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PRELIMINARY STUDY OF ISSUES RELATING TO THE REALIZATION  
 OF ECONOMIC AND SOCIAL RIGHTS CONTAINED IN THE UNIVERSAL  
 DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL  
 COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Prepared by the Secretary-General

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International action and methods in regard to the realization of economic, social and cultural rights

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## INTRODUCTION

## I

1. The Commission on Human Rights at its twenty-fourth session adopted resolution 11 (XXIV) entitled "Study of the question of the realization of economic and social rights contained in the Universal Declaration of Human Rights". In paragraph 1 of this resolution, the Secretary-General was requested "to prepare, in consultation with interested specialized agencies, a preliminary study of issues relating to the implementation of economic and social rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, with a view to submitting it to the Commission in time for its consideration at the twenty-fifth session".

2. The present study was prepared in response to the above-mentioned resolution. In submitting it, the Secretary-General wishes to underline its preliminary character and the limitation of its scope to presenting certain issues relating to the implementation of economic and social rights.

3. At a very early stage in the elaboration of what now is the International Covenant on Economic, Social and Cultural Rights, in 1951/1952, the Secretary-General submitted to the Commission on Human Rights, at its request, a report on "Activities of the United Nations and of the Specialized Agencies in the Field of Economic, Social and Cultural Rights".<sup>1/</sup>

4. In the years which have elapsed since the publication of this report the number of organs and organizations active in this field has increased and their activities have been considerably widened in scope and intensified. In the Introduction to the report (paragraph 3) the Secretary-General stated that the work of the various bodies of the United Nations and of the specialized agencies having a relevance to the human rights set out in articles 22-27 of the Universal Declaration of Human Rights had been both extensive and varied. He added that a process of selection had therefore been thought essential since without it the useful inferences to be drawn from the experience of these bodies and agencies might easily be lost in a mass of factual material. This consideration is still more compelling at the time of the preparation of the present preliminary study.

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<sup>1/</sup> E/CN.4/364/Rev.1, January, 1952; United Nations publication, Sales No.: 1952.IV.4.

5. The preliminary study will therefore concentrate on issues which were considered as particularly important in the light of past discussions. It will, inter alia, describe the relevant activities and procedures which have occupied various organs and organizations, particularly in recent years, while a more comprehensive and detailed examination of all the relevant questions must be left to a later stage of the Commission's study.

6. Although the Commission in its resolution mentioned only economic and social rights, the statements made in the debate leave no doubt of its intention that the whole range of economic, social and cultural rights should be covered, i.e. the rights proclaimed in articles 22 to 27 of the Universal Declaration of Human Rights and regulated in articles 6 to 15 of the International Covenant on Economic, Social and Cultural Rights.<sup>2/</sup> Some of the other instruments emanating from the United Nations and the specialized agencies, for example, the International Convention on the Elimination of All Forms of Racial Discrimination and several international labour and UNESCO conventions deal with rights and situations not necessarily spelt out in the Declaration and the Covenant. Reference to such aspects of economic, social and cultural rights will be made in due course.

7. The Universal Declaration of Human Rights, following the example of most of the national constitutional instruments of the eighteenth to the twentieth centuries relating to human rights, proclaims the right to own property.

8. The right of property is, of course, an "economic right" in the sense that until recent times it was and to a very large extent still is - a basic element of world economy. The Universal Declaration of Human Rights lists it in article 17, and not among the economic, social and cultural rights which are dealt with in articles 22 to 27. This right was not included in the International Covenant on Economic, Social and Cultural Rights by which States Parties undertake to take steps with a view to achieving progressively the full realization of these rights. (Art. 2 (i)). The present preliminary study does not deal with this right as such. However, questions such as agrarian reform are closely

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<sup>2/</sup> Wherever in the following pages reference to "the Covenant" is made and nothing different is indicated, the reference is to the Covenant on Economic, Social and Cultural Rights.

connected with the concept and scope of the right of property and it is assumed that such problems may be treated within the over-all study of the realization of economic, social and cultural rights in due course.

9. To the extent that it deals with nationalization, expropriation and requisition the Declaration on Permanent Sovereignty over Natural Resources of 1962 takes up aspects of the right of property against the background of the right of peoples and nations to permanent sovereignty over their national wealth and resources.<sup>3/</sup> This is a problem which has a considerable bearing on economic rights and it is assumed that it may also be dealt with in the final study.

10. At this preliminary stage of the study, consultations have been initiated with the specialized agencies concerned, and will continue as required. In accordance with the wishes expressed by members of the Commission, extensive use has been made of material available in already existing United Nations documents and publications in the economic, social and human rights fields. Particular reliance has been placed upon the voluminous documentation prepared in connexion with the International Conference on Human Rights held at Teheran from 22 April to 13 May 1968, including the special reports presented on this occasion by the specialized agencies concerned. Special attention has also been given to the report of the United Nations Seminar on the realization of economic and social rights contained in the Universal Declaration of Human Rights, held in Warsaw in August 1967 (ST/TAO/HR/51), as well as to the reports of the United Nations Seminars on human rights in developing countries held in Kabul in May 1964 and in Dakar in February 1966 (ST/TAO/HR/21 and 25). In the preamble of the Commission resolution 11 (XXIV) reference is made to these reports.

11. In his approach to the preliminary study, the Secretary-General has been guided by the relevant provisions of the Charter of the United Nations, of the International Bill of Human Rights as a whole (which consists of the Universal Declaration and the Covenants) and, in addition, to many other decisions of United Nations organs and organs of the specialized agencies which will be referred to in due course below, by the pronouncements of the International Conference on Human Rights, 1968. In other words, the Secretary-General is basing

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<sup>3/</sup> General Assembly resolution 1803 (XVII), 1962.

this study on the standards set in all these documents, including the International Covenant on Civil and Political Rights, which also contains basic provisions on rights and freedoms which relate to economic, social or cultural rights, including the prohibition of slavery, servitude and forced or compulsory labour (article 8), the standards of treatment of juvenile persons involved in criminal prosecutions (article 10, para. 2 b), the standards set for the penitential system (article 10 (3)), provisions for the protection of the family by society and the State and of marriage (article 23, paras. 1, 2 and 3), and the standards for the rights of children (article 24).

12. The basic assumption of this study is of course that it is the policy of all Member States to implement and to realize economic, social and cultural rights, both within their respective national jurisdictions and through international co-operation, as they have pledged themselves to do in Articles 55 and 56 of the Charter. It may be recalled that the controversies which took place, particularly in the course of the first years of the work of the Organization in the human rights field, did not centre around the uncontested aim of promoting and realizing economic, social and cultural rights, but only around the question of legislative technique, i.e. whether these rights should be treated in the same instruments as civil and political rights or whether the bulk of the economic, social and cultural rights should be set forth in a separate international instrument.

13. This is not to say that the economic, social and philosophical preferences as regards the relative importance to be attached to the various types of rights are not of great significance from the practical point of view; on the contrary, it cannot be doubted that the measures which are being taken and will be taken to promote economic and social rights will be different in States with a fully planned economy, different in States where parts of the economic sector are subject to planning and other parts are not, and different again in States which traditionally have attempted to reduce state interference in these matters to a minimum.

14. As the study will show, while some of the problems and solutions will vary with different groups of States, the issues which the Secretary-General has been requested to study are basically common to most of them.

II

15. Consideration of these questions, and specifically of the aspects they assume when viewed in the context and from the standpoint defined in the preceding paragraphs, may perhaps be simplified by prefacing it at this point with a few historical observations on the emergence and development of the concept of economic, social and cultural rights at the national and international levels.

A. Economic, social and cultural rights at the national level

16. In earlier times, in the tribe and clan and then in the commune, province and finally the State, there were certain institutions or practices which ensured that the economic, social or cultural needs of human beings - or, at any rate, some of them - were satisfied. In particular, the obligations of charity or solidarity and sometimes even a certain sense of social justice motivated various private or public groups to assume responsibility for the elementary needs of children and widows, the aged and the sick.

17. However, most societies were for centuries based on a hierarchic concept. In societies where the idea of castes or "orders" or the distinction between free men and slaves prevails, and where many human beings are the property of other human beings, the very idea of "rights" is obviously meaningless.

18. When the concept of human rights gradually took hold, the rights concerned were civil and political rights: limitation of the powers of the sovereign, gradual introduction of "national representation", abolition of slavery, individual guarantees, primarily by creating a judiciary independent of the executive power, etc. However, the question of property and often also the question of taxation, which recur at every stage in the development of philosophical and political thinking - and which often touched off revolutions - are directly related to the economic and social order.

19. Yet, the emergence of the idea of economic, social and cultural rights as now understood - that is to say, as a distinct group of rights - is a recent phenomenon.

20. The concept of human rights, which is derived largely from the "philosophies" which flourished in the eighteenth century, is essentially a political concept, and the "Declarations" which drew their inspiration from it were based on an



individualistic approach. The State, must not intervene; it must not distort the "natural order", which must be established "harmoniously" in economic and social life through the free play of contracts believed to be entered into - or alleged to be entered into - between free and equal wills.

21. Yet, economic and social rights are by their very nature collective rights. Where the State did not deny the existence of those collective rights, it intervened only to prohibit any outward expression of them. In certain countries, this took the form of banning "coalitions" - that is to say, particularly workers' associations; and workers were to find themselves subject to police surveillance.

22. This basic concept, already shaken by the revolutionary ideas and movements of the late eighteenth century, particularly the French Revolution, was to be called in question with increasing frequency and directness during the nineteenth century in relation to the economic and social changes brought about by the industrial revolution which gradually spread through most countries; and this new trend of thought was to play a major role in a long process which was to culminate in modern times in the recognition of genuine economic, social and cultural rights at the national and international levels.

23. It would be rash to try to find any common philosophy behind all the different nineteenth century theories inspired by concern for economic, social and cultural rights. Nevertheless, over and above their differences and inconsistencies, all those theories - co-operativism, reformism, socialism, utopianism, etc. - combined to bring about the final recognition of these rights. Some theories called for intervention by the State; others envisaged autonomous structures and institutions of a new type, independent of the State and designed to create a new social order; in any case, all of them criticized the systems of classic economic liberalism which had led to the alienation of workers in town and country.

24. Reformist tendencies were soon supplemented, and gradually supplanted, by theories advocating a radical transformation of society, such as libertarian anarchism, but mainly by revolutionary theories among which Marxism occupies a particularly important place, partly because of the role it has played in the transformation of certain nations and partly because of the effect it has had even in societies which have not taken a Marxist approach to the transformation of infrastructures and superstructures.

25. From that time forward the law tended to establish a minimum of social and economic protection in the liberal State, particularly for certain segments of the population, at first with State intervention motivated by paternalism or humanitarianism, and gradually by the recognition of certain social rights.

26. However, the development of political doctrine and political institutions in this field cannot be considered in isolation from the practical action taken by social groups themselves. After a period of semi-clandestine activity and repression, workers' associations finally managed to secure recognition by the law of their existence and some of their activities. Trade unionism, whose development was facilitated by the concentration of workers in urban areas as a result of the industrial revolution, was to become one of the most positive factors in the recognition and protection of many social rights. Trade unions played a very important part not only at the national level; their full impact can be measured by the fact that after the First World War employers' and workers' organizations were to be recognized at the international level by the establishment of the International Labour Organisation.

27. Furthermore, in the legislation and practice of a large number of States, particularly after 1919, social rights became broader in scope and also more specific: more labour legislation and regulations protecting workers was enacted, social insurance schemes were introduced and courts specializing in the settlement of social disputes were created and their jurisdiction broadened, more provident and social welfare institutions were established, working hours were limited, pension and compensation schemes for social risks were worked out, etc.

28. The Soviet order, by abolishing private ownership of the means of production, tried to promote economic and social rights under a political system different from that of the Western countries.

29. The tragic consequences of the economic depression in 1929 gave rise in many countries to a demand for active intervention by the State in order to solve economic and social problems and thereby promote general recognition of the idea of economic and social rights.

30. While it is true that in many industrially developed States then in the throes of the depression, the State intervened to guarantee and promote certain economic, cultural and social rights, it should be remembered that most of the world's population was still under colonial régimes at the time, and often did not share in the benefits of social progress enjoyed by the peoples of the metropolitan territories.

31. Today the idea of economic, social and cultural rights has at last been universally accepted. In most countries, they are proclaimed and recognized in the same way as the conventional freedoms. The implementation of these rights shows that there is some distance to be covered between legal recognition and effective application; but the mere fact of recognition represents a tremendous step forward, considering that only a short time ago large segments of the public and government leadership refused to recognize as rights the social aspirations of another segment of the public, and lawyers were only mildly interested in those aspirations. Recognition opens up immense possibilities since in many cases it confers a genuine subjective right on individuals and groups and recognizes that they have legal - or, at the very least, psychological, political and social - claims on the State and on the various organs of society.

32. The recognition of economic, social and cultural rights in legal instruments or in custom or practice has been followed by important changes in the procedures for giving effect to these rights.

33. Not only have these rights been recognized at the national level and the conditions of their enjoyment defined in legislation and regulations, but in many countries a legal and institutional framework has been established to enable "social partners" to regulate by contract social conditions - and sometimes economic conditions as well - in enterprises, in professions and even in the nation as a whole.

34. Moreover, what has been achieved is not merely a definition of individual rights or an organizational framework for conventional collective action in various economic and social fields. In a variety of ways, the State has been drawn into the process of the development, elaboration and application of economic and social policies. Having become the executing agency - in some cases the manager of the development effort, in other contexts its catalyst, prime mover or driving force - the State accepts primary responsibility for the implementation of economic, social and cultural rights through more or less consistent but deliberate development policies which, involving as they do planning and programming, are increasingly serving as instruments of an economic and social strategy.

35. In this process new ideas have emerged: redistribution of income through tax reform, social security, methods of price-fixing, credit, public assistance

to certain sectors or categories, joint action on behalf of certain regions or social and professional groups, integrated economic and social development, participation of individuals and groups in the preparation and implementation - and sometimes even control - of economic and social policies at the level of the nation, the region or economic or social units.

36. Today, even if it must be acknowledged that the "consumer civilization" actually prevails in only one part of the world, it cannot be denied that the State - whatever the dominant philosophy and the level of development of the country - is no longer neutral where economic, social and cultural matters are concerned.

37. This need for the State to intervene in, direct or provide the motive power for the implementation of economic, social and cultural rights raises philosophical, ethical and legal problems which are all the more complex in that they apparently cannot be solved realistically by eliminating the role of government authorities.

#### B. Economic, social and cultural rights at the international level

38. While the developments described above were taking place at the national level, economic, social and cultural rights were making headway in international life and international law.

39. In an international society characterized primarily by inter-State relations of an essentially political nature, the idea of human rights, and particularly of economic, social and cultural rights, naturally was not regarded as a matter of priority.

40. However, the end of the nineteenth century and the beginning of the twentieth saw the first governmental activities in the field of social rights: the diplomatic conference on labour legislation held at Berlin in 1890, which adopted a series of resolutions concerning, inter alia, child labour, protection of young women workers and mine workers, and the conferences at Berne in 1905 and 1906, which drafted and adopted the International Convention Respecting the Prohibition of Night Work for Women in Industry Employment and the International Convention Prohibiting the Use of White (Yellow) Phosphorous in Manufacture of Matches. The outbreak of the First World War prevented the adoption of conventions

concerning other aspects of international labour legislation which were in preparation in 1913 and were to have been completed in 1914.

41. After the war, there were certain very important developments. Article 23 of the Covenant of the League of Nations provided, inter alia, that Member States:

"will endeavour to secure and maintain fair and humane conditions of labour for men, women and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations;

"... undertake to secure just treatment of the native inhabitants of territories under their control;

...

"will endeavour to take steps in matters of international concern for the prevention and control of disease."

42. It should be noted, however, that human rights are dealt with in the Covenant only as matters of secondary importance. The work of the League of Nations in the social, humanitarian, health and cultural fields was by no means negligible, but the League was slow in establishing international co-operation and study systems and methods and their practical effects were limited.

43. Nevertheless, as far as "labour" matters were concerned, the international instruments adopted in 1919 and 1920 established an institution and procedures which were new in more ways than one.

44. The originality of the International Labour Organisation is manifested in a number of provisions which concern the international protection of human rights, particularly certain social and economic rights.

45. Firstly, the very structure of ILO accorded employers' and workers' groups the right to participate fully in the work of the International Labour Conference, the Governing Body and numerous subsidiary bodies.

46. Secondly, the Constitution of ILO establishes a certain degree of international control over the enforcement by States of international conventions which they have ratified: legal and technical control (with the participation of representatives of employers' and workers' organizations), and jurisdictional control which can be exercised over the conduct of States.

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47. However, it was only at the end of the Second World War that the general authority of the organized international community in the field of human rights was affirmed and that "respect for human rights and for fundamental freedoms for all" was recognized as a "purpose" of international action on the same footing as the maintenance of peace and security.

48. The United Nations Charter reflects a global concept of human rights: it is not confined to the "conventional" freedoms but also embraces economic, social and cultural rights. In obligating States to co-operate in the solution of "international problems of an economic, social, cultural or humanitarian character", within the framework, inter alia, of the General Assembly, and in establishing a principal organ for that purpose - the Economic and Social Council - as well as subsidiary organs, including the Commission on Human Rights, the Charter creates conditions propitious for the adoption of economic, social and technical measures necessary for progress without which many human rights would be no more than paper freedoms.

49. In addition, the establishment of various international organizations in the post-war period has been a decisive step forward in both institutional and functional terms, for each specialized agency has special competence in respect of a certain category of human rights and the sum of these competences covers almost all the rights, including economic, social and cultural rights, proclaimed in 1948 in the Universal Declaration of Human Rights.

50. In recognizing human rights at the international level and in placing economic, social and cultural rights on the same footing as civil and political rights, the Charter and the Universal Declaration of Human Rights express, in legal terms, a global concept of man, his rights and his aspirations, and bring the individual within the scope of the competence of the international community.

51. The lengthy task of drafting conventions dealing with particular rights, completed after more than twenty years, has culminated in the adoption of the International Covenant on Economic, Social and Cultural Rights.

52. While the procedures for putting that Covenant into effect and supervising its implementation do not go as far as those of the Covenant on Civil and Political Rights, they nevertheless offer broad possibilities for international and national action, not only of a legal but also of a technical character.

53. The International Covenant on Economic, Social and Cultural Rights is one of the components of the international machinery for co-operation and, in particular, a further incentive for the expansion of international programmes for the promotion of economic, social and cultural development.

54. In short, however substantial the effort made at the national level, it will continue to be limited in scope if the international effort to promote co-operation in the sectors affecting development is not also "progressively" increased.

55. Thus in the final analysis the effective promotion of economic, social and cultural rights will also depend on the harmoniously integrated activities of the United Nations and the specialized agencies and on technical co-operation programmes co-ordinated with national programmes.

CHAPTER I

GENERAL ISSUES RELATING TO THE REALIZATION  
OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. The realization of economic, social and cultural rights in relation to economic and social development

(a) Development policies and techniques which may contribute to the realization of economic, social and cultural rights

56. It is generally recognized that in order to achieve in any country a meaningful realization of the economic, social and cultural rights proclaimed in the Universal Declaration of Human Rights and in the Covenant on Economic, Social and Cultural Rights, a sufficient level of economic development is required. The possibility of ensuring progressively to everyone the full enjoyment of these rights is dependent upon the existence and orderly utilization of adequate material and financial resources and implies as well the optimum utilization of human resources.

57. The link between economic development and the realization of economic and social rights which has been repeatedly stressed in United Nations discussions, was emphasized at the Warsaw Seminar by participants coming from countries of the European region having different socio-economic systems. In a resolution entitled "Economic Development and Human Rights" (resolution XVII), the International Conference on Human Rights also expressed the belief that there is "a profound inter-connexion between the realization of human rights and economic development".<sup>4/</sup>

58. Moreover, while economic development appears to be a prerequisite for the creation of the material conditions which should result in social progress, conversely it is accepted that social progress contributes to economic development. Both elements are closely interwoven and constantly interacting in the over-all process of development. They support and strengthen each other in what constitutes a cumulative process.

59. In the Final Act of the first session of the United Nations Conference on Trade and Development, held at Geneva in 1964, it was stated that "economic and

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<sup>4/</sup> Final Act of the International Conference on Human Rights, Teheran, 22 April to 15 May 1968 (A/CONF.32/41), chap. III, Resolutions adopted by the Conference.



social progress should go together" and that "if the social and cultural dimension of development is ignored, economic advance alone can bring no abiding benefit".<sup>5/</sup> The International Conference of Ministers Responsible for Social Welfare held at United Nations Headquarters in September 1968, reaffirmed in its findings and conclusions, that "social progress was the ultimate aim of development" and also stressed that "social development could only be promoted and safeguarded if based on parallel economic development".<sup>6/</sup>

60. This link is expressly recognized in regard to the right to work in article 6 (2) of the Covenant which provides that the steps to be taken by States to achieve the full realization of the right to work shall include "... policies and techniques to achieve steady economic, social and cultural development and full and productive employment ...".

61. The comprehensive development policy which is found necessary in order to achieve progress in the realization of economic and social rights can hardly be undertaken and pursued, as it has become increasingly realized in recent years, without an extensive degree of specific national programming or planning adjusted to the particular needs and circumstances of each country. Recognizing the need, during the United Nations Development Decade, to devote special attention on both the national and the international level to progress in the field of human rights, the General Assembly, in its resolution 2027 (XX) entitled "Measures to accelerate the promotion of respect for human rights and fundamental freedoms" urged all Governments, during the Development Decade, "to include in their plans for economic and social development measures directed towards the achievement of further progress in the implementation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and in subsequent declarations and instruments in the field of human rights".

62. In its resolution 2436 (XXIII) of 19 December 1968 adopted as a result of its consideration of the Report on the World Social Situation, 1967, the General Assembly again emphasized, in the perspective of the second United Nations

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<sup>5/</sup> Proceedings of the United Nations Conference on Trade and Development, vol. I, Final Act and Report (E/CONF.46/141; United Nations publication, Sales No.: 64.II.B.11), Vol. I, Final Act, First Part - Preamble, Section I (Background), para. 4.

<sup>6/</sup> Report of the International Conference of Ministers Responsible for Social Welfare (E/4590), para. 12.

Development Decade, the imperative need to ensure respect for human rights and fundamental freedoms for all with a view to effective participation of the members of society in achieving common objectives of development. The General Assembly recommended to Member States to incorporate in their national plans, programmes and research, social as well as economic objectives and targets giving attention, inter alia, to the following requirements: eliminating hunger, poverty and illiteracy; improving nutrition, health and education; providing housing for all; increasing opportunities for full and productive employment in both urban and rural areas; finding new approaches to the problems of income security and also introducing or extending appropriate systems of protection against unemployment; promoting a more effective strategy of social security and welfare with emphasis on preventive measures integrated into broader programmes of national development for the purpose of improving, without any discrimination, the levels of living of families and individuals, with particular attention to the disabled; and co-ordinating competent government authorities in their efforts to anticipate, plan and implement government policies in the field of social and economic development.

63. The regional Seminar on the Realization of Economic and Social Rights contained in the Universal Declaration of Human Rights, organized in Warsaw under the programme of advisory services in human rights in August 1967<sup>7/</sup> devoted a great deal of attention to the role of economic and social planning and co-ordination of economic and social development in the realization of economic and social rights. The discussion as well as the papers presented to the Seminar by participants from several countries of the European region confirmed that a great variety of institutional arrangements and technical modalities had evolved in these countries as regards the planning and co-ordination of economic and social development, depending on the political, social and economic systems of the countries concerned.

64. The constitutional, legal, administrative and contractual arrangements through which and under which the national planning takes place, vary from country to country and from system to system. These will be considered in some detail in chapter II below in the general context of national measures of implementation.

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<sup>7/</sup> The report of the Warsaw Seminar has been issued as document ST/TAC/HR/31.

In regard to the special problem of planning it might be said, at this juncture, that in countries with planned economies, the planning is carried out directly by the State and the plan is usually given the status of a law which is, of course, binding on all concerned. In countries with mixed economies it also occurs that certain programmes of an economic or social character are enacted by the national legislature or the legislature of a component part of the State concerned. This, however, is not always the case and even where a plan enacted by the legislature is in existence, it usually lays down only certain general principles and guidelines while its concrete application is left to the co-operation of central and local government agencies with non-governmental elements such as trade unions, employers organizations, co-operatives and private entrepreneurs.

65. Despite the wide differences which can thus be observed in the scope of planning and the techniques used in the various countries, there seems to be no doubt as to the usefulness of some kind of central programming or planning, so as to ensure the best utilization of available resources.

66. Because of the limited available resources in developing countries and of the considerable structural changes, social and otherwise, that such process may entail,<sup>8/</sup> it is generally agreed that planning or detailed programming is particularly needed in their case. Although it is recognized that development depends primarily upon national efforts and the adequate formulation and execution of plans and programmes adjusted to the conditions and requirements in the country concerned, it is also accepted that internal measures may still prove insufficient for the purpose. International co-operation is expected to make available supplementary means with a view to facilitate and accelerate the process of development. Article 2 (1) of the Covenant on Economic, Social and Cultural Rights therefore juxtaposes steps which States Parties will take "individually" with those which will be taken "through international assistance and co-operation". It is also agreed that the implementation of international co-operation programmes may be made more effective and fruitful when development planning exists in receiving countries. In fact, development plans at the national level may even be

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<sup>8/</sup> In its resolution 1916 (XVIII) on the World Social Situation the General Assembly expressed its conviction that "economic and social progress, especially in the developing countries, cannot be achieved without a substantial change in outlook and a clear view of the ends to be attained and without such alteration of certain social structures as may be necessary".

a useful counterpart to international programmes. Some of these programmes may actually be formulated on the basis of national development programmes already in operation. Their implementation may also involve the carrying out of appropriate corresponding plans at the national level.

(b) Safeguards for human rights; the question of reconciling certain measures relating to planned economic and social development with respect for human rights and fundamental freedoms

67. The major role which for these various reasons may be assigned to planning or programming for national development makes it necessary to give attention to human rights values and their practical implications at all stages in the preparation and implementation of plans or programmes.

68. As it has been pointed out in the Consolidated Report prepared by the Economic and Social Council's Committee on Programme Appraisals, "one of the greatest dangers in development policy lies in the tendency to give to the more material aspects of growth an overriding and disproportionate emphasis. The end may be forgotten in preoccupation with the means. Human rights may be submerged, and human beings seen only as instruments of production rather than as free entities for whose welfare and cultural advance the increased production is intended. The recognition of this issue has a profound bearing upon the formulation of the objectives of economic development and the methods employed in attaining them. Even where there is recognition of the fact that the end of all economic development is a social objective, i.e., the growth and well-being of the individual in larger freedom, methods of development may be used which are a denial of basic human rights".<sup>2/</sup>

69. A similar warning was expressed by the Commission for Social Development in its report on its nineteenth session in connexion with the development and utilization of human resources in developing countries. The Commission agreed "that basic rights and freedoms were essential to economic and social progress, and that it would be impossible or futile to develop human resources without these"

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<sup>2/</sup> Five-Year Perspective, 1960-1964 (United Nations publication, Sales No.: 60. IV.14, E/3347/Rev.1), para. 90.

The right to full employment, a minimum standard of living, education, health, social security and social welfare measures were mentioned among others in this respect.<sup>10/</sup>

70. It was sometimes alleged in past years that the two overriding needs of planned development on the one hand and the maintenance of human rights and fundamental freedoms on the other may be difficult to reconcile, especially in developing countries. Thus, some of the participants in the Seminar on Human Rights in Developing Countries, Kabul, Afghanistan, May 1964<sup>11/</sup> expressed the view that, in some developing countries, it was not yet possible to rely exclusively upon systems of voluntary labour in order to satisfy the basic needs of the nation for economic and social progress. Recourse had sometimes to be had to certain forms of labour mobilization of peoples to areas other than those of their residences.<sup>12/</sup> Other participants in the same Seminar dissented, indicating that in their countries it had not been found necessary to resort to compulsory labour and asserting that it was very dangerous to accept as a principle that compulsory labour was necessary in developing countries to ensure economic progress. Forced labour in any form, they claimed, was a threat to human dignity.<sup>13/</sup> A similar exchange of views took place also at the Seminar on Human Rights in Developing Countries, Dakar, Senegal, 1966.<sup>14/</sup>

71. This issue, discussed at the two Seminars, was not new. There now exist, however, a number of international instruments the purpose of which it is to give guidance on the problem to national decision-makers. For instance, the International Covenant on Civil and Political Rights provides in article 8 (3) (a) that no one shall be required to perform forced or compulsory labour. It goes on to formulate, in sub-paragraph 3 (b) an exception from this prohibition (the performance of hard labour in pursuance of a sentence to such punishment by a competent court) and to delimit the term "forced or compulsory labour" in

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<sup>10/</sup> Official Records of the Economic and Social Council, Forty-fourth Session, Supplement No. 5, (E/4467/Rev.1, E/CN.5/430/Rev.1), para. 33.

<sup>11/</sup> Document ST/TAO/HR/21.

<sup>12/</sup> Ibid., para. 164.

<sup>13/</sup> Ibid., paras. 166-167.

<sup>14/</sup> Document ST/TAO/HR/25, paras. 60 et seq., particularly para. 76.

sub-paragraph 3 (c) by listing, under (i), (ii), (iii) and (iv), four types of service or work which for the purpose of the paragraph shall not be included in the term.<sup>15/</sup> Thus e.g. any service exacted in cases of emergency or calamity threatening the life or well-being of the community is deemed not to be "forced or compulsory labour"; nor is any work or service which forms part of normal civic obligations.

72. Similar but by no means identical provisions concerning the term "forced or compulsory labour" and its delimitation had already been included in the Forced

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15/ Article 8, para. 3 of the Covenant on Civil and Political Rights reads as follows:

- "3. (a) No one shall be required to perform forced or compulsory labour:
- "(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
- "(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
- "(i) Any work or service, not referred to in sub-paragraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
- "(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
- "(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
- "(iv) Any work or service which forms part of normal civil obligations.

The correct term is "normal civic obligations". The use of the word "civil" is due to a printing error. See Official Records of the General Assembly, Thirteenth Session (1958), Annexes, agenda item 32, Report of the Third Committee, A/4045, paras. 25-31.

Labour Convention, 1930, article 2, adopted by the International Labour Conference.<sup>16/</sup> In the Abolition of Forced Labour Convention, 1957, adopted by the International Labour Conference<sup>17/</sup> each party undertakes to suppress and not to make use of any form of forced or compulsory labour, inter alia, as a method of mobilizing and using labour for purposes of economic development (article 1 (b)).

73. It may be added that the issue raised at the Kabul and Dakar Seminars is not necessarily peculiar to developing countries. A decision given by the European Commission on Human Rights in 1963 furnishes an interpretation of article 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 as regards a case which arose in a country party to the European Convention; that article is similar to article 8 of the International Covenant on Civil and Political Rights.<sup>18/</sup>

74. As regards permissible limitations, reference may be made to article 29 (2) of the Universal Declaration of Human Rights which permits limitations on the rights set forth in the Declaration, including economic, social and cultural rights, provided such limitations are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. Under article 4 of the Covenant, economic, social and cultural rights may be subjected "only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purposes of promoting the general welfare in a democratic society".

B. The question of progressive implementation and the determination of priorities

(a) The progressive implementation of economic, social and cultural rights

75. The realization of the whole range of economic, social and cultural rights as set forth in the Universal Declaration of Human Rights and in the Covenant on Economic, Social and Cultural Rights will in many cases require the full use of available resources and certain structural and institutional changes which will

<sup>16/</sup> ILO, Conventions and Recommendations adopted by the International Labour Conference, 1919-1966 (Geneva, 1966), pp. 155-156.

<sup>17/</sup> Reprinted in Human Rights, A Compilation of International Instruments of the United Nations (A/CONF.32/4; United Nations publication, Sales No.: E.68.XIV.6), p. 47.

<sup>18/</sup> Yearbook of the European Convention on Human Rights, vol. VI (1963), Application 1468/62, pp. 278-333.

depend upon national circumstances; their effective transformation into directly applicable and enforceable legal rights may require time. This is why the obligations to be undertaken by States Parties to the Covenant on Economic, Social and Cultural Rights have been formulated in a way different from the obligations which will be undertaken by the Parties to the Covenant on Civil and Political Rights. While under the latter each State Party undertakes as from the time of its ratification or accession, to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in that Covenant, the States Parties to the Covenant on Economic, Social and Cultural Rights undertake to take steps to the maximum of their available resources with a view to achieving progressively the full realization of the rights recognized in that Covenant (Article 2, paragraph 1 in both Covenants).

76. This does not mean that all the rights set forth in the Covenant on Economic, Social and Cultural Rights and all the economic, social and cultural rights proclaimed in the Universal Declaration should be given effect to only progressively; there are, among them, several which are capable of immediate application as respect for them is not dependent on the achievement of particular economic or social levels. Then it would appear that States Parties to the Covenant on Economic, Social and Cultural Rights will be bound to apply immediately, such provisions as the guarantee against discrimination (article 2, paragraph 2), the ensuring of equal rights of men and women (article 3), the right to form and join trade unions (article 8), the rule that marriage must be entered into with the free consent of the intending spouses (article 10, paragraph 1, last sentence), the prohibition of employment of children in harmful work (article 10, paragraph 3, third sentence), the respect of the liberty of parents to choose for their children schools other than those established by the public authorities (article 13, paragraph 3) and the undertaking to respect the freedom indispensable for scientific research and creative activity (article 15, paragraph 3).

77. In most cases, however, the implementation of economic and social rights will require active intervention and not merely non-interference on the part of States. This may lead to the formulation of precise plans of action which would set out more or less specific targets and a gradual time-table for the realization of the rights concerned.



78. The concept of a detailed plan of action for the realization of specific rights within a definite period of time, is exemplified in the Covenant itself with respect to the right to education. Under article 14 of the Covenant, States Parties which are not able to secure compulsory primary education, "undertake, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all". Governments might find it practicable to resort to similar planning methods for the realization of other economic, social and cultural rights. Such plans might be closely related to the over-all economic and social development programmes of the country and indeed could well be drawn up as an integral part of such programmes.

(b) The determination of priorities

79. In some cases, particularly in developing countries, the limited resources available and other factors, such as administrative problems and the scarcity of qualified manpower will often make it advisable to establish priorities appropriate to the social and economic conditions and circumstances of the country concerned.

80. The establishment of priorities among various projects purporting to promote various economic, social and cultural rights in different fields raises questions of great complexity which may be difficult to solve and may require high-level governmental decisions. Problems relating to necessary choices between particular economic projects and specific social programmes or between competing social needs are presently under study by the Commission for Social Development.<sup>19/</sup>

81. As was pointed out in a preliminary report by the Secretary-General on methods of determining the appropriate allocation of resources to the various social sectors at different stages of economic development, the interrelation between economic and social development "differ at different levels of development and in different economic and social systems", and furthermore "countries differ in

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<sup>19/</sup> In the Five-Year programme of work of the Commission for Social Development (1966-1970), several items are dealing with these problems, in the section on Social Planning. See Official Records of the Economic and Social Council, Forty-second Session, Supplement No. 5, pp. 50-51.

their patterns of value, in the relative importance they may assign to different components of the standard of living".<sup>20/</sup>

82. It may be found appropriate to place emphasis on particular rights rather than others at a certain stage of economic and social development. A Government may decide to allocate particular urgency to improving the housing situation. In other circumstances a Government may come to the conclusion that health services or educational facilities deserve first priority, it being always understood that the determination of first priorities will not imply neglecting endeavours in other fields. On the contrary, the relationship which exists between the various rights at the different levels of realization requires combined and balanced action in the whole sphere of human rights.

83. If it can be said that "not all economic advance will provide commensurate social benefit", it is also true that "not all social expenditures will be of economic benefit, and certainly not all to the same degree".<sup>21/</sup> Moreover, "in so far as social programmes are seriously guided by economic considerations, they may not be able to realize simultaneously the ideals of social justice. Thus, the education programme that provides secondary and technical or higher education for a few while many do not have even a primary education, will perhaps best promote economic development in certain countries today, but it will nevertheless appear discriminatory and, from the point of view of those who miss all educational opportunities, unjust. Similarly, health services, social security, vocational training and employment services, low-cost housing and other advantages that may be guaranteed to better-off urban workers in the modern sector of the economy in less developed countries, will undoubtedly help to stabilize and improve the labour force, with beneficial economic consequences, but it can also mean that an elite among the workers may be favoured over against the impoverished and more needy urban and rural masses who are unemployed, or underemployed in inefficient traditional occupations".<sup>22/</sup> On the other hand, "particular economic projects

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<sup>20/</sup> E/CN.5/387, p. 12.

<sup>21/</sup> Ibid., p. 11. For a fuller discussion of the question of priorities in this report, see pp. 8-12 and 50-56.

<sup>22/</sup> Ibid., p. 11.

that are directed towards immediate social objectives can - and sometimes do - fail for that reason. It may be of the greatest social advantage to locate industry in the poorer or more backward areas of a country, or to favour the kind of labour-intensive industry that will provide maximum employment; but in the opinion of some observers the costs and relative inefficiencies of such policies in certain circumstances seriously impede economic growth. This is a matter of great controversy today, and the evidence is far from clear. Some countries are enthusiastically pursuing major economic development projects that have immediate social objectives, while others have decided that it is better to develop the economy at the fastest rate possible and deal with social problems through separate social programmes."<sup>23/</sup>

### C. The prohibition of discrimination

#### The necessity of eliminating discrimination

84. It is generally recognized that discrimination is a major obstacle to the realization of economic, social and cultural rights. It may obstruct the actual achievement of these rights by large sectors of the population even in the most developed countries which have sufficient resources at their disposal to achieve their realization. In view of the close interdependence between the various rights concerned, when individuals are denied the exercise of one of those rights as a result of discriminatory practices, they will consequently be debarred from the enjoyment of other related rights. For instance, if discrimination is practised in education, it will deprive certain members of the community from access to the training that would enable them to exercise their right to work.

85. These considerations underline that it is imperative in implementing economic and social rights to respect fully the principle of equality and non-discrimination set forth as a basic element of the United Nations concept of human rights in the Charter and in the Universal Declaration of Human Rights.

86. Under article 2, paragraph 2 of the Covenant on Economic, Social and Cultural Rights, States Parties undertake to guarantee that the rights enunciated in the

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<sup>23/</sup> Ibid., p. 11.

Covenant "will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

37. As the aim of achieving progressively the full realization of the rights is being pursued, the prohibition of discrimination must therefore be a constant and binding element of the process. While the substantive rights may be implemented only progressively, the prohibition of discrimination should be considered as being of urgent and immediate application.

38. In the paragraphs that follow, some of the problems of racial discrimination, of discrimination based on religion or belief and of discrimination on the ground of sex which raise special issues in relation to the enjoyment of economic, social and cultural rights will be referred to. Reference will also be made to the question of protective and promotional measures in favour of certain groups.

(a) Racial discrimination

39. Racial discrimination as practised in certain countries results in denials of economic, social and cultural rights to large sections of the population. Its varied aspects and practical effects in the economic, social and cultural spheres are described in the study on racial discrimination which has been prepared for the Sub-Commission on Prevention of Discrimination and Protection of Minorities by its Special Rapporteur, Mr. Hernán Santa Cruz, and was submitted to the Sub-Commission at its twenty-first session in October 1968.<sup>24/</sup>

90. The most acute and systematic form of racial discrimination is found in the policy of apartheid and racial segregation applied by certain countries and in certain territories in southern Africa. These policies and resulting practices, amount, in many respects, to a far-reaching and sometimes a complete denial of economic and social rights to the non-white population. The "Study of apartheid and racial discrimination in southern Africa" prepared by the Special Rapporteur appointed under resolution 7 (XXIII) of the Commission, Mr. Manouchehe Ganji, and submitted to the Commission at its twenty-fourth session<sup>25/</sup> presents a detailed picture of the manifestations of apartheid.

<sup>24/</sup> E/CN.4/Sub.2/288.

<sup>25/</sup> E/CN.4/949 and Corr.1, E/CN.4/949/Add.1 and Corr.1, and Add.2-5.

91. In the economic sphere, racial discrimination places restrictions on the right to work of members of particular racial groups ranging from limitations of employment opportunities or types of employment available to them, to systematic segregation in the field of labour which can take the form of an industrial colour bar.

92. Racial discrimination affects the living conditions and the standard of living of the individual when practised in such areas as housing, health services, social security and insurance. It is particularly serious in housing because many problems confronting members of an under-privileged group may be a consequence of housing segregation. In many countries, housing segregation creates school segregation and leads to ghettos and all the evils that follow.

93. Racial discrimination affecting the right to education is of the most serious nature and takes a wide variety of forms.

94. The elimination of all forms of racial discrimination is the subject of two United Nations instruments which elaborate upon the general provisions of the Universal Declaration, namely the United Nations Declaration on the Elimination of All Forms of Racial Discrimination proclaimed by the General Assembly on 20 November 1965<sup>26/</sup> and the International Convention on the Elimination of All Forms of Racial Discrimination adopted by the General Assembly on 21 December 1965.<sup>27/</sup> The Declaration solemnly affirmed the necessity of eliminating racial discrimination in all its forms and manifestations and set forth principles for its elimination. The Convention converts those principles into legal obligations. The term "racial discrimination" is defined in article 1, paragraph 1 of this Convention as meaning "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". The Convention lays upon States Parties specific obligations regarding the prohibition and elimination of racial discrimination. Under the terms of article 3, States Parties

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<sup>26/</sup> General Assembly resolution 1904 (XVIII).

<sup>27/</sup> General Assembly resolution 2106 A (XX).

"particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction". The Convention provides in article 5 that States Parties shall guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law in the enjoyment inter alia of economic, social and cultural rights. An illustrative, non-exhaustive list of those rights is given in paragraph (c) of the same article. In paragraph (f), specific mention is made in this respect of "the right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafés, theatres and parks".

95. A number of International Labour Conventions and Recommendations and the Declaration concerning the Policy of Apartheid of the Republic of South Africa adopted by the International Labour Conference in 1964<sup>28/</sup> provide for the elimination of discrimination and the promotion of equality of opportunity and treatment. The most significant international labour instruments on the subject are the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111)<sup>29/</sup> adopted by the International Labour Conference in 1958. These instruments aim at securing the pursuance by States of national policies designed to eliminate "any distinction, exclusion or preference" made on the basis of inter alia race or colour "which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation". Under article 3 of the Convention, States undertake inter alia to seek the co-operation of employers' and workers' organizations and other appropriate bodies in promoting the acceptance and observance of this policy, to enact appropriate legislation,

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<sup>28/</sup> This Declaration, adopted at the forty-eighth session of the International Labour Conference, Geneva, 8 July 1964, is reproduced, together with the ILO Programme for the Elimination of Apartheid in Labour Matters in the Republic Of South Africa, in a special booklet issued by the International Labour Office, Geneva, 1964.

<sup>29/</sup> The text of this Convention is reproduced in Human Rights, A Compilation of International Instruments of the United Nations, op. cit., pp. 28-30. For the text of the Recommendation, see ILO, Conventions and Recommendations adopted by the International Labour Conference, 1919-1966, op. cit., pp. 973-975.

to repeal statutory provisions and modify administrative instructions or practices inconsistent with this policy, and to promote supporting educational programmes. As elaborated in the Recommendation, this policy should enable all persons, without discrimination, to enjoy equality of opportunity and treatment in respect of access to vocational guidance and placement services, vocational training, access to training and employment of their own choice, advancement, security of tenure of employment, remuneration for work of equal value, and conditions of work, including hours of work, rest periods, annual holidays with pay, occupational safety and health and social security and welfare in connexion with employment.

96. Following upon a Study of Discrimination in Education which was undertaken by the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities,<sup>30/</sup> the General Conference of the United Nations Educational, Scientific and Cultural Organization adopted on 14 December 1960 the Convention and Recommendation against Discrimination in Education. Under its article 1, "discrimination", for the purposes of the Convention, includes any distinction, exclusion, limitation or preference which has the purpose or effect of nullifying or impairing equality of treatment in education, and in particular of depriving any person or group of persons of access to education of any type or at any level; of limiting any person or group of persons to education of an inferior standard; of establishing or maintaining separate educational systems or institutions for persons or groups of persons, except in certain conditions determined in article 2. Under article 3 of the Convention, States Parties undertake inter alia to abrogate statutory provisions and administrative instructions and to discontinue administrative practices which involve discrimination in education, as well as to ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions. Furthermore, under article 4, States Parties undertake to formulate, develop and apply a national policy which will tend to promote equality of opportunity and of treatment in the matter of education.

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<sup>30/</sup> United Nations publication, Sales No.: 57.XIV.3.

(b) Discrimination based on religion or belief

97. The evidence and consequences of manifestations of religious and racial intolerance led the General Assembly, in resolution 1781 (XVII) adopted in 1962, to request the Commission on Human Rights to prepare a draft declaration and a draft convention on the elimination of all forms of religious intolerance.

98. The draft Convention submitted by the Commission<sup>31/</sup> is now before the General Assembly. The General Assembly decided, at its twenty-second session, that the title of the proposed instrument should be changed to draft International Convention on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief.<sup>32/</sup>

99. Under the draft Convention, States Parties would undertake the obligations to ensure to everyone freedom to enjoy and to exercise inter alia economic, social and cultural rights without discrimination on the ground of religion or belief.

100. Both the Discrimination (Employment and Occupation) Convention, 1958, and the Convention against Discrimination in Education, adopted in 1960, provide for the elimination of discrimination inter alia on the ground of religion.

(c) Discrimination on the ground of sex

101. It has been increasingly recognized that economic and social progress should be accompanied by an improvement of the status of women both in public life and in the family, as well as in matters of education, employment and occupation. The principle of equal rights for women which had been proclaimed in the Charter was subsequently reaffirmed in numerous resolutions and instruments adopted by the United Nations and the specialized agencies, covering various aspects of discrimination practised against women. Among them is the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 1962 in which it was also recalled that the General Assembly had declared by resolution 843 (IX) of 17 December 1954 that certain customs, ancient laws and practices

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<sup>31/</sup> Resolution 3 (XXIII) adopted by the Commission on 9 March 1967, Official Records of the Economic and Social Council, Twenty-third Session, Supplement No. 6, para. 134.

<sup>32/</sup> General Assembly resolution 2295 (XXII) of 11 December 1967.



relating to marriage and the family were inconsistent with the principles set forth in the Charter and in the Universal Declaration.

102. The continuous concern of the United Nations with the equal status of women culminated in the adoption by the General Assembly, in resolution 2263 (XXII) of 7 November 1967, of the Declaration on the Elimination of Discrimination against Women. The Declaration is based among other considerations expressed in the preamble, on the belief that "discrimination against women is incompatible with human dignity and with the welfare of the family and of society, prevents their participation, on equal terms with men, in the political, social, economic and cultural life of their countries and is an obstacle to the full development of the potentialities of women in the service of their countries and of humanity". The Declaration provides in particular that all appropriate measures should be taken to ensure to women equal rights with men in the field of economic and social life (article 10) as well as in education at all levels (article 9).

103. In its resolution IX on Measures to promote women's rights in the modern world including a unified long-term United Nations programme for the advancement of women, the International Conference on Human Rights urged States Members of the United Nations and of the specialized agencies and their peoples to take immediate and effective measures to conform to the Charter and the Universal Declaration in order to ensure the equality of men and women in accordance with the aforementioned Declaration ( paragraph 2). The Conference made, to this end, a number of recommendations. It recommended in particular that every effort be made "to amend or add to constitutions and other national laws so as to bring them into harmony with the United Nations Charter, the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Declaration on the Elimination of Discrimination Against Women, the Conventions of the United Nations and the specialized agencies, and their resolutions and recommendations on the status of women" (paragraph 4 (b)). The Conference further recommended to intensify efforts in order to implement these instruments, especially by making at least elementary education compulsory for all and by adopting educational methods and programmes **eliminating** all discrimination between the sexes and promoting understanding of the equality of all human beings (paragraph 4 (c)) and to ensure "the equality of men and women in the field of social and economic rights,

including the right to work, the right to equal pay, the right to rest, the right to social security and the right to health protection" (paragraph 4 (i)).

104. The Covenant on Economic, Social and Cultural Rights, in addition to the general principle of non-discrimination formulated in article 2, paragraph 2, contains a specific provision in article 3 to the effect that States Parties undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the Covenant.

105. Regarding the right to education, the Convention against Discrimination in Education provides that States Parties should take certain appropriate measures in order to eliminate and prevent discrimination based on sex. While discrimination against women in education has considerably diminished in most countries in recent decades, there still subsist wide de facto differences.

106. With respect to economic rights and opportunities, the removal of discrimination against women and the achievement of equal rights of men and women in the matter of employment and occupation have been the subject of continuous attention by United Nations organs in particular the Commission on the Status of Women, and by the ILO. The Discrimination (Employment and Occupation) Convention adopted by the International Labour Conference in 1958 provides that States Parties undertake to pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating discrimination on the basis inter alia of sex. The Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value adopted by the International Labour Conference in 1951 is aimed at eliminating discrimination in the field of remuneration. The Covenant on Economic, Social and Cultural Rights provides, in article 7 relating to the right of everyone to the enjoyment of just and favourable conditions of work, that women should be "guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work".

107. It has often been said that legislation - both national and international - alone may not be sufficient to eradicate customary discriminatory practices against women and that education in its broadest sense has an essential role to play in changing social attitudes.

108. Thus article 3 of the Declaration on the Elimination of Discrimination against Women provides that "all appropriate measures shall be taken to educate public

opinion and to direct national aspirations towards the eradication of prejudice and the abolition of customary and all other practices which are based on the idea of the inferiority of women".

109. The principle of equality and non-discrimination does not preclude the adoption of special protective measures in the interest of women workers. Thus article 10, paragraph 3, of the Declaration on the Elimination of Discrimination against Women provides that "measures taken to protect women in certain types of work, for reasons inherent in their physical nature, shall not be considered as discriminatory". Similarly, in article 5, paragraph 2, of the Discrimination (Employment and Occupation) Convention, 1958, it is provided that any member may, after consultation with representative employers' and workers' organizations determine that special measures designed to meet the particular requirements of persons who, for reasons such as, inter alia, sex, are generally recognized to require special protection or assistance, shall not be deemed to be discrimination. The nature and scope of such protection should be determined so as not to result in disguised forms of discrimination in employment based on sex.

(d) Protective and promotional measures in favour of certain groups

110. The prohibition of discrimination will not exclude the taking of special measures for the sole purpose of assisting groups and individuals which require special protection. Thus mentally or physically handicapped persons should have a right to special treatment, medical, educational, and vocational, to help them overcome their difficulties. When the circumstances so warrant, special and concrete measures in the social, economic and cultural fields might also be necessary to ensure the adequate development and protection of certain racial groups or individuals belonging to them for the purpose of guaranteeing them the full and equal enjoyment of the rights concerned. Measures of this kind must not entail as a consequence the maintenance of unequal or separate rights for different groups after the objectives for which they were taken have been achieved.

111. Principles along these lines are laid down in article 1, paragraph 4, and article 2, paragraph 2, of the Convention on the Elimination of All Forms of Racial Discrimination. Article 1 (4) reads as follows:

"4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved."

Article 2 (2) provides:

"2. States Parties, shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved."

112. It has been pointed out in previous United Nations documents that rural populations may require special protective as well as promotional measures. In particular the importance of rural communities in the national structure of developing countries and the imbalance which often exists between the level of economic and social development in urban and rural areas would require extensive rural welfare and development programmes with a view to accelerating the raising of the standard of living of the rural population, thus complying with both the exigencies of over-all economic development and social justice.

113. The Working Party of Experts which drafted what eventually became the Convention against Discrimination in Education and the recommendation on the same subject, dealt in its report to the General Conference of UNESCO with the difficult and delicate issues which arise in connexion with protective and promotional measures favouring certain groups. The views of the Working Party were as follows:

"Generally speaking, the authors of the Convention found that there is no unjustified preference shown when measures taken by the State are designed to meet the special needs of those in particular circumstances such as backward children, the blind, illiterates whom it is hoped to integrate into society by special teaching methods, immigrants, etc.

"Measures aimed at the swift and effective removal of the vast discrimination and inequality from which certain sectors of the population have, in some cases, suffered for centuries may, however, conflict with the principle of non-discrimination.

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"The admission to certain schools of children from communities, groups or castes previously excluded from them may, for instance, be prescribed on a strictly proportional basis; yet the very existence of this quota may exclude candidates from another group, in spite of their merit.

"Such border-line cases should not lead to any condemning of the principles of these new policies inspired by concern to give an 'extra chance' to those for whom, a short time ago, access to education was closed or virtually closed. But, here again, problems of conciliation may arise. This circumstance, among others, justifies international supervision of the application of the Convention." 32a/

114. It has been emphasized, on the other hand, that in the determination of priorities and adoption of protective or promotional measures in favour of under-privileged groups, absolute priority should be attributed to the right to the dignity of the human person. It has been pointed out that social policies should be guided by that primary consideration and that in the choice of appropriate methods and solutions care should be taken to affirm the solidarity on equal terms between all members of the community rather than make distinctions even in favour of those who may have the most pressing social needs. Special measures which may be required in favour of the old, the handicapped, immigrants etc., should ultimately be aimed at ensuring their full integration in society. 33/

D. The role of public authorities and of popular participation in the realization of economic, social and cultural rights

(a) The primary responsibility of public authorities

115. In modern times, and in the last decades in particular, the concept of the functions of the State and of public authorities has greatly changed. While in earlier periods of history the dominant view was that the State and its functions should be restricted mainly to maintaining safety against dangers from abroad and order within the State's borders, the modern understanding of the tasks of the State vests in it, in addition, responsibility for safeguarding the welfare - in the widest sense of the word - of its citizens. This modern concept of the functions of the State is expressed in international instruments of our time, in

32a/ Working Party report, 10 December 1960 (document PRG/11 G/PRG/36.

33/ See statement made by Mr. Pierre Laroque at the International Conference on Social Welfare, Helsinki, Finland, 18-24 August 1968, reproduced in Droit Social, December 1968, pp. 625-632.

particular in the Charter of the United Nations by which Members have pledged themselves to take joint and separate action to promote higher standards of living, full employment, conditions of economic and social progress and development and universal respect for and observance of, human rights and fundamental freedoms. 116. It follows that responsibility for the attainment of these goals, for the realization of economic, social and cultural rights rests with the public authorities of each country. As article 8 of the draft Declaration on Social Progress and Development adopted by the Third Committee at the twenty-third session of the General Assembly expresses it,

"Each Government has the primary role and ultimate responsibility of ensuring the social progress and well-being of its people." 34/

117. Co-operation at all levels of the governmental structure is deemed essential to the effective realization of economic, social and cultural rights. Practical arrangements vary from one country to another depending on the existing institutional pattern and administrative procedures. In some countries, the higher levels of government will perform only those functions which cannot be carried out by local authorities. In other countries, central governmental authorities will formulate policies to guide local authorities and State-sponsored bodies in actually dealing with certain economic and social problems, and in other instances will take themselves positive direct measures to give effect to the policies.

118. While a primary role in the realization of economic, social and cultural rights will normally belong to the State, positive action will often be initiated by various institutions legally distinct from the public administration proper, such as autonomous bodies, public law corporations and voluntary institutions and funds. The practical achievement of economic, social and cultural rights will then represent in a large measure the combined result of joint efforts by various organs of government and various agencies.

119. In view of the primary responsibility of the State, a solid administrative structure and a sound public administration are some of the essential prerequisites for successful realization of economic, social and cultural rights. This

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34/ A/7574, para. 133.

requirement has been repeatedly affirmed by United Nations organs in the context of economic and social development.<sup>35/</sup>

120. According to experts in the field of public administration, effective administration is "the crucial element in the formulation and implementation of plans, programmes and other undertakings to advance economic and social conditions". Deficiencies in organization and management at all levels of government are said to constitute "major obstacles to progress in fulfilling national aspirations and approved goals".<sup>36/</sup>

121. In certain countries various reforms in public administration may therefore be essential prerequisites for the enjoyment of economic and social rights by all sectors of the population. In many countries, regardless of their systems of government and of their stage of development, changes in technology and patterns of population settlement, especially increasing urbanization, will often necessitate adjustments in the relations between levels of government.

122. Moreover, it should be pointed out that international assistance to developing countries in fields directly connected with the realization of economic and social rights, such as health or education, runs the risk of being ineffective when national administrative structures do not provide sufficient support for the execution of projects and necessary follow-up activities.

(b) The question of popular participation

123. The importance of greater popular participation in the planning and implementation of development was recently stressed by the Economic and Social Council in resolution 1143 (XLI) on the World Social Situation. The Commission for Social Development, in operative paragraph 2 (b) of its resolution 1 (XIX) concerning recommendations to be made on the development and utilization of human resources also insisted on the desirability of "involving more actively all groups of the population".<sup>37/</sup> Furthermore, in article 5 of the draft Declaration on Social Progress and Development, as adopted by the Third Committee of the General

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<sup>35/</sup> See in particular resolutions 907 (XXXIV) and 987 (XXXVI) of the Economic and Social Council.

<sup>36/</sup> United Nations Programme on Public Administration, Report of the Meeting of Experts (E/4296, ST/TAO/M/38), para. 8.

<sup>37/</sup> Official Records of the Economic and Social Council, Forty-fourth session, Supplement No. 5, para. 51.

Assembly on 12 November 1968,<sup>38/</sup> it is stated that social progress and development require inter alia "the active participation of all elements of society, individually or through associations, in defining and in achieving the common goals of development with full respect for the fundamental freedoms embodied in the Universal Declaration of Human Rights".

124. The International Labour Organisation made recommendations on similar lines on several occasions, especially in resolution III adopted by the International Labour Conference in 1964 concerning the Concept of Democratic Decision-Making in Programming and Planning for Economic and Social Development. The International Conference on Human Rights noting "the close relationship between public administration, the participation of citizens in the decision-making, planning, or programming process, and the fulfilment of economic and social rights", requested Governments "to ensure the informed participation of all citizens in the decision-making affecting national development" in order to further the realization of economic and social rights.<sup>39/</sup>

125. The association of citizens with the implementation process in accordance with national practice is viewed as a means to ensure that decisions are taken with due knowledge of their wishes and needs. Where priorities have to be established in the context of limited resources, competing needs and over-all development requirements, it is particularly important to determine "what the people themselves feel that they need most".<sup>40/</sup>

126. Popular participation also appears to be a condition of the active support of the population. This support is necessary for successful implementation. It has been observed that lack of interest on the part of the people may well result in failure, even with the best-laid national plans.<sup>41/</sup>

127. In addition to the democratic participation of all citizens through elected authorities and the established political and institutional channels, certain

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<sup>38/</sup> A/7374, para. 133.

<sup>39/</sup> Resolution XXI, preambular para. 6 and operative para. 7.

<sup>40/</sup> Report of the Secretary-General on "Methods of determining social allocations" (E/CN.5/387), p. 50.

<sup>41/</sup> Report of the Meeting of Experts on public administration, op. cit., para. 35. See also the working paper prepared for the International Conference of Ministers Responsible for Social Welfare (E/CONF.55/1), para. 28.



groups are more particularly active and influential in the field of economic and social rights. A prominent role is played by interest groups, especially workers' and employers' organizations and comparable vocational or social organizations and associations.

128. Other groups such as co-operatives, rural associations, consumer organizations and religious institutions have also been mentioned as having a role to play in the promotion of economic and social rights.<sup>42/</sup>

129. A resolution of the International Labour Conference concerning the "Concept of Democratic Decision-Making in Programming and Planning for Economic and Social Development" calls upon Governments "to ensure that, where national programming or planning exists, appropriate methods of consultation and participation of free and independent employers' and workers' organizations should take place in working towards and implementing social advancement schemes, and in promoting national economic development at all levels."<sup>43/</sup>

130. Trade unions can have a direct responsibility in assisting in the enforcement of individual rights, e.g. through the representation of claimants before competent courts and other organs and the granting of legal aid. They can also provide a link between workers and labour inspection services. The collaboration of employers and workers and their organizations with the labour inspectorate is specifically provided for in the ILO Labour Inspection Convention (No. 81) and Recommendation (No. 81), 1947.<sup>44/</sup> Article 5 of the Convention provides that the competent State authorities shall make appropriate arrangements to promote collaboration between officials of the labour inspectorate and employers and workers or their organizations. This collaboration, according to paragraph 6 of the Recommendation, should be facilitated to the organization of conferences or joint committees, or similar bodies, in which questions concerning the enforcement of labour legislation and the health and safety of the workers may be discussed.

131. Accent was recently placed on the special contribution which might be made by the younger generation to economic and social development and the promotion of

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<sup>42/</sup> See Report of the Warsaw Seminar, op. cit., para. 117 and The ILO and Human Rights, report presented by the International Labour Organisation to the International Conference on Human Rights, 1968, United Nations document A/CCNF.32/9, p. 107.

<sup>43/</sup> Resolution III adopted by the International Labour Conference in 1964.

<sup>44/</sup> See ILO, Conventions and Recommendations adopted by the International Labour Conference 1919-1966, op. cit., pp. 611-622.

human rights. The International Conference on Human Rights, in its resolution XX, taking into consideration the legitimate desire of youth to be useful to society and to have its full share in the accomplishment of the major humanitarian demands of our century, called upon States to take appropriate measures to secure for it an active share in the life and in the development of society. The Economic and Social Council, in its resolution 1353 (XLV) of 2 August 1968 on youth participation in international co-operation, called the attention of Governments to the desirability of giving due consideration, in consultation with youth organizations and other appropriate non-governmental organizations concerned with youth problems, to the ways in which the participation of youth in the process of economic and social development and in the protection and promotion of human rights can be further strengthened and enhanced. The General Assembly, in its resolution 2456 (XXIII) of 19 December 1963 on the World Social Situation, recalling the above-mentioned resolutions of the International Conference and of the Council, recommended to Member States inter alia to give attention to "creating conditions for the full participation of youth in national development and in the advancement of human rights".

(c) Forms and methods of popular participation

152. Participation by the various interest groups, whether social or occupational, may take varied forms.

153. This participation may be limited to the initiation and preparation of projects or programmes for economic development at the various levels or extend to their actual implementation. Moreover, it may take the form of mere consultation or that of direct involvement in decision-making.

154. Interest groups are often in a position, particularly in the industrialized countries, to exert considerable influence on the preparation and implementation of plans, through the existing institutional machinery.

155. Trade unions, industrial and commercial firms, agricultural organizations, co-operatives, social, scientific and cultural institutions, may be given a voice in the economic and social policy of the State, through representation in a body competent at the national level to make suggestions and give advice concerning the adoption and implementation of plans, programmes and reforms in the economic and

social fields. Women and youth organizations may also be invited to participate in the process, especially in those areas of economic, social and cultural rights that are of direct and immediate concern to them.

136. A number of other institutions can also be developed to enable the public to make its wishes known and keep policy-makers aware of the public needs. For example, commissions of enquiry may be appointed by the Government or by a decision of legislative bodies to inquire into a particular problem concerning the implementation of economic and social rights, their members being chosen so as to give a balanced representation of the various interests involved and the setting up of the enquiry being widely publicized.

137. Standing committees of an advisory character also composed in part of members chosen for their knowledge of the specific subject and partly of members representing the various interests involved, can offer another channel through which public needs and complaints may be brought to the attention of the competent government departments. Local advisory committees can perform similar functions in relation to government officials at the local level. For instance, the Minister responsible for social security may be advised centrally on national insurance matters by a national insurance advisory committee, and in each district by a local advisory committee.

138. The active support of voluntary efforts and their co-ordination with social measures and services provided by State or local authorities can also contribute to achieving good results in the implementation of economic and social rights.

139. Community development techniques may also prove useful, especially in developing countries, in securing active participation of the local people in welfare projects of direct relevance to the realization of economic and social rights at the community level. Such projects, although directed primarily toward the improvement of local conditions (health and sanitation, nutrition) or the eradication of illiteracy will contribute to the attainment of national goals of social and economic advancement and should be co-ordinated and integrated as such in plans and policies of national development. Community development is mentioned in Part III, paragraph 11, of the Draft Declaration on Social Development as one of the methods to promote popular participation in social and economic development.<sup>45/</sup>

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<sup>45/</sup> Official Records of the Economic and Social Council, Forty-fourth Session, Supplement No. 5, Annex I, p. 51.

## CHAPTER II

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS  
AT THE NATIONAL AND LOCAL LEVELS

140. Under Articles 55 and 56 of the Charter of the United Nations, Member States pledge to take joint and separate action in co-operation with the Organization for the achievement of higher standards of living, full employment, conditions of economic and social progress and development, and universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. In becoming Parties to the Charter, States accepted the obligation to implement their pledge in good faith; they did not commit themselves to specific methods by which to fulfil this obligation in their domestic legal, political, economic and social systems.

A. National measures

141. In general it can be said that the following steps and measures are found to be taken by States to give effect to economic, social and cultural rights:

(a) The incorporation of provisions on economic, social and cultural rights in constitutions and related instruments;

(b) The enactment of legislation on a national scale; legislation of subordinate units of the State and of bodies of local government; various regulatory measures such as administrative instructions instruments based on enabling acts, by-laws of public corporations and similar norms;

(c) Arrangements of a contractual type;

(d) The establishment of judicial or quasi-judicial authorities and of non-judicial procedures for giving effect to economic, social and cultural rights. These four groups of steps and measures will now be briefly considered.

(e) The incorporation of provisions on economic, social and cultural rights in constitutions and related instruments 46/

142. While the inclusion in constitutions and related instruments of provisions setting forth programmes and standards in the field of economic, social and

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46/ The texts of the constitutional instruments referred to in the paragraphs that follow and which originated before or in 1946 will be found in the Yearbook on Human Rights for 1946; the later texts in the respective volumes of the Yearbook for 1947 to 1965.

cultural rights has become more widespread in recent years than it was in earlier periods, it is by no means an entirely new phenomenon in the constitutional development of States. Even so ancient an instrument of a constitutional type as the Magna Carta (1215) deals with some questions of an economic and social character, although the scope of these provisions was very narrow and only a fraction of the population benefited from them. Various constitutional instruments of the eighteenth century contain some provisions in this field. The French Declaration of the Rights of Man and of the Citizen (1784) contains a provision which comes within the field of fiscal policy, an important aspect of every modern social and economic endeavour. It provides for the equitable contribution of the citizens, according to their ability, to the expenses of government.<sup>47/</sup> The French Constitutions of 1791 and 1793 contained provisions outlining programmes in the social field, including the protection of abandoned children, the organizing of help to the sick who are poor, the providing of work for those who are able to work and the organization of public education for everybody. Some of the Constitutions of American States of the same period, such as the Constitution of the Commonwealth of Massachusetts (1780), and of New Hampshire (1784) contain sections on the encouragement of literature, the spreading of the opportunities and advantages of education, the duty of legislatures and magistrates to cherish the interests of public schools and grammar schools, to promote agriculture, arts, sciences, commerce, trades, manufactures, to countenance and inculcate the principles of humanity and general benevolence.

145. In the constitutions of States adhering to various economic and social systems and political philosophies we find early in the twentieth century comprehensive sets of provisions dealing with what in United Nations terminology are called economic, social and cultural rights. Examples are the Political Constitution of the United Mexican States of 1917; the Declaration of the Rights of the Labouring and Exploited Masses of 16 January 1918 which became part of the Constitution of the Russian Socialist Federal Soviet Republic of 10 July 1918, the General Principles set forth in that Constitution (subsequently superseded by the Constitution of the

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<sup>47/</sup> The French Declaration of the Rights of Man and of the Citizen, as well as most other constitutional instruments and catalogues of human rights of the eighteenth, nineteenth and twentieth centuries, contain provisions on the protection of the right to property.

Russian Soviet Federative Socialist Republic of 1937); the Weimar Constitution of Germany of 1919; the Constitution of the Spanish Republic of 1931; the 1936 Constitution of the USSR; and the Constitution of Ireland of 1937. Significant developments in this field of the early post-World-War II period, have been the Constitution of the French Republic of 1946, the Constitution of the Italian Republic of 1947, the Constitution of Burma of 1947, the Constitution of the People's Republic of Bulgaria of 1947, the Constitution of India of 1949 and the Constitution of the Hungarian People's Republic of 1949. In 1947, the Charter of the Spanish People of 1945 was converted into a basic law of Spain. A new constitution, containing provisions on the subject here under consideration was enacted by the Polish People's Republic in 1952, Czechoslovakia in 1960, Yugoslavia in 1963 and Romania in 1965. Among recent constitutions, those of Guatemala (1965) and Honduras (1965) contain a comprehensive elaboration of "social guarantees" on the family, culture and labour; that of Pakistan (1962) as amended by the Constitution (First Amendment) Act, 1963, a part on "Fundamental Rights and Principles of Policy".

144. In the period since 1953, a great number of States, beginning with Guinea (1958) have inserted in their constitutions statements expressing their adherence to the Universal Declaration of Human Rights; in some cases (e.g. Algeria (1963), Rwanda (1962)) a direct reference to the Universal Declaration is contained in the body of the constitution, in many others (e.g. Senegal (1963), Congo (Brazzaville) (1963), Democratic Republic of the Congo (1964), Dahomey (1964)) in the preamble. In either case the constitutional provision comprises both civil and political and economic, social and cultural rights.

145. The effect of inserting provisions on economic, social and cultural rights in a national constitution varies, of course, from country to country. Some constitutions can be repealed or amended in the same way as ordinary laws. Most constitutions enjoy an authority superior to the authority of the other laws of the State and can be changed only by a method different from and more difficult than that whereby other laws are enacted or repealed. Under systems of the latter type basic differences exist: some constitutions provide for the judicial review of the constitutionality of enactments by the ordinary courts of the land; others reserve the right to adjudicate upon the constitutionality of legislation to speci-

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constitutional courts to which often only certain authorities, and not private litigants, have access; other constitutions again, may provide for the examination of the constitutionality of proposed ordinary legislation by a judicial or quasi-judicial authority during the stage preparatory to enactment but do not permit a challenge to the validity of duly promulgated enactments once they are adopted; in some jurisdictions there does not exist any procedure for the adjudication of the question of the compatibility with the constitution of an ordinary law which is deemed to be unconditionally binding on courts, administrators and individuals alike.

146. In addition to the great variations among constitutions in relation to the legal system of a State as a whole, a number of specific variants may be found as regards provisions dealing with economic, social and cultural rights. A right coming within this category may be formulated in the constitution in such a way that it is immediately applicable, that it becomes a "subjective" and justiciable right which can be enforced against an organ of the State or against a third party in the ordinary courts, in special courts or through administrative adjudication. The cases are more frequent, however, where the constitutional provision sets forth a general principle which requires concrete expression through legislation.

147. The Constitution of Ireland of 1937 sets forth, on the one hand, "fundamental rights" (which include also a provision for free primary education) and, on the other hand, "directive principles of social policy". The latter are intended "for the general guidance of the legislature". The application of those principles in the making of laws is the responsibility of the parliament of Ireland exclusively, and is not cognizable by any court. Similarly the Constitution of Burma of 1947 and of India of 1949 contain on the one hand "Fundamental Rights" devoted mostly but not exclusively to civil and political rights and, on the other, "Directive Principles of State Policy" which deal with economic and social rights. These are not enforceable by any court but the principles therein laid down are nevertheless fundamental in the governance of the country and it is the duty of the State to apply these principles in making laws.

148. The Constitution of Pakistan of 1962 as amended in 1963 sets forth "Fundamental Rights" which cover civil and political rights and some aspects of economic, social and educational rights, and "Principles of Policy" which deal, inter alia, with

conditions of work, standards of living and social security. Under the Constitution of Pakistan, the validity of a law cannot be called in question on the ground that the law disregards, violates or is otherwise not in accordance with the "principles of policy".

149. Many other constitutions which deal with economic, social and cultural rights do not make the distinction between enforceable rights and principles of policy in the same formal way as the constitutions just quoted; an interpretation of the various provisions of these constitutions leads, however, to similar conclusions.

150. Among recent constitutions, that of Yugoslavia of 1963, provides that the right to work and the freedom of labour are guaranteed and that the community shall create increasingly favourable conditions for the exercise of the right to work, particularly by developing productive forces and the material basis for other socially organized activities, and by showing concern for occupational interests of the working man. The Romanian Constitution of 1965 provides that in the Socialist Republic of Romania, all State activity shall have as its purpose the development of the socialist system and the prosperity of the socialist nation and a continuous increase in the people's material and cultural well-being. For this purpose the Romanian socialist State shall inter alia organize, plan and guide the national economy and guarantee the full exercise of the rights of citizens.

151. The Constitution of Honduras of 1965, like several other constitutions, distinguishes between "Declarations, Rights and Guarantees", concerning mainly civil or political rights, and "Social Guarantees", the latter covering economic, social and cultural rights. Certain provisions included among the "Social Guarantees" of the Constitution of Honduras are of considerable importance from the point of view of legislative technique: article 124 of the Constitution of Honduras provides that "laws governing the relations between employers and workers are of public order". Any provisions or agreements which contravene or restrict guarantees which are set forth in that article in considerable detail, are to be null and void. By this provision, the peremptory (jus cogens) character of legal norms for the protection of employees, which is recognized in the labour laws of many countries, is made part of the constitutional law of Honduras. In regard to



other provisions on questions of labour and social welfare the Constitution of Honduras (article 144) similarly provides that "the rights affirmed in this chapter cannot be renounced. Any stipulations which restrict or suppress them shall be null and void".

152. The Constitution of Honduras provides in article 52 that the declarations, rights and guarantees set out in it "shall be without prejudice to other rights not specified, which are inherent in national sovereignty, the republican and democratic form of government and human dignity". Article 145 provides "that the rights affirmed do not exclude those emanating from the principles of social justice accepted by our country in international conventions". Such formulations would appear to be of considerable interest in the case of the drafting of new constitutions when it is intended to give recognition only to a limited number of economic and social rights without prejudicing the realization of others. A similar technique had been used in the Canadian Bill of Rights which is not a constitutional instrument but a law enacted by the Parliament of Canada in 1960 "for the Recognition and Protection of Human Rights and Fundamental Freedoms". It is provided there (section 5) that "nothing in the Bill of Rights shall be construed to abrogate or abridge any human right or fundamental freedom not enumerated therein that may have existed in Canada at the commencement of the Act". The Constitution of the Province of Chaco (Argentina) of 1957<sup>48/</sup> provides that "the rights, duties, declarations and guarantees enumerated in the National Constitution and those which this Constitution itself enunciates, shall not be regarded as excluding others, not enumerated, inherent in democracy, the republican form of government, and the freedom, dignity and security of the human person".

(b) Giving effect to economic, social and cultural rights through the adoption of legislative measures

153. The main basis in the municipal legal system for the definition, regulation and realization of economic, social and cultural rights is the legislative process in a wider sense as previously outlined. The realization of most of the economic,

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<sup>48/</sup> Reproduced in the Yearbook on Human Rights for 1960.

social and cultural rights is hardly conceivable except on a statutory basis. The right to work and the rights and obligations of those who work are basically regulated by the law of the land which, of course, in addition to enacted statutes and delegated legislation of various kinds, includes or may include customary law and law developed by court decision. In the field of labour relations in particular, the general private law of a country affords the basis. This general law which regulates e.g. the contract of employment is elaborated upon and refined with a view to strengthening the position of the economically weaker party. A number of legislations in this field have recourse to endowing the protective provisions in the field of labour relations, but also in other fields, such as the protection of health and the right to education, with the character of ordre public i.e. with the character of peremptory norms from which no derogation is permitted. In many instances the legislature has recourse also to introducing penal sanctions on violations of provisions which purport to guarantee economic, social and cultural rights. Examples are provisions for the protection of the health of employees and of the general public at large, and for the enforcement of compulsory primary education.

154. It is through the process of legislation in the wider sense as used above that the general principles contained in international instruments and sometimes also in constitutions are given concrete form and converted into subjective and justiciable rights. It is by way of legislation that the authorities are established and maintained which can be seized of claims based on the substantive law relating to economic, social and cultural rights. These authorities may be courts of general jurisdiction, special courts or tribunals and various administrative authorities of either the State itself or of subordinate territorial bodies, or autonomous institutions which are responsible for administering the various social schemes and giving effect to the rights concerned. In many jurisdictions the activities of special tribunals and of administrative authorities making decisions in these fields is subject to review by the ordinary courts, usually those of appellate jurisdiction, or of higher administrative courts such as the French Conseil d'Etat.

155. In very many States, the body of legislation and regulation of economic, social and cultural rights is very extensive. In some States attempts have been made to simplify the working and application of this comprehensive body of private and

administrative law by enacting consolidating statutes, sometimes called "codes", the purpose of which is to regulate the whole body of a certain segment of the law. The idea behind such consolidating statutes or "codes" is the simplification of the law and the facilitation of its application, by courts and other authorities, and its understanding by the private parties involved and those whose task it is to assist in the enforcement of the rights.

(c) Arrangements of a contractual type

156. In historical perspective it was the individual contract of private law which established the legal relationship between e.g. the individual employee and the individual employer, or the relationship between a sick person and those who assist him. In the course of the historical development this individual aspect has been overlaid by provisions of public law and by collective arrangements and agreements. In the last decades, in particular, collective labour agreements have played a decisive role. Through such agreements between a trade union and an organization of employers, or between a trade union and an individual employer, the conditions of employment are agreed upon and these conditions, the "normative" contents of the collective agreement, then become an integral part of the individual contract of employment between an employee and his employer. Here again the situation differs from country to country; in some jurisdictions, the contents of the contract of service are regulated in great detail by public authorities, in others, this purpose is accomplished by collective agreements. In many instances the law provides that the conditions laid down in collective agreements cannot be derogated from to the detriment of the employee in whole or in part. In some systems the "normative" contents of the collective agreement become, under certain conditions, also part of the individual contracts of employment of workers who do not belong to the organization which negotiated the collective agreement. It goes without saying that in many cases a collective agreement contains provisions which grant rights to the workers which go beyond the minimum stipulated for in the general law. Collective agreements may eventually lead to changes and improvements in the law of the land.

(d) Remedies to protect and enforce economic, social and cultural rights

157. Article 8 of the Universal Declaration of Human Rights provides that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law. This provision of the Declaration applies, of course, also to economic, social and cultural rights. In its resolution XXI on the realization of economic, social and cultural rights, the International Conference on Human Rights called upon all Governments to focus their attention, inter alia, on developing and perfecting legal procedures for prevention of violations and the defence of economic, social and cultural rights.

158. Once an economic, social and cultural right, proclaimed in general terms in an international instrument or in a national constitution, has by law been transformed into a "subjective right", it can of course be enforced vis-à-vis the public authority or against a private party, e.g. an employer, with equal effectiveness as civil and political rights can be claimed by way of the appropriate procedures. Once an economic or social right has been so transformed, a claim based on it may very often be even easier to enforce than some of the traditional civil and political rights. If for instance a retired worker has a claim to be paid a monthly pension in a certain amount, it will probably be easier for him to ensure respect for this right through, e.g., special tribunals adjudicating upon questions of social insurance, than an individual who in certain difficult circumstances would like to make use of some of his civil or political rights, not to speak of the difficulties which face litigants who claim that a certain law which has been applied against them is unconstitutional and should therefore be set aside.

159. The bulk of the protection of economic, social and cultural rights is afforded by the ordinary courts which, as stated above, in some systems have even the right to review the constitutionality of ordinary legislation.

160. In many jurisdictions it has been found useful to vest jurisdiction in regard to certain aspects of economic and social rights in special courts or tribunals or in administrative authorities. In many countries labour courts have been instituted to adjudicate claims of an employee against his employer and vice versa, e.g. the Conseil des prud'hommes in France. Similar tribunals

exist in the field of social security and social insurance. Some of these tribunals are composed, in part, of non-lawyers who may have special expertise in the matters to be decided. The procedure before such special tribunals is usually simple and not expensive. Very often legislatures have exempted such procedures from stamp duty and other fiscal levies. In many jurisdictions, an appeal lies from such special courts and their simplified procedures to higher ranking appeal courts or administrative courts, particularly where the interpretation of the law is concerned. Such arrangements contribute as much as it is possible to the unity in the application of the law throughout the country.

161. Over the years the International Labour Organisation has addressed itself to this problem and a number of International Labour instruments provide for procedures to be followed when individual rights are denied; this is the case, for example, with the instruments concerning minimum wages, social security, and the termination of employment without valid reason.<sup>49/</sup>

#### Non-judicial institutions and procedures

162. The judicial enforcement of economic, social and cultural rights is in very many cases supplemented by a great number of institutions and procedures the aim of which is to give satisfaction to the injured party without the necessity of conducting judicial or contentious administrative proceedings.

163. The parliamentary control of the administration offers many devices and procedures by which injuries to groups or individuals can be prevented or reparation for infringements of human rights, including economic, social and cultural rights, arranged. A member of the legislature may take up a case of one of his constituents with the responsible public authority. He may raise the matter, if necessary, in open meeting of Parliament. In many systems the responsible member of the Government is under an obligation to reply to such a parliamentary question or is at least expected to do so. The legislature may create standing committees the meetings of which ministers are obliged to attend in order to answer questions put to them. Resolutions, including

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<sup>49/</sup> See The ILO and Human Rights, op. cit., p. 104.

motions of no confidence, can be moved in the legislative body. At the Buenos Aires Seminar on judicial and other remedies against the illegal exercise or abuse of administrative authority<sup>50/</sup> the then Assistant Attorney-General of the United States presented a statement on the role of congressional committees whose function it was to supervise the execution of laws and to determine what further legislation should be enacted. He described the advantages and drawbacks of such investigations. The Buenos Aires Seminar, the Peradeniya (Kandy), Ceylon, Seminar<sup>51/</sup> and the Stockholm Seminar,<sup>52/</sup> all on practically the same subjects, examined certain institutions which had developed in specific countries or groups of countries.

164. One of these institutions is that of the Parliamentary Commissioner or Ombudsman which has existed in Sweden since the beginning of the nineteenth century and was established in Finland, Denmark and Norway in the present century. The United Nations Seminars referred to brought the institution to the attention of the Governments of States in various parts of the world. At the 1961 Wellington, New Zealand, Seminar<sup>53/</sup> the Attorney-General and Minister of Justice of New Zealand, expressly referring to the study of the institution of "ombudsman" at the Kandy Seminar of 1959, stated that his Government intended to pass legislation creating such an institution. In 1962, the Parliamentary Commissioner (Ombudsman) Act 1962, No. 10, was adopted by the Parliament of New Zealand.<sup>54/</sup> Since then similar legislation has been enacted in many other countries, States and provinces on several continents.

165. The institution of the "Procurator" which exists in the countries of Eastern Europe plays an important part in ensuring the observance of legality at all levels of the administration and in safeguarding the rights of the

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<sup>50/</sup> Buenos Aires, August/September 1959 (ST/TAO/HR/6), p. 59.

<sup>51/</sup> 1959 Seminar on judicial and other remedies against the illegal exercise or abuse of administrative authority (ST/TAO/HR/4).

<sup>52/</sup> 1962 Seminar on judicial and other remedies against the abuse of administrative authority with special emphasis on the role of parliamentary institutions (ST/TAO/HR/15).

<sup>53/</sup> 1961 Seminar on the protection of human rights in the administration of criminal justice (ST/TAO/HR/10), p. 156.

<sup>54/</sup> Yearbook on Human Rights for 1962, p. 211.

citizens. The role of the Procurator in East European countries differs in a number of respects from that of various similarly named institutions in other countries. His functions in the countries of Eastern Europe include supervision of the legality of acts of the administration in a very broad sense, including authorities, enterprises and official institutions and organizations.<sup>55/</sup>

166. Under a Statute of 21 July 1926 there exists in Spain the Office of the Fiscal whose task it is to ensure observance of the laws in the social interest, undertaking, for instance, the legal protection of the family and of minors, the mentally deficient and others in a position of disadvantage.<sup>56/</sup>

167. In the field of labour law, grievance procedures exist for the non-judicial settlement of disputes, both between workers and employers or between workers and supervisors either within an undertaking or on a wider scale. The International Labour Conference recently devoted a recommendation to this problem. The Examination of Grievances Recommendation (130) adopted at the Fifty-first Session of the International Labour Conference in 1967 states the principle that any worker who, acting individually or jointly with other workers, considers that he has grounds for a grievance should have the right to submit such grievance without suffering any prejudice whatsoever as a result and to have such grievance examined pursuant to an appropriate procedure. As far as possible, grievances should be settled within the undertaking itself according to effective procedures which give the parties concerned every assurance of objectivity, and without prejudice to the right the worker may have under national laws or regulations to apply directly to the competent labour authority or to a labour court or other judicial authority in respect of a grievance.<sup>57/</sup>

B. International conventions providing for specific measures to be taken on the national plane

168. In certain of the human rights conventions concluded under the auspices of the United Nations or the specialized agencies, specific means of national implementation have been indicated.

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<sup>55/</sup> Stockholm Seminar report, op. cit., paras. 66 et seq.

<sup>56/</sup> Stockholm Seminar report, op. cit., para. 85.

<sup>57/</sup> The ILO and Human Rights, op. cit., p. 104.

169. In the International Covenant on Civil and Political Rights, each State Party undertakes to take the necessary steps to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in that Covenant. Each State Party to that Covenant further undertakes to ensure that any person whose rights or freedoms are violated shall have an effective remedy.

170. The Convention on the Elimination of All Forms of Racial Discrimination, which is applicable to economic, social and cultural rights as well as to rights in the political and other fields, indicates some of the detailed internal measures which a State Party is obliged to take. States Parties undertake, among other things, to ensure that all public authorities and public institutions, national and local, shall act in conformity with the obligation not to engage in any act or practice of racial discrimination. Each State Party to that Convention also undertakes to review governmental, national and local policies and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination. Each State is also obliged to prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any person, group or organization. The States Parties to the Racial Discrimination Convention also undertake to declare an offence punishable by law the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination as well as acts of violence or incitement to such acts. They also undertake to declare illegal and prohibit organizations and propaganda activities which promote and incite racial discrimination and to recognize participation in such organization or activities as an offence punishable by law.

171. The undertaking to make certain acts punishable offences under domestic law is not present only in the Convention on Racial Discrimination. Earlier, in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, the Contracting Parties undertook to enact the necessary legislation to give effect to the provisions of the Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts punishable under the Convention. The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956 also imposes on States Parties the obligation to make certain acts punishable offences under their municipal law.



172. The States Parties to the Racial Discrimination Convention undertake to ensure to everyone within their jurisdiction effective protection and remedies through the competent national tribunals and other state institutions against any act of racial discrimination as well as the right to seek just and adequate reparation or satisfaction for any damage suffered as a result of discrimination.

173. States Parties to the Discrimination (Employment and Occupation) Convention of 1958 undertake concrete obligations in regard to national implementation. They undertake to seek the co-operation of employers' and workers' organizations and other appropriate bodies in promoting the acceptance and observance of the policy of eliminating any discrimination in respect of employment and occupation. They undertake to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy. They are, in particular, under the obligation to repeal statutory provisions and to modify any administrative instructions or practices which are inconsistent with the policy.

174. In the Convention against Discrimination in Education of 1960, States Parties undertake to abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education and to ensure by legislation, where necessary, that there is no discrimination in the admission of pupils to educational institutions. The Convention of 1960 also contains the undertaking to formulate, develop and apply a national policy to promote equality of opportunity and of treatment in the matter of education and in this regard it refers to methods appropriate to the circumstances and to national usage.

175. Similar formulae referring to national usage and circumstances appear also in various International Labour Conventions, e.g. in the Discrimination (Employment and Occupation) Convention, already referred to which contains a reference to "methods appropriate to national conditions and practices". The Employment Policy Convention of 1964 contains a provision to the same effect.

176. The International Covenant on Economic, Social and Cultural Rights does not regulate in detail the application of its provisions within States Parties. It limits itself to the formulation of the general obligation that States Parties undertake to take steps with a view to achieving progressively the full realization of the rights recognized in that Covenant by all appropriate means. However, the Covenant singles out "particularly the adoption of legislative measures".

### CHAPTER III

#### INTERNATIONAL INSTRUMENTS RELATING TO ECONOMIC, SOCIAL AND CULTURAL RIGHTS

##### A. Substantive provisions and standards

###### (a) Provisions of world-wide application

177. The Universal Declaration of Human Rights sets forth the "common understanding" of the rights and freedoms which Member States have pledged themselves to promote in the Charter of the United Nations. The "common standard of achievement for all peoples and all nations" in regard to economic, social and cultural rights is proclaimed in articles 22 to 27 of the Declaration.

178. The International Covenant on Economic, Social and Cultural Rights contains the substantive provisions on specific rights in its Part III (Articles 6 to 15). The International Covenant on Civil and Political Rights also contains provisions on certain economic and social rights, e.g. article 8, paragraph 3 (prohibition of forced or compulsory labour), article 22 (freedom of association, including the right to form and join trade unions), article 23 (protection of the family), article 24 (protection of the child), and, to some extent, article 27 (protection of minorities including their right to enjoy their own culture). Provisions relevant to the equal enjoyment of economic, social and cultural rights are, as is explained in greater detail in Chapter I, C, also contained in the United Nations instruments relating to racial discrimination, i.e. the Declaration on the Elimination of All Forms of Racial Discrimination of 1963 and the International Convention on the Elimination of All Forms of Racial Discrimination adopted in 1965.

179. In regard to the undertaking of each State Party contained in article 2 (1) of the Covenant on Economic, Social and Cultural Rights to take steps "individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources... etc.", the view was expressed that the provision might be construed as imposing a formal obligation upon States Parties in a position to do so to give to other States Parties

economic, technical or other assistance.<sup>58/</sup> Another interpretation would appear to be that the Covenant imposes an obligation on each State to work towards the realization of the aims of the Covenant as regards its own people, and to seek to this end, when appropriate, international assistance and co-operation as provided in the Covenant.

180. It may be sufficient for the purposes of the present study merely to mention these views. Whether or not the Covenant will impose a formal obligation on States Parties to render assistance to other States Parties, it is an historical fact that for two decades at least international assistance and co-operation in the economic and social fields has been practised on a large scale, multilaterally and bilaterally, through the United Nations family of organizations and otherwise.<sup>59/</sup>

181. The work of the International Labour Organisation and the conventions and recommendations which the International Labour Conference has adopted deal with the development and protection of many economic, social and cultural rights. Of this great number of instruments a few have come to be regarded in a special sense as the human rights conventions of the International Labour Organisation. These are, in chronological order, the Forced Labour Convention, 1930, the Freedom of Association and Protection of the Right to Organize Convention, 1948, the Right to Organize and Collective Bargaining Convention, 1948, the Equal Remuneration Convention, 1951, the Abolition of Forced Labour Convention, 1957 and the Discrimination (Employment and Occupation) Convention, 1958. Also of particular relevance to the subject under consideration are the Social Security (Minimum Standards) Convention of 1952 and the Employment Policy Convention of 1964.

182. The Convention against Discrimination in Education adopted in 1960 by the General Conference of UNESCO also belongs within the category of basic human rights conventions of world-wide application.

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<sup>58/</sup> Official Records of the General Assembly, Twenty-first Session, Third Committee, 1455th meeting, para. 31.

<sup>59/</sup> For some of the international arrangements and activities, see the annex to the present study.

183. Work on the preparation of a Declaration on Social Progress and Development has been undertaken by the United Nations since 1966. The General Assembly called for the preparation of the instrument in its resolution 2215 (XXI) of 19 December 1966. A draft was prepared by the Commission on Social Development at its eighteenth and nineteenth sessions in 1967 and 1968<sup>60/</sup> and considered by the General Assembly at its twenty-third session in 1968. The General Assembly did not complete its consideration of the draft at that session. Its Third Committee adopted, however, the Preamble and Part I (articles 1 to 9) which deals with "Principles".<sup>61/</sup> The General Assembly decided to give high priority to the draft Declaration at its twenty-fourth session in 1969 with a view to completing it at that session.

(b) Regional provisions

184. Within the Council of Europe the most important instrument relating to economic and social rights is the European Social Charter of 1961. Some of the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, particularly its articles 4, 11, and article 2 of the First Protocol to that Convention of 1952 also have a bearing on social and cultural rights.<sup>62/</sup> Under the auspices of the Council of Europe a number of other international conventions dealing with social rights have been concluded, among them the European Social Security Code and Protocol of 1964.<sup>63/</sup>

<sup>60/</sup> Report of the Commission on Social Development on its nineteenth session, Official Records of the Economic and Social Council, Forty-Fourth Session, Supplement No. 5, (E/4467/Rev.1). The draft Declaration as prepared by the Commission is also reproduced as annex I to Document A/7161 (Note by the Secretary-General).

<sup>61/</sup> Official Records of the General Assembly, Twenty-third Session (1968), Agenda item 50, Report of the Third Committee A/7374. For the text of the provisions as approved by the Third Committee, see ibid., para. 133.

<sup>62/</sup> The European Convention on Human Rights is reprinted in the Yearbook on Human Rights for 1950; the First Protocol thereto in the Yearbook on Human Rights for 1952. For the European Social Charter see the Yearbook on Human Rights for 1961. All three documents are reprinted in the Report submitted by the Council of Europe to the International Conference on Human Rights (A/CONF.32/L.9).

<sup>63/</sup> For extracts from this Code and the Protocol see the Yearbook on Human Rights for 1964, pp. 331 to 335.

185. The Ninth International Conference of American States held at Bogotá in 1948 which prepared the Charter of the Organization of the American States also adopted the American Declaration of the Rights and Duties of Man.<sup>64/</sup> This Declaration which antedates the Universal Declaration of Human Rights by several months, sets forth, like the Universal Declaration, a series of economic, social and cultural rights. Also in 1948, the Ninth International Conference of American States approved the Inter-American Charter of Social Guarantees.<sup>65/</sup>

186. A considerable number of international conventions in the field of human rights have been prepared, signed and ratified within the Inter-American system. These are, however, mostly devoted to civil and political rights. Since 1959, the various bodies of the Organization of American States have been preparing a Draft Inter-American Convention on Human Rights, the 1959 draft of which, in its articles 22 to 33, sets forth a series of economic, social and cultural rights. No final action has yet been taken on the Draft Inter-American Convention on Human Rights.

187. The endorsement of the Universal Declaration of Human Rights in the constitutions of a great number of African States, has been followed by its reaffirmation in the Charter of the Organization of African Unity which was established by thirty heads of African States and Governments assembled in May 1963, in Addis Ababa, Ethiopia. In the Preamble the heads of States and Governments declare "that the United Nations Charter and the Universal Declaration of Human Rights provide a solid foundation for peaceful and productive co-operation among States" and add that they reaffirm their adherence to the principles of the United Nations Charter and of the Declaration. The All African Charter of Unity lists among the purposes of the new organization "to promote international co-operation, with due regard for the United Nations Charter and the Universal Declaration of Human Rights". The Commitment of the Organization of African Unity endorsing, as it does, the Universal Declaration of Human Rights, comprises, of course, economic, social and cultural rights as well as civil and political rights.

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<sup>64/</sup> Yearbook on Human Rights for 1948; also reprinted in the Report submitted by the Organization of American States to the International Conference on Human Rights (A/CONF.32/E.10), appendix I.

<sup>65/</sup> A/CONF/32/10, appendix II.

188. Under the auspices of the League of Arab States a number of international instruments have been prepared and established while others are in the process of preparation. Among these instruments, the following are of relevance to the present study: The Charter for Arab Labour; the Constitution of the Arab Labour Organization; the Agreement on Labour Standards; the Cultural Agreement of 1945 and the Arab Cultural Unity Pact of 1964.<sup>66/</sup>

B. Procedures providing a measure of international review

189. A variety of organizational and procedural arrangements concerned with the international implementation of economic, social and cultural rights have been developed within the United Nations and the specialized agencies; some of these arrangements are based directly on the Charter of the United Nations or the constitutional instrument of the specialized agency concerned. Others are provided for in international conventions concluded under the auspices of the United Nations, the specialized agencies and other intergovernmental organizations.

(a) Measures of implementation of economic, social and cultural rights based on the Charter of the United Nations

(i) The system of periodic reports on human rights

190. Under Article 64 of the Charter, the Economic and Social Council may make arrangements with the Members of the United Nations and the specialized agencies to obtain reports in matters falling within its competence. By resolution 624 B (XXII) of 1 August 1956, subsequently revised in resolutions 888 B (XXXIV) (1962), 1074 C (XXXIV) (1965) and 1230 (XLII) (1967) the Economic and Social Council requested States to transmit reports describing developments and the progress achieved in the field of human rights and measures taken to safeguard human liberty. Under the Council resolutions at present in force, Governments

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<sup>66/</sup> The information on the instruments established under the auspices of the League of Arab States is based on the Report on the Work of the League of Arab States in the Field of Human Rights, submitted by the League to the International Conference on Human Rights, A/CONF/32/L.11.

are requested to submit information within a three-year cycle, one year on civil and political rights, another year on economic, social and cultural rights and the third year on freedom of information.

191. The specialized agencies are invited to transmit appropriate reports in respect of rights coming within the scope of their activities. Non-governmental organizations in consultative status are invited to submit comments and observations of an objective character on the situation in the field of human rights to assist the Commission on Human Rights in its consideration of the periodic reports.

192. At its twenty-third session, in 1967, the Commission on Human Rights had before it information on economic, social and cultural rights consisting of reports received from twenty-six Governments<sup>67/</sup> and from the ILO, UNESCO and WHO.<sup>68/</sup> On the basis of the study of these reports by the ad hoc Committee on Periodic Reports, the Commission adopted resolution 16 (XXIII) in which it noted that the reports on economic, social and cultural rights revealed certain trends, in particular the constructive efforts in law and practice made in States with varying systems of government and at different stages of development to promote the right to education, the right to social security, the rights of the child and the family, the right to work and the right to an adequate standard of living, as well as the attempts by various States to overcome difficulties with respect to implementation, and, notably, the concern to make available remedies for the violation of these rights.

193. The Commission expressed the belief that until the Covenants and their specific reporting procedures are widely accepted the submission and consideration of periodic reports under resolution 1074 C (XXXIX) of the Council would remain of considerable value.

194. The Commission expressed the opinion that the identification of important trends documented by the reports would be facilitated by concentrating on material of an objective character revealing in particular the influence on Member States

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<sup>67/</sup> E/CN.4/917/Add.12-15 and 17-19.

<sup>68/</sup> E/CN.4/918/Add.1 and 2.

of United Nations instruments on human rights and especially measures of implementation relating to such instruments, the difficulties experienced in the field of human rights which may be of interest to other States, and new developments or methods which may be helpful in overcoming such difficulties.<sup>69/</sup>

(ii) Procedures relating to Trust and Non-Self-Governing Territories

195. The Charter provides in Article 87 that the General Assembly and, under its authority, the Trusteeship Council may, inter alia, consider reports submitted by the Administering Authority and accept petitions and examine them in consultation with the Administering Authority. In regard to Non-Self-Governing Territories, the Charter (Art. 73 (e)) imposes on administering Powers the obligation to transmit regularly to the Secretary-General information relating to conditions in the territories concerned. Following upon the adoption, in 1960, of the Declaration on the Granting of Independence to Colonial Countries and Peoples, the General Assembly established the Special Committee on the Situation with regard to the Implementation of the Declaration of 1960. The task of considering the reports submitted by Administering Authorities under Article 73 (e) of the Charter was eventually vested in that Committee. A very great number of bodies subsidiary to the Special Committee have been created and have operated for many years. The Trusteeship Council and the Committee of Twenty-Four and its subordinate bodies are, of course, concerned also with economic, social and cultural rights in the territories with which they deal and have for many years been receiving and considering petitions including petitions relating to those groups of rights. Article 15 of the Convention on the Elimination of All Forms of Racial Discrimination refers to the right of petition granted to the peoples of colonial countries by "international instruments or by the United Nations and its specialized agencies".

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<sup>69/</sup> Official Records of the Economic and Social Council, Forty-second Session, Supplement No. 6 (E/4322) para. 538, resolution 16 (XXIII).



(b) The reporting system under the International Covenant on Economic, Social and Cultural Rights

196. The States Parties to the Covenant on Economic, Social and Cultural Rights undertake to submit reports on measures which they have adopted and the progress made in achieving the observance of the rights recognized in that Covenant (Art. 16 (1)). These reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the Covenant (Art. 17 (2)). The reports shall be furnished in stages, in accordance with a programme to be established by the Council after consultation with the States Parties and the specialized agencies concerned (Art. 17 (1)). These reports are forwarded to the Economic and Social Council. The Council may transmit the reports to the Commission on Human Rights for study and general recommendation or, as appropriate, for information (Art. 19). The Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information on the measures taken and the progress made in achieving general observance of the rights recognized in the Covenant (Art. 21). In addition, the Council may bring any matters arising out of the reports to the attention of other organs of the United Nations and specialized agencies which are concerned with furnishing technical assistance. The purpose is to assist such bodies on the advisability of international measures likely to contribute to the effective progressive implementation of the Covenant (Art. 22).

197. The Covenant provides for the co-operation of the specialized agencies in its implementation procedures (Art. 16 (2)). The Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the Covenant falling within the scope of their activities (Art. 18). These reports may also be referred to the Commission on Human Rights (Art. 19).

198. The Covenant on Economic, Social and Cultural Rights provides for no other measures of implementation than the reporting procedures described above. In this respect, the Covenant differs from the International Convention on the Elimination of All Forms of Racial Discrimination, an instrument which covers, in addition to discrimination as to political rights, also discrimination in regard

to economic, social and cultural rights. The Covenant also differs in this matter from the arrangements which apply under the Constitution of the International Labour Organisation to the international implementation of International Labour Conventions.

199. The fact that the Covenant on Economic, Social and Cultural Rights restricts the measures of implementation for which it provides to reporting, is generally attributed to the fact that by and large the obligations which States Parties to the Covenant undertake, are held to be of a "promotional" nature, their fulfilment to be achieved progressively. It has been indicated elsewhere in this study (see above, Chapter I, B) that certain of the rights set forth in the Covenant are of immediate application and not subject to progressive implementation e.g. the prohibition of discrimination and the obligation to ensure equal rights of men and women. It may be recalled in this connexion that in the course of the consideration of the International Covenant on Economic, Social and Cultural Rights by the Commission on Human Rights, three representatives proposed the insertion in that Covenant of provisions under which States Parties to the Covenant would have been able to accept the implementation procedures provided for in the Covenant on Civil and Political Rights also in regard to some or all of the rights set forth in the Covenant on Economic, Social and Cultural Rights. These proposals were, however, not pressed to a vote.<sup>70/</sup>

(c) Measures of implementation under the International Convention on the Elimination of All Forms of Racial Discrimination

200. The International Convention on the Elimination of All Forms of Racial Discrimination adopted and opened for signature and ratification by General Assembly resolution 2106 A (XX) of 21 December 1965 is applicable to racial discrimination in regard to human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. States Parties undertake to pursue by all appropriate means a policy of eliminating racial discrimination in all its forms and to prohibit and bring to an end racial discrimination by any persons, group or organization (Art. 1, paragraph 1;

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<sup>70/</sup> Report of the tenth session of the Commission on Human Rights, Official Records of the Economic and Social Council, Eighteenth Session, Supplement No. 7, E/2573, paras. 215-225; documents E/CN.4/L.338 and E/CN.4/L.339.

Art. 2, paragraph 1 (d)). The States Parties guarantee the right of everyone, without distinction as to race, colour or national or ethnic origin, to equality before the law. In article 5 (e) and (f), the Convention lists economic, social and cultural rights to which the Convention applies, the enumeration not being exhaustive. The Convention establishes a Committee on the Elimination of Racial Discrimination and ad hoc Conciliation Commissions. States Parties undertake to submit reports on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of the Convention. If a State Party considers that another State Party is not giving effect to the provisions of the Convention, it may bring the matter to the attention of the Committee on the Elimination of Racial Discrimination. If no settlement is reached, the Chairman of the Committee appoints an ad hoc Conciliation Commission which eventually prepares a report embodying its findings on all questions of fact relevant to the issue between the parties and containing recommendations for the amicable solution of the dispute.

201. A State Party may also declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals claiming to be victims of a violation by a State Party of any of the rights set forth in the Convention. The proceedings concerning communications culminate in the Committee forwarding its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

(d) Procedures relating to the implementation of International Labour Conventions and Recommendations

202. Each of the Members of the International Labour Organization has agreed to make an annual report on the measures which it has taken to give effect to the provisions of International Labour Conventions to which it is a party and to report the position of its law and practice in regard to matters dealt with in Conventions which it has not ratified and in regard to matters dealt with in Recommendations. The consideration of these reports by the Committee of Experts on the Application of Conventions and by the International Labour Conference are held to be an essential element in the implementation of ILO standards.<sup>71/</sup>

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<sup>71/</sup> Articles 22, 19 (5) (e) and 19 (6) (d) of the Constitution of the International Labour Organisation.

203. Each Member of the ILO undertakes to bring any Convention or Recommendation adopted by the International Labour Conference before the authorities within whose competence the matter lies for the enactment of legislation or other action.<sup>72/</sup> The Constitution of the ILO also provides for representations by industrial associations of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party (Art. 24). Any of the Members of the International Labour Organisation has the right to file a complaint if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified. The Governing Body of the International Labour Office may appoint a Commission of Enquiry to consider the complaint and to report thereon. The Governing Body may adopt this procedure also either on its own motion or on receipt of a complaint from a delegate to the International Labour Conference, which may, of course, be also an employers' or workers' delegate (Art. 26). When the Commission of Enquiry has fully considered the complaint, it prepares a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing recommendations. If any of the parties does not accept the recommendations contained in the report of the Commission of Enquiry, the complaint may be referred to the International Court of Justice which may affirm, vary or reverse any of the findings or recommendations of the Commission (Art. 28 et seq. of the Constitution of the ILO). Any question or dispute relating to the interpretation of the Constitution of the International Labour Organisation or of any International Labour Convention shall be referred for decision to the International Court of Justice (Art. 37 of the Constitution of the International Labour Organisation).

204. The Constitution of the International Labour Organisation provides that each Member shall communicate copies of the information and reports which it submits to the ILO to the representative organizations of workers and employers. The consideration of the Governing Body reports by a tripartite Committee of

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<sup>72/</sup> Article 19 (5) (b) and (6) (d) of the Constitution of the ILO.

the International Labour Conference, is preceded by their examination by the "Committee of Experts on the Application of Conventions and Recommendations" which consists of independent persons who do not represent either countries or occupational interests, but whose function it is to make an expert examination of the reports.

205. In addition to the procedures in regard to the implementation of International Labour Conventions and Recommendations of the International Labour Conference, the Governing Body of the ILO, in agreement with the Economic and Social Council, established special machinery for the safeguarding of trade union rights (freedom of association) which applies irrespective of whether the State concerned has ratified the relevant International Labour Conventions dealing with Freedom of Association and the Protection of the Right to Organize and Collective Bargaining of 1948 and 1949 respectively.

206. As originally contemplated by the Economic and Social Council and the Governing Body in making arrangements for these procedures, the main organ for their operation was to be the Fact-Finding and Conciliation Commission on Freedom of Association established by the International Labour Organization on its own behalf and also on behalf of the United Nations. The arrangements were to the effect that allegations of infringements of trade union rights received from Governments or from employers' or workers' organizations might be referred to the Fact-Finding and Conciliation Commission subject to the consent of the Governments concerned. Subsequently the Governing Body established the Committee on Freedom of Association constituted of Government, workers' and employers' representatives which is entrusted with the preliminary examination of the complaints and has the task to consider for recommendation to the Governing Body whether the cases put before it are worthy of examination by the Governing Body. When so determined affirmatively by the Governing Body, it is the Committee's function to attempt to secure the consent of the Government concerned to the reference of the case to the Fact-Finding and Conciliation Commission. Since it was established in 1951, the Committee on Freedom of Association has examined over 500 cases and has thus become the main agency active in this field.

In two cases, the complaint was subsequently referred to the Fact-Finding and Conciliation Commission. At several occasions the Economic and Social Council itself had before it for consideration and action allegations concerning infringements of trade union rights in States or Territories non-Members of the International Labour Organisation, among them allegations relating to South Africa which the Council referred to the ad hoc Working Group of Experts established by the Commission on Human Rights at its twenty-third session<sup>73/</sup>

(e) Procedures relating to the implementation of instruments adopted by UNESCO

207. Under the Constitution of UNESCO, States Members have undertaken the obligation to submit Recommendations or Conventions adopted by the General Conference of UNESCO to their competent authorities (Article 4 (4)).

The Constitution further provides (Article 8) that each Member State shall report periodically to the Organization on its laws, regulations and statistics relating to educational, scientific and cultural life and institutions, and on the action taken upon the Recommendations and Conventions adopted by the General Conference. Some of the conventions which have come into existence under the auspices of UNESCO contain detailed provisions on the reporting obligations of Member States additional to that contained in the Constitution. Among those is the Convention against Discrimination in Education of 1960<sup>74/</sup> which specifies in article 7 that States Parties shall in the periodic reports submitted to the General Conference give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of the Convention, including that taken for the formulation and the development of the national policy of promoting equality of opportunity and of treatment in the matter of education, the results achieved and the obstacles encountered in the application of that policy. Under the Rules of Procedure concerning Recommendations to Member

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<sup>73/</sup> Resolution 2 (XXIII) of the Commission on Human Rights; resolutions 1236 (XLI) and 1216 (XLII) of the Economic and Social Council.

<sup>74/</sup> Adopted by the General Conference of UNESCO on 14 December 1960; reproduced in Yearbook on Human Rights for 1961, pp. 437-439 and in Human Rights, A Compilation of International Instruments of the United Nations, op. cit., pp. 30-33.

States and International Conventions which the General Conference of UNESCO adopted in 1950, the General Conference after considering the reports of Member States, is to embody its comments in one or more general reports which are transmitted to Member States, to National Commissions of UNESCO and to any other authorities specified by the General Conference.<sup>75/</sup>

208. A special procedure relating to the implementation of the Convention against Discrimination in Education of 1960 is provided for in the Protocol instituting a Conciliation and Good Offices Commission to be responsible for securing the settlement of any disputes which may arise between States Parties to the Convention against Discrimination in Education. The Protocol was adopted by the General Conference of UNESCO on 10 December 1962.<sup>76/</sup>

209. If a State Party to this Protocol considers that another State Party is not giving effect to a provision of the Convention it may initiate proceedings under which this complaint is eventually referred for consideration to the Conciliation and Good Offices Commission which has the task to ascertain the facts and make available its good offices to the States concerned with a view to an amicable solution of the matter on the basis of respect for the Convention. If such a solution is not reached, the Commission shall draw up a report on the facts and indicate the recommendations which it made with a view to conciliation.

(f) Regional procedures concerning economic, social and cultural rights within the framework of the Council of Europe

210. Several instruments have been prepared and opened for signature and ratification by States Members of the Council of Europe which provide for international procedures in the field which is the subject matter of the present

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<sup>75/</sup> See "Activities of UNESCO in connexion with the Promotion of Human Rights. A survey prepared by the Director-General of UNESCO", (document A/CONF.32/10, 22 January 1968), paras. 56-57 and passim.

<sup>76/</sup> See Human Rights, a Compilation of International Instruments of the United Nations, op. cit., pp. 33-36.

study. The most important is the European Social Charter of 1961<sup>77/</sup> which stands in a relation to the European Convention on Human Rights of 1950 comparable to that of the International Covenant on Economic, Social and Cultural Rights to the International Covenant on Civil and Political Rights. The European Social Charter provides for the international implementation of its substantive provisions by a reporting procedure which is greatly influenced by that under the Constitution of the International Labour Organisation.

211. Each party to the European Social Charter undertakes to communicate copies of its reports to certain national organizations of employers and trade unions and shall forward to the Secretary-General of the Council of Europe comments on the report received from these national organizations if so requested by them. The reports are examined by a Committee appointed by the Committee of Ministers from a list of independent experts nominated by the Contracting Parties. The conclusions of the Committee of Experts and the reports of the States Parties are then submitted to a sub-committee of the governmental Social Committee in the proceedings of which certain organizations of employers and trade unions and representatives of non-governmental organizations having consultative status with the Council of Europe may participate in a consultative capacity. The conclusions of the Committee of Experts are also transmitted to the parliamentary body of the Council of Europe, the Consultative Assembly, which shall communicate its views on these conclusions to the Committee of Ministers. By a majority of two thirds the Committee of Ministers may, after consultation with the Consultative Assembly, make to each Contracting Party any necessary recommendations. According to the Appendix to the European Social Charter, "it is understood that the Charter contains legal obligations of an international character, the application of which is submitted solely to the supervision provided for in Part IV thereof", i.e., the reporting procedure as

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<sup>77/</sup> Yearbook on Human Rights for 1961, p. 442; see also the Report of the Council of Europe to the International Conference on Human Rights, 1968, (A/CONF.32/L.9), annex VII.



just summarized. The European Social Charter does not provide for other international measures of implementation.

(g) Regional procedures within the framework of the Organization of American States

212. The Organization of American States established in 1959 an organ, the Inter-American Commission on Human Rights, to which by decisions of various organs of the Organization important functions in the field of human rights have been entrusted. Under its Statute as amended in 1966, the Inter-American Commission of Human Rights is directed to give particular attention to the observance of the human rights referred to in certain articles of the American Declaration of the Rights and Duties of Man which deal with civil and political rights. For this reason, the activities of the Inter-American Commission on Human Rights have related mostly to civil and political rights rather than to economic, social and cultural rights.<sup>78/</sup>

213. As early as 1928 the Sixth International Conference of American States initiated the establishment of the Inter-American Commission of Women. At the Eighth International Conference of the American States in 1938, the functions of the Inter-American Commission of Women were extended and the work of the Commission was directed to aim at the extension not only of civil and political rights but also of economic and social rights of the women of America. The Inter-American Commission of Women has addressed itself in particular to the full protection in and opportunity for work by women and to the most ample protection of mothers.<sup>79/</sup>

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<sup>78/</sup> The Statute of the Inter-American Commission on Human Rights is summarized in the report submitted by the Organization of the American States to the International Conference on Human Rights, particularly on pages 43, 64 and 65, A/CONF.32/L.10.

<sup>79/</sup> The comprehensive activities of the Organization of the American States in the field of the Rights of Women, including their economic, social and cultural rights, are described in the report referred to in the preceding foot-note A/CONF.32/L.10.

214. A survey of international methods and international action in regard to the implementation of economic, social and cultural rights will be found in the Annex to the present study.

## CHAPTER IV

### PRELIMINARY CONCLUSIONS

215. The acceptance by States of the human rights instruments which have been established by or under the auspices of the United Nations and of the specialized agencies would appear as a most important step towards the realization of economic, social and cultural rights. The International Conference on Human Rights, 1968, invited States to consider their participation in international human rights instruments with a view to their accession to as many of them as possible (resolution XXII). The international conventions adopted in the human rights field were drafted, negotiated and adopted by most of the Governments which are invited to sign and ratify or to accede to them. The more important among them, including the International Covenants on Human Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, were adopted by the General Assembly unanimously. As far as economic, social and cultural rights are concerned, the early entry into force among as many States as possible of the International Covenant on Economic, Social and Cultural Rights is of particular importance. In the unanimously adopted resolution 2337 (XXII) of 18 December 1967, the General Assembly invited eligible States to hasten their ratifications of or accessions to that Covenant as well as the Covenant on Civil and Political Rights and the Protocol to the latter.

216. Pending the entry into force and wide acceptance of the Covenant and the putting into operation of its reporting procedure, the submission and consideration of periodic reports under Council resolution 1074 C (XXXIX) remains of considerable value, as the Commission stated in the Preamble to its resolution 16 (XXIII). The Commission may therefore wish to address a request and reminder to States Members of the United Nations and members of the specialized agencies to make an effort to submit comprehensive reports on economic, social and cultural rights for the three-year period ending 30 June 1969, which the Commission will consider at its twenty-sixth session in 1970.

217. Although the Covenant on Economic, Social and Cultural Rights while having been signed by thirty-nine States has at the time of the preparation of the

present study been ratified only by one State while ratification or accession by thirty-five States is required, and its entry into force is therefore not imminent, the Commission may nevertheless wish to give early consideration to the preparatory work which will eventually be required to set in motion the reporting procedure provided in the Covenant. The reporting procedure requires the establishment of a programme by the Economic and Social Council after consultation with the States Parties and the specialized agencies concerned. Although it is not yet known which States will be parties to the Covenant, some preliminary consultations about the programme might be envisaged at an early stage.

218. Independently from the question of the entry into force of the Covenant, the close inter-connexion between economic development and the realization of human rights makes it necessary to intensify still more than has been the case in recent years the international co-operation and assistance, especially economic and technical, which will accelerate progress towards the full realization of economic, social and cultural rights in developing countries.

219. The improvement of the economic conditions at the national level, particularly in developing countries which is considered necessary to achieve meaningful progress in the realization of economic, social and cultural rights, makes it highly desirable to apply national programming in this field. In establishing programmes, due account should be taken of the provisions of the relevant international human rights instruments.

220. As an account of limited resources and other limiting factors the realization of economic, social and cultural rights will often be possible only progressively, States should, when deciding upon the steps to be taken with a view to achieving progressively the full realization of these rights, establish where necessary certain priorities among various rights and various projects. In establishing these priorities account should be taken of the consideration that the steps taken should benefit the greatest possible number of people. Where a choice has to be made between steps from which only a fraction of the population might profit and such as would increase the well-being of a large section of the community, the latter should be preferred.

221. The whole process of programming and progressive development should be determined by concern for human rights. One of the issues arising out of

large-scale planning is the question of reconciling certain measures planned in the economic field with respect for human rights. For the solution of this problem the existing United Nations instruments, particularly the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Abolition of Forced Labour Convention, offer guidance to decision makers.

222. While some economic, social and cultural rights can in certain situations be realized only progressively as the necessary standard of economic development is reached, others are capable of immediate application. This applies in particular to the prohibition of discrimination of any kind and to the ensuring of equal rights of men and women to the enjoyment of all economic, social and cultural rights.

223. The idea that the realization of human rights shall take place without any discrimination of any kind as to race, colour, sex, language, religion political opinion, racial or social origin, property, birth or other status, permeates all United Nations instruments on the subject. The General Assembly and other organs of the United Nations and of the specialized agencies have repeatedly stated that systems based on discrimination and segregation particularly on the grounds of race, such as the policy of apartheid, are not only contrary to the moral precepts of the international community and the positive provisions of the Charter of the United Nations and other relevant Conventions, but are also an obstacle to progress in regard to economic, social and cultural rights affecting the whole population.

224. The prohibition of discrimination does not exclude the taking of special measures designed to meet the special needs of those who are in particular circumstances, such as backward children, the blind, the mentally or physically handicapped, illiterates, immigrants, etc. Rural populations may call for special protective and promotional measures. In particular, States should, when circumstances so warrant, take in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence

the maintenance of unequal or separate rights for different groups after the objectives for which they were taken have been achieved (cf. Article 2, paragraph 2 of the International Convention on the Elimination of All Forms of Racial Discrimination).

225. It has been repeatedly recognized that each Government has a primary role and ultimate responsibility of ensuring the social progress and well-being of its people. Authority in this regard is often vested in governmental bodies at subordinate levels or autonomous institutions. For the achievement of the aim of realizing economic, social and cultural rights, co-operation on all levels of government is essential as well as appropriate co-ordination between governmental and non-governmental efforts. In all situations a solid administrative structure is an essential prerequisite.

226. In the process of programming and economic and social development, the popular will should be ascertained through appropriate democratic processes. Popular participation is necessary also for the implementation of programmes and projects thus established and the day to day effective realization of the rights concerned.

227. The constitutions of States with various political and economic structures often contain provisions on economic, social and cultural rights. The protection thereby given to these rights differs from constitution to constitution. Where the constitutionality of ordinary legislation can be reviewed by the courts; where the norms of the constitution are directly applicable; where the constitution provides that derogations of economic and social rights set forth therein are not permitted, the constitutional protection is particularly effective. But even in cases where the constitution sets forth only principles of policy in this field, the constitutional provisions are also of considerable value by enhancing the respect of the legislature, the judiciary, the executive power and private individuals and entities for these rights. It is in any event desirable that respect for and recognition of economic and social rights be consecrated at the highest legal level.

228. The principal instrument for ensuring economic, social and cultural rights at the national level is legislation in the widest sense of the word as well as law developed by court decisions and customary law. Here again peremptory norms

for the protection of the weaker party which cannot be derogated from (d'ordre public; jus cogens) are particularly effective in the field of economic, social and cultural rights.

229. Contractual arrangements, particularly collective labour agreements, are in many countries an important element in the process of realization of economic and social rights.

230. Appropriate machinery for the enforcement of economic, social and cultural rights is necessary. This machinery may consist in the ordinary courts of the land, special tribunals or administrative authorities. These might be subject to control by appeal courts and/or administrative courts to secure the correct and uniform application of the law. Non-judicial institutions and procedures should continue to play an important role in safeguarding economic, social and cultural rights. These include parliamentary control, committees of inquiry, specific institutions such as the Ombudsman, originating in the Scandinavian countries and the Procurator as provided in the systems of Eastern European countries. Grievance procedures play an important role in the settlement of complaints by workers and their maintenance and development should be encouraged.

231. The United Nations Charter and the constitutions of the specialized agencies have made possible the establishment of systems of international co-operation for purposes of review of achievement in the field of economic, social and cultural rights such as the triennial reporting system on human rights established by the Economic and Social Council and the procedure for the protection of trade union rights created by the International Labour Organisation in co-operation with the Economic and Social Council. In addition, international procedures are provided for in a number of international conventions in the field of human rights. The International Convention on the Elimination of All Forms of Racial Discrimination provides for reporting, complaints and petitions. The International Labour Conventions in the human rights field partake of the measures of implementation for which the Constitution of the International Labour Organisation provides: representations, inter-state complaints, complaints by delegates to the Conference, adjudication by the International

Court of Justice. The Convention Against Discrimination in Education together with the Protocol thereto of 1962 provide for reporting and for conciliation and the rendering of good offices.

232. The United Nations Economic Commissions for Africa, Asia and the Far East, Europe and Latin America, provide useful forums for the achievement of co-operation in the economic and social fields and thereby instruments for the realization of economic, social and cultural rights in these regions. In addition, regional organizations existing outside the United Nations system also have established international instruments and in some cases also international machinery in these fields.

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