewise, the Constitutional Court of South Africa has upheld economic, social and cultural rights included in the 1996 Constitution. It has developed an understanding of the state's duty to act "reasonably" to progressively ensure access to essential medicines and adequate housing, in particular through prioritizing the most vulnerable people.

At the regional level, the African Commission on Human and Peoples' Rights has found Nigeria in violation of several rights, including to health, housing and life, through failing to take sufficient measures to protect the Ogoni people from adverse impacts of oil exploration in the Niger Delta.[31] The European Court of Human Rights has also increasingly recognized the interdependence of human rights. Where the state failed to protect the population from the health impact of a polluting business, the Court found this to be in violation of their right to respect for their private and family life and their home.[32]

In addition, mechanisms have been developed to allow victims of violations to enforce their economic, social and cultural rights at the regional and international levels. The UN and the African, American and European regional systems have adopted complaints procedures that permit international remedies for violations of economic, social and cultural rights.[33] The UN Human Rights Council also appoints Independent Experts or Special Rapporteurs – human rights specialists who monitor the realization of specific human rights. Mandates have been created to monitor education, adequate housing, food, health, extreme poverty, cultural rights, water and sanitation, amongst others.[34]

Current challenges

Despite the advances, great challenges remain. Some influential states continue to be sceptical about the validity of individual claims to recognition and defence of these human rights. For many years the US government described economic, social and cultural rights as "goals" or "aspirations", rather than rights.

The Obama administration has modified this stance, and adopted what it describes as a "holistic approach to human rights, democracy and development".[35] The US government has joined the consensus on some resolutions promoting economic, social and cultural rights at the Human Rights Council and General Assembly.[36] However, although the USA was involved in the negotiations of the ICESCR, and proposed some of its key provisions, it has only signed the treaty (in 1979), but not ratified it.

However, a greater challenge lies in the fact that most of the countries that do fully accept economic, social and cultural rights, do not do enough to ensure that these rights are realized. Many countries have failed to safeguard economic, social and cultural rights within their national constitutions and also fail to provide effective remedies for victims of violations.

FAILURE TO COMPLY WITH INTERNATIONAL DECISIONS

"We don't want to touch their lands; all we want is ours."

Venancio Flores, Yakye Axa, Paraguay, November 2008

For over 20 years, the Yakye Axa and Sawhoyamaxa Indigenous Peoples in Paraguay have been fighting for their traditional lands. Without access to their land, the Yakye Axa and Sawhoyamaxa are unable sustain their traditional activities such as hunting, fishing and gathering honey, or their cultural and spiritual practices, which are vital to their way of life. In 2005 and 2006, in two different judgements, the Inter-American Court of Human Rights ruled that Paraguay had violated the rights of the communities and ordered the return of their ancestral land within three years. In another similar case, the Inter-American Court of Human Rights also ruled in favour of the Xákmok Kásek Indigenous community in Paraguay in August 2010. The Yakye Axa and the Sawhoyamaxa, with the support of national and international civil society organizations, including Amnesty International, have campaigned extensively for the full implementation of the Court's orders. Despite some positive developments, Paraguay has yet to fully comply with the Court's rulings.[37]

In January 2012, an agreement between the Paraguayan authorities and a landowner in the country's central region opened the door for the Yakye Axa to move to 12,000 hectares of land within the ancestral territory of the Enxet ethnic group in the Chaco region. However, by early 2014 the community was still living in temporary homes on a narrow strip of land beside a busy highway, with limited access to basic services, because access to their land had not yet been cleared. The community has lived there for more than 20 years.[38]

In March 2013, the Sawhoyamaxa – who were also living in similar conditions beside a main road – decided to move back to a portion of their traditional land, which is still in the hands of private owners. The community felt that they had no other option because the state was not taking effective steps to secure the land. On 11 June 2014, a new law was enacted to comply with the ruling of the Inter-American Court. This law will allow the Paraguayan state to expropriate 14,404 hectares of traditional land to the Sawhoyamaxa Indigenous community by paying the landowner compensation. This was a major victory for the community who have been fighting for their land for over 20 years. By passing the law, the President of Paraguay has sent a strong message about the willingness of the state to respect and protect the rights of Indigenous Peoples.

A banner displaying solidarity messages shared with the Sawhoyamaxa Indigenous Peoples during an event organized with Amnesty International Paraguay activists, November 2013. The community had returned to their lands in March 2013. They had been excluded from these lands for more than 20 years, despite a 2006 Inter-American Court judgement in their favour. In August 2013, the Paraguayan government submitted a bill to Parliament that would restore their traditional lands to the Sawhoyamaxa. The bill was approved by the Senate in April 2014 and at the time of writing was awaiting approval by by the Lower Chamber and the President in order to come into effect. © Amnesty International

The view that economic, social and cultural rights are mere aspirations of development is legally incorrect and draws attention away from violations of those rights in both poor and wealthy states. A key challenge for human rights activists is to reclaim the universality of rights by spotlighting abuses and campaigning for better enforcement of economic, social and cultural rights around the world.

PURSUING RIGHTS BEFORE REGIONAL BODIES

Human rights organizations, including CEJIL and the International Centre for the Legal Protection of Human Rights (Interights), have intervened in economic, social and cultural rights cases before regional human rights mechanisms. They have submitted opinions known as *amicus curiae* (literally, friend of the court) briefs, and have represented victims of human rights violations.

For example, CEJIL – along with the Movement of Dominico-Haitian Women Inc (MUDAH) and the Human Rights Clinic of the University of California at Berkeley – successfully represented two young girls, Dilcia Yean and Violeta Bosico, before the Inter-American Court of Human Rights. The two girls were denied nationality registration by the Dominican Republic on the basis that they were of Haitian descent. Without registration, they would not have been allowed to enrol in school, in violation of their right to education.[39] The Court upheld the claim of racial discrimination in relation to nationality, awarded each of the girls US$8,000 and requested that the state apologize.[40]

The importance of integrating human rights into development co-operation has been recognized by UN agencies and various donor governments. The UN Development Programme (UNDP), for example, has stated:

"A decent standard of living, adequate nutrition, health care and other social and economic achievements are not just development goals. They are human rights inherent in human freedom and dignity. But these rights do not mean an entitlement to a handout. They are claims to a set of social arrangements – norms, institutions, laws and enabling economic environment – that can best secure the enjoyment of these rights. It is thus the obligation of governments and others to implement policies to put these arrangements in place."[41]

However, the integration of human rights in development work has been, at best, uneven.[42] Also, some UN agencies – including the World Bank Group and the International Monetary Fund – as well as many regional development banks – have not taken adequate measures to ensure that their policies and practice are consistent with human rights standards, even in areas where their work clearly has direct human rights implications.[43]

In addition to international development, the processes associated with economic globalization – the integration of the global economy, trade and investment liberalization, and initiatives to privatize the provision of core public services – have brought new challenges to defending economic, social and cultural rights. Encouraging states to live up to international obligations to ensure that privatization does not negatively affect access to services such as water, health care and education is one of the priorities of campaigners for economic and social justice. Human rights activists bring an independent rights-based critique to such campaigns by highlighting the impact of deregulation on the realization of human rights and compliance with the state's obligations under international law.

While trade liberalization can bring positive benefits, such as greater opportunities for access to previously closed markets for producers from developing countries, certain provisions of trade agreements clearly safeguard the interests of wealthy states, and multinational corporations, at the expense of people in developing countries. Human rights activists have increasingly voiced concern at the impact of international, regional and bilateral free trade agreements on the realization of human rights, particularly as regards access to essential medicines and respect for labour rights.[44]

The great advances in understanding and defence of economic, social and cultural rights that have occurred over the past two decades, in particular, continue to be threatened by scepticism by some states and the failure of many governments to put in place effective accountability mechanisms, particularly for the most disadvantaged people. In response to global opportunities, as well as global threats, human rights and social justice activists have, in turn, increasingly established international partnerships to defend the rights of marginalized people.

Remaining scepticism about economic, social and cultural rights as enforceable rights is based on the perception that their scope and content are unclear, and that it is not appropriate for courts to interfere in these issues, as they involve political decisions on allocation of resources. The work done over the last three decades by civil society organizations, courts and expert bodies all around the world, however, has demonstrated powerfully, as with all rights, that economic, social and cultural rights gain clarity through interpretation and application, and that they are capable of enforcement by courts and other bodies.

DEMAND DIGNITY: ENABLING PEOPLE TO CLAIM AND EXERCISE THEIR HUMAN RIGHTS[45]

Dignity lies at the heart of what it means to be human. In the Universal Declaration of Human Rights, states affirmed that "all human beings are born free and equal in dignity and rights". However, Amnesty International's evidence highlights how living in poverty places people at greater risk of human rights violations, such as forced evictions, denial of access to water and health, and torture and ill-treatment by the police. This is a global reality. Many of these human rights violations have the effect of driving people further into poverty. They create a vicious cycle of insecurity, exclusion and deprivation, and prevent people's voices from being heard.

The failure of governments to recognize and enforce economic, social and cultural rights, such as the rights to health and housing, in their laws, policies and programmes, leaves a critical gap in attempts to halt this process. In 2009, Amnesty International launched an international campaign, entitled Demand Dignity, to reduce this gap. The Demand Dignity campaign focused on four thematic areas:

- maternal health and sexual and reproductive rights
- slums and informal settlements
- corporate accountability
- legal enforcement of economic, social and cultural rights.

Although there are strong international standards in these areas, international institutions and companies that abuse these rights are rarely held accountable. This accountability gap is compounded by the lack of adequate mechanisms to address many human rights violations, and also by the particular barriers that people living in poverty face in accessing justice. The aim of the Demand Dignity campaign was to address these gaps in access, accountability and active participation, so that people living in poverty can claim and exercise their rights.

Amnesty International called on governments to:

- protect economic, social and cultural rights and incorporate them into national laws where this is not already the case
- enforce rights for people living in poverty, including by removing barriers to access, such as fees for health care services
- enable people to claim their rights, which can be achieved by removing barriers to access to justice, providing effective remedies for violations, and giving support and information to enable people to participate actively in decision-making processes that have an impact on their lives.

NOTES _ CHAPTER 1

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28 General Comments are authoritative, although not legally binding, interpretations of obligations under the treaty on the basis of the Committee's understanding of state practice, and can be found at: http://www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx (accessed 17 April 2014).

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Migrant worker outside his living quarters in a labour camp outside Doha, Qatar, October 2012. Many of the workers in the camp were sleeping on the floor, several rooms had no air conditioning, despite Qatar's searing summer heat, and the kitchen was flooded.
(See page 55.) © Shaival Dalal

CHAPTER 2
ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN FOCUS

“There is no water-tight division between civil and political and economic, social and cultural rights.”

European Court of Human Rights[46]

In many ways an arbitrary classification, the term “economic, social and cultural rights” covers a range of human rights, from rights to education, adequate housing, health, food, water, sanitation, to the right to work and rights at work, the right to social security as well as cultural rights. The Universal Declaration of Human Rights did not divide rights into clusters of civil and political on the one hand and economic, social and cultural on the other, and for good reason. Some rights, including those of freedom of association and labour rights, are found in both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Others, such as the right to education, include aspects that are traditionally perceived as civil rights and others that are seen as social rights. An outline of some of those rights generally classified as economic, social and cultural is presented here.

ROMA IN ITALY: DISCRIMINATION AND MARGINALIZATION IN ACCESS TO ADEQUATE HOUSING

Two years after the Council of State, the country's highest administrative court, struck down an unlawful and discriminatory government plan known as Nomad Emergency (a ruling upheld in the Italian Supreme Court in April 2013), thousands of Roma living in Italy, including in major cities such as Milan and Rome, remained trapped in a vicious cycle of discrimination and marginalization.

The government adopted Nomad Emergency in May 2008, in response to what it described as a "situation of grave social alarm" with possible public order and security repercussions allegedly created by Roma, who were conveniently, but incorrectly, labelled as "nomads". The government failed to provide any evidence to justify its assertions. Using special powers and fresh financial resources provided under Nomad Emergency, the authorities closed down Roma camps and forcibly evicted thousands of people without legal safeguards, often leaving them homeless.

While Nomad Emergency represented the culmination of discriminatory policies targeting Roma, its demise has not ended the violations of Roma families' human rights. Forced evictions continue. Thousands of Roma in Italy – over 4,000 in Rome alone – remain segregated in camps, removed from residential neighbourhoods, often in overcrowded and substandard housing. Without a regular income from formal employment, they cannot afford private market rents. Nor can they easily access social housing. In Rome and Milan, municipal authorities have adopted discriminatory criteria in the allocation of social housing, which exclude vast numbers of Roma families.

Amnesty International is urging the national and local authorities in Italy to meet their international obligations to guarantee equal access to adequate housing for all, and this includes removing discriminatory obstacles to accessing social housing and ending housing segregation of Roma. Amnesty International is also urging the European Union to open an infringement procedure against Italy for breach of the Race Equality Directive in the provision of housing.[47]

Cultural rights

Culture – the context of individuals' lives in their communities – can affect all aspects of human life, from housing, food, and the relationship with land and the natural environment, to health care, religion, education and the arts. Related rights, such as the right to adequate food and to education, require that food and education policies be culturally appropriate.[48]

Thus, people have a right to enjoy their economic, social and cultural rights in a manner that is consistent with those cultural practices that they wish to retain and which does not infringe the rights of others. A common example is that most cultures expect toilets in public places to include separate facilities for men and women.

Genuine opportunities for the participation of minorities and Indigenous Peoples in particular, through respect for freedom of expression, freedom of association and the right to take part in political life, are thus a central element of respect for cultural rights.[49]

Cultural rights are protected in international standards in a diffuse way. The ICESCR protects the right to participate in cultural life. This right entitles everyone – alone, in association with others, or as a community – to choose his or her own identity, to take part in the political life of society, to engage in their own cultural practices, to express themselves in the language of their choice, to know and understand their own culture and those of others, through education and information, and to be involved in creating the spiritual, material, intellectual and emotional expressions of the community.[50]

The ICESCR also provides for the right of everyone to enjoy the benefits of science and its applications.

It outlines the duty of the state to preserve, develop and disseminate science and culture. More concrete provisions are found in international law relating to Indigenous Peoples and in minority rights standards and those relating to the elimination of racial discrimination. Individuals and groups defending cultural rights internationally most often rely on the ICCPR (Article 27), which protects the rights of members of minorities, in community with others, to enjoy their own culture, to profess and practise their own religion, and to use their own language.[51]

Protecting the cultural rights of groups, communities and peoples must be balanced with the rights of individuals. The African Charter on Human and Peoples' Rights, which obliges members to promote and protect "morals and traditional values recognised by the community", has been applied to differentiate "positive" from "negative" cultural practices. Some, such as those that clearly subordinate women, may be in breach of other provisions of the African Charter. The Arab Charter on Human Rights requires that the measures adopted by state parties to achieve the right to the highest attainable standard of physical and mental health include "suppression of traditional practices which are harmful to the health of the individual".[52]

States must take all appropriate measures to eliminate traditional or cultural practices that are discriminatory or harmful, particularly to children or women.[53]

The right to adequate food

There is more than enough food produced in the world to feed everyone, and yet hundreds of millions are chronically malnourished.[54] To comply with obligations related to the right to adequate food,[55] states must immediately tackle hunger and progressively ensure that "every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement".[56]

Obligations to realize the right to food require the state to ensure:

- Availability: possibilities either for feeding oneself directly from productive land or other natural resources, or from well-functioning distribution, processing and market systems. This includes obligations of the state when acting internationally to ensure respect for the right to food in other countries, to protect that right, to facilitate access to food, and to provide the necessary aid when required.[57]

- Accessibility: both economic accessibility (through economic activity, appropriate subsidies or aid) and physical accessibility (in particular for vulnerable groups). People who are socially vulnerable or otherwise disadvantaged may need attention through special programmes. They include victims of natural disasters and people living in disaster-prone areas.

- Acceptability: "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."[58]

As the African Commission on Human and Peoples' Rights found in a case involving abuses surrounding oil exploration in Ogoniland, Nigeria:

"The African Charter and international law require and bind [states] to protect and improve existing food sources and to ensure access to adequate food for all… [Among other requirements] the right to food requires that the [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."[59]

STARVATION AS PUNISHMENT IN NORTH KOREA

"We were given corn-rice in small quantities. At times we got only salt soup with cabbage leaves. No meat was served. We were always hungry, and resorted to eating grass in spring. Three or four people died of malnutrition. When someone died, fellow prisoners delayed reporting his death to the authorities so that they could eat his allocated breakfast."

Kim spent four years in a penal labour colony for political prisoners at Yodok in the Democratic People's Republic of Korea (North Korea) after being repatriated from China and charged with treason. Hundreds of thousands of people died and many millions suffered chronic malnutrition in a famine in North Korea exacerbated by the actions of the authorities. The government prevented swift and equitable distribution of food aid, and prohibited the freedom of movement that would have allowed people to go in search of food.[60] Refugees forcibly returned to North Korea are routinely jailed and subjected to degrading treatment, including being seriously deprived of food.

A UN report in March 2013 stated that the majority of North Korean people, about 16 million, remain chronically food-insecure, and a 2012 National Nutrition Survey concluded that 27.9% of children under the age of five were chronically malnourished.[61]

One of the most basic obligations under the right to food is the duty on states not to starve those within their control, such as prisoners. As the UN Human Rights Committee has established, when the state arrests and detains individuals, it takes on direct responsibility to care for their lives, for example to provide adequate medical treatment, living conditions and food.[62]

Human rights standards also speak to gender-specific aspects of the right to food, requiring states to meet the needs of women during pregnancy and confinement, and after giving birth.[63]

The right to adequate housing

The Committee on Economic, Social and Cultural Rights has stated that: "the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head, or which views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity."[64] Similarly, the Special Rapporteur on Adequate Housing has said ""The human right to adequate housing is the right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity.[65]

The Committee has identified seven criteria for determining the adequacy of housing:

- ¬ Legal security of tenure
- ¬ Availability of services, materials, facilities and infrastructure
- ¬ Location
- ¬ Habitability
- ¬ Affordability
- ¬ Accessibility
- ¬ Cultural adequacy.[66]

Governments have to ensure that all people have a minimum degree of security of tenure, which offers them legal protection from forced eviction, harassment and other threats. Housing should be accessible to all, and the costs of housing should not undermine people's ability to satisfy their other needs. In developing housing programmes and allocating resources, governments should prioritize the most disadvantaged groups. They should take steps to ensure that housing is: located in safe areas, away from military sites, dangerous emissions or pollution; near transport links and employment opportunities; and respects cultural rights. People should be able to access water, sanitation and other facilities that are essential for health, security, comfort and nutrition.[67]

Forced eviction is the removal of people against their will from the homes or land they occupy, without due process or other legal safeguards. These safeguards include genuine consultation with affected communities to identify all feasible alternatives to eviction, prior and adequate notice, provision of legal remedies, compensation for losses, and adequate alternative housing to those who cannot provide for themselves.[68] Forced evictions have been characterized as a gross violation of a range of human rights.[69]

The effects of forced eviction can be catastrophic, especially for people who are already living in poverty. People lose not only their homes (which they may have built themselves) but also neighbourhoods, personal possessions, social networks, access to work and to services such as water, sanitation, schools and health care. Women often suffer disproportionately from forced evictions and their effects. This reflects the discrimination

that many women experience in relation to property and inheritance, the increased risks of violence following evictions, and other gendered impacts of homelessness and loss of access to services.

Governments must adopt legislation which prohibits forced evictions and sets out safeguards that must be complied with prior to any eviction, consistent with international requirements. The UN Special Rapporteur on Adequate Housing developed the Basic Principles and Guidelines on Development-based Evictions and Displacement,[70] which provide detailed guidance on steps that should be taken before, during and after evictions in order to comply with international human rights law. The Basic Principles are a good model for the development of national laws on evictions.

The right to education

The right to education encompasses the right to free and compulsory primary education, and increasing access to secondary, technical, vocational and higher education.[71] It cuts across the false divide between human rights, as it has civil, cultural, economic, political and social elements. Realizing people's right to education reduces their vulnerability to child labour, early marriage, discrimination and many other human rights abuses. It also increases their opportunities to realize other human rights, including the right to health and the right to participate in public affairs.[72]

ROMA CHILDREN LOSE OUT ON EDUCATION

"In grade 7 of the special school I learned the same things that I learned in grade 3 of the mainstream school."

Fourteen-year-old Roma boy placed in a special school in Slovakia

Large numbers of Roma children in Slovakia suffer discrimination and are racially segregated in education, with severe consequences for their lives and future opportunities. Roma children are routinely placed in "special schools" or classes for children with mild mental disabilities, or they are segregated in mainstream Roma-only schools or classes. In both cases, they study a lower quality curriculum, often isolated from other pupils. According to a UN Development Programme (UNDP) survey published in 2012, only 17% of Roma children completed secondary school, compared with 88% of non-Roma.[73]

In 2008, Amnesty International found that 99.5% of the 190 pupils in the special school in the village of Pavlovce nad Uhom were Roma. Many of the children in the school had not been assessed in any way before being transferred from the mainstream school.[74] In response to Amnesty International's campaign, the government amended the Schools Act so that it explicitly prohibits discrimination and segregation in education. In August 2010, the government made a commitment to end segregation on the basis of ethnic origin in Slovakia's schools.

However, to date, the authorities have had no clear definition of what acts and measures constitute segregation, and, in practice, the government has failed to ensure that the ban on discrimination is implemented.[75]

A landmark decision of the Prešov Regional Court in October 2012 brought a small ray of hope in the generally grim situation of Roma pupils in Slovakia. Addressing a complaint filed by an NGO, the Centre for Civil and Human Rights, the court held that an elementary school in the village of Šarisské Michaľany, in eastern Slovakia, had discriminated against Roma children by teaching them in separate classrooms, without reasonable justification. Unfortunately, the school has so far received very little state support in acting on the judgement. Its efforts to desegregate the classes are supported mainly by another NGO, eduRoma.

In January 2012, Slovakia adopted the National Roma Integration Strategy 2020, which states that desegregation is one of the basic principles of public policies aiming at the integration of Romani communities. Despite these initiatives, there has been little concrete evidence of change. The Slovak authorities are also failing to monitor the situation in schools due to their unwillingness to collect ethnically disaggregated data on the composition of different kinds of schools.

A Roma child setting off for school in the town of Levoča, Eastern Slovakia, 2013. In 2011, Roma children were placed in ethnically segregated classes. Their parents campaigned for an end to discrimination and the segregation of Roma children in access to education.
© Amnesty International

States must ensure free and compulsory primary education as a matter of priority, and freedom of education (the right of parents to ensure that their children can receive education in conformity with their religious and philosophical convictions). To accord with human rights obligations, governments must ensure that education is adequately available; accessible (financially as well as physically); acceptable (it should respect cultural rights and the human rights of learners); and adaptable.

Minimum core[76] elements of the right to education include prioritizing free and compulsory primary education for all children, and ensuring that educational content accords with human rights principles. This includes fostering diversity and understanding, rather than segregation and prejudice.

The right to health

Article 12 of the International Covenant on Economic, Social and Cultural Rights recognizes the "right of everyone to the enjoyment of the highest attainable standard of physical and mental health".[77] The right to health is not the right to be healthy – no one can have perfect health all the time. It encompasses freedoms (such as the right to control one's health and body, including protections against medical treatment without consent) and entitlements (for example, to equality of access to health care).[78]

The Committee on Economic, Social and Cultural Rights has adopted a broad conception of the right to health, recognizing it as:

"an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels."[79]

Human rights law sets out criteria for determining or assessing whether the underlying determinants of health or health facilities and services are compatible with human rights principles. The right to health thus contains the following "interrelated and essential" elements:[80]

- Health care facilities, goods and services must be available in sufficient quantity within the country. This includes, for example, hospitals, clinics, trained health workers, essential medicines, preventive public health strategies and health promotion.

- Health facilities, goods, services and information on health must be physically and economically accessible to everyone without discrimination.

- Health facilities, goods, services and information must respect medical ethics, be culturally appropriate and sensitive to gender and lifecycle requirements in order to be acceptable.

- Health facilities, goods, services and information must also be scientifically and medically appropriate and of good quality. This requires, among other things, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.[81]

Potential violations of the right to health include:

- deliberately withholding or intentionally misrepresenting information essential for the prevention or treatment of illness or disability

- promoting harmful substances

- failing to ban or discourage harmful cultural practices

- failing to control activities of corporations that have adverse impacts on health

- failing to adopt a detailed plan for realizing the minimum core obligations of the right to health.[82]

The UN Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health (Special Rapporteur on the right to health) has enhanced understanding of the right to health, including sexual and reproductive health, and mental health.

The Special Rapporteur has highlighted the negative impact of criminal law and other legal restrictions in relation to sexual and reproductive health care – including access to goods, services and information – on the freedoms and human dignity of people affected, particularly women, and on public health.[83] For example, legal restrictions on access to contraceptives for unmarried people can contribute to unwanted pregnancies and the spread of sexually transmitted infections. According to the Rapporteur, the use by states of criminal and other legal restrictions to regulate sexual and reproductive health may represent serious violations of the right to health and are also ineffective as public health interventions.[84]

The Special Rapporteur has also emphasized the relationship between the right to health and maternal mortality and morbidity. According to the Rapporteur, while an increasing number of countries have made progress in reducing maternal mortality, the process has stagnated or been reversed in many countries with the highest maternal mortality rates.[85] The Special Rapporteur explains that underlying the high number of deaths of women and girls in pregnancy and childbirth from preventable causes are both the failure of health systems to provide for women and the failure of so many women to reach even those lifesaving services that do exist, because of social and economic factors.[86] In 2012, the Human Rights Council also noted these links, encouraging states to "take action at all levels to address the interlinked root causes of maternal mortality and morbidity, such as poverty, malnutrition, harmful practices, lack of accessible and appropriate health care services, information and education, and gender inequality".[87]

The right to water

The World Health Organization and UNICEF estimate that, as of the end of 2011, 768 million people did not have access to a source of water that was protected from outside contamination.[88] In addition, many more people have no access to sustainable sources of safe water.[89] There are no reliable global estimates of the number of people whose water is of adequate quality and whose access to water allows them a sufficient quantity to meet their personal and domestic needs. Lack of safe water, combined with lack of adequate sanitation, is a cause of serious illnesses, such as diarrhoeal diseases, which kill over 2 million people every year, the vast majority of them children, mostly in developing countries.[90]

The right to water has been recognized as being derived from the right to an adequate standard of living, and therefore implicitly contained in the International Covenant on Economic, Social and Cultural Rights and other instruments.[91] It has also been recognised as a legally binding right in a growing number of national constitutions. The right to water includes availability of sufficient water for personal and domestic uses, physical access within or in the immediate vicinity of each household, affordability, and adequate quality of water.[92] States must prioritize, as part of their immediate obligations, access for everyone to the minimum essential amount of water that is sufficient and safe for personal and domestic uses to prevent disease. States have to adopt the necessary measures directed towards the full realization of the right to water, including by taking positive measures to assist individuals and communities to enjoy the right.[93] Access to water is also an element of other rights. It can be essential in order to realize the rights to food and to secure livelihoods such as for farmers or others who rely on water for their daily work.[94]

As with other economic, social and cultural rights, priority should be given to the most disadvantaged, that is to "those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, Indigenous Peoples, refugees, asylum-seekers, internally displaced people, migrant workers, prisoners and detainees."[95]

PALESTINIANS DENIED FAIR ACCESS TO WATER[96]

The inequality in access to water between Israelis and Palestinians is striking. Palestinian consumption in the Occupied Palestinian Territories (OPT) is about 70 litres a day per person – well below the 100 litres per capita daily recommended by the World Health Organization (WHO) – whereas Israeli daily per capita consumption, at about 300 litres, is around four times as much. In some rural communities, Palestinians survive on far less than even the average 70 litres: in some cases barely 20 litres per day, the minimum amount recommended by the WHO for emergency situations.[97]

On 10 March 2008, Fa'iq Ahmad Sbeih received a visit from an Israeli army patrol at his farm in al-Farisiya, a few kilometres north of Jiftlik, in the Jordan Valley area of the West Bank. The soldiers confiscated 1,500m of the rubber hose that brought water to his farm from a spring on a hill above his land, and crushed the small metal pipe that was connected to the hose. The confiscation order delivered by the army stated that the hose was confiscated "due to lack of permit". The army considers the spring water to be "state property".

In the past, local farmers had tried to build a water cistern to collect water from the spring and to harvest the rainwater, but the army prevented this because they did not possess, and could not obtain from the army, a permit to do so. When an Amnesty International delegate visited the farm on 11 March 2008, Fa'iq Sbeih was beside himself with worry:

"This is my family's livelihood. We work day and night and we need water; and the weather is getting hotter every day. Already the situation is difficult this year because we have had so little rain; you can see how little water there is in the stream and we only took a bit of it. I can't buy another pipe; and if I do the army may come and take it again."

The army subsequently returned the rubber hose to Fa'iq Sbeih, though it was damaged and no longer usable, and reiterated the ban on him using the water from the spring. With the onset of the hot season, he tried to keep some of his crops alive by buying water from other areas, delivered by tanker, but he still lost most of the crop.[98]

Without access to water from the spring, Palestinian farmers like Fa'iq Sbeih have no option but to travel several kilometres to buy small quantities of water that they then transport to their orchards by tanker. This is the most expensive way to obtain water, even more so because the restrictions imposed by the Israeli army require the water tankers to take long detours and circuitous routes to make their deliveries. The unlawful Israeli settlements that surround al-Farisiya face no such problems. Their residents have free access to the water from the spring, which Fa'iq Sbeih and his family are not permitted to use and which forms a small stream that flows down towards the Israeli

settlements. The Israeli settlements also have an abundant supply of water from nearby wells to which Fa'iq Sbeith and other Palestinian farmers have no access. The nearby Israeli settlement of Shamdot Mechola advertises on its website:

"Breathtaking tours to Amaryllis bulbs hot houses which are harvested, packed and shipped to Europe and USA and potted in time to bloom during the winter holiday season. Short tours of our "Hi-tec" dairy farm, vineyards and orchards. Tours of farms in the Jordan Valley who specialize in crops of vegetables, fruits, flowers and spices for export in hot dry climate."[99]

The right to sanitation

The World Health Organization and UNICEF estimate that, at the end of 2011, there were 2.5 billion people who did not have access to an adequate toilet in their home, and among them, 1 billion engaged in open defecation.[100]

The right to sanitation, like the right to water, has been recognized as being derived from the right to an adequate standard of living, and therefore implicitly contained in the International Covenant on Economic, Social and Cultural Rights.[101] This right requires that sufficient sanitation facilities (with associated services) be available within, or in the immediate vicinity of, each household, health or educational institution, workplace, public institution and public place. It requires quality of sanitation facilities, which means they must be hygienically safe to use, including regular cleaning, maintenance and emptying of pits or other places that collect human excreta. Facilities must be in a safe location and be physically accessible for everyone at all times. Access to sanitation facilities and services must be affordable, ensure privacy and dignity, and be socially and culturally acceptable.[102]

The right to sanitation requires that special attention be paid to the safety needs of children and of people with disabilities. Women's toilets need to include facilities for dealing with menstruation. The need for adequate hygiene promotion and education is a significant element in governments' obligations to ensure the right to sanitation.

"Sanitation, more than many other human rights issues, evokes the concept of human dignity."

Report of the UN independent expert on human rights obligations related to access to safe drinking water and sanitation, 2009.

NAIROBI'S SLUMS AND INFORMATION SETTLEMENTS

Some two million of Nairobi's residents live in informal settlements and slums, in inadequate housing with little access to clean water, sanitation, health care, schools or other essential public services.[103] The situation in the settlements reflects decades of government failure to recognize Kenyan slums and informal settlements for the purposes of city planning and budgeting, or to require property owners to provide their tenants with adequate toilets.

"There is a community toilet run by a co-operative society where I live… However I am unable to use this toilet because I cannot afford it. One has to pay Ksh2 [US$0.025] every time you use it and you may have to use the toilet so many times. My neighbours and I have no solution but to use flying toilets [human waste disposed of in plastic bags thrown into the open] as Kiandaa is one of the areas where it is rare to find pit latrines – even of poor quality – within the plots".

Christine, Kibera settlement, 12 February 2010

A resident of Mukuru settlement told Amnesty International: "The public health officials on the ground do not focus on sanitation issues at all. They are more interested in projects where they can get money, for example, enforcement of controls on liquor. The first time I ever saw a public health officer in my area was when NACADA [National Authority for the Campaign Against Alcohol and Drug Abuse] was set up."[104]

Women and girls living in these informal settlements are particularly affected by lack of adequate access to sanitation facilities for toilets and bathing. Many women have to walk more than 300m from their homes to reach the available latrines. This is unsafe for them, especially at night.

Women in four settlements interviewed by Amnesty International explained that poor sanitary conditions led to greater levels of disease such a cholera, in turn requiring them to incur high health care costs at the expense of other basic needs. Also, the lack of toilets and bathroom facilities in the immediate household vicinity, combined with the absence of effective policing in the settlements, also put women at great risk of sexual and other forms of gender-based violence. Women told Amnesty International of the high number of women and girls who have experienced rape and other forms of violence as a direct result of their attempt to find or walk to a toilet or latrine some distance away from their houses. As a result, many women and girls have no access whatsoever to a toilet during the night. Because many women live in one-room homes, they had no privacy when trying to bathe or use the toilet.

The right to work and rights at work

The Committee on Economic, Social and Cultural Rights has emphasized the interdependence of the provisions of the Covenant that safeguard the right to work, rights at work and the right to form and join a trade union, as well as to strike. The right to work remains less well understood than some of the other rights discussed here and is sometimes misinterpreted as the right to a job. The right to work entails access to employment without discrimination of any kind, to choose freely and not be forced into work, access to a system of protection against unfair dismissals, and a supportive structure that aids access to employment, including appropriate vocational education.[105] The right to work covers both paid work and people working independently (referred to as livelihoods in certain contexts) and requires governments to extend protections to people working in the informal sectors of the economy.[106]

Rights at work protect the right of everyone to just and favourable conditions of work, including to fair wages, equal pay for work of equal value, safe and healthy working conditions, reasonable limitations on working hours, protections for workers during and after pregnancy, and equality of treatment in employment.

QATAR CASE STUDY: FORCED LABOUR

"Please help us, our company… did not pay us our salary for 4 months. We don't have any money to eat or rent. If we go to labour office we may lose our job. Please send this mail to some who can help us."

Email received by Amnesty International from workers in Qatar, July 2013

In Qatar, 1.35 million foreign nationals make up 94% of the country's workforce. Hoping for a better life than the poverty they experience in their own countries in South and South-East Asia, many work in the construction industry on large-scale infrastructure projects, including those connected to the 2022 World Cup. Amnesty International found that the sector is rife with abuse and exploitation, such as non-payment of wages, harsh and dangerous working conditions and shocking standards of accommodation. In some cases the exploitation amounted to forced labour.

Researchers met dozens of construction workers whose employers prevented them from leaving the country for many months – so they were trapped in Qatar with no way out. A contemporary survey revealed that 90% of migrant workers have had their passports retained by their employers; 21% "sometimes, rarely or never" received their salary on time; and 20% received a different – lower – salary from the amount they had been promised.

Amnesty International's findings highlighted the inadequacy of the government's existing arrangements to protect migrant workers; many employers routinely flout existing labour protections, and the labour inspectorate is under-resourced. Amnesty International also found that the "sponsorship" system in Qatar is a major factor enabling widespread abuse of migrant workers. Under this system migrant workers are unable to leave the country or change jobs without their employers' permission.[107]

The right to an effective remedy

All victims of human rights violations have the right to an effective remedy. This right has been recognized under various international and regional human rights treaties and instruments. [108]

The Committee on Economic, Social and Cultural Rights (CESCR) has clarified the obligation of states to ensure an effective remedy for violations of economic, social and cultural rights under Article 2(1) of the ICESCR. The CESCR has stated that: "the Covenant norms must be recognized in appropriate ways within the domestic legal order, appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place".[109]

When economic, social and cultural rights are violated, all victims, whether they are individuals, groups or whole communities, have the right to an effective remedy. The existence of effective remedies can strengthen the bargaining power of people and communities living in poverty, who are affected by violations to claim their rights from governments. Such legal avenues can also be used alongside social mobilization of communities, with both strategies being mutually supportive and reinforcing. One example is Treatment Action Campaign's work to ensure access to life-saving health care for people living with HIV/AIDS in South Africa.[110]

A remedy must include the measures necessary to repair the specific harm suffered by victims, for example, returning to them the home from which they have been forcibly evicted, compensating them for their loss and any harm suffered, and providing a legal guarantee that the violation will not occur again. The CESCR has emphasized that, whatever remedies are available, they must be "accessible, affordable, timely and effective". They must also be implemented by the state and lead to an end to the violation.

The CESCR has also emphasized that any person or groups who are victims of a violation:

"should have access to effective judicial or other appropriate remedies at both national and international levels. All victims of such violations should be entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition."[111]

In the first instance, pursuing a remedy might not necessarily involve going to a court; it could, for example mean complaining to a human rights commission, administrative body or a traditional justice system, provided that these bodies have the necessary powers, resources and expertise to adequately investigate and adjudicate complaints and monitor and ensure compliance with their decisions.

However, if the victim is not satisfied with the initial decision and wants to appeal, states must have a very good reason for not allowing the complaint to be ultimately considered by a judicial mechanism. Courts provide powerful and independent protection for rights, as well as stimulating participatory democracy, enabling people to act, entrenching their ability to speak to government and requiring the latter to respond. Judicial measures are particularly required where the remedy requires structural reform, and not just relief in an individual case, for instance, where discrimination claims reveal policy failures or systemic gaps. This can pose the biggest challenge in terms of implementation since it may require systematic structural reforms both in law and practice. These challenges, however, apply across all human rights, not just economic, social and cultural rights.

Where the state has provided judicial remedies for other rights, the indivisibility principle requires that there should be a compelling justification for treating economic, social and cultural rights differently.

States should also ensure that economic, social and cultural rights are adequately protected in law, ideally in a Constitution or Bill of Rights, and in legislation. Effective remedies also mean access to justice for everybody, with legal aid for those who cannot afford a lawyer, and the removal of procedural barriers that prevent public interest claims being brought by NGOs on behalf of large numbers of victims. It also requires people being made aware of their rights, of their ability to claim them and of what remedies can be pursued.

CAMPAIGNING FOR LEGAL ENFORCEMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Amnesty International campaigns to strengthen enforcement of economic, social and cultural rights. It calls on all governments to:

- **Ensure that economic, social and cultural rights are enforceable**
  All countries must ratify the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol. Governments must also ensure that these rights are enforceable in national law.
- **Ensure effective and accessible remedies for violations**
  Governments must remove obstacles to access to justice for victims of human rights violations, in particular those that exclude people living in poverty, and provide legal aid. They should ensure that national human rights institutions and regulatory bodies have the capacity and mandate to investigate complaints of violations and monitor government performance to ensure compliance with human rights.
- **Comply with judgements in full**
  Governments must comply with human rights decisions by the judiciary and regional and international human rights mechanisms.

NOTES _ CHAPTER 2

46 *Airey v. Ireland*, (6289/73) [1979] European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) 3, decision of 9 October 1979, para. 26, http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57420#{"itemid":["001-57420"]} (accessed 17 April 2014).

47 See Amnesty International, *Double standards: Italy's housing policies discriminate against Roma* (Index: EUR 30/008/2013); *On the edge: Roma, forced evictions and segregation in Italy* (Index: EUR 30/010/2012); and *Italy: Zero tolerance for Roma* (Index: EUR 30/020/2011).

48 The Committee on the Rights of the Child has indicated that respect for the right to education requires "recognition of the need for a balanced approach to education and one which succeeds in reconciling diverse values through dialogue and respect for difference." General Comment 1, The aims of education, UN Doc. CRC/GC/2001/1, para. 4.

49 See also Article 17 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, on women's "right to a positive cultural context", including their participation in the formulation of cultural policies: http://www.achpr.org/instruments/women-protocol/ (accessed 17 April 2014).

50 Committee on Economic, Social and Cultural Rights, General Comment 21, The right of everyone to take part in cultural life, UN Doc. E/C.12/GC/21, para. 15, http://www1.umn.edu/humanrts/gencomm/escgencom21.html (accessed 17 April 2014).

51 See for example Communication No. 167/1984, *Lubicon Lake Band v. Canada*, UN Doc. Supp. No. 40 (A/45/40) at 1, http://www1.umn.edu/humanrts/undocs/session45/167-1984.htm (accessed 17 April 2014); and Amnesty International, *Canada: "Time is wasting" – Respect for the land rights of the Lubicon Cree long overdue* (Index: AMR 20/001/2003).

52 Arab Charter on Human Rights, Article 9(4), https://www1.umn.edu/humanrts/instree/loas2005.html (accessed 17 April 2014).

53 See for example Article 24(3), Convention on the Rights of the Child (CRC), http://www.ohchr.org/en/professionalinterest/pages/crc.aspx (accessed 17 April 2014); Article 21, African Charter on the Rights and Welfare of the Child, Articles 5 and 16, http://www1.umn.edu/humanrts/africa/afchild.htm (accessed 17 April 2014); Convention on the Elimination of All Forms of Discrimination against Women, http://www.un.org/womenwatch/daw/cedaw/cedaw.htm (accessed 17 April 2014); and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf (accessed 17 April 2014).

54 World Food Programme, http://www.wfp.org/hunger/faqs (accessed 17 April 2014).

55 The right to adequate food: Article 11, ICESCR, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx (accessed 17 April 2014); Article 24(2)(c), CRC, http://www.ohchr.org/en/professionalinterest/pages/crc.aspx (accessed 17 April 2014); Article 12, San Salvador Protocol, http://www.oas.org/juridico/english/treaties/a-52.html (accessed 17 April 2014): among others.

56 Committee on Economic, Social and Cultural Rights, General Comment 12, The right to adequate food, UN Doc. E/C.12/1999/5, para. 6, http://www1.umn.edu/humanrts/gencomm/escgencom12.htm (accessed 17 April 2014).

57 Committee on Economic, Social and Cultural Rights, General Comment 12, para. 36.

58 Committee on Economic, Social and Cultural Rights, General Comment 12, para. 8.

59 African Commission on Human and Peoples' Rights, *Social and Economic Rights Action Center and Center for Economic and Social Rights v. Nigeria*, Communication No. 155/96, October 2001, http://www1.umn.edu/humanrts/africa/comcases/155-96.html (accessed 17 April 2014).

60 Amnesty International, *Starved of rights: Human rights and the food crisis in the Democratic People's Republic of Korea (North Korea)* (Index: ASA 24/003/2004).

61 See Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (A/68/319), 14 August 2013, http://www.ohchr.org/Documents/Countries/KP/A-68-319.pdf (accessed 17 April 2014).

62 Communication No. 763/1997, *Ms Yekaterina Pavlovna Lantsova v. The Russian Federation*, UN Doc CCPR/C/74/D/763/1997, http://www1.umn.edu/humanrts/undocs/763-1997.html (accessed 17 April 2014). The ICCPR regulates conditions of all people deprived of their liberty: in prisons, hospitals – particularly psychiatric hospitals – detention camps, correctional institutions or elsewhere (UN Human Rights Committee, General Comment 21 on Article 10, para. 2).

63 Article 12.2, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), http://www.un.org/womenwatch/daw/cedaw/cedaw.htm (accessed 17 April 2014); Article 14.2 (b), Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf (accessed 17 April 2014).

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65 See http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G01/105/87/PDF/G0110587.pdf?OpenElement (accessed 17 April 2014).

66 CESCR, General Comment 4, The Right to Adequate Housing, UN Doc. E/1992/23, 13 December 1991: http://www.unhchr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0053547e?Opendocument (accessed 17 April 2014).

67 CESCR, General Comment 4, The right to adequate housing (Article 11.1), para. 8.

68 CESCR, General Comment 7: The right to adequate housing – forced evictions (Article 11.1), 20 May 1997, paras 13, 15 and 16: www.unhchr.ch/tbs/doc.nsf/MasterFrameView/469f4d91a9378221c12563ed0053547e?Opendocument (accessed 17 April 2014).

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74 Amnesty International, *Roma children still lose out: Segregation persists in Slovak schools despite new law* (Index: EUR 72/004/2009) p. 4.

75 Amnesty International, *Roma children still lose out*, p. 2.

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83 Report of the UN Special Rapporteur on the right to the highest attainable standard of health, A/66/254, 2011, http://www.un.org/ga/search/view_doc.asp?symbol=A/66/254 (accessed 17 April 2014).

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The right to water was recognized as an element of the right to an adequate standard of living by the Committee on Economic, Social and Cultural Rights in General Comment 15, The right to water, UN Doc. E/C.12/2002/11, http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94 (accessed 17 April 2014), by the UN Human Rights Council in 2010 (Resolution 15/9), http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/166/33/PDF/G1016633.pdf?OpenElement (accessed 17 April 2014), and by the UN General Assembly in 2013 (Resolution A/RES/68/157), http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/157 (accessed 17 April 2014). It is therefore implicitly contained in the Covenant and CRC.

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104 Amnesty International interview, 18 August 2012.

105 CESCR, General Comment No. 18: The right to work (Article 6), para. 8, UN Doc. E/C.12/GC/18, 6 February 2006: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.GC.18.En?OpenDocument (accessed 17 April 2014).

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108 See, for example, Article 8 of the Universal Declaration of Human Rights, http://www.un.org/en/documents/udhr/ (accessed 17 April 2014); Article 2(3) of the International Covenant on Civil and Political Rights, http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx (accessed 17 April 2014); Article 2(1) of the International Covenant on Economic, Social and Cultural Rights, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx (accessed 17 April 2014); Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx (accessed 17 April 2014), and Article 83 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, http://www2.ohchr.org/english/bodies/cmw/cmw.htm (accessed 17 April 2014).

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On the day of their forced eviction, the Roma community living at the Skadarska Street settlement desperately try to explain to the police that they cannot leave because they do not have anywhere else to go. Belgrade, Serbia, August 2011. (See page 73.)
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CHAPTER 3
OBLIGATIONS UNDER INTERNATIONAL LAW

International standards on economic, social and cultural rights, although universally applicable, take into account the differing resources available to each state. They allow for the fact that full realization of these rights can only be achieved progressively over time, where sufficient human, technical and economic resources are available, including through international co-operation and assistance, such as development aid.

Duties to respect, protect and fulfil rights

Economic, social and cultural rights have often been misunderstood as primarily "positive" obligations on states.[112] In fact, being the "provider of last resort"[113] (stepping in where individuals and communities are otherwise unable to realize their rights) is only one element of the state's obligations.

State obligations to realize all human rights are of three types:

- **to respect** – not to interfere with the exercise of a right
- **to protect** – to ensure others do not interfere, primarily through effective regulation and remedies, and
- **to fulfil** – including to promote rights, facilitate access to rights, and to provide for those unable to provide for themselves.[114]

The obligation to **respect** human rights requires states to refrain from interfering directly or indirectly with people's enjoyment of human rights.[115] This is an immediate obligation. It includes respecting efforts people themselves make to realize their rights. Governments must not torture, unduly inhibit the right to strike, arbitrarily close private schools teaching in minority languages, or carry out evictions without due process of law or providing alternative accommodation, for example.

Under the obligation to **protect** human rights, states must prevent, investigate, punish and ensure redress for the harm caused by abuses of human rights by third parties – private individuals, commercial enterprises or other non-state actors. This is an immediate obligation. Governments must regulate and monitor, for instance, corporate use of private security firms, potentially hazardous industrial emissions, the treatment of workers by their employers, and the adequacy and appropriateness of services that the state delegates or privatizes, including private medical practices and private schools.[116]

States have an obligation to **fulfil** human rights by taking legislative, administrative, budgetary, judicial and other steps towards the full realization of human rights. This obligation can be realized progressively.

This obligation includes duties to **facilitate** (contribute to the realization of that right and enable and assist individuals and communities to enjoy the right), **provide** (ensure that the whole population may realize their rights where they are unable to do so themselves) and **promote** (ensure appropriate education and public awareness on the right and how a person can secure it). The authorities must, for example, provide defendants with any interpretation they need in order to understand court proceedings, or introduce meaningful

vocational training to ensure that students benefit from education.[117] Above all, governments must give priority to meeting the minimum essential levels of each right, especially for the most disadvantaged people.

ARGENTINA: GOVERNMENT ORDERED TO PRODUCE VACCINE

Within the duty to fulfil rights, states must prioritize their minimum core obligations. For the right to health, these include responding to epidemics. In 1998 a law student in Argentina, Mariela Cecilia Viceconte, together with the National Ombudsman, used the power of *amparo*, a form of class action to uphold constitutional rights, to demand that the state take more effective action to realize the right to health, and to respond to an epidemic of Argentine haemorrhagic fever threatening 3.5 million people.

The Federal Court of Appeals ordered that the state produce a vaccine, as the epidemic was unique to Argentina and the private sector saw the development of a vaccine as unprofitable. The court empowered the Ombudsman to monitor the implementation of its order, and held the Minister of Health personally accountable.[118]

In this case, the court found that the state should take specific, concrete measures (developing a vaccine) to combat an epidemic that was unique to the country and where the private sector was unwilling to intervene.

Immediate obligations and "progressive realization"

The principal obligation on states under international human rights standards on economic, social and cultural rights is to achieve, progressively, the full realization of these rights according to the maximum of available resources ("progressive realization").[119] States have a duty to take deliberate, concrete and targeted steps, as "expeditiously and effectively as possible", towards fulfilling these rights.[120] Such measures might include adopting legislation or administrative, economic, financial, educational or social reforms, or establishing action programmes, appropriate oversight bodies or judicial procedures.[121]

In addition to the duty of progressive realization, states have various immediate obligations related to economic, social and cultural rights which are not dependent on available resources.[122]

The duty to "take steps" is an immediate obligation. The concept of progressive realization of rights does not justify government inaction on the grounds that a state has not reached a certain level of economic development. Conversely, taking steps to limit a right or taking retrogressive steps, for example by massively reducing investment in education or health services, can only be justified by an analysis of all the resources available to the state (including those available through international co-operation) and of the full range of obligations the state faces.[123]

To rely on circumstances beyond its control to justify rolling back the realization of rights, the state has to show that it could not reasonably have prevented the negative impact on the right. For example, the African Commission on Human and Peoples' Rights found that Zaire (as the Democratic Republic of the Congo was then named) had violated the right to education when secondary schools and universities were closed for two years during a period of armed conflict.[124]

Another immediate obligation is the state's **duty to prioritize "minimum core obligations"**, to ensure minimum essential levels of each of the rights for all. Under the right to education, for example, core obligations include the right to free and compulsory primary education, and ensuring that children are not taught in a racist, homophobic or otherwise discriminatory way. Under the right to health, states must ensure access to essential medicines, emergency care and pre- and post-natal care. To justify a failure to fulfil core obligations, states must show that they have done all within their power.

"A State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant."[125]

The **duty not to discriminate** is also an immediate obligation. The adoption of laws, policies or practices that have a direct or indirect discriminatory impact on the ability of people to realize their rights amounts to a human rights violation.

Women, girls, men and boys take to the streets in Nicaragua on the Day for the Decriminalization of Abortion in Latin America and the Caribbean, 28 September 2011. © Amnesty International (photo: Grace Gonzalez)

NICARAGUA: CRIMINALIZATION OF ABORTION AND THE IMPACT ON WOMEN AND GIRLS

"Before, no woman was forced to have a particular course of treatment … [a woman] had every right to say, 'I understand the risks, I know I might die, but I choose to continue with this pregnancy'… equally if a woman told me, 'It makes me sad to lose this pregnancy, but I want the cancer treatment,' I would be able to respect her right to choose life."

Nicaraguan doctor interviewed by Amnesty International, November 2008[126]

Since July 2008, abortion has been outlawed in all circumstances in Nicaragua. Before 2006, Nicaraguan law allowed women and girls whose lives or health were threatened by their pregnancy and, in some cases, rape survivors, to be exempted from the general ban on abortion. But now the law criminalizes all forms of abortion, regardless of the circumstances in which it is sought, obtained or performed.[127]

"Doctors' hands are tied … we are anxious even about treating a miscarriage for example."

Nicaraguan doctor, interviewed by Amnesty International, October 2008[128]

The law means that lifesaving medical interventions, which doctors might have recommended to women and girls in situations of high risk, are now effectively ruled out unless the doctor is willing to risk his or her professional career and a possible term of imprisonment.[129]

The **duty to prioritize the most disadvantaged** is also an immediate obligation. The state should actively reach out to marginalized and excluded people, who face the greatest barriers in realizing their rights, and they should be given "first call" when allocating resources.[130]

"Even in times of severe resources constraints … vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programs."[131]

Obligations beyond borders

"We recognize that, in addition to our separate responsibilities to our individual societies, we have a collective responsibility to uphold the principles of human dignity, equality and equity at the global level. As leaders, we have a duty therefore to all the world's people, especially the most vulnerable, and in particular, the children of the world, to whom the future belongs."

UN Millennium Declaration, adopted at the Millennium Summit of the United Nations in 2000[132]

The growing influence of transnational corporations and other private actors, the globalization of labour, trade, finance and investment, and the changing nature of development finance, all mean that the international dimensions of human rights obligations are more important than ever.

With greater movement of capital, goods and services, increasing attention is being focused on the obligations of states towards the human rights of people living outside their borders. This includes the need for governments to regulate the activities of companies for their impacts on human rights overseas. International financial institutions can also have far-reaching impacts on human rights, so states need to recognize that their human rights obligations continue when they act within these organizations.[133]

The obligations of states to respect, protect and fulfil economic, social and cultural rights are not limited to their own territories, but extend to actions and omissions that have effects beyond their borders.[134] A state should be held to account when its actions in another country directly undermine the ability of that country's population to realize their rights (failure to respect rights abroad), or where failure to regulate domestic actors (such as corporations) results in human rights abuses abroad (failure to protect rights abroad), or when it provides aid with conditions that undermine human rights (failures linked to obligations to fulfil rights).

MAASTRICHT PRINCIPLES ON EXTRATERRITORIAL OBLIGATIONS OF STATES IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS[135]

In September 2011, a group of experts in international human rights law, including 12 people who are or have been members of UN human rights treaty monitoring bodies or thematic independent experts appointed by the UN Human Rights Council, adopted the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights. These principles are drawn from international law and aim to clarify the content of extraterritorial obligations to realize economic, social and cultural rights.

The Principles affirm that states are obliged to co-operate and assist other states in the realization of economic, social and cultural rights. They also emphasize that states can and must be held to account for violations of human rights resulting from their acts and omissions that have effects beyond their borders.

It is generally recognized that, because of the huge imbalances in economic power between countries, international co-operation and assistance are crucial to realizing the economic, social and cultural rights of all people. However, despite significant attention to development co-operation, few people are aware that international assistance is not merely a question of charity or enlightened self-interest but is a human rights obligation.[136]

All UN member states have an obligation to take joint and separate action to achieve universal respect for, and observance of, human rights for all without distinction.[137] International standards, in particular the International Covenant on Economic, Social and Cultural Rights, oblige states to take steps, individually and through international assistance and co-operation, according to the maximum of available resources, towards the full realization of economic, social and cultural rights.[138]

International co-operation must at all times be based on consent.[139] However, states are required to seek international assistance where they cannot meet their minimum core obligations.[140] Similarly, there is an obligation on states that are in a "position to assist" to provide international co-operation and assistance, both economic and technical, to other states that require it to meet their minimum core obligations.[141]

Any international co-operation and assistance must always be provided consistent with human rights standards, in a non-discriminatory manner, which prioritizes the realization of minimum essential levels of rights for all, including the most disadvantaged groups. Despite a growing recognition that development co-operation must "do no harm",[142] co-operation and assistance can in some cases lead to negative impacts on human rights. All states have an obligation to ensure that such assistance does not lead to human rights violations. This means, for example, that development assistance must not support projects that involve forced evictions or that perpetuate or foster discrimination. Those receiving development assistance also have an obligation to ensure that it is used in a way that is consistent with human rights standards.

SERBIA: FORCED EVICTIONS THE PRICE OF DEVELOPMENT?

An infrastructure project funded by the European Bank for Reconstruction and Development (EBRD), and partially funded by the European Investment Bank (EIB), led to the forced eviction of Roma communities in Belgrade, some of whom were resettled in metal containers that failed to meet criteria for the right to adequate housing.[143]

On 31 August 2009, 175 Roma families were forcibly evicted by the City of Belgrade authorities from the Gazela Bridge settlement, in advance of reconstruction work to be carried out on the dilapidated Gazela Bridge as part of a multimillion-euro highway and infrastructure project. Despite clear requirements by the EBRD that the City of Belgrade authorities develop a satisfactory Resettlement Action Plan and provide those affected with adequate permanent housing, the Roma families were forcibly evicted by the City of Belgrade authorities. Some 114 households were provided with alternative accommodation in metal containers which failed to meet criteria for adequate alternative housing. Another 61 households who were forcibly evicted from Gazela were forced to return to their places of origin in southern Serbia, in violation of their right to freedom of movement. Many returned to inadequate housing and unemployment, and faced difficulties in accessing essential levels of their social and economic rights.

In September 2009, the Centre for Ecology and Sustainable Development (CEKOR) and CEE Bankwatch Network[144] submitted a complaint to the EIB's Complaints Office,[145] citing failures by the EIB to comply with its transparency requirements and its social standards in relation to the Gazela Bridge Rehabilitation Project. Following an investigation, the Complaints Office recommended that the city and relevant government authorities made significant improvements in housing conditions and provided access to employment for those who had been resettled – both at the container settlements and in southern Serbia. They also stipulated that subsequent loan disbursements should be conditional on the implementation of these recommendations.[146]

While some of those resettled to containers were able to move into social housing, by 2013, four years after their forced eviction, 41 households (165 individuals), continued to live in containers.

At the time of writing in April 2014, the remaining Gazela Roma living in containers are to be resettled under a scheme funded by the European Commission. Those who were returned to the south continue to live in inadequate housing and, in the absence of employment, many had returned to other informal settlements in Belgrade, where they remain at risk of forced eviction. None were granted access to an effective remedy.

Amnesty International has subsequently called on the EBRD and the EIB to strengthen their social policies by adopting adequate human rights due diligence procedures to ensure that they do not support projects that lead to human rights violations.[147]

Many institutions – including bilateral donors and UN agencies – have adopted a human rights-based approach to development. Many donors state that they are guided in their development co-operation by the human rights principles of equality, participation, indivisibility and inclusion. However, in practice, many donors and institutions fail to fully integrate human rights standards into their policies and programmes.

MILLENNIUM DEVELOPMENT GOALS – FALLING SHORT OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

All UN member states have pledged to achieve the UN Millennium Development Goals (MDGs) by 2015. These eight goals represent a global consensus to address poverty.[148]

The MDGs were drawn from the Millennium Declaration, adopted by the UN General Assembly in 2000, which set concrete, timebound and measurable targets for health, education, housing, food, gender equality, water and sanitation.

While the MDGs have played an important role in drawing global attention to issues of development and poverty reduction, they fall short of the existing obligations on states in relation to economic, social and cultural rights. The MDGs only require states to halve the number of people who are hungry by 2015 but under international law, governments are required to use all the resources at their disposal to ensure that, at the very least, everyone is free from hunger. Similarly, while it is estimated that more than one billion people live in slums, the MDGs only commit the international community to improve the lives of 100 million slum-dwellers by 2020.[149] This target is grossly inadequate given the existing obligations under international human rights law to give priority to realizing at least minimum essential levels of housing, water and sanitation for all, and to ensure immediately that everyone has protection against forced evictions. Such legal obligations are rarely integrated into national plans and strategies aimed at achieving the MDGs.

While the Millennium Declaration promised to strive for the protection and promotion of civil, social, economic, political and cultural rights for all, the focus of the MDGs on aggregate and average global targets allows patterns of discrimination and injustice to go largely unchallenged. Identifying and addressing discrimination on all prohibited grounds is a key human rights obligation but it is not reflected in the global goals. Those who are most often subject to discrimination – such as internally displaced people, Indigenous Peoples, migrants, minorities, children, people living with disabilities, refugees, women and girls – are often among the most marginalized and disadvantaged sections of the population. However, the MDGs do not require states to take the necessary measures to eliminate such discrimination in law, policy and practice.

Similarly, gender equality and women's rights are recognized as essential for tackling poverty and states have obligations to address discrimination against women and girls and to ensure equality in all areas, but the approach of the MDGs to promoting gender equality and empowering women is both limited and inadequate.

The MDGs also ignore the importance of rights to participation, freedom of expression, information and association of affected communities. This is despite global acceptance that rights are rarely realized in situations where individuals are denied the freedom to mobilize in defence of their rights.

At the time of writing (April 2014) there is a renewed opportunity to integrate human rights into the goals that will succeed the MDGs in 2015 – the Post-2015 Development Agenda and Framework[150] – and to ensure that the failings of the previous process are not repeated. Amnesty International, together with other civil society partners, is advocating for goals, targets and indicators that will ensure greater accountability, transparency, participation and equality in the Post-2015 Framework. There is a significant risk that, if these essential rights-based concepts are not embedded in the new goals, the most disadvantaged and marginalized people will still not benefit from progress on socio-economic development.

NOTES _ CHAPTER 3

112 For example, G. Weigel, 'Mrs. Roosevelt's confusions revisited', 1995: http://eppcold.polymath.io/publication/mrs-roosevelts-confusions-revisited/ (accessed 17 April 2014).

113 K. Tomaševski, Preliminary Report of the Special Rapporteur on the Right to Education, UN Doc. E/CN.4/1999/49, para. 41: http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/6a76ced2c8c9efc780256738003abbc8?Opendocument (accessed 17 April 2014).

114 This typology has now been recognized by treaty monitoring bodies as well as regional human rights enforcement bodies. See General Comments of the Committee on Economic, Social and Cultural Rights, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11 (accessed 17 April 2014), and, for example, Inter-American Court of Human Rights, *Case Velázquez Rodríguez*, Judgment of 29 July 1988, Series C, No. 4: http://www1.umn.edu/humanrts/iachr/b_11_12d.htm (accessed 17 April 2014), and *Social and Economic Rights Action Center and Center for Economic and Social Rights v. Nigeria*, African Commission on Human and Peoples' Rights, Communication No. 155/96, October 2001: http://www1.umn.edu/humanrts/africa/comcases/155-96.html (accessed 17 April 2014).

115 UN Charter Articles 55 and 56 provide that all members pledge themselves to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction.

116 The duty to protect applies to all human rights: Human Rights Committee, General Comment 31 on Article 2, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. HRI/GEN/1/Rev.6, para. 8: http://www.unhchr.ch/tbs/doc.nsf/0/ca12c3a4ea8d6c53c1256d500056e56f/$FILE/G0441302.pdf (accessed 17 April 2014).

117 The most recent General Comments to define these are: CESCR General Comment 18, paras. 26-28: http://www.refworld.org/docid/4415453b4.html (accessed 17 April 2014); General Comment 19, paras. 48-50: http://www.refworld.org/docid/47b17b5b39c.html (accessed 17 April 2014); General Comment 21, paras 52-54: http://www.refworld.org/docid/4ed35bae2.html (accessed 17 April 2014).

118 Cámara Nacional en lo Contencioso-Administrativo Federal, IV, *Viceconte, Mariela C v. El Ministerio de Salud y Acción Social*, 2/6/1998, see http://globalinitiative-escr.org/wp-content/uploads/2012/06/Litigating-ESCR-Report.pdf (accessed 17 April 2014).

119 ICESCR, Article 2(1): http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx (accessed 17 April 2014).

120 CESCR General Comment 3, The Nature of States Parties' Obligations, UN Doc. E/1991/23: http://www.refworld.org/docid/4538838e10.html (accessed 17 April 2014).

121 CESCR General Comment 3, para. 4.

122 CESCR General Comment 3.

123 CESCR General Comment 3.

124 African Commission on Human and Peoples' Rights, *Free Legal Assistance Group, Lawyers Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Témoins de Jehovah v. Zaire*, Communication Nos. 25/89, 47/90, 56/91 and 100/93 (joined): http://www.achpr.org/communications/decision/25.89-47.90-56.91-100.93/ (accessed 17 April 2014), Ninth Annual Activity Report of the African Commission on Human and Peoples' Rights 1995/96: http://www.achpr.org/files/activity-reports/9/achpr1819eo2_actrep9_19951996_eng.pdf (accessed 17 April 2014), Assembly of Heads of State and Government, 32nd Ordinary Session, 7-10 July, Yaoundé, Cameroon.

125 CESCR General Comment 3 (the examples given are indicative, not exhaustive): http://www.refworld.org/docid/4538838e10.html (accessed 17 April 2014).

126 Amnesty International, *Not even when her life is at stake: How the total abortion ban in Nicaragua criminalizes doctors and endangers women and girls* (Index: AMR 43/004/2009), p. 2.

127 Amnesty International, *Not even when her life is at stake*, p. 2.

128 Amnesty International, *Not even when her life is at stake*, p. 3.

129 Amnesty International, *Not even when her life is at stake*, p. 4.

130 Marta Santos Pais (former Chair of the UN Committee on the Rights of the Child and Director of the UNICEF Innocenti Research Centre), A Human Rights Conceptual Framework for UNICEF, UNICEF Innocenti Essays No. 9, 1999, p. 8: http://www.unicef-irc.org/publications/2 (accessed 17 April 2014).

131 CESCR General Comment 3, para. 12: http://www.refworld.org/docid/4538838e10.html (accessed 17 April 2014).

132 Millennium Declaration, UNGA Res 55/2 (8 September 2000), para. 2: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/55/2&Lang=E (accessed 17 April 2014).

133 The CESCR has consistently held that states' obligations under the ICESCR extend to state action as part of intergovernmental organizations, including international financial institutions (IFIs) such as the World Bank and the IMF. See Concluding Observations of the Committee on Economic, Social and Cultural Rights: Sweden 30/11/2001, E/C. 12/1/Add.70 (Concluding Observations/Comments), para. 24, http://www.manskligarattigheter.se/Media/Get/530/Ladda20ner20dokument20(pdf) (accessed 17 April 2014), and Concluding Observations of the Committee on Economic, Social and Cultural Rights: France 30/11/2001, E/C. 12/1/Add.72 (Concluding Observations/Comments), para. 32, http://www.refworld.org/pdfid/3cc801a54.pdf (accessed 17 April 2014).

134 See M. Langford, F. Coomans and F. Gómez Isa, 'Extraterritorial Duties in International Law ' in M. Langford, W. Vandenhole, M. Scheinin and W. van Genugten (eds), *Global Justice, State Duties: The Extraterritorial Scope of Economic, Social, and Cultural Rights in International Law*, Cambridge University Press, 2013 pp. 53-82; M. Salomon, *Global Responsibility for Human Rights: World Poverty and the Development of International Law*, Oxford University Press, 2007; M.N. Wabwile, *Legal Protection of Social and Economic Rights of Children in Developing Countries*, Intersentia, 2010.

135 Available at: www.maastrichtuniversity.nl/web/Institutes/MaastrichtCentreForHumanRights/MaastrichtETOPrinciples.htm (accessed 17 April 2014). The drafting committee published a commentary elaborating on the Principles and their legal basis: O. De Schutter, A. Eide, A. Khalfan, M. Orellana, M. Salomon and I. Seiderman, 'Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights', (2012) 34 *Human Rights Quarterly* 1084, http://www.icj.org/wp-content/uploads/2012/12/HRQMaastricht-Maastricht-Principles-on-ETO.pdf (accessed 17 April 2014).

136 The UN CESCR has clarified that "in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation … for the realization of economic, social and cultural rights is an obligation of all States". CESCR, General Comment 3, 'The nature of States parties obligations', (Article 2, para. 1 of the Covenant), para. 14.

137 UN Charter Articles 55 and 56, http://www.un.org/en/documents/charter/chapter9.shtml (accessed 17 April 2014).

138 ICESCR, Article 2(1), http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx (accessed 17 April 2014), and CRC Article 4, http://www.ohchr.org/en/professionalinterest/pages/crc.aspx (accessed 17 April 2014).

139 Recognized explicitly in ICESCR Article 11.1, in respect of the right to an adequate standard of living, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx (accessed 17 April 2014).

140 For example, in respect of the right to adequate food, "[a] state claiming that it is unable to carry out its obligations for reasons beyond its control therefore has the burden of proving that this is the case and that it has unsuccessfully sought to obtain international support to ensure the availability and accessibility of the necessary food." CESCR, General Comment 12, para. 17.

141 CESCR, General Comment 3, 'The nature of states parties' obligations', UN Doc. E/1991/23, para. 14, http://www.refworld.org/docid/4538838e10.html (accessed 17 April 2014).

142 *Action-Oriented Policy Paper on Human Rights and Development*, Doc. DDC/DAC (2007) 5/FINAL, OECD-DAC, February 2007, http://www.oecd.org/development/governance-development/39350774.pdf (accessed 17 April 2014).

143 The EBRD provided a loan of €80 million to the public company, Putevi Srbije (Roads of Serbia), for this project, following a loan agreement signed in 2007. The EIB has also provided a loan of €33 million to Putevi Srbije for the same project. Amnesty International, *Home is more than a roof over your head: Roma denied adequate housing in Serbia* (Index: EUR 70/001/2011). See also, Amnesty International, *How the EBRD's funding contributed to a forced eviction in Belgrade, Serbia*, March 2014 (Index: EUR 70/006/2014).

144 An international NGO with member organizations from countries across central and eastern Europe (CEE) which monitors the activities of international financial institutions in the region and promotes environmentally, socially and economically sustainable alternatives to their policies and projects, http://bankwatch.org/ (accessed 17 April 2014).

145 http://bankwatch.org/sites/default/files/complaint_EIB_gazela_28Sep09.pdf (accessed 17 April 2014).

146 http://bankwatch.org/sites/default/files/EIB_ConclusionsReport_Gazela_14Jul2010.pdf (accessed 17 April 2014). See also: Follow-Up report on Complaint SG/E/2009/07, Gazela Bridge Rehabilitation Project, Serbia, 9 May 2001, by the EIB Complaints Mechanism.

147 See Joint Statement by Accountability Counsel, Amnesty International, ARTICLE 19, CEE Bankwatch Network, Center for International Environmental Law, Centre for Research on Multinational Corporations (SOMO), and Human Rights Watch: *European Bank for Reconstruction and Development: Draft Environment and Social Policy Retreats on Human Rights*, March 2014 (Index: IOR 80/002/2014)

148 UN Millennium Declaration, adopted by General Assembly Resolution 55/2, 8 September 2000. See Millennium Development Goals on the UNDP website, www.undp.org/content/undp/en/home/mdgoverview (accessed 17 April 2014).

149 Millennium Development Goals and Beyond 2015, Goal 7: Ensure Environmental Sustainability www.un.org/millenniumgoals/environ.shtml (accessed 17 April 2014).

150 For more information on the post-2015 development agenda see www.un.org/en/ecosoc/about/mdg.shtml (accessed 17 April 2014).

Residents wait to receive food aid distributed by the UN Relief and Works Agency (UNRWA) at the besieged Yarmouk camp, south of Damascus, Syria, 31 January 2014.
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CHAPTER 4
IDENTIFYING VIOLATIONS OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

"A violation of economic, social and cultural rights occurs when a State pursues, by action or omission, a policy or practice which deliberately contravenes or ignores obligations of the Covenant."

Maastricht Guidelines on Violations of Economic, Social and Cultural Rights[151]

Much scepticism about economic, social and cultural rights is the result of feelings of helplessness or resignation in the face of overwhelming statistics on deprivation.[152] Can all 842 million people who do not have access to nutritionally adequate food be victims of human rights violations?

Initial resistance to the recognition of economic, social and cultural rights as human rights stemmed in part from the perceived difficulty of monitoring and assessing the "progressive realization" of these rights. This would require the collection of reliable data, appropriately disaggregated according to each of the prohibited grounds of discrimination, as well as effective indicators to identify progress (or lack of progress) towards full realization.

Over recent years, there has been a focus on developing indicators and monitoring techniques, but there are still many challenges to be met. These include the costs of collecting comprehensive data and finding ways of ensuring that the data is accurate.

In the last few decades, international experts and NGOs have adapted techniques used for monitoring other human rights to assess violations of economic, social and cultural rights. Much of this work has focused on identifying the failures of states to meet their immediate or minimum core obligations.[153] Recently, however, there has also been significant progress in monitoring the obligations of states to fulfil rights in a more comprehensive manner. One possible method is to employ budget analysis and link resource allocation to human rights obligations with respect to deprivations and disparities in the provision of services.[154]

Using human rights indicators

Human rights indicators can be directly based on both human rights standards (such as the prohibition on torture) and existing socio-economic data.[155] Much of the data that is collected for measuring development progress can also be used to assess compliance with economic, social and cultural rights obligations.

Human rights indicators should:

¬ be based on the normative content of the right, as detailed primarily in the treaties ratified by states and the general comments produced by the monitoring bodies

¬ focus on measuring the commitments and efforts of states to meet their human rights obligations

¬ be based on universal standards but be contextually meaningful, bearing in mind states' relative social, political and economic development

¬ ensure the inclusion of cross-cutting norms, such as non-discrimination and equality, transparency, participation and accountability.

Human rights indicators can be:

¬ qualitative and quantitative

¬ structural, concerning process and outcome

¬ objective and subjective.

Here are some examples of structural, process and outcome indicators:

Structural

¬ Ratification of treaty.

¬ Constitutional and/or statutory protection of a right.

Process

¬ How budgets are decided and money is allocated.

¬ Human rights complaints received and the proportion redressed.

Outcome

¬ Infant mortality rates.

¬ Educational attainments (such as youth and adult literacy rates) by targeted population group.

IDENTIFYING A VIOLATION?

A framework for identifying possible violations of economic, social and cultural rights more easily was developed through international expert seminars in 1986 and 1996, and confirmed by subsequent case law.[156] These include situations where a state:

- fails to respect or protect a right or to remove obstacles to its immediate fulfilment (for example, through forced eviction or failing to adequately regulate private service providers)
- employs policies or practices with the intent or effect of discriminating against certain groups or individuals on impermissible grounds (for example, where health care professionals speak only official languages, not minority languages)
- fails to realize without delay a minimum core obligation (for example, failing to prioritize free and compulsory primary education)
- fails to take prompt, concrete and targeted steps towards the full realization of a right (for example, failing to plan for essential medicines to be affordable and available to all)
- fails to adequately prioritize the realization of minimum essential levels of each right, particularly for marginalized people, the excluded and the vulnerable (for example, investing heavily in improving the environment of wealthier districts and little on ensuring the safety of shanty towns)
- places a limitation, not recognized in international law, on the exercise of a right[157] (for example, restricting the right to security of tenure to citizens, and denying it to non-citizens)
- retards or halts the progressive realization of a right, unless it is acting within a limitation permitted by international law because it lacks resources, or because of unforeseeable and uncontrollable events (for example, closing all universities during an armed conflict).

Deprivation alone is not sufficient to prove a violation of economic, social and cultural rights. To demonstrate that a violation has occurred, evidence is needed that a state has omitted to act at all or to the level required of it to overcome deprivation, or that it has actively impeded, or allowed others to impede, the realization of a right.

Violations can be of duties to respect, protect or fulfil rights. Where denial of economic, social and cultural rights is a result of inability (where there are genuine resource constraints, or circumstances beyond the control or outside the knowledge of the state), a state cannot be said to have violated its international obligations. Violations are the result of unwillingness, negligence or discrimination.

Thousands of people have been forcibly evicted from their homes on and around Boeung Kak Lake, Phnom Penh, Cambodia, since the land was leased to a company in 2007. Many residents were harassed and threatened into accepting inadequate compensation or relocation to a place far from work opportunities and without basic services and infrastructure. Women were at the forefront of campaigning and protests against the forced eviction. As the company filled the lake with sand, several homes were flooded and destroyed. In August 2010, this family had to balance on a narrow jetty to get to their house. The lake area is now completely filled and an estimated 650 families await alternative housing.
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Violations of economic, social and cultural rights can therefore occur across the breadth of states' obligations to respect, protect and fulfil human rights. They may include acts of direct obstruction or denial, and failures to act to prevent or redress denial of rights. As is the case for all human rights, many violations involve failures of the state to desist from a specific policy, legislative change or practice that is inconsistent with its obligations under international law. Allegations of this sort require proof that the act impedes realization of rights, and that a remedy lies in simply ceasing this course of action. Violations also often involve abuses by other actors, where the state has failed to regulate their conduct and has failed to ensure effective remedies for potential victims.

Allegations of failures to fulfil rights are harder to assess, without an analysis of how the state has utilized its available resources. Nevertheless, we can identify three types of violations of the duty to fulfil economic, social and cultural rights without a detailed analysis of the availability and allocation of resources:

- ¬ retrogression, which includes:
- ¬ developing and implementing new policies that move further from the full realization of rights
- ¬ large-scale disinvestment in social services, which is not justified by a general economic downturn
- ¬ the reallocation of resources away from economic, social and cultural rights to other areas, such as unwarranted or excessive military expenditure.
- ¬ discriminatory non-fulfilment. Non-discrimination is an immediate obligation that cuts across all obligations to respect, protect and fulfil rights. The adoption of laws, policies and practices that are inconsistent with the principle of non-discrimination amounts to a human rights violation.
- ¬ the failure to prioritize minimum core obligations, particularly for the most disadvantaged.

PUBLIC POLICIES AND THE OBLIGATION TO FULFIL: A POTENTIAL ASSESSMENT MODEL

In 2009 the Center for Economic and Social Rights (CESR), then based in Spain, and the Instituto Centroamericano de Estudios Fiscales (ICEFI), based in Guatemala, produced a project report entitled *Rights or privileges? Fiscal commitment to the rights to health, education and food in Guatemala*. The project aimed to assess Guatemala's development efforts through the lens of its human rights obligations, and the particular role of tax and budget policies in advancing the economic and social rights of the whole population. This is part of ongoing efforts by CESR and other human rights and development practitioners to expand monitoring of the full range of obligations that states have in relation to economic, social and cultural rights, assessing, in particular, compliance with fulfiling obligations and policy frameworks.

Despite being a middle-income country with the largest economy in Central America, Guatemala's social indicators were alarming; more than half the population lived below the national poverty line and one person in seven lived in extreme poverty. The persistence of systemic inequality and discrimination could be partially explained by the legacy of almost 40 years of armed conflict, which did not end until in 1996. However, the lack of state resources was clearly only part of the story. At least as significant, if not more so, was the unequal distribution of resources by the state, contrary to its human rights obligations to ensure adequate enjoyment of a range of economic and social rights for all.

The study focused on the state's efforts to fulfil three key rights – health, education and food – and to address three serious threats to these rights: child malnutrition, maternal mortality and low primary school completion. In so doing it examined the state's obligation to fulfil economic, social and cultural rights, which are the most challenging to assess, given the difficulties in establishing causal links between failures in public policies and violations of rights. Furthermore, since the obligation to fulfil is concerned with both the conduct of the state and the outcomes, there is a need to examine both, and to assess whether they are adequate or not.

An analysis was made of Guatemala's public policies in four key areas – outcomes, policy efforts, resources, and assessment – using a multidisciplinary approach, which combined a range of research techniques. These techniques were drawn not only from human rights law, but also from public policy analysis and development economics, and were quantitative as well as qualitative.

By adopting this robust analytical framework and methodological approach, the NGOs were able to conduct a rigorous policy analysis and make detailed and concrete recommendations to the government on the fiscal reform that would be needed to ensure higher social spending, better distribution of this

expenditure, and the strengthening of social auditing systems and accountability. This put pressure on the government to justify its decisions and, ultimately, the government gave a commitment to increase social spending and to implement progressive tax reforms. The report also prompted and strengthened monitoring by civil society at both the national and local levels. Important lessons were learned about the challenges of applying the analytical framework and how it could be further improved and adapted to provide an effective tool for holding governments to account for their economic and social policy decisions. CESR has since applied the framework in other contexts, from austerity measures in Europe to the political transition in Egypt (see www.cesr.org/opera).

As explained earlier, a common critique of economic, social and cultural rights has focused on whether courts can be involved in judgements about the allocation of resources and the prioritization of policy. In adjudicating on such matters, courts in some countries have been reticent about intruding on the terrain of the executive or other public policymakers, or about issuing rulings that imply the redistribution of resources from one sector at the expense of another. However, in other contexts, courts have tried to balance their supervisory role with giving room for manoeuvre to other branches of government. The standard of "reasonableness", developed in the South African courts, is an example.

"A Court considering reasonableness will not enquire whether other more desirable or favourable measures could have been adopted, or whether public money could have been better spent. The question would be whether the measures that have been adopted are reasonable. It is necessary to recognise that a wide range of possible measures could be adopted by the State to meet its obligations. Many of these would meet the requirement of reasonableness. Once it is shown that the measures do so, this requirement is met."[158]

In applying this principle, the Constitutional Court of South Africa considered whether the policy or programme was: comprehensive, coherent and coordinated; balanced and flexible; allowed for short-, medium- and long-term needs; was reasonably conceived and implemented; and was transparent.[159]

The court considered that the obligation to fulfil the right to adequate housing was violated where housing policy did not prioritize the improvement of the housing condition of those living "with no access to land, no roof over their heads, and who were living in intolerable conditions or crisis situations."[160]

States use a variety of arguments to excuse conduct that would generally be considered a human rights violation, often citing insufficient resources or security concerns, the burden of debt repayments or natural disasters. Although states have differing access to resources, international standards on economic, social and cultural rights take this into account: failure to ensure rights that genuinely results from inability cannot be judged a violation. Thus a temporary closure of a school or hospital following a natural disaster may be understandable where the building must be checked for safety or there are short-term problems in transporting staff to work. However, disaster response must not discriminate against marginalized groups.[161]

Armed conflict does not justify violations

Armed conflict or states of emergency often result in widespread violations of economic, social and cultural rights, where health services, housing, food and clean water sources are destroyed or people are prevented from accessing them. Measures to respond to security concerns must be reasonable and proportionate to the threat. In times of armed conflict, they must also respect the distinction between civilians and combatants.

During an armed conflict, or an emergency that "threatens the life of the nation", governments may derogate (declare that the guarantees are temporarily suspended) from some, although not all, human rights obligations.[162] Yet many recent human rights instruments do not contain a derogation clause. In the case of the African Charter, for example, the African Commission on Human and Peoples' Rights (ACHPR) has said that "limitations on the rights and freedoms enshrined in the Charter cannot be justified by emergencies or special circumstances."[163]

While the realization of economic, social and cultural rights may be a greater challenge during armed conflict, there is no provision made for derogation from obligations under the International Covenant on Economic, Social and Cultural Rights or other core treaties protecting these rights. As with human rights generally, only reasonable and proportionate limitations on the exercise of economic, social and cultural rights are permitted under international law and in pursuit of a legitimate aim (for example, public health, order and security).

At the very least, states must comply with minimum core obligations, which have been explicitly considered non-derogable.[164]

There is also a series of duties in international humanitarian law – the law of armed conflict – relating to the means and methods of conducting hostilities, and to the duties of an occupying power, which are relevant to economic, social and cultural rights. Examples include:

- the prohibition of starvation as a means of warfare[165]
- the prohibition of means and methods of warfare likely to cause widespread, long-term damage to the environment, thereby jeopardizing the health or survival of the population

- ¬ the prohibition of attack on objects essential to the survival of the civilian population[166]
- ¬ the duty to allow the free passage of medical workers and supplies through sieges[167]
- ¬ the duty of occupying powers to ensure and maintain medical services, public health and hygiene in territory under occupation.[168]

GAZA STRIP: ACCESS TO HEALTH

The Israel-imposed blockade on the Gaza Strip, which amounts to the collective punishment of the population of Gaza, has resulted in the near collapse of basic infrastructure, including medical facilities and sanitation. Israel bans exports from Gaza and imposes severe restrictions on imports, stifling the economy. Israel controls the Gaza population registry and forbids the movement of people, including for travel to the West Bank, apart from in exceptional cases.

Patients in Gaza who are referred for treatment in Israel and the West Bank are sometimes refused entry, delayed, or exposed to the risk of arrest at the checkpoint between Gaza and Israel. In the summer of 2013, 180 patients out of 1,165 who had applied for permits to travel to or through Israel for medical treatment missed their appointments for oncological, cardiological or other treatment that is not available in Gaza because they did not receive an answer from the Israeli military authorities. Seventeen patients underwent interrogations by the intelligence services at the passenger crossing between Israel and the Gaza Strip and were subsequently denied a medical visit permit.[169]

On 20 November 2012, during the Israeli Operation Pillar of Defence, two 16-year-old Palestinian boys, Mahmoud al-Arja and Ibrahim Hammad, were hit by an Israeli strike at approximately 5pm. According to witness accounts and enquiries by human rights organizations, the boys were not engaged in any activity that could be interpreted as a threat to Israelis and were not in the vicinity of any military activity; they were standing alone in an open field to the east of the Rafah refugee camp. They were struck approximately 400m from the fence that separates Gaza from Israel, in an area where ambulance access requires authorization from the Israeli military. The Palestinian Red Crescent initiated the process to obtain this authorization soon after 5pm, but at 8pm the Israeli authorities refused to grant access. Eventually, after 10pm, the Israeli authorities allowed a Red Crescent ambulance to reach the boys, who, by that time, had died.[170]

During the 2008-2009 Gaza conflict, after Israeli ground forces took positions inside Gaza on 3 January 2009, they routinely prevented ambulances and other vehicles from reaching the wounded or from collecting bodies anywhere near their positions. As a result, many of the wounded, who were never more than 15 minutes away from a hospital, died needlessly. Scores of bodies, which could not be recovered until after the ceasefire, lay decomposing for days.

One of the most shocking cases is that of the al-Sammouni family, who lost 29 members of their extended family in the al-Zaytoun neighbourhood, in the south-east of Gaza City. Most of those who perished were killed when one of the family homes, that of Wa'el al-Sammouni, was shelled, seemingly with tank rounds, on 5 January 2009. The previous day, Israeli soldiers had ordered dozens of family members to move there from a nearby house that belonged to the same extended family. In addition to those killed outright in the attack,

several other family members, who had been wounded, died over the following days as they remained trapped in the house because the army would not allow ambulances into the area. Several family members bled to death over a three-day period while they waited in vain for someone to rescue them. Children lay for three days without food or water, next to the bodies of their dead mother, siblings and other relatives.[171]

Salah al-Sammouni told Amnesty International:

"The following morning [5 January], three of my cousins and I tried to go out of the house, to the walled garden to get some tomatoes and some wood to cook something. As soon as we got out of the door we were shelled. My cousins Muhammad and Hamdi were killed and Wa'el and I were injured and we retreated back into the house. Then the house was shelled again – at least two shells – from above. Some 25 people were killed and most of the others were injured. My little girl, Azza, was killed and my wife was injured. My mother Rahma was holding baby Mahmoud (six months old) and she was killed but she shielded the baby with her body and saved him. My father was killed. Wa'el's children, a boy and a girl, were both killed. Safa, the wife of my brother Iyad, was killed and Maha, the wife of my brother Hilmi, and their baby son Muhammad were all killed. Why did they shell the house after having put us all in there? We thought we'd all be killed; those of us who could ran out of the house. Many of us were injured; I was injured in the head and blood was pouring down my face as I ran. Nearby there were soldiers in the house of the Sawafiri family and they shouted to us to go back and shot at us, but we kept running. When we got to safety we raised the alarm, called the Red Cross to send an ambulance to the house to get the injured, but the army did not let any ambulances approach the area. We knew there were people still alive in the house because we called the mobile numbers and children answered; they were scared, with dead bodies all around them. Some of the injured died in the house waiting to be rescued. Only three days later could the Red Cross go in, but only on foot as the army did not let the ambulances approach; they found some children still alive and many others dead."[172]

On 7 January, three Palestinian Red Crescent ambulances escorted by an International Committee of the Red Cross (ICRC) vehicle were finally allowed to evacuate 14 wounded civilians, most of them children. Israeli forces had refused permission for the ambulances to approach the house, so the paramedics had to walk 1.5km and transport the wounded, along with three of the bodies, on a donkey cart from the house to the ambulances. The rescue team had to leave dozens of bodies behind because they had no means of carrying them away.[173]

The Israeli army did not give any medical team access to the area during the remainder of Operation Cast Lead. On the morning of 18 January, after Israel declared a ceasefire and pulled out its forces, Amnesty International delegates went to the al-Sammouni area and witnessed medical rescue teams extracting bodies from the rubble. The house where the ICRC/Palestinian Red Crescent paramedics had found the injured civilians and 22 bodies on 7 January had been bulldozed by the Israeli army on top of the bodies, an act of wanton destruction. By 18 January, when they could finally be extracted from the rubble, the bodies were in a state of decomposition.[174]

On 6 July 2010 the Israeli military opened an internal investigation into this incident. When the investigation closed on 1 May 2012, no one had been found responsible for these civilian deaths, and no details of the investigation or of the decision to close the case were made available to lawyers who had made official complaints on behalf of the al-Sammouni family, to human rights organizations or to the UN Fact Finding Mission that had reported the incident. Colonel Ilan Malka, who was commander of the Givati Brigade during Operation Cast Lead, and was allegedly involved in approving the air strike that killed 21 members of the al-Sammouni family, was promoted to the rank of Brigadier General in November 2012.[175] Amnesty International continues to have serious concerns that the Israeli investigations – carried out by Israeli Defense Forces (IDF) commanders or the Military Advocate General's Office – lack independence, impartiality, transparency, appropriate expertise, and sufficient investigatory powers.[176]

Insufficient resources are no excuse

All too frequently, states seek to justify a violation of economic, social and cultural rights on the grounds that they lack financial, technical or human resources.

In considering such claims, it is important to look at whether the state has given sufficient priority to human rights when setting budgets, and has genuinely sought international assistance where needed.

Two further basic principles apply:

- "Even where the available resources are demonstrably inadequate, the obligation remains for a State Party to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances."[177]

- "Even in times of severe resource constraints, whether caused by a process of adjustment, of economic recession, or by other factors, the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes."[178]

A general lack of resources must also be differentiated from the ability to realize a specific duty. For example, in the course of analysing the adequacy of mental health care in Gambia, the government disclosed that it actually had a sufficient supply of medicines for mental health patients, but that they had not been distributed. Consequently the African Commission on Human and Peoples' Rights could justifiably order that the state provide these medicines to those who had need of them, even though it noted the state's severe resource constraints.[179]

Courts in some jurisdictions have considered whether resource allocation is consistent with constitutional human rights obligations. When the South African government claimed that it lacked resources to provide anti-retroviral drugs to pregnant women, the Constitutional Court did not accept the claim. The Court's position was that the government could not argue that it lacked the resources to provide the drugs without developing a plan to determine the cost of rolling out provision across the country as part of a programme for people living with HIV/AIDS and without assessing the various resources at its disposal.[180]

INDIA: USING THE COURTS TO DEFEND ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The right to food, first defended in India using public interest litigation, is now guaranteed in law.

In 2001, several Indian states faced a second or third year of drought but failed to ensure the minimum nutritional requirements of the population, despite holding millions of tonnes of food stock. One of India's leading human rights organizations, the People's Union for Civil Liberties, filed a petition before the Indian Supreme Court, arguing that the government was violating the right to food by failing to address chronic malnutrition.[181] Despite a funded programme of midday school meals and food rations for families living below the poverty line, the quality and reach of such schemes were often limited.[182]

The Court ruled that minimum food ration guarantees for families living below the poverty line should be legally binding and implemented in full. The Court ordered state authorities to provide cooked midday meals, with specified minimum calorific and protein content, to all school children for a minimum of 200 days a year. The Court also introduced the National Maternity Benefit Scheme, a fixed cash incentive of INR500 (US$10 in April 2014), to be provided to all pregnant women living below the poverty line, irrespective of their age and number of previous births, to give women and girls better access to much-needed nutrition during their pregnancy.[183]

The order strengthened the bargaining power of civil society groups campaigning for the right to food. In addition, the court appointed commissioners to monitor its implementation. It is conservatively estimated that, following the litigation, at least 350,000 more girls per year are enrolling in school due to the increased availability of school meals.[184]

The Indian Constitution makes a distinction between fundamental rights (civil and political rights enforceable in the courts) and directive principles of state policy (which guide governmental decision-making). The Supreme Court, however, used these principles to broaden the interpretation of fundamental rights. In particular, it has interpreted the right to life to include the right to a livelihood, adequate nutrition, housing, health and education. By relaxing the procedural rules to permit public interest litigation on the basis of informal petitions, disadvantaged people gained easier access to the courts.

Following a sustained campaign, in 2013, the Indian Parliament enacted the National Food Security Bill, which aims to provide subsidized food grains to approximately two-thirds of India's 1.2 billion people. These people will now be able to purchase 5kg of cereals per eligible person per month at subsidized prices. Also, pregnant women, lactating mothers and certain categories of children are now eligible for daily free meals.

Young woman protesting at a right to food rally, New Delhi, India, April 2010.
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NOTES _ CHAPTER 4

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Sunday Agava is a fisherman in Nigeria. Fishing in Bodo creek used to provide a regular source of income for him and his family. Because of the Shell oil spills of 2008, fishing in Bodo is no longer an option and he has to go much further away in order to fish. Because it takes a long time for him to get there, he can no longer earn a proper living by fishing. He now also has to work in the housing construction business. But he is not trained for this and there is not a lot of work for him. © Amnesty International

CHAPTER 5
WHO IS RESPONSIBLE?

"In the interest of ensuring that ESC rights are taken more seriously as obligations, international human rights organizations should not be unduly limited in identifying the targets of their naming and the means of their shaming."

Mary Robinson, former UN High Commissioner for Human Rights[185]

Responsibility for the denial of economic, social and cultural rights frequently lies not only with governments but also with individuals, groups and enterprises.

Primary accountability in international law rests with the state in which the population lives. However, as discussed in Chapter 3, states also have obligations to respect, protect and fulfil human rights outside their borders. This includes such situations as occupation or internal armed conflict: where an occupying state or an armed group exercises effective control over a part of the population, the controlling power is legally accountable for human rights abuses within that territory.[186]

During armed conflict, not only states but also other armed groups have responsibilities relating to economic, social and cultural rights under international humanitarian law. For example, Amnesty International issued several open letters to the Communist Party of Nepal (CPN) (Maoist) in 2004. They expressed concern about the impact on the right to education of abducting schoolchildren for political education, and about the potential harm of the Maoists' "blockade" of Kathmandu on access to food and essential medical supplies for the civilian population.[187]

Where an interim UN administration exercises effective or joint control over a territory, it may be responsible for human rights abuses committed in that territory. Amnesty International has called on the UN Interim Administration Mission in Kosovo (UNMIK) and the Kosovo/Kosova authorities to find alternative accommodation for Roma communities living in dangerously polluted settlements.[188]

Corporate responsibility for human rights

Governments are responsible for protecting human rights, and this includes rights that are threatened by business operations. However, the failure of a government to protect human rights does not absolve companies of responsibility for the impact of their operations on human rights. The emerging consensus on corporate responsibility is that companies should, as a minimum, respect all human rights. The UN Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises has emphasized that "the corporate responsibility to respect human rights exists independently of States' duties or capacities" and "it constitutes a universally applicable human rights responsibility for all companies in all situations".[189]

Policy commitments on human rights are not sufficient; companies must actively seek to understand and prevent violations of human rights that may occur as a consequence of their operations. The UN Special Representative has described this as human rights due diligence, which encompasses the steps a company must take to become aware of, prevent and address adverse human rights impacts.

It is seen as increasingly important for businesses to carry out assessments of the impact of their operations on human rights, particularly in industries that are extremely physically invasive, such as mineral extraction. According to the UN Special Representative: "While these assessments can be linked with other processes like risk assessments or environmental and social impact assessments, they should include explicit references to internationally recognized human rights. Based on the information uncovered, companies should refine their plans to address and avoid potential negative human rights impacts on an ongoing basis."[190]

The Special Representative has highlighted the importance of reducing or compensating "for the governance gaps created by globalization, because they permit corporate-related human rights harm to occur even where none may be intended".[191] His framework rests on three foundational pillars:

- the state duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication

- the corporate responsibility to respect human rights, which means to act with due diligence to avoid infringing the rights of others and to address adverse impacts that may occur, and

- greater access by victims to effective remedy, judicial and non-judicial.[192]

In 2011 the Special Representative issued Guiding Principles which further elaborate the "Protect, Respect and Remedy" Framework.[193]

International financial institutions, such as the World Bank and the International Monetary Fund (IMF), exert significant influence in defining many states' economic and social policies. A particularly controversial aspect of the World Bank's activities is its responsibility and international accountability for the human rights impact of its operations.[194] Officials of the Bank consider that it is not mandated to consider human rights in lending decisions, only economic criteria. Yet, the Bank is composed of states that have responsibilities to respect, protect and fulfil human rights in all activities, including in their actions and decisions taken multilaterally through the Bank.

The Committee on Economic, Social and Cultural Rights has consistently held that the obligations of states under the Covenant extend to the actions of states as members of intergovernmental organizations, including international financial institutions, such as the World Bank and the IMF. It has indicated that states parties have an obligation to take whatever measures they can to ensure that the policies and decisions of those organizations are in conformity with their obligations under the Covenant.[195]

The World Bank and IMF, as specialized agencies of the UN, must act consistently with the provisions of the UN Charter, including provisions requiring the UN to promote universal respect and observance of human rights.[196] Furthermore, all international organizations are bound by customary international law relating to human rights and by human rights principles, such as non-discrimination, that constitute general principles of international law.[197]

Structural Adjustment Programmes, which flourished under the auspices of the World Bank and the IMF in the 1980s and early 1990s, united human rights groups and other sectors of civil society in opposition to the reduction of public funding for social services in many countries. Under many of the programmes, charges (user fees) were introduced for primary health care and education.[198] The impact on access to primary education, for example, was significant.[199] The capacity of the poor to access these services was significantly reduced, and the World Bank eventually amended its policy. Currently the Bank "does not support user fees for primary education or for basic health services for poor people."[200] To reintroduce free primary education for all, not only those considered poor, will require resources to fill any funding gap. Support from the international donor community would help offset the damage done previously when it encouraged moves away from free provision. International human rights law clearly states that primary education should be free and compulsory.[201]

CAMPAIGNING FOR CORPORATE ACCOUNTABILITY IN THE EXTRACTIVE SECTOR

Amnesty International's research has repeatedly highlighted how governments are unwilling or unable to discharge their legal obligations to protect people from human rights abuses perpetrated by companies, and how company operations frequently result in human rights abuses. It has described how companies can take advantage of weak regulatory systems, particularly in developing countries, which frequently results in the poorest people being the most at risk of exploitation by corporate actors. Women often face additional levels of discrimination and abuse, for example threats to their personal safety in the form of sexual or physical violence from security forces employed by companies. Across the world, people living in poverty face obstacles in accessing justice, ranging from financial barriers to difficulties in travelling to offices, courts and services. These difficulties are exacerbated by companies exerting powerful control over the availability of relevant information.

Amnesty International works:

- to close the gap in accountability for companies by ensuring both that there are stronger legal frameworks in place to hold corporations to account (at the national and international level) and that existing laws are enforced;
- to support the active participation of communities, particularly by ensuring their right to information;
- for greater recognition of and accountability for extra-territorial obligations (human rights beyond borders).

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Young girls in their makeshift home in the Kart-e- Parwan area of Kabul, Afghanistan, home to many internally displaced families. June 2011. (See page 124.)
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CHAPTER 6
ALL RIGHTS FOR ALL PEOPLE

Human rights apply to all people simply because they are human. Yet some people face particular difficulties in realizing their rights because of who they are. Women, for example, not only face direct discrimination in law, but also the impact of longstanding discrimination implicit in dominant social attitudes and "historically unequal power relations between men and women", which have impeded the achievement of gender equality.[202]

People are discriminated against on a wide range of grounds, including their gender, race, ethnicity, immigration status, sexuality, health (such as people living with HIV/AIDS), because they live in poverty or have a disability. Many people face discrimination on several grounds at once, leading to multiple marginalization.

Social movements working for the rights of women, children, Indigenous Peoples, minorities and other groups have highlighted specific ways in which these groups are economically, socially and culturally disempowered and disadvantaged. They have identified measures needed in law and policy to address this. Their efforts are also reflected in the development of international standards specific to these groups. International standards now recognize not only the duty to immediately prohibit discrimination, but also to ensure that it is progressively eliminated. Special measures or "affirmative action" taken to redress conditions (including pervasive discrimination) that prevent or impair the enjoyment of human rights are not prohibited under international law; in fact they are required.[203] Such measures must be reasonable and objective, have a legitimate aim, and cease when the goal is achieved.[204]

This chapter looks at the challenges faced by some disadvantaged groups in order to show how economic, social and cultural rights, like all human rights, take into account the particular characteristics of a person. These are only examples, and many other groups also face significant challenges in the realization of their rights as a result of their identity or situation. These include minorities, people with disabilities, members of non-dominant castes, people living in slums, older people, youth, non-nationals, couples living together, people born out of wedlock and people with mental illnesses.[205]

Children

"If children had a voice they would, rightly and repeatedly, criticize adult society for hypocrisy."

Thomas Hammarberg, former Vice Chair, UN Committee on the Rights of the Child[206]

Children's rights seized the world's imagination in an unprecedented way. The UN Convention on the Rights of the Child (CRC) was ratified by more countries, more quickly than any other international treaty. It is now a binding legal standard for the entire world, with the sole exceptions of Somalia and the USA, the only two countries not to be bound by it, although both are signatories. For the first time in international law, the CRC recognized that children are not the property of their parents, or of anyone else.[207] They are fully-fledged human beings with human rights. The CRC includes the key principle that all decisions made on behalf of a child, whether by the state, by a parent or guardian, or by any other person, must be taken in the best interests of the child. It also protects children's right to express opinions and have them taken into account, according to their developing capacities. Other general principles in the CRC include the right to freedom from discrimination and the right to survival and development.

A key theme in the CRC is the protection of children from abuse and exploitation. Such exploitation can take various forms, but is often economically motivated. Economic exploitation is proscribed.[208] One of the main focuses of child rights activists and the UN Committee on the Rights of the Child has been child labour, although the Committee recognizes that "not all areas where an economic element prevails are necessarily exploitative".[209] There are two key International Labour Organization (ILO) standards in this area: Convention 182, which prohibits the most dangerous forms of child labour, and Convention 138 on the minimum age for employment. According to these standards, children may not work in hazardous jobs below 18 years of age, and may perform only "light work", which does not interfere with their education below the age of 15.[210]

REGULATING THE USE OF CHILD LABOUR: PORTUGAL

An important regional instrument for the protection of economic, social and cultural rights is the European Social Charter. Since 1995, organizations representing victims have had the right to lodge collective complaints outlining alleged violations of Charter rights. An early case, brought by the International Commission of Jurists (ICJ), alleged that Portugal had failed to effectively regulate the working conditions of a large number of children. The ICJ outlined that:

"the granite industry in the north employs young boys who work unprotected from the granite dust while breaking stones. Children are reported to suffer badly from this work, as their lungs are dangerously coated with granite dust and their backs are badly affected."[211]

The European Committee of Social Rights found that this went beyond "light work" and that Portugal was not regulating sufficiently the practice of employers in using child labour and was in breach of the Charter[212] and Portuguese law.[213]

The decision led to improvements, including legislative amendments and increase in the number of labour inspectors. The experience of the ICJ highlights the importance of local partner organizations monitoring follow-up.[214]

Among innovative provisions of the CRC are those that protect the rights of disabled children (Article 23) and extend cultural rights explicitly to Indigenous children (Article 30). The CRC also sets out the duty of the state "in case of need to provide material assistance and support programmes [to parents], particularly with regard to nutrition, clothing and housing."[215]

Women

All universal and regional human rights treaties prohibit discrimination on the basis of sex. Yet women continue to face widespread and systematic inequality in the realization of their economic, social and cultural rights.

The ILO has found that, although progress has been made in some countries on closing the gender pay gap, women's average wages continue to be less than those of men in all countries where data is available.[216]

States that are party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) are obliged to "pursue by all appropriate means and without

delay a policy of eliminating discrimination against women".[217] This is a significant challenge. Discriminatory practices towards women are often justified by reference to traditional, historical, religious and cultural attitudes. Factors such as disparate social roles in terms of family responsibilities and gender-based violence present additional obstacles to equal achievement of economic, social and cultural rights by women. For example, the traditional assignment to women and girls of the role of primary care-giver in the family restricts women's freedom of movement and consequently their access to paid employment and education.[218] When states fail to give adequate priority to primary education for all, it increases the likelihood that families will decide not to send girls to school. The UN Special Rapporteur on the right to education has pointed out that "years of schooling appear wasted when women do not have access to employment and/or are precluded from becoming self-employed, do not have a choice whether to marry and bear children, or their opportunities for political representation are foreclosed."[219]

Campaigning for maternal health and sexual and reproductive rights

All over the world, women and girls are being discriminated against and denied their human rights, simply because of their gender. But perhaps nowhere is the devastation that discrimination causes in women's lives more evident than in issues surrounding sexual and reproductive rights. These are the rights to choose who to have sex with and when; to choose whether and when to marry or get pregnant; to access information about sex, health, family planning and safe and legal abortion services; and to access good quality health care, including during pregnancy and childbirth. These rights ensure that people can exercise control over their own bodies and lives.

For the girl who is not taught about safe sex at school, for the teenager who becomes pregnant as a result of rape and has no choice about giving birth because abortion is illegal where she lives, for the woman who needs her husband's consent to get contraception, the consequences of discrimination can be serious – even fatal. Every year, hundreds of thousands of women and girls die or suffer serious injury during pregnancy or shortly after giving birth because they cannot get the information, health care or medicine they need.

Women and girls have the right to make their own decisions about their lives and their sexual and reproductive health, free from threat, discrimination or coercion. Yet in every region of the world, in developed and developing countries, women and girls are denied this right. Amnesty International calls on all governments to ensure that all women and girls are:

- empowered and able to claim their rights, with the necessary information, knowledge, skills and power to participate in shaping the laws, policies and practices that affect their lives.
- able to access sexual and reproductive health services and information without any barriers, and to exercise their sexual and reproductive rights free from discrimination.
- Able to access justice when their rights are violated.

Access to land is essential for realizing the right to housing and, in many contexts, for the rights to food, work and an adequate standard of living. Women are often denied or have unequal access to land because of discrimination in property, inheritance and land registration systems.

"In many slums, the majority of occupants living in densely packed shacks in fact do not own them, but rather rent them from landlords. Owners often rent out their shacks at high costs relative to the income of the majority of occupants, and this is especially problematic for indigent women who tend to be the lowest income earners. Add to this the fact that women are even less likely to have recognised rights over their homes, as these rights, in practice, are vested with the husband. For women, while they may not have control over their housing situation, nonetheless have to deal with all of the problems inherent in inadequate housing. Construction and repair of slum housing is appallingly inadequate most of the time, exposing occupants to leaking roofs, abysmal sanitation, security risks, flooding, and fire outbreaks. It is women who are disproportionately affected by all of these problems, as they spend more time in the home and community caring for their families and their households."

Centre on Housing Rights and Evictions, Women, Slums and Urbanisation, Geneva, 2008.

Sexual orientation and gender identity

Commemorating the 60th anniversary of the Universal Declaration of Human Rights in 2008, Louise Arbour, the then High Commissioner for Human Rights, said that it is "unthinkable" to exclude people from human rights protections because of their race, religion or social status, and so we must "reject any attempt to do so on the basis of sexual orientation or gender identity".[220]

Yet, in many countries around the world, individuals are targeted for discrimination, abuse and violence because of their sexual orientation or gender identity.

In 76 countries, consensual same-sex sexual relations continue to be criminalized, and individuals who are, or are perceived to be, gay or lesbian, risk harassment, arrest or conviction.[221] Even where not actively enforced, these laws may be used by state and non-state actors to legitimize discrimination in access to employment, education, housing and other services, and may be used to restrict the activities of health care workers. [222]

Even in countries without laws that criminalize same-sex relationships, social attitudes may legitimize discrimination, harassment and violence against individuals because they are, or are perceived to be, lesbian, gay, bisexual, transgender or intersex (LGBTI). This may take the form of direct discrimination, abuse or denial of services. It may also be manifested as institutional discrimination: for example, in many countries, transgender individuals cannot obtain official documents (birth certificates, passports, identity cards) corresponding to their gender identity, and so face disclosing the fact that they are transgender – risking harassment or even violence – in any dealings with state actors or services.

A young man who has been frequently beaten in his neighbourhood and evicted from his home because of his sexual orientation. Downtown Yaoundé, Cameroon, May 2013.
© Amnesty International

In Turkey, domestic legal standards prohibiting discrimination in commerce or the provision of services do not cover discrimination on the basis of sexual orientation and gender identity. Amnesty International has documented how this has resulted in the denial of public services to people on the basis of their perceived sexual orientation or gender identity. Transgender women, in particular, told Amnesty International of longstanding attempts by the authorities to force them out of their houses. They also described how they needed a non-transgender person to sign a rental agreement on their behalf because most landlords refused to deal directly with transgender individuals.[223]

LGBTI people may suffer from violations of their right to health, in the form of both denial of access to services and forced or unwanted medical treatment.

In sub-Saharan Africa, gay men face barriers to accessing health services because of the social stigma associated with HIV and its perceived link with gay men. In Kenya in 2010, a medical facility providing HIV services to men who have sex with men was mobbed by community members after church leaders claimed that it was providing "counselling services to criminals".[224]

In many countries, intersex infants and children with genitalia that are not easily classifiable as male or female, often undergo genital surgery or pharmaceutical regimes to "correct" their genital presentation and are then assigned a corresponding male or female gender. Often, multiple operations are performed, followed by hormone treatment to "fix" the child in his or her assigned gender. Such treatment can result in serious emotional and physical trauma. These procedures are not medically necessary and are often performed on infants and children who are too young to give informed consent.

LGBTI individuals may also be denied access to employment; in many countries, they face the risk of discrimination or even dismissal from their jobs. In order to get a job, transgender people may be forced to conform to standards of dress that correspond to their gender at birth, rather than their identified gender.[225] In many countries, LGBTI individuals may only be able to find work in the sex industry.

Individuals may also be denied access to education, either through expulsion or through the education system. In Cameroon, lesbians have been expelled from schools and universities because of their sexual orientation,[226] while in Ireland, transgender individuals who are unable to change their legal documents may be unable to enter university if the name on their school leaving certificate does not match their legal name.[227]

International human rights law recognizes that sexual orientation and gender identity are integral to every person's dignity and humanity and must not be the basis for discrimination and abuse.[228] Everyone, regardless of their real or perceived sexual orientation or gender identity, is entitled to enjoy the full range of human rights without fear of discrimination, persecution or violence.

Indigenous Peoples

Indigenous Peoples today account for around 6% of the world's population; an estimated 370 million people with an extraordinary diversity of cultures and histories. Although there is no fixed definition of Indigenous Peoples in the UN Declaration on the Rights of Indigenous Peoples, the term is generally used to refer to communities and peoples who: "having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples".[229] Self-identification is also a vital factor.[230]

Indigenous Peoples seek recognition of their rights both as individuals and as nations or peoples on their own terms, in accordance with their traditions. It is increasingly recognized that the relationship to land of Indigenous Peoples is crucial to the realization of a wide range of rights.[231] Traditional ways of living off the land are central to providing food, medicine and housing to Indigenous families and communities, and to maintaining the practices that nourish their spiritual and social lives. Indigenous Peoples around the world are seeking formal demarcation of their territories: that is, mapping, marking and protecting their boundaries from unwanted intrusions and ecological destruction.

The UN Declaration on the Rights of Indigenous Peoples affirms the right of Indigenous Peoples to the lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired, and requires that states give legal recognition and protection to these lands, territories and resources.[232] The Declaration recognizes the rights of Indigenous Peoples to self-determination.[233] It also states:

"Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired."[234]

and that

"Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return."[235]

The Declaration requires states to "consult and cooperate in good faith with the Indigenous Peoples concerned, through their own representative institutions, in order to obtain their free and informed consent prior to the approval of any project affecting their lands or

territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources."[236]

Various international human rights bodies have also recognized the central importance of Indigenous Peoples' relationship with their lands for the realization of their other human rights and affirmed the obligation of states to seek the free and informed consent of Indigenous Peoples before making any decision relating to their rights and interests.[237]

LAND RIGHTS IN BRAZIL AND NICARAGUA: CONTRASTING OUTCOMES FOR INDIGENOUS PEOPLES

"In the Guarani and Kaiowá areas, what happens? A lot of malnutrition. We have no land to plant on. Precisely because of this, there is misery and hunger in our land... We Indians have already taken a decision. If an eviction occurs in these areas in conflict, we will commit suicide. We will commit suicide because we don't mean anything to anyone."

Indigenous leader in a public meeting with a special Brazilian senate commission on Indigenous affairs, February 2004[238]

Indigenous Peoples in Brazil have for centuries been the target of violence aimed at driving them from their lands. This threat persists to this day and Indigenous people continue to be harassed, attacked and killed.[239]

Successive governments have failed to deliver on international and constitutional obligations to recognize Indigenous land rights fully and finally. The government has also been slow to follow through on promises to demarcate and ratify territories. This has left Indigenous communities at risk of attack and forced evictions, aggravating their already dire economic and social situation.

Prospectors, ranchers and logging companies want to exploit the land's natural resources; landowners claim title to it; and the military cite national security interests to reduce and limit the control of border areas by Indigenous communities. Such vested interests use substantial economic and political lobbying powers to delay and block the recognition of Indigenous Peoples' land rights. As a result of state inaction, Indigenous Peoples are deprived of the essential resource for the realization of their economic, social and cultural rights – their land.[240]

In Nicaragua, protection for Indigenous land rights was won in 2001 by the Awas Tingni living on the Atlantic coast. The Awas Tingni appealed in 1995 to the Inter-American Commission on Human Rights to protect rights under threat from logging operations by a foreign company. Although the Nicaraguan Constitution recognizes the rights of Indigenous Peoples over communally held land, the Awas Tingni did not hold formal title to the land. In August 2001, the Inter-American Court of Human Rights found that the government had effectively treated the Awas Tingni land as state property when it granted a logging concession without the consent of the community. It found that Nicaragua had violated the Awas Tingni's rights to judicial proceedings and to property under the American Convention on Human Rights and ordered the government to refrain from infringing their rights and to ensure the demarcation and titling of all Indigenous land.[241] This was the first binding decision by an international human rights tribunal to explicitly recognize the rights of Indigenous Peoples over communal land.

Migrants

The UN Department of Economic and Social Affairs (UN-DESA) estimates that 232 million people, or 3.2% of the world's population, lived abroad in 2013, compared with 175 million in 2000 and 154 million in 1990. The figures also show that from 1990 to 2013, the number of international migrants born in the South and residing in the North doubled, increasing from 40 to 82 million and growing more than twice as fast as the global total. Over the same period, the migrant population originating in the South and living in the South grew from 59 million to 82 million (a 41% rise). South to North migration accounted for 54% of the growth in the number of international migrants, while 31% was due to an increase in South-South migration.[242]

The International Labour Organization (ILO) estimates that around 90% of international migration today is directly connected to people's work, with an estimated 105 million of the 214 million people living outside their countries of birth or citizenship in 2010 being economically active.[243]

Migrant workers play a vital role in sustaining the economy and enriching the culture in the countries in which they work. Yet people who leave their country for social and economic reasons are often vilified. Many experience discrimination, racism and xenophobia, exploitation and other violations of their human rights, including their economic, social and cultural rights.

Many migrants around the world have no status in the country in which they live because they do not have the legal right to enter into or remain in the country. Such people are particularly vulnerable to abuse. Some states are only too willing to turn a blind eye to large numbers of irregular migrant workers working in the informal economy.

Many migrant workers live and work in appalling conditions, without access to essential services such as health care. The countries of origin of many migrant workers often sign agreements with countries of employment in which their citizens are treated as commodities or mere units of labour. Many irregular migrants are fearful of reprisals, they

often face expulsion from the state in which they reside, and so are reluctant to speak out against abuses of their rights by governments, state agents, or employers.

All migrants, regardless of their status, are entitled to the protection of international human rights law and standards. While the fundamental principle of non-discrimination permits certain distinctions to be made between nationals and non-nationals, these distinctions must serve a legitimate objective and must not be disproportionate. Most importantly, such distinctions must not inhibit the individual, either directly or indirectly, from enjoying his or her human rights. The Committee on the Elimination of Racial Discrimination (which monitors states' compliance with the International Convention on the Elimination of All Forms of Racial Discrimination) recently clarified the scope of the rights of non-citizens. It underlined that the Convention requires, among other things, the "Remov[al of] obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the areas of education, housing, employment and health."[244]

The protection of the human rights of migrants is now complemented by the seventh core international human rights treaty, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.[245] The Convention covers rights and protection for migrant workers at all stages of migration, and applies specific protection to irregular migrants and their families. Amnesty International is campaigning for migrants' rights in a range of situations around the world.

Refugees and internally displaced people

In 2012 the UN High Commissioner for Human Rights (UNHCHR) estimated that almost 45.2 million people had been forcibly displaced worldwide – the highest level in nearly 20 years. This figure included 15.4 million refugees, who have left their countries to find protection from conflict or other situations where they would be at risk of serious human rights violations; 937,000 asylum seekers; and 28.8 million internally displaced people – those forced to seek refuge within the borders of their own countries.[246]

Enjoyment of economic, social and cultural rights is of fundamental importance for refugees and displaced people before, during and after their flight.

The denial of economic, social and cultural rights can itself cause displacement. Massive violations of rights, such as the right to food, through sieges or discriminatory distribution of food aid, can force thousands to leave their homes.[247] Sometimes individuals are specifically targeted: if a state violates the rights of individuals because of who they are (for example, their gender or ethnicity) or what they believe in (for example, their religion or political opinions, including opinions on gender roles), this may constitute a ground for recognition as a refugee. The interdependence of rights means that the denial of economic, social and cultural rights is often linked to the denial of civil and political rights.

The current international system for the protection of refugees is based on the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol, which aim to ensure that refugees have "the widest possible exercise" of all rights recognized in the Universal Declaration of Human Rights. This requires that states ensure work, housing and education to refugees on their territory on at least as favourable a basis as either nationals or other non-nationals. In countries of asylum, this is now complemented by international law protecting the rights of non-nationals generally.[248]

There are three possible solutions to the plight of refugees: complete local integration in the country of asylum; resettlement in a third country; or voluntary repatriation in safety and dignity to the country of origin. Each requires that refugees are able to enjoy economic, social and cultural rights:

- Refugees who are denied fundamental human rights, including access to employment and education, in a country of asylum will often need to be resettled to another country where they can realize these rights.

- Denial of economic, social and cultural rights can result in a refugee population failing to integrate for generations.[249] Refugees who are not able to enjoy such rights as the right to adequate food and clean water, or to work or education, may have no choice but to move on of their own accord to another country where they believe they can realize their economic, social and cultural rights.

- Voluntary repatriation will lead to renewed displacement if returnees are not able to rebuild their lives in a sustainable manner, which means they must be able to realize economic, social and cultural rights.[250]

Economic, social and cultural rights are not only important in the long-term perspective. Emergency delivery of food, shelter and health care to displaced populations is an element of states' obligations to realize minimum essential levels of economic, social and cultural rights. According to agreed standards, humanitarian response to emergency situations is premised on the imperative of meeting human needs and restoring human dignity.[251] Often the displaced people themselves will highlight the necessity of realizing economic, social and cultural rights. For example, many people from Darfur in western Sudan, whom Amnesty International met as refugees in eastern Chad in 2013, said that one of their main concerns was that their children should have access to education.[252]

There is no specific international treaty aimed at providing protection for internally displaced people but they are protected under the general provisions of all human rights treaties. In addition to various treaty obligations, the UN Guiding Principles on Internal Displacement (the Guiding Principles), a compilation of standards derived from international human rights, humanitarian and refugee law, clarify the obligations of states towards internally displaced people.[253]

The Guiding Principles reiterate that the primary responsibility for protection and assistance lies with the state on whose territory the displaced population finds itself. They stipulate the right of all internally displaced people to an adequate standard of living, and to certain minimum economic, social and cultural rights, "regardless of the circumstances and without discrimination". They also contain standards on the necessity of access to displaced populations for humanitarian organizations to deliver assistance, and the obligations of humanitarian organizations to respect the human rights of the internally displaced people.

The Committee on Economic, Social and Cultural Rights has also clarified that the "exercise of Covenant rights should not be conditional on, or determined by, a person's current or former place of residence; e.g. whether an individual lives or is registered in an urban or a rural area, in a formal or an informal settlement, is internally displaced or leads a nomadic lifestyle."[254]

AFGHANISTAN'S DISPLACED PEOPLE – FLEEING CONFLICT ONLY TO FIND NEW MISERY

"I don't know which problem I should talk about – school, unemployment, not having proper housing, food, health – when my children are getting sick and I have to pay for the doctor... It's everything."

Fatima, a woman in her 20s living in Kabul's Chaman-e-Babrak slum area

In 2011-2012, Amnesty International documented the plight of half a million Afghans displaced by fighting. Let down by their government and international donors, they were struggling to survive in makeshift shelters; at least 28 children had already died in the harsh winter conditions in the camps around Kabul, where up to 35,000 displaced people live in 30 slum areas.[255]

The problems faced by the thousands of people living in freezing, cramped conditions, with very little food, are exacerbated by the Afghan government's restrictions on UN agencies and humanitarian organizations delivering aid. They imposed these restrictions so as to avoid any assumption that the settlements might be permanent.

Housing in Afghanistan's cities is scarce, and rents are comparatively high. As a result, residents construct makeshift dwellings from mud, poles, plywood, plastic sheeting and cardboard, which offer little protection from the elements. Displaced people in makeshift camps are under constant threat of forced eviction and, in some cases, have had to scramble to move their belongings before bulldozers levelled their shelters.

Food is scarce in the settlements. Many displaced families told Amnesty International that they could provide their children with only one meal each day at most. Cramped conditions, poor sanitation and few health clinics combine to promote the spread of disease. Most women give birth in difficult and insanitary slum conditions, without skilled birth attendants, increasing the risk of maternal and infant death in a country where these mortality rates are already among the highest in the world.

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(See page 138.) © Amnesty International

CHAPTER 7
DEFENDING ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Human rights are recognized as a result of popular struggles. It is people, not politicians, who claim rights, and it is their efforts that lead to official recognition. All significant advances in the protection of human rights have developed from social struggles, including those of organized labour, anti-colonialists, the women's movement and Indigenous Peoples.

Campaigning against abuses of economic, social and cultural rights is not new. Local, national and regional human rights organizations have been defending these rights for decades.

Since the 1980s, international NGOs working on these rights have emerged. These include the Food First Information and Action Network (FIAN International) in 1986;[256] the Center for Economic and Social Rights in 1993;[257] and many others, along with an international network for the promotion of economic, social and cultural rights (ESCR-Net) in 2003.[258] Yet challenges remain on how to campaign most effectively to ensure the realization of economic, social and cultural rights.

Key challenges for those campaigning to advance economic, social and cultural rights include identifying violations, victims, violators and remedies on which to focus campaigning. How best can human rights activists transform calls for policy reforms into concrete actions that highlight the need for change to improve the lives of individuals, groups and communities?

Working effectively to promote greater respect for economic, social and cultural rights will often mean confronting structural failings and underlying factors that allow individual abuses to continue. This is true for all human rights campaigning. Such changes may be as relatively straightforward as legislative amendments. They can also be as challenging as seeking to alter entrenched patterns of abuse, where methods include human rights training programmes for the police, prosecutors and judges, or for health professionals, food distributors, educators and policy-makers.

One way of opposing violations of economic, social and cultural rights is to expose the impact of policies, projects and actions that deprive individuals and groups of the ability to realize their rights.

Working for change through individual cases

Amnesty International has mobilized millions of people all over the world to oppose human rights abuses. Largely, this has been through telling the stories of real women, men and children, and giving a human face to statistics of atrocities and neglect. The accounts of individuals who have suffered violations of their economic, social and cultural rights can be told equally effectively to highlight the impact of government action or inaction. While demanding remedies for a particular individual or group at risk also allows broader systemic factors to be challenged.

BADIA EAST, NIGERIA

Badia East is an informal settlement in Lagos State, Nigeria, inhabited by over 100,000 people. It is part of Badia, which is one of the nine informal settlements identified by the Lagos State Government for slum upgrading activities under the World Bank-funded Lagos Metropolitan Development and Governance Project (LMDGP).

On 23 February 2013, the Lagos State Government carried out a forced eviction in Badia East. At least 266 structures that served as homes and businesses were razed to the ground, with the support of heavily armed police personnel. An estimated 2,237 households and nearly 9,000 people were affected by the forced eviction. According to eyewitnesses, residents were prevented from taking their belongings before their homes were demolished; the police arrested three unarmed young men during the demolitions, and beat several residents who tried to resist the demolition.

On Monday 25 February 2013, two days after the forced eviction, hundreds of Badia East residents marched to the Lagos State Governor's office where they staged a protest for nearly five hours to request a meeting with the Governor. Leaders of the community attempted to enter the Governor's office to register their protest, but were prevented from doing so by security forces.

Some weeks after the forced eviction, the police visited Badia East and harassed the evicted residents, who were living in the open and in makeshift shelters, telling them to move elsewhere. The harassment continued when government officials chased people away from where they had been camping and destroyed their shelters.

The Lagos State Government failed to ensure that legal and procedural safeguards were in place before carrying out the evictions. The affected people were neither provided with an opportunity for genuine consultation nor informed about the reasons for the eviction. The Lagos State Government also failed to provide adequate notice of the eviction or to offer any alternative housing or compensation.

Amnesty International visited Badia East in May and August 2013 and found that many of the affected people were still homeless. Several families had been separated, many children had stopped going to school, and many people were living in precarious circumstances, relying on friends and well-wishers for food and clothing. The Lagos State Government indicated that the demolition in February 2013 was the first phase in a three-phase plan to demolish the Badia East settlement. Thousands of people are at risk of being forcibly evicted if the government goes ahead with its plans.

While the Lagos State Government has developed a resettlement action plan (RAP) for the community and initiated a process of payment of compensation, it does not provide the community with an effective remedy as required by international human rights law. The community was not genuinely consulted during the RAP's development and it does not provide sufficient compensation for victims to source alternative adequate housing. No further evictions were reported as of April 2014.

(The information in this case study was taken from Amnesty International's *Submission to the Nigerian Human Rights Commission's public hearing on evictions and demolitions in Nigeria; Lagos 2013* (Index: AFR 44/034/2013), the 2013 report "*If you love your life, move out!" Forced eviction in Badia East, Lagos State, Nigeria* (Index: AFR 44/006/2013) and the public statement *The World Bank rubber stamps flawed Resettlement Action Plan for Badia East*, March 2014 (Index: AFR 44/003/2014).)

Forcibly evicted people of Badia East peacefully protesting against the forced eviction at the Lagos State Governor's office in Ikeja, Nigeria, 25 February 2013. © Social and Economic Rights Action Center (SERAC)

TAKING ON THE DRUG COMPANIES AND THE GOVERNMENT IN SOUTH AFRICA

The Southern African region has been one of the worst affected by the HIV/AIDS pandemic. In South Africa, an estimated 6 million people were living with HIV in 2012, with 240,000 people dying of AIDS-related illnesses.[259]

The Treatment Action Campaign (TAC) was launched in 1998 to campaign for greater access to HIV treatment, by raising public awareness and understanding about issues surrounding the availability, affordability and use of HIV treatments.[260] To achieve its goals, TAC:

- formed professional alliances with activist economists, doctors and lawyers to research and present its case to drug companies, to the government, and ultimately in court
- undertook a five-year public education programme on treatment literacy to compensate for poorly trained health professionals and under-resourced facilities
- formed alliances with labour and religious sectors in launching its campaign, in the face of strong ideological disagreements.

In 1998, a group of pharmaceutical companies took the South African government to court to oppose draft legislation that would have allowed compulsory licensing and parallel import of anti-retroviral drugs, greatly reducing the cost of the drugs and allowing more people access to treatment. TAC and a global alliance of civil society organizations "named and shamed" the drug companies involved in the litigation, and campaigned in the companies' home countries, notably Switzerland and the USA. Faced with a growing international backlash, and the possibility of an unfavourable precedent in the South African Constitutional Court, the pharmaceutical companies eventually withdrew their claim in 2001.

TAC then found that this victory alone was insufficient. The government refused to provide the anti-retroviral drug Nevirapine – used to prevent mother-to-child HIV transmission – to all those who required the treatment, even though 70,000 infants were being infected each year. The authorities decided that the drug would only be provided at 18 pilot sites until they had fully devised their own programme. The reasons they gave for stalling the roll-out of the provision of anti-retroviral drugs were: cost; fears over the safety of the drugs; a need for counselling during the treatment course; and failures in the health service infrastructure. This decision was made despite support for the drug by the World Health Organization and the South African Medicines Control Council, and an offer by the manufacturer to provide the drug free of charge for five years.

TAC mobilized extensively and took the government to court. In 2002, South Africa's Constitutional Court ruled that it was not reasonable to withhold the administration of Nevirapine from women and children outside the pilot sites until the government had fully devised its own programme and completed its research. The Court therefore required the government to permit and facilitate the use of Nevirapine by medical practitioners in public hospitals and clinics where adequate facilities existed for testing and counselling. It further required the state to take reasonable measures to facilitate and expedite the use of Nevirapine throughout the public health sector.[261]

The decision helped to undermine the government's opposition to the widespread provision of anti-retroviral drugs. It also bolstered TAC's lobbying work for the wider provision of anti-retroviral treatment. In 2003, South Africa's cabinet adopted an operational plan to combat AIDS, which included anti-retroviral treatment as one of its core components.[262]

At the time, GlaxoSmithKline and Boehringer Ingelheim, who manufacture more than half the world's anti-HIV drugs, received compensation from the South African government in return for permitting the production of generic versions of the drugs in South Africa. This was agreed after TAC filed a complaint with South Africa's Competition Commission. Had the complaint been considered by the competition tribunal, the companies would have been required to indicate the true cost of research and development of the drugs.[263]

Documenting abuses

While developing indicators of progress or decline in the realization of economic, social and cultural rights is an enduring challenge to the human rights community, research into violations of these rights is in many cases similar to research into violations of civil and political rights.

Campaigning strategies can be based on documenting failures of governments to respect or protect rights – such as forced eviction, contamination of water supplies by private actors or the destruction of crops. They can also be built on identifying the people affected and the remedies required, such as halting the abuse and providing adequate reparation, and on identifying the range of actors responsible, such as a polluting business and the state that fails to regulate the activities of businesses, at home and abroad. Campaigning tactics such as letter-writing and publicity can have impact in such cases.

Skills in documenting economic, social and cultural rights are developing. They are increasingly shared internationally, through workshops and networks, in manuals by NGOs for NGOs,[264] and through skill sharing on techniques ranging from budgetary analysis to the use of national constitutions to effect change. Links between organizations working for economic, social and cultural rights around the world have never been stronger. One of the strengths of joining national campaigns with international solidarity is the ability to highlight the international dimensions of states' obligations in relation to economic, social and cultural rights, and how actions abroad, whether by the state, its

representatives (including multilateral development banks) or its businesses, impact on the realization of human rights.

The indivisibility of all human rights often emerges when human rights organizations document patterns of human rights violations. The imprisonment of people campaigning for recognition of their land rights, the use of disproportionate force in response to protests over the impact of water privatization, the lack of judicial independence in eviction cases – all demand a holistic human rights response.

THE RIGHT TO INFORMATION IN INDIA

In 2005 the government of India introduced the Right to Information Act (RTI Act). This followed a successful public campaign led by an activist organization, Mazdoor Kisan Shakti Sangathan, which highlighted how people living in poverty in rural areas were disadvantaged by lack of information and how this also contributed to rampant corruption in famine relief.[265]
The Act covers the central and state governments, local self-government (Panchayati Raj) institutions, local bodies and recipients of government grants. Public authorities are under a duty to provide access to information when requested and there are penalty provisions for authorities that refuse to release requested information or do not provide it in a timely manner.

Although the Act continues to have some limitations, it is a significant step towards greater transparency and accountability in India. Since it came into force, there have been several cases where the RTI Act has enabled people to combat corruption in public services and authorities.[266] It has also allowed people to obtain information about services and programmes that affect their lives, from the delivery of ration cards, passports and income tax returns, to larger decisions like water policy reforms in Delhi, and has strengthened their ability to participate in processes that affect their lives and to hold relevant public authorities to account.

Amnesty International investigated the operations of Vedanta Aluminium Limited's alumina refinery and their impact on the local communities, and filed right to information applications in order to obtain the data gathered by the State Pollution Control Board in its monitoring of the company. This information was shared with the local community and was analysed in Amnesty International's reporting on the negative impacts of the refinery's operations on the rights to water, health and information of communities living in close proximity to the refinery.[267] Amnesty International worked with local, national and international partners to target Vedanta Resources (the parent company) and the Indian authorities. This pressure contributed to Vedanta Resources being denied permission to mine bauxite in the Niyamgiri Hills, the traditional lands of the Dongria Kondh Indigenous communities.

Working in partnership

"By working in collaboration or partnership with local civil society organizations, international human rights organizations can strengthen the hand of these organizations and also obtain… legitimacy of voice."

Mary Robinson, former UN High Commissioner for Human Rights[268]

International human rights organizations new to working on economic, social and cultural rights have much to learn from those local, national, regional and international human rights and other civil society organizations with greater experience of documenting and campaigning on these issues.

Many community-based organizations, Indigenous Peoples, development organizations and other civil society representatives have long campaigned for social justice concerns which can be defined as human rights issues. The human rights movement and other movements for social justice have much to learn from one another.

Groups promoting economic, social and cultural rights have used a range of approaches and initiatives and have joined in broad partnerships to advance their goals. They have worked with legislators and lawyers to draft legislation, have initiated court cases on behalf of individuals or groups, and have increased media and public interest in significant cases. They have trained law enforcement officers, judges and others on economic, social and cultural rights. Others have held public hearings and used the right to information to challenge the corrupt diversion of resources that should have been used to realize economic, social and cultural rights. Other techniques include demanding recognition of economic, social and cultural rights in legislation and especially the constitution, long-term grassroots monitoring and budgetary analysis.

Lobbying for constitutional guarantees

"A Constitution containing only civil and political rights projects an image of truncated humanity. Symbolically, but still brutally, it excludes those segments of society for whom autonomy means little without the necessities of life."[269]

Lobbying for amendments to legislation and constitutions so that they reflect all the state's human rights obligations is a growing area of human rights advocacy, including by Amnesty International.[270] Some economic, social and cultural rights (such as the right to education) are included in a large number of constitutions.[271] Inclusion of economic, social and cultural rights in the constitution does not guarantee that they will be respected, but it represents an important commitment to the indivisibility of human rights and facilitates the enforcement of these rights by affected people.

A number of constitutions safeguard minimum resource allocation for the realization of economic, social and cultural rights. The constitutions of Brazil, Costa Rica, Indonesia

and the Philippines, for example, have been used to challenge budgetary allocations for education in the courts through public interest litigation and on the streets through direct action to demand compliance with constitutional obligations.

KENYA: CONSTITUTIONAL GUARANTEES

In August 2010, a significant majority (nearly two-thirds) of voters in Kenya's public referendum voted in favour of the adoption of a new Constitution. The Bill of Rights under the new Constitution (Chapter 4) guarantees economic, social and cultural rights; this includes the rights to food, housing, sanitation, water, health (including reproductive health care), education and social security as enforceable rights. For the first time, people in Kenya have access to legal remedies and can hold the government accountable for violations of these rights.

Economic, social and cultural rights had been included in the draft constitution since the constitutional review process started in 2002. Yet, at one point the potential for achievement had been in doubt. In January 2010, the Parliamentary Select Committee (PSC) on the Constitution removed economic, social and cultural rights as enforceable rights from the draft constitution, either treating them only as guiding principles or deleting them altogether. Civil society organizations Hakijamii,[272] the Eastern Africa Coalition on Economic, Social and Cultural Rights (EACOR), Kituo Cha Sheria,[273] and Amnesty International, made strong public criticisms of this change. They also lobbied the independent Committee of Experts, who had the task of revising the draft following the PSC's changes. The Committee of Experts decided to retain economic, social and cultural rights in the Constitution as enforceable rights, and no legislators made any further attempts to remove them.

In February 2011, the High Court of Kenya made its first ruling under the Bill of Rights of the Constitution, issuing an injunction to prevent the forced eviction of people from their homes in Muthurwa settlement. On 30 August 2013 this case concluded with a groundbreaking verdict, which called on the government to follow due process when carrying out evictions, and to immediately draft legislation and guidelines on evictions and resettlement. The High Court has determined in at least two other cases that the constitutional right to adequate housing includes a prohibition on forced evictions.

Examining budgets

"Budget analysis can often pinpoint inadequacies in expenditures, misdirection of funds or a 'misfit' of expenditures relative to the government's stated human rights commitments – particularly with regard to its 'positive' obligations (obligations to take action) rather than its 'negative' obligations (obligations to desist from doing something)."[274]

Budgetary analysis is fast emerging as a key technique in pressing governments to meet their human rights obligations. Particularly for economic, social and cultural rights, this research allows human rights activists to quantify the steps the government is taking to fulfil its obligations. As a parallel process to documenting violation and abuse, it can be a significant tool in monitoring and encouraging the progressive realization of rights.[275]

The International Budget Partnership (IBP)[276] collaborates with civil society around the world to analyze and influence public budgets in order to reduce poverty and improve the quality of governance. The IBP works in five major areas:

- Building budget analysis and advocacy skills through training and technical assistance;
- Measuring and advancing transparency, accountability, and public participation in the budget process;
- Contributing to strong and sustainable organizations by providing financial assistance for civil society budget work; and
- Enhancing knowledge exchange among civil society budget groups and other public finance stakeholders by acting as a hub of information on civil society budget work.

The IBP recognizes that, although budgetary analysis is important, it requires effective advocacy to achieve real and sustainable change. The results of budget analysis need to be linked to such initiatives as providing input into budget debates, proposing alternative policies, informing the public and building constituencies, and holding the government accountable for achieving its aims.

The right to information is key to achieving transparency in the budgeting process so, in order to carry out effective analysis and advocacy, NGOs and communities may first need to campaign for changes in law and policy on access to information.

Conclusion: time for action

There can no longer be any excuses for failing to take action. Violations of people's economic, social and cultural rights cannot be ignored. Hunger, homelessness and preventable disease must not be treated as though they were intractable social problems or solely the product of natural disasters – they are a human rights scandal.

AN ACTIVISTS' TASK LIST

Human rights advocates, gathered together in the mid-1990s, identified the following tasks as key to documenting and campaigning for economic, social and cultural rights:[277]

- identifying the rights issues of immediate concern to the country or community;
- monitoring the state's development of the conditions necessary to ensure economic, social and cultural rights and, in particular, its implementation of related policies, plans and legislation;
- monitoring, documenting and reporting on the government's actions in complying with, or violating, its obligations;
- observing the government's compliance with recommendations made by international human rights bodies. This would include first-hand collection of facts and evidence from various sources;
- ascertaining the availability of legal remedies, and determining their enforceability under national laws. This would involve researching the relevant laws and analyzing court decisions related to economic, social and cultural rights claims;
- responding to individual or community complaints of violations;
- educating the population on their economic, social and cultural rights; and
- mobilizing and collaborating with communities and other organizations in advocacy.[278]

Deprivation of rights cannot be blamed on lack of resources alone – invariably it results also from lack of political will and from discrimination. In the wealthiest countries, marginalized groups suffer poverty and injustice. In the poorest, the international community has allowed millions of people to suffer the utmost deprivation.

In many countries, governments hide behind the excuse of lack of resources to fail their people, to deny them the means to realize their rights, and to allow companies and others to act without restriction, even where this means endangering lives and health.

In response, human rights defenders have documented violations and abuses, and launched imaginative campaigns to change policies and practice. They have sought to improve the lives of all and to defend their right to live with dignity. Economic, social and cultural rights are not just aspirations. They are not goals that can be deferred to the future. They are based in international law and enforced by international and national tribunals in an increasing body of case law. They demand immediate respect.

Governments must refrain from undermining people's efforts to realize their rights. They must stop discriminating against marginalized groups and must actively include the excluded. They must regulate corporations and other non-state actors to ensure that they respect human rights. These obligations do not cease at their borders. They extend to their actions abroad, whether alone or through international financial institutions.

The last two decades have witnessed huge steps forward in the development of economic, social and cultural rights, culminating in 2014 in the coming into force of a dedicated international complaints mechanism. Sceptics can no longer credibly argue that that these rights lack the concrete legal certainty of their civil and political counterparts. More significantly, victims of economic, social and cultural rights violations will have an additional avenue of redress, with the potential to contribute to wider policy reform in their home states. It is critical that civil society organizations, having played a key role in setting up the mechanism, use and promote it. The result should see new groundbreaking decisions, which can help to further elaborate the content of the rights and of concepts such as "maximum available resources" and "minimum core obligations".

Many challenges remain – effective implementation of legal decisions; persuading governments and businesses that integrating human rights into their policies and practices can actually deliver better outcomes; and mainstreaming human rights into the post-2015 development agenda – but this primer shows what can be achieved by determined and strategic advocacy and campaigning.

More than ever, economic, social and cultural rights are an integral part of the human rights agenda. Promoting and defending economic, social and cultural rights should be an urgent priority, not just for individual governments, but for the international community and the human rights movement and civil society as a whole. Hopefully, this primer can serve not just as a useful resource for activists but as a stepping stone for taking practical action.

NOTES _ CHAPTER 7

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Millions of women, men and children living in countries in all regions of the world and at all levels of development do not have access to even minimum levels of food, water, sanitation, education, health care and housing. This is not an inevitable fact of life. It is a human rights scandal.

Human rights for human dignity outlines some of the key features of economic, social and cultural rights. It presents an overview of these rights, outlines their scope and content, and gives examples of violations and what can be done to address them. It highlights the obligations of governments and the human rights responsibilities of other actors, including international organizations and corporations.

This revised and updated second edition of Amnesty International's primer on economic, social and cultural rights reflects significant developments over the past decade in advancing these rights. At its heart are the experiences of activists and communities around the world who are speaking out and claiming their rights. Their stories show why this remains an urgent priority for governments, for the international community and for the human rights movement as a whole. Above all, they show how determined campaigning can take forward the struggle to ensure that everyone is able to live free and equal in dignity and rights.

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