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SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE
INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL
RIGHTS

General Comment No. 15 (2002)

**The right to water (arts. 11 and 12 of the International Covenant
on Economic, Social and Cultural Rights)**

I. INTRODUCTION

1. Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights. The Committee has been confronted continually with the widespread denial of the right to water in developing as well as developed countries. Over one billion persons lack access to a basic water supply, while several billion do not have access to adequate sanitation, which is the primary cause of water contamination and diseases linked to water.¹ The

¹ In 2000, the World Health Organization estimated that 1.1 billion persons did not have access to an improved water supply (80 per cent of them rural dwellers) able to provide at least 20 litres of safe water per person a day; 2.4 billion persons were estimated to be without sanitation. (See WHO, *The Global Water Supply and Sanitation Assessment 2000*, Geneva, 2000, p.1.) Further, 2.3 billion persons each year suffer from diseases linked to water: see United Nations, Commission on Sustainable Development, *Comprehensive Assessment of the Freshwater Resources of the World*, New York, 1997, p. 39.

continuing contamination, depletion and unequal distribution of water is exacerbating existing poverty. States parties have to adopt effective measures to realize, without discrimination, the right to water, as set out in this general comment.

The legal bases of the right to water

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

3. Article 11, paragraph 1, of the Covenant specifies a number of rights emanating from, and indispensable for, the realization of the right to an adequate standard of living “including adequate food, clothing and housing”. The use of the word “including” indicates that this catalogue of rights was not intended to be exhaustive. The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival. Moreover, the Committee has previously recognized that water is a human right contained in article 11, paragraph 1, (see General Comment No. 6 (1995)).² The right to water is also inextricably related to the right to the highest attainable standard of health (art. 12, para. 1)³ and the rights to adequate housing and adequate food (art. 11, para. 1).⁴ The right should also be seen in conjunction with other rights enshrined in the International Bill of Human Rights, foremost amongst them the right to life and human dignity.

4. The right to water has been recognized in a wide range of international documents, including treaties, declarations and other standards.⁵ For instance, Article

² See paras. 5 and 32 of the Committee’s General Comment No. 6 (1995) on the economic, social and cultural rights of older persons.

³ See General Comment No. 14 (2000) on the right to the highest attainable standard of health, paragraphs 11, 12 (a), (b) and (d), 15, 34, 36, 40, 43 and 51.

⁴ See para. 8 (b) of General Comment No. 4 (1991). See also the report by Commission on Human Rights’ Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mr. Miloon Kothari (E.CN.4/2002/59), submitted in accordance with Commission resolution 2001/28 of 20 April 2001. In relation to the right to adequate food, see the report by the Special Rapporteur of the Commission on the right to food, Mr. Jean Ziegler (E/CN.4/2002/58), submitted in accordance with Commission resolution 2001/25 of 20 April 2001.

⁵ See art. 14, para. 2 (h), Convention on the Elimination of All Forms of Discrimination Against Women; art. 24, para. 2 (c), Convention on the Rights of the Child; arts. 20, 26, 29 and 46 of the Geneva Convention relative to the Treatment of Prisoners of War, of 1949; arts. 85, 89 and 127 of the Geneva Convention relative to the Treatment of Civilian Persons in Time of War, of 1949; arts. 54 and 55 of Additional Protocol I thereto of 1977; arts. 5 and 14 Additional Protocol II of 1977; preamble, Mar Del

14, paragraph 2, of the Convention on the Elimination of All Forms of Discrimination Against Women stipulates that States parties shall ensure to women the right to “enjoy adequate living conditions, particularly in relation to [...] water supply”. Article 24, paragraph 2, of the Convention on the Rights of the Child requires States parties to combat disease and malnutrition “through the provision of adequate nutritious foods and clean drinking-water”.

5. The right to water has been consistently addressed by the Committee during its consideration of States parties’ reports, in accordance with its revised general guidelines regarding the form and content of reports to be submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, and its general comments.

6. Water is required for a range of different purposes, besides personal and domestic uses, to realize many of the Covenant rights. For instance, water is necessary to produce food (right to adequate food) and ensure environmental hygiene (right to health). Water is essential for securing livelihoods (right to gain a living by work) and enjoying certain cultural practices (right to take part in cultural life). Nevertheless, priority in the allocation of water must be given to the right to water for personal and domestic uses. Priority should also be given to the water resources required to prevent starvation and disease, as well as water required to meet the core obligations of each of the Covenant rights.⁶

Water and Covenant rights

7. The Committee notes the importance of ensuring sustainable access to water resources for agriculture to realize the right to adequate food (see General Comment

Plata Action Plan of the United Nations Water Conference; see para. 18.47 of Agenda 21, *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (A/CONF.151/26/Rev.1 (Vol. I and Vol. I/Corr.1, Vol. II, Vol. III and Vol. III/Corr.1) (United Nations publication, Sales No. E.93.I.8), vol. I: *Resolutions adopted by the Conference*, resolution 1, annex II; Principle No. 3, The Dublin Statement on Water and Sustainable Development, International Conference on Water and the Environment (A/CONF.151/PC/112); Principle No. 2, Programme of Action, *Report of the United Nations International Conference on Population and Development, Cairo, 5-13 September 1994* (United Nations publication, Sales No. E.95.XIII.18), chap. I, resolution 1, annex; paras. 5 and 19, Recommendation (2001) 14 of the Committee of Ministers to Member States on the European Charter on Water Resources; resolution 2002/6 of the United Nations Sub-Commission on the Promotion and Protection of Human Rights on the promotion of the realization of the right to drinking water. See also the report on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation (E/CN.4/Sub.2/2002/10) submitted by the Special Rapporteur of the Sub-Commission on the right to drinking water supply and sanitation, Mr. El Hadji Guissé.

⁶ See also World Summit on Sustainable Development, Plan of Implementation 2002, paragraph 25 (c).

No.12 (1999)).⁷ Attention should be given to ensuring that disadvantaged and marginalized farmers, including women farmers, have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology. Taking note of the duty in article 1, paragraph 2, of the Covenant, which provides that a people may not “be deprived of its means of subsistence”, States parties should ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples.⁸

8. Environmental hygiene, as an aspect of the right to health under article 12, paragraph 2 (b), of the Covenant, encompasses taking steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions.⁹ For example, States parties should ensure that natural water resources are protected from contamination by harmful substances and pathogenic microbes. Likewise, States parties should monitor and combat situations where aquatic eco-systems serve as a habitat for vectors of diseases wherever they pose a risk to human living environments.¹⁰

9. With a view to assisting States parties' implementation of the Covenant and the fulfilment of their reporting obligations, this General Comment focuses in Part II on the normative content of the right to water in articles 11, paragraph 1, and 12, on States parties' obligations (Part III), on violations (Part IV) and on implementation at the national level (Part V), while the obligations of actors other than States parties are addressed in Part VI.

II. NORMATIVE CONTENT OF THE RIGHT TO WATER

10. The right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water.

⁷ This relates to both *availability* and to *accessibility* of the right to adequate food (see General Comment No. 12 (1999), paras. 12 and 13).

⁸ See also the Statement of Understanding accompanying the United Nations Convention on the Law of Non-Navigational Uses of Watercourses (A/51/869 of 11 April 1997), which declared that, in determining vital human needs in the event of conflicts over the use of watercourses “special attention is to be paid to providing sufficient water to sustain human life, including both drinking water and water required for production of food in order to prevent starvation”..

⁹ See also para. 15, General Comment No. 14.

¹⁰ According to the WHO definition, vector-borne diseases include diseases transmitted by insects (malaria, filariasis, dengue, Japanese encephalitis and yellow fever), diseases for which aquatic snails serve as intermediate hosts (schistosomiasis) and zoonoses with vertebrates as reservoir hosts.

11. The elements of the right to water must be *adequate* for human dignity, life and health, in accordance with articles 11, paragraph 1, and 12. The adequacy of water should not be interpreted narrowly, by mere reference to volumetric quantities and technologies. Water should be treated as a social and cultural good, and not primarily as an economic good. The manner of the realization of the right to water must also be sustainable, ensuring that the right can be realized for present and future generations.¹¹

12. While the adequacy of water required for the right to water may vary according to different conditions, the following factors apply in all circumstances:

(a) *Availability*. The water supply for each person must be sufficient and continuous for personal and domestic uses.¹² These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.¹³ The quantity of water available for each person should correspond to World Health Organization (WHO) guidelines.¹⁴ Some individuals and groups may also require additional water due to health, climate, and work conditions;

(b) *Quality*. The water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health.¹⁵ Furthermore, water should be of an acceptable colour, odour and taste for each personal or domestic use.

¹¹ For a definition of sustainability, see the *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 1992*, Declaration on Environment and Development, principles 1, 8, 9, 10, 12 and 15; and Agenda 21, in particular principles 5.3, 7.27, 7.28, 7.35, 7.39, 7.41, 18.3, 18.8, 18.35, 18.40, 18.48, 18.50, 18.59 and 18.68.

¹² "Continuous" means that the regularity of the water supply is sufficient for personal and domestic uses.

¹³ In this context, "drinking" means water for consumption through beverages and foodstuffs. "Personal sanitation" means disposal of human excreta. Water is necessary for personal sanitation where water-based means are adopted. "Food preparation" includes food hygiene and preparation of food stuffs, whether water is incorporated into, or comes into contact with, food. "Personal and household hygiene" means personal cleanliness and hygiene of the household environment.

¹⁴ See J. Bartram and G. Howard, "Domestic water quantity, service level and health: what should be the goal for water and health sectors", WHO, 2002. See also P.H. Gleick, (1996) "Basic water requirements for human activities: meeting basic needs", *Water International*, 21, pp. 83-92.

¹⁵ The Committee refers States parties to WHO, *Guidelines for drinking-water quality*, 2nd edition, vols. 1-3 (Geneva, 1993) that are "intended to be used as a basis for the development of national standards that, if properly implemented, will ensure the safety of drinking water supplies through the elimination of, or reduction to a

(c) *Accessibility*. Water and water facilities and services have to be accessible to *everyone* without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

(i) *Physical accessibility*: water, and adequate water facilities and services, must be within safe physical reach for all sections of the population. Sufficient, safe and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace.¹⁶ All water facilities and services must be of sufficient quality, culturally appropriate and sensitive to gender, life-cycle and privacy requirements. Physical security should not be threatened during access to water facilities and services;

(ii) *Economic accessibility*: Water, and water facilities and services, must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realization of other Covenant rights;

(iii) *Non-discrimination*: Water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds; and

(iv) *Information accessibility*: accessibility includes the right to seek, receive and impart information concerning water issues.¹⁷

Special topics of broad application

Non-discrimination and equality

13. The obligation of States parties to guarantee that the right to water is enjoyed without discrimination (art. 2, para. 2), and equally between men and women (art. 3), pervades all of the Covenant obligations. The Covenant thus proscribes any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to water. The Committee recalls paragraph 12 of General Comment No. 3 (1990), which states that even in times of severe resource

minimum concentration, of constituents of water that are known to be hazardous to health.”

¹⁶ See also General Comment No. 4 (1991), para. 8 (b), General Comment No. 13 (1999) para. 6 (a) and General Comment No. 14 (2000) paras. 8 (a) and (b). Household includes a permanent or semi-permanent dwelling, or a temporary halting site.

¹⁷ See para. 48 of this General Comment.

constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes.

14. States parties should take steps to remove de facto discrimination on prohibited grounds, where individuals and groups are deprived of the means or entitlements necessary for achieving the right to water. States parties should ensure that the allocation of water resources, and investments in water, facilitate access to water for all members of society. Inappropriate resource allocation can lead to discrimination that may not be overt. For example, investments should not disproportionately favour expensive water supply services and facilities that are often accessible only to a small, privileged fraction of the population, rather than investing in services and facilities that benefit a far larger part of the population.

15. With respect to the right to water, States parties have a special obligation to provide those who do not have sufficient means with the necessary water and water facilities and to prevent any discrimination on internationally prohibited grounds in the provision of water and water services.

16. Whereas the right to water applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, indigenous peoples, refugees, asylum seekers, internally displaced persons, migrant workers, prisoners and detainees. In particular, States parties should take steps to ensure that:

(a) Women are not excluded from decision-making processes concerning water resources and entitlements. The disproportionate burden women bear in the collection of water should be alleviated;

(b) Children are not prevented from enjoying their human rights due to the lack of adequate water in educational institutions and households or through the burden of collecting water. Provision of adequate water to educational institutions currently without adequate drinking water should be addressed as a matter of urgency;

(c) Rural and deprived urban areas have access to properly maintained water facilities. Access to traditional water sources in rural areas should be protected from unlawful encroachment and pollution. Deprived urban areas, including informal human settlements, and homeless persons, should have access to properly maintained water facilities. No household should be denied the right to water on the grounds of their housing or land status;

(d) Indigenous peoples' access to water resources on their ancestral lands is protected from encroachment and unlawful pollution. States should provide resources for indigenous peoples to design, deliver and control their access to water;

(e) Nomadic and traveller communities have access to adequate water at traditional and designated halting sites;

(f) Refugees, asylum-seekers, internally displaced persons and returnees have access to adequate water whether they stay in camps or in urban and rural areas.

Refugees and asylum-seekers should be granted the right to water on the same conditions as granted to nationals;

(g) Prisoners and detainees are provided with sufficient and safe water for their daily individual requirements, taking note of the requirements of international humanitarian law and the United Nations Standard Minimum Rules for the Treatment of Prisoners;¹⁸

(h) Groups facing difficulties with physical access to water, such as older persons, persons with disabilities, victims of natural disasters, persons living in disaster-prone areas, and those living in arid and semi-arid areas, or on small islands are provided with safe and sufficient water.

III. STATES PARTIES' OBLIGATIONS

General legal obligations

17. While the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect. States parties have immediate obligations in relation to the right to water, such as the guarantee that the right will be exercised without discrimination of any kind (art. 2, para. 2) and the obligation to take steps (art. 2, para.1) towards the full realization of articles 11, paragraph 1, and 12. Such steps must be deliberate, concrete and targeted towards the full realization of the right to water.

18. States parties have a constant and continuing duty under the Covenant to move as expeditiously and effectively as possible towards the full realization of the right to water. Realization of the right should be feasible and practicable, since all States parties exercise control over a broad range of resources, including water, technology, financial resources and international assistance, as with all other rights in the Covenant.

19. There is a strong presumption that retrogressive measures taken in relation to the right to water are prohibited under the Covenant.¹⁹ If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party's maximum available resources.

¹⁸ See arts. 20, 26, 29 and 46 of the third Geneva Convention of 12 August 1949; arts. 85, 89 and 127 of the fourth Geneva Convention of 12 August 1949; arts. 15 and 20, para. 2, United Nations Standard Minimum Rules for the Treatment of Prisoners, in *Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.88.XIV.1).

¹⁹ See General Comment No. 3 (1990), para. 9.

Specific legal obligations

20. The right to water, like any human right, imposes three types of obligations on States parties: obligations to *respect*, obligations to *protect* and obligations to *fulfil*.

(a) Obligations to respect

21. The obligation to *respect* requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to water. The obligation includes, inter alia, refraining from engaging in any practice or activity that denies or limits equal access to adequate water; arbitrarily interfering with customary or traditional arrangements for water allocation; unlawfully diminishing or polluting water, for example through waste from State-owned facilities or through use and testing of weapons; and limiting access to, or destroying, water services and infrastructure as a punitive measure, for example, during armed conflicts in violation of international humanitarian law.

22. The Committee notes that during armed conflicts, emergency situations and natural disasters, the right to water embraces those obligations by which States parties are bound under international humanitarian law.²⁰ This includes protection of objects indispensable for survival of the civilian population, including drinking water installations and supplies and irrigation works, protection of the natural environment against widespread, long-term and severe damage and ensuring that civilians, internees and prisoners have access to adequate water.²¹

(b) Obligations to protect

23. The obligation to *protect* requires State parties to prevent third parties from interfering in any way with the enjoyment of the right to water. Third parties include individuals, groups, corporations and other entities as well as agents acting under their authority. The obligation includes, inter alia, adopting the necessary and effective legislative and other measures to restrain, for example, third parties from denying equal access to adequate water; and polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems.

24. Where water services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable, and physical access to sufficient, safe and acceptable water. To prevent such abuses an effective regulatory system must be established, in conformity with the Covenant and this General Comment, which

²⁰ For the interrelationship of human rights law and humanitarian law, the Committee notes the conclusions of the International Court of Justice in *Legality of the Threat or Use of Nuclear Weapons (Request by the General Assembly)*, ICJ Reports (1996) p. 226, para. 25.

²¹ See arts. 54 and 56, Additional Protocol I to the Geneva Conventions (1977), art. 54, Additional Protocol II (1977), arts. 20 and 46 of the third Geneva Convention of 12 August 1949, and common article 3 of the Geneva Conventions of 12 August 1949.

includes independent monitoring, genuine public participation and imposition of penalties for non-compliance.

(c) Obligations to fulfil

25. The obligation to *fulfil* can be disaggregated into the obligations to facilitate, promote and provide. The obligation to facilitate requires the State to take positive measures to assist individuals and communities to enjoy the right. The obligation to promote obliges the State party to take steps to ensure that there is appropriate education concerning the hygienic use of water, protection of water sources and methods to minimize water wastage. States parties are also obliged to fulfil (provide) the right when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal.

26. The obligation to fulfil requires States parties to adopt the necessary measures directed towards the full realization of the right to water. The obligation includes, inter alia, according sufficient recognition of this right within the national political and legal systems, preferably by way of legislative implementation; adopting a national water strategy and plan of action to realize this right; ensuring that water is affordable for everyone; and facilitating improved and sustainable access to water, particularly in rural and deprived urban areas.

27. To ensure that water is affordable, States parties must adopt the necessary measures that may include, inter alia: (a) use of a range of appropriate low-cost techniques and technologies; (b) appropriate pricing policies such as free or low-cost water; and (c) income supplements. Any payment for water services has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with water expenses as compared to richer households.

28. States parties should adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations.²² Such strategies and programmes may include: (a) reducing depletion of water resources through unsustainable extraction, diversion and damming; (b) reducing and eliminating contamination of watersheds and water-related eco-systems by substances such as radiation, harmful chemicals and human excreta; (c) monitoring water reserves; (d) ensuring that proposed developments do not interfere with access to adequate water; (e) assessing the impacts of actions that may impinge upon water availability and natural-ecosystems watersheds, such as climate changes, desertification and increased soil salinity, deforestation and loss of biodiversity;²³ (f)

²² See footnote 5 above, Agenda 21, chaps. 5, 7 and 18; and the World Summit on Sustainable Development, Plan of Implementation (2002), paras. 6 (a), (l) and (m), 7, 36 and 38.

²³ See the Convention on Biological Diversity, the Convention to Combat Desertification, the United Nations Framework Convention on Climate Change, and subsequent protocols.

increasing the efficient use of water by end-users; (g) reducing water wastage in its distribution; (h) response mechanisms for emergency situations; (i) and establishing competent institutions and appropriate institutional arrangements to carry out the strategies and programmes.

29. Ensuring that everyone has access to adequate sanitation is not only fundamental for human dignity and privacy, but is one of the principal mechanisms for protecting the quality of drinking water supplies and resources.²⁴ In accordance with the rights to health and adequate housing (see General Comments No. 4 (1991) and 14 (2000)) States parties have an obligation to progressively extend safe sanitation services, particularly to rural and deprived urban areas, taking into account the needs of women and children.

International obligations

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

31. To comply with their international obligations in relation to the right to water, States parties have to respect the enjoyment of the right in other countries. International cooperation requires States parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries. Any activities undertaken within the State party's jurisdiction should not deprive another country of the ability to realize the right to water for persons in its jurisdiction.²⁵

32. States parties should refrain at all times from imposing embargoes or similar measures, that prevent the supply of water, as well as goods and services essential for securing the right to water.²⁶ Water should never be used as an instrument of political

²⁴ Article 14, para. 2, of the Convention on the Elimination of All Forms of Discrimination Against Women stipulates States parties shall ensure to women the right to "adequate living conditions, particularly in relation to [...] sanitation". Article 24, para. 2, of the Convention on the Rights of the Child requires States parties to "To ensure that all segments of society [...] have access to education and are supported in the use of basic knowledge of [...] the advantages of [...] hygiene and environmental sanitation."

²⁵ The Committee notes that the United Nations Convention on the Law of Non-Navigational Uses of Watercourses requires that social and human needs be taken into account in determining the equitable utilization of watercourses, that States parties take measures to prevent significant harm being caused, and, in the event of conflict, special regard must be given to the requirements of vital human needs: see arts. 5, 7 and 10 of the Convention.

²⁶ In General Comment No. 8 (1997), the Committee noted the disruptive effect of sanctions upon sanitation supplies and clean drinking water, and that sanctions regimes should provide for repairs to infrastructure essential to provide clean water.

and economic pressure. In this regard, the Committee recalls its position, stated in its General Comment No. 8 (1997), on the relationship between economic sanctions and respect for economic, social and cultural rights.

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

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

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

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

Core obligations

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

(a) To ensure access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease;

(b) To ensure the right of access to water and water facilities and services on a non-discriminatory basis, especially for disadvantaged or marginalized groups;

(c) To ensure physical access to water facilities or services that provide sufficient, safe and regular water; that have a sufficient number of water outlets to avoid prohibitive waiting times; and that are at a reasonable distance from the household;

(d) To ensure personal security is not threatened when having to physically access to water;

(e) To ensure equitable distribution of all available water facilities and services;

(f) To adopt and implement a national water strategy and plan of action addressing the whole population; the strategy and plan of action should be devised, and periodically reviewed, on the basis of a participatory and transparent process; it should include methods, such as right to water indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all disadvantaged or marginalized groups;

(g) To monitor the extent of the realization, or the non-realization, of the right to water;

(h) To adopt relatively low-cost targeted water programmes to protect vulnerable and marginalized groups;

(i) To take measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation;

38. For the avoidance of any doubt, the Committee wishes to emphasize that it is particularly incumbent on States parties, and other actors in a position to assist, to provide international assistance and cooperation, especially economic and technical which enables developing countries to fulfil their core obligations indicated in paragraph 37 above.

IV. VIOLATIONS

39. When the normative content of the right to water (see Part II) is applied to the obligations of States parties (Part III), a process is set in motion, which facilitates identification of violations of the right to water. The following paragraphs provide illustrations of violations of the right to water.

40. To demonstrate compliance with their general and specific obligations, States parties must establish that they have taken the necessary and feasible steps towards the realization of the right to water. In accordance with international law, a failure to act in good faith to take such steps amounts to a violation of the right. It should be stressed that a State party cannot justify its non-compliance with the core obligations set out in paragraph 37 above, which are non-derogable.

41. In determining which actions or omissions amount to a violation of the right to water, it is important to distinguish the inability from the unwillingness of a State

party to comply with its obligations in relation to the right to water. This follows from articles 11, paragraph 1, and 12, which speak of the right to an adequate standard of living and the right to health, as well as from article 2, paragraph 1, of the Covenant, which obliges each State party to take the necessary steps to the maximum of its available resources. A State which is unwilling to use the maximum of its available resources for the realization of the right to water is in violation of its obligations under the Covenant. If resource constraints render it impossible for a State party to comply fully with its Covenant obligations, it has the burden of justifying that every effort has nevertheless been made to use all available resources at its disposal in order to satisfy, as a matter of priority, the obligations outlined above.

42. Violations of the right to water can occur through *acts of commission*, the direct actions of States parties or other entities insufficiently regulated by States. Violations include, for example, the adoption of retrogressive measures incompatible with the core obligations (outlined in para. 37 above), the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to water, or the adoption of legislation or policies which are manifestly incompatible with pre-existing domestic or international legal obligations in relation to the right to water.

43. Violations through *acts of omission* include the failure to take appropriate steps towards the full realization of everyone's right to water, the failure to have a national policy on water, and the failure to enforce relevant laws.

44. While it is not possible to specify a complete list of violations in advance, a number of typical examples relating to the levels of obligations, emanating from the Committee's work, may be identified:

(a) Violations of the obligation to respect follow from the State party's interference with the right to water. This includes, inter alia: (i) arbitrary or unjustified disconnection or exclusion from water services or facilities; (ii) discriminatory or unaffordable increases in the price of water; and (iii) pollution and diminution of water resources affecting human health;

(b) Violations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to water by third parties.²⁷ This includes, inter alia: (i) failure to enact or enforce laws to prevent the contamination and inequitable extraction of water; (ii) failure to effectively regulate and control water services providers; (iv) failure to protect water distribution systems (e.g., piped networks and wells) from interference, damage and destruction; and

(c) Violations of the obligation to fulfil occur through the failure of States parties to take all necessary steps to ensure the realization of the right to water. Examples includes, inter alia: (i) failure to adopt or implement a national water policy designed to ensure the right to water for everyone; (ii) insufficient expenditure or misallocation of public resources which results in the non-enjoyment of the right to water by individuals or groups, particularly the vulnerable or marginalized; (iii) failure to monitor the realization of the right to water at the national level, for example

²⁷ See para. 23 for a definition of "third parties".

by identifying right-to-water indicators and benchmarks; (iv) failure to take measures to reduce the inequitable distribution of water facilities and services; (v) failure to adopt mechanisms for emergency relief; (vi) failure to ensure that the minimum essential level of the right is enjoyed by everyone (vii) failure of a State to take into account its international legal obligations regarding the right to water when entering into agreements with other States or with international organizations.

V. IMPLEMENTATION AT THE NATIONAL LEVEL

45. In accordance with article 2, paragraph 1, of the Covenant, States parties are required to utilize “all appropriate means, including particularly the adoption of legislative measures” in the implementation of their Covenant obligations. Every State party has a margin of discretion in assessing which measures are most suitable to meet its specific circumstances. The Covenant, however, clearly imposes a duty on each State party to take whatever steps are necessary to ensure that everyone enjoys the right to water, as soon as possible. Any national measures designed to realize the right to water should not interfere with the enjoyment of other human rights.

Legislation, strategies and policies

46. Existing legislation, strategies and policies should be reviewed to ensure that they are compatible with obligations arising from the right to water, and should be repealed, amended or changed if inconsistent with Covenant requirements.

47. The duty to take steps clearly imposes on States parties an obligation to adopt a national strategy or plan of action to realize the right to water. The strategy must: (a) be based upon human rights law and principles; (b) cover all aspects of the right to water and the corresponding obligations of States parties; (c) define clear objectives; (d) set targets or goals to be achieved and the time-frame for their achievement; (e) formulate adequate policies and corresponding benchmarks and indicators. The strategy should also establish institutional responsibility for the process; identify resources available to attain the objectives, targets and goals; allocate resources appropriately according to institutional responsibility; and establish accountability mechanisms to ensure the implementation of the strategy. When formulating and implementing their right to water national strategies, States parties should avail themselves of technical assistance and cooperation of the United Nations specialized agencies (see Part VI below).

48. The formulation and implementation of national water strategies and plans of action should respect, inter alia, the principles of non-discrimination and people's participation. The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, programme or strategy concerning water. Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties.

49. The national water strategy and plan of action should also be based on the principles of accountability, transparency and independence of the judiciary, since good governance is essential to the effective implementation of all human rights, including the realization of the right to water. In order to create a favourable climate

for the realization of the right, States parties should take appropriate steps to ensure that the private business sector and civil society are aware of, and consider the importance of, the right to water in pursuing their activities.

50. States parties may find it advantageous to adopt framework legislation to operationalize their right to water strategy. Such legislation should include: (a) targets or goals to be attained and the time-frame for their achievement; (b) the means by which the purpose could be achieved; (c) the intended collaboration with civil society, private sector and international organizations; (d) institutional responsibility for the process; (e) national mechanisms for its monitoring; and (f) remedies and recourse procedures.

51. Steps should be taken to ensure there is sufficient coordination between the national ministries, regional and local authorities in order to reconcile water-related policies. Where implementation of the right to water has been delegated to regional or local authorities, the State party still retains the responsibility to comply with its Covenant obligations, and therefore should ensure that these authorities have at their disposal sufficient resources to maintain and extend the necessary water services and facilities. The States parties must further ensure that such authorities do not deny access to services on a discriminatory basis.

52. States parties are obliged to monitor effectively the realization of the right to water. In monitoring progress towards the realization of the right to water, States parties should identify the factors and difficulties affecting implementation of their obligations.

Indicators and benchmarks

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

54. Having identified appropriate right to water indicators, States parties are invited to set appropriate national benchmarks in relation to each indicator.²⁸ During

²⁸ See E. Riedel, "New bearings to the State reporting procedure: practical ways to operationalize economic, social and cultural rights – The example of the right to health", in S. von Schorlemer (ed.), *Praxishandbuch UNO*, 2002, pp. 345-358. The

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

Remedies and accountability

55. Any persons or groups who have been denied their right to water should have access to effective judicial or other appropriate remedies at both national and international levels (see General Comment No. 9 (1998), para. 4, and Principle 10 of the Rio Declaration on Environment and Development).²⁹ The Committee notes that the right has been constitutionally entrenched by a number of States and has been subject to litigation before national courts. All victims of violations of the right to water should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition. National ombudsmen, human rights commissions, and similar institutions should be permitted to address violations of the right.

56. Before any action that interferes with an individual’s right to water is carried out by the State party, or by any other third party, the relevant authorities must ensure that such actions are performed in a manner warranted by law, compatible with the Covenant, and that comprises: (a) opportunity for genuine consultation with those affected; (b) timely and full disclosure of information on the proposed measures; (c) reasonable notice of proposed actions; (d) legal recourse and remedies for those affected; and (e) legal assistance for obtaining legal remedies (see also General Comments No. 4 (1991) and No. 7 (1997)). Where such action is based on a person’s failure to pay for water their capacity to pay must be taken into account. Under no circumstances shall an individual be deprived of the minimum essential level of water.

57. The incorporation in the domestic legal order of international instruments recognizing the right to water can significantly enhance the scope and effectiveness of

Committee notes, for example, the commitment in the 2002 World Summit on Sustainable Development Plan of Implementation to halve, by the year 2015, the proportion of people who are unable to reach or to afford safe drinking water (as outlined in the Millennium Declaration) and the proportion of people who do not have access to basic sanitation.

²⁹ Principle 10 of the Rio Declaration on Environment and Development (*Report of the United Nations Conference on Environment and Development*, see footnote 5 above), states with respect to environmental issues that “effective access to judicial and administrative proceedings, including remedy and redress, shall be provided”.

remedial measures and should be encouraged in all cases. Incorporation enables courts to adjudicate violations of the right to water, or at least the core obligations, by direct reference to the Covenant.

58. Judges, adjudicators and members of the legal profession should be encouraged by States parties to pay greater attention to violations of the right to water in the exercise of their functions.

59. States parties should respect, protect, facilitate and promote the work of human rights advocates and other members of civil society with a view to assisting vulnerable or marginalized groups in the realization of their right to water.

VI. OBLIGATIONS OF ACTORS OTHER THAN STATES

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



Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

General recommendation No. 27 on older women and protection of their human rights

Introduction

1. The Committee on the Elimination of Discrimination against Women (hereinafter “the Committee”), concerned about the multiple forms of discrimination experienced by older women and that older women’s rights are not systematically addressed in the reports of States parties, decided at its forty-second session, held from 20 October to 7 November 2008, pursuant to article 21 of the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “the Convention”), to adopt a general recommendation on older women and protection of their human rights.

2. In its decision 26/III of 5 July 2002, the Committee acknowledged that the Convention “is an important tool for addressing the specific issue of the human rights of older women.”¹ General recommendation No. 25 on article 4, paragraph 1, of the Convention (temporary special measures) also recognizes that age is one of the grounds on which women may suffer multiple forms of discrimination. In particular, the Committee recognized the need for statistical data, disaggregated by age and sex, in order to better assess the situation of older women.

3. The Committee affirms previous commitments to older women’s rights enshrined in, inter alia, the Vienna International Plan of Action on Ageing,² the Beijing Declaration and Platform for Action,³ the United Nations Principles for Older Persons (General Assembly resolution 46/91, annex), the Programme of Action of the International Conference on Population and Development,⁴ the Madrid International Plan of Action on Ageing 2002,⁵ Committee on Economic, Social and Cultural Rights general comment No. 6 on the

¹ See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 38 (A/57/38, Part One, chap. I, decision 26/III, and chap. VII, paras. 430-436)*.

² *Report of the World Assembly on Ageing, Vienna, 26 July-6 August 1982* (United Nations publication, Sales No. E.I.16), chap. VI, sect. A.

³ *Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annexes I and II.

⁴ *Report of the International Conference on Population and Development, Cairo, 5-13 September 1994* (United Nations publication, Sales No. E.95.XIII.18), chap. I, resolution 1, annex.

⁵ *Report of the Second World Assembly on Ageing, Madrid, 8-12 April 2002 1995* (United Nations publication, Sales No. E.02.IV.4), chap. I, resolution 1, annex II.



economic, social and cultural rights of older persons (1995), and general comment No. 19 on the right to social security (2008).

Background

4. Current United Nations figures estimate that within 36 years there will be more people over the age of 60 than children under 15 years, globally. It is estimated that by 2050, the number of older people will be over 2 billion, or 22 per cent of the global population, an unprecedented doubling of the present 11 per cent of the population that is over 60.

5. The gendered nature of ageing reveals that women tend to live longer than men, and that more older women than men live alone. While there are 83 men for every 100 women over the age of 60, there are only 59 men for every 100 women over the age of 80. Further, statistics from the United Nations Department of Economic and Social Affairs indicate that 80 per cent of men over 60 are married compared with only 48 per cent of older women.⁶

6. This unprecedented demographic ageing, due to improved living standards and basic health-care systems as well as declines in fertility and rising longevity, can be considered a successful outcome of development efforts and one that is set to continue, making the twenty-first century, the century of ageing. However, such demographic changes have profound human rights implications and increase the urgency of addressing the discrimination experienced by older women in a more comprehensive and systematic manner through the Convention.

7. The issue of ageing is shared by both developed and developing countries. The proportion of older persons in less developed countries is expected to increase from 8 per cent in 2010 to 20 per cent by 2050,⁷ while the proportion of children will decrease from 29 to 20 per cent.⁸ The number of older women living in less developed regions will increase by 600 million within the period 2010 to 2050.⁹ This demographic shift presents major challenges for developing countries. The ageing of society is a well-established trend and a significant feature in most developed countries.

8. Older women are not a homogeneous group. They have a great diversity of experience, knowledge, ability and skills, however, their economic and social situation is dependent on a range of demographic, political, environmental, cultural, social, individual and family factors. The contribution of older women in public and private life as leaders in their communities, entrepreneurs, caregivers, advisers, mediators, among other roles, is invaluable.

Purpose and objective

9. This general recommendation on older women and promotion of their rights explores the relationship between the articles of the Convention and ageing. It identifies the multiple forms of discrimination that women face as they age, outlines the content of the obligations to be assumed by States parties with regard to ageing with dignity and older

⁶ United Nations Department of Economic and Social Affairs, Population Ageing and Development 2009 Chart, available at <http://www.un.org/esa/population/publications/ageing/ageing2009.htm>.

⁷ Ibid.

⁸ United Nations Department of Economic and Social Affairs, Population Division, World Population Prospects: The 2008 Revision Population Database, <http://esa.un.org/unpp/index.asp?panel=1>.

⁹ Ibid.

women's rights, and includes policy recommendations aimed at mainstreaming the responses to the concerns of older women into national strategies, development initiatives and positive action so that older women can fully participate in society without discrimination and on an equal basis with men.

10. The general recommendation also provides guidance to States parties on the inclusion of the situation of older women in their reports on the implementation of the Convention. The elimination of all forms of discrimination against older women can only be achieved by fully respecting and protecting their dignity and their right to integrity and self-determination.

Specific areas of concern

11. While both men and women experience discrimination as they become older, older women experience ageing differently. The impact of gender inequality throughout their lifespan is exacerbated in old age and is often based on deep-rooted cultural and social norms. The discrimination that older women experience is often a result of unfair resource allocation, maltreatment, neglect and limited access to basic services.

12. Concrete forms of discrimination against older women may differ considerably under various socio-economic circumstances and in various sociocultural environments, depending on the equality of opportunities and choices regarding education, employment, health, family and private life. In many countries, the lack of telecommunication skills, access to adequate housing, social services and the Internet, loneliness and isolation pose problems for older women. Older women living in rural areas or urban slums often suffer a severe lack of basic resources for subsistence, income security, access to health care, information on and enjoyment of their entitlements and rights.

13. The discrimination experienced by older women is often multidimensional, with the age factor compounding other forms of discrimination based on gender, ethnic origin, disability, poverty levels, sexual orientation and gender identity, migrant status, marital and family status, literacy and other grounds. Older women who are members of minority, ethnic or indigenous groups, internally displaced or stateless often experience a disproportionate degree of discrimination.

14. Many older women face neglect as they are no longer considered useful in their productive and reproductive roles, and are seen as a burden on their families. Widowhood and divorce further exacerbate discrimination, while lack of or limited access to health-care services for diseases and conditions, such as diabetes, cancer, hypertension, heart disease, cataract, osteoporosis and Alzheimer, prevent older women from enjoying their full human rights.

15. The full development and advancement of women can only be achieved through a life-cycle approach that recognizes and addresses the different stages of women's lives –from childhood through adolescence, adulthood and old age– and the impact of each stage on the enjoyment of human rights by older women. The rights enshrined in the Convention are applicable at all stages of a woman's life. However, in many countries, age discrimination is still tolerated and accepted at the individual, institutional and policy levels, and few countries have legislation prohibiting discrimination based on age.

16. Gender stereotyping, traditional and customary practices can have harmful impacts on all areas of the lives of older women, in particular those with disabilities, including family relationships, community roles, portrayal in the media, employers' attitudes, health care and other service providers, and can result in physical violence as well as psychological, verbal and financial abuse.

17. Older women are often discriminated against through restrictions that hamper their participation in political and decision-making processes. For example, lack of identification documents or transportation may prevent older women from voting. In some countries, older women are not allowed to form or participate in associations or other non-governmental groups to campaign for their rights. Further, the mandatory retirement age may be lower for women than for men, which may be discriminatory against women, including those who represent their Governments at the international level.

18. Older women with refugee status or who are stateless or asylum-seekers, as well as those who are migrant workers or internally displaced, often face discrimination, abuse and neglect. Older women affected by forced displacement or statelessness may suffer from post-traumatic stress syndrome, which may not be recognized or treated by health-care providers. Older refugee and internally displaced women are sometimes denied access to health care because they lack legal status or legal documents and/or are resettled far from health-care facilities. They may also experience cultural and language barriers in accessing services.

19. Employers often regard older women as non-profitable investments for education and vocational training. Older women also do not have equal opportunities to learn modern information technology, nor the resources to obtain them. Many poor older women, especially those with disabilities and those living in rural areas, are denied the right to education and receive little or no formal or informal education. Illiteracy and innumeracy can severely restrict older women's full participation in public and political life, the economy, and access to a range of services, entitlements and recreational activities.

20. Women are fewer in the formal employment sector. Women also tend to be paid less than men for the same work or work of equal value. Moreover, gender-based discrimination in employment throughout their life has a cumulative impact in old age, forcing older women to face disproportionately lower incomes and pensions, or even no pension, compared with men. In general comment No. 19, the Committee on Economic, Social and Cultural Rights recognizes that non-contributory pensions will be required in most States since it is unlikely that everyone will be covered by contributory schemes (para. 4 (b)), while article 28, paragraph 2 (b) of the Convention on the Rights of Person with Disabilities provides for social protection for older women, particularly those with disabilities. Since the old-age pension payable is usually closely linked to earnings during active life, older women often end up with lower pensions compared with men. Furthermore, older women are particularly affected by discrimination on the basis of age and sex, which results in a different mandatory retirement age than that for men. Women should be subject to an optional retirement age so as to protect older women's right to continue working if they wish to and to accumulate pension benefits, where applicable, at par with men. It is a known fact that many older women care for, and are sometimes the sole caregivers of, dependent young children, spouses/partners or elderly parents or relatives. The financial and emotional cost of this unpaid care is rarely recognized.

21. Older women's right to self-determination and consent with regard to health care are not always respected. Social services, including long-term care, for older women might be disproportionately reduced when public expenditure is cut. Post-menopausal, post-reproductive and other age-related and gender-specific physical and mental health conditions and diseases tend to be overlooked by research, academic studies, public policy and service provision. Information on sexual health and HIV/AIDS is rarely provided in a form that is acceptable, accessible and appropriate for older women. Many older women do not have private health insurance, or are excluded from State-funded schemes because they did not contribute to a scheme during their working life in the informal sector or providing unpaid care.

22. Older women may not be eligible to claim family benefits if they are not the parent or legal guardian of children in their care.

23. Microcredit and finance schemes usually have age restrictions or other criteria that prevent older women from accessing them. Many older women, particularly those who are confined to their homes, are unable to participate in cultural, recreational and community activities, which leaves them isolated and has a negative impact on their well-being. Often, not enough attention is given to the requirements for independent living, such as personal assistance, adequate housing, including accessible housing arrangements and mobility aids.

24. In many countries, the majority of older women live in rural areas where access to services is even more difficult due to their age and poverty levels. Many older women receive irregular, insufficient or no remittances from their migrant-worker children. Denial of their right to water, food and housing is part of the everyday life of many poor, rural older women. Older women may not be able to afford proper food due to a combination of factors such as the high price of food and the inadequacy of their income—due to discrimination with regard to employment—, social security and access to resources. Lack of access to transportation can prevent older women from accessing social services or participating in community and cultural activities. Such lack of access may be due to the fact that older women have low incomes and the inadequacy of public policy in providing affordable and accessible public transport to meet the needs of older women.

25. Climate change impacts differently on women, especially older women who, due to their physiological differences, physical ability, age and gender, as well as social norms and roles and an inequitable distribution of aid and resources relating to social hierarchies, are particularly disadvantaged in the face of natural disasters. Their limited access to resources and decision-making processes increases their vulnerability to climate change.

26. Under some statutory and customary laws, women do not have the right to inherit and administer marital property on the death of their spouse. Some legal systems justify this by providing widows with other means of economic security, such as support payments from the deceased's estate. However, in reality, such provisions are seldom enforced, and widows are often left destitute. Some laws particularly discriminate against older widows, and some widows are victims of "property grabbing."

27. Older women are particularly vulnerable to exploitation and abuse, including economic abuse, when their legal capacity is deferred to lawyers or family members, without their consent.

28. The Committee's general recommendation No. 21 (1994) states that "[p]olygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependants that such marriages ought to be discouraged and prohibited" (para. 14). Nevertheless, polygamy is still practised in many States parties, and many women are in polygamous unions. Older wives are often neglected in polygamous marriages once they are no longer considered to be reproductively or economically active.

Recommendations

General

29. State parties must recognize that older women are an important resource to society, and have the obligation to take all appropriate measures, including legislation, to eliminate discrimination against older women. States parties should adopt gender-sensitive and age-specific policies and measures, including temporary special measures, in line with article 4, paragraph 1 of the Convention and general recommendations No. 23 (1997) and No. 25

(2004) of the Committee, to ensure that older women participate fully and effectively in the political, social, economic, cultural and civil life, and any other field in their societies.

30. States parties have an obligation to ensure the full development and advancement of women throughout their life cycle in times of both peace and conflict, as well as in the event of any man-made and/or natural disaster. States parties should therefore ensure that all legal provisions, policies and interventions aimed at the full development and advancement of women do not discriminate against older women.

31. States parties' obligations should take into account the multidimensional nature of discrimination against women and ensure that the principle of gender equality applies throughout women's life cycle, in legislation and in the practical implementation thereof. In this regard, States parties are urged to repeal or amend existing laws, regulations and customs that discriminate against older women, and ensure that legislation proscribes discrimination on the grounds of age and sex.

32. In order to support legal reform and policy formulation, States parties are urged to collect, analyse and disseminate data disaggregated by age and sex, so as to have information on the situation of older women, including those living in rural areas, areas of conflict, belonging to minority groups, and with disabilities. Such data should especially focus, among other issues, on poverty, illiteracy, violence, unpaid work, including care-giving to those living with or affected by HIV/AIDS, migration, access to health care, housing, social and economic benefits and employment.

33. States parties should provide older women with information on their rights and how to access legal services. They should train the police, judiciary as well as legal aid and paralegal services on the rights of older women, and sensitize and train public authorities and institutions on age- and gender-related issues that affect older women. Information, legal services, effective remedies and reparation must be made equally available and accessible to older women with disabilities.

34. States parties should enable older women to seek redress for and resolve infringements of their rights, including the right to administer property, and ensure that older women are not deprived of their legal capacity on arbitrary or discriminatory grounds.

35. States parties should ensure that climate change and disaster risk-reduction measures are gender-responsive and sensitive to the needs and vulnerabilities of older women. States parties should also facilitate the participation of older women in decision-making for climate change mitigation and adaptation.

Stereotypes

36. States parties have an obligation to eliminate negative stereotyping and modify social and cultural patterns of conduct that are prejudicial and harmful to older women, so as to reduce the physical, sexual, psychological, verbal and economic abuse that older women, including those with disabilities, experience based on negative stereotyping and cultural practices.

Violence

37. States parties have an obligation to draft legislation recognizing and prohibiting violence, including domestic, sexual violence and violence in institutional settings, against older women, including those with disabilities. States parties have an obligation to investigate, prosecute and punish all acts of violence against older women, including those committed as a result of traditional practices and beliefs.

38. State parties should pay special attention to the violence suffered by older women in times of armed conflict, the impact of armed conflicts on the lives of older women, and the contribution that older women can make to the peaceful settlement of conflicts and to reconstruction processes. States parties should give due consideration to the situation of older women when addressing sexual violence, forced displacement and the conditions of refugees during armed conflict. States parties should take into account relevant United Nations resolutions on women and peace and security when addressing such matters, including, in particular, Security Council resolutions 1325 (2000), 1820 (2008) and 1889 (2009).

Participation in public life

39. States parties have an obligation to ensure that older women have the opportunity to participate in public and political life, and hold public office at all levels and that older women have the necessary documentation to register to vote and run as candidates for election.

Education

40. States parties have an obligation to ensure equal opportunity in the field of education for women of all ages, and to ensure that older women have access to adult education and lifelong learning opportunities as well as to the educational information they need for their well-being and that of their families.

Work and pension benefits

41. States parties have an obligation to facilitate the participation of older women in paid work without discrimination based on their age and gender. States parties should ensure that special attention is paid to addressing problems that older women might face in their working life, and that they are not forced into early retirement or similar situations. States parties should also monitor the impact of gender-related pay gaps on older women.

42. States parties have an obligation to ensure that the retirement age in both the public and private sectors do not discriminate against women. Consequently, States parties have an obligation to ensure that pension policies are not discriminatory in any manner, even when women opt to retire early, and that all older women who have been active have access to adequate pensions. States parties should adopt all appropriate measures, including, where necessary, temporary special measures, to guarantee such pensions.

43. States parties should ensure that older women, including those who have the responsibility for the care of children, have access to appropriate social and economic benefits, such as childcare benefits, as well as access to all necessary support when caring for elderly parents or relatives.

44. States parties should provide adequate non-contributory pensions, on an equal basis with men, to all women who have no other pension or insufficient income security, and State-funded allowances should be made available and accessible to older women, particularly those living in remote or rural areas.

Health

45. States parties should adopt a comprehensive health-care policy aimed at protecting the health needs of older women in line with the Committee's general recommendation No. 24 (1999) on women and health. Such policy should ensure affordable and accessible health care to all older women through, where appropriate, the elimination of user fees, training of health workers in geriatric illnesses, provision of medicine to treat age-related chronic and non-communicable diseases, long-term health and social care, including care that allows for

independent living and palliative care. Long-term care provisions should include interventions promoting behavioural and lifestyle changes to delay the onset of health problems, such as healthy nutritional practices and an active lifestyle, and affordable access to health-care services, including screening for and treatment of diseases, in particular those most prevalent among older women. Health policies must also ensure that health care provided to older women, including those with disabilities, is based on the free and informed consent of the person concerned.

46. States parties should adopt special programmes tailored to the physical, mental, emotional and health needs of older women, with special focus on women belonging to minorities and women with disabilities, as well as women tasked with caring for grandchildren and other young family dependants due to the migration of young adults, and women caring for family members living with or affected by HIV/AIDS.

Economic empowerment

47. States parties have an obligation to eliminate discrimination in all its forms against older women in economic and social life. All barriers based on age and gender to accessing agricultural credit and loans should be removed and access to appropriate technology for older women farmers and small landholders should be ensured. States parties should provide special support systems and collateral-free microcredit, as well as encourage micro-entrepreneurship for older women. Recreational facilities for older women should be created and outreach services should be provided to older women who are confined to their homes. States parties should provide affordable and appropriate transportation to enable older women, including those living in rural areas, to participate in economic and social life, including community activities.

Social benefits

48. States Parties should take necessary measures to ensure older women have access to adequate housing that meet their specific needs, and all barriers, architectural and other, that hinder the mobility of older persons and lead to forced confinement should be removed. States parties should provide social services that enable older women to remain in their homes and live independently for as long as possible. Laws and practices that negatively affect older women's right to housing, land and property should be abolished. States parties should also protect older women against forced evictions and homelessness.

Rural and other vulnerable older women

49. States parties should ensure that older women are included and represented in rural and urban development planning processes. States parties should ensure the provision of affordable water, electricity and other utilities to older women. Policies aimed at increasing access to safe water and adequate sanitation should ensure that the related technologies are accessible and do not require undue physical strength.

50. States parties should adopt appropriate gender- and age-sensitive laws and policies to ensure the protection of older women with refugee status or who are stateless, as well as those who are internally displaced or are migrant workers.

Marriage and family life

51. States parties have an obligation to repeal all legislation that discriminates against older women in the area of marriage and in the event of its dissolution, including with regard to property and inheritance.

52. States parties must repeal all legislation that discriminates against older widows in respect of property and inheritance, and protect them from land grabbing. They must adopt

laws of intestate succession that comply with their obligations under the Convention. Furthermore, they should take measures to end practices that force older women to marry against their will, and ensure that succession is not conditional on forced marriage to a deceased husband's sibling or any other person.

53. States parties should discourage and prohibit polygamous unions, in accordance with general recommendation No. 21, and ensure that upon the death of a polygamous husband, his estate is shared equally among his wives and their respective children.



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**General comment No. 15 (2013) on the right of the
child to the enjoyment of the highest attainable
standard of health (art. 24)***

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I. Introduction

1. The present general comment is based on the importance of approaching children's health from a child-rights perspective that all children have the right to opportunities to survive, grow and develop, within the context of physical, emotional and social well-being, to each child's full potential. Throughout this general comment, "child" refers to an individual below the age of 18 years, in accordance with article 1 of the Convention on the Rights of the Child (hereinafter "the Convention"). Despite the remarkable achievements in fulfilling children's rights to health in recent years since the adoption of the Convention, significant challenges remain. The Committee on the Rights of the Child (hereinafter "the Committee") recognizes that most mortality, morbidity and disabilities among children could be prevented if there were political commitment and sufficient allocation of resources directed towards the application of available knowledge and technologies for prevention, treatment and care. The present general comment was prepared with the aim of providing guidance and support to States parties and other duty bearers to support them in respecting, protecting and fulfilling children's right to the enjoyment of the highest attainable standard of health (hereinafter "children's right to health").

2. The Committee interprets children's right to health as defined in article 24 as an inclusive right, extending not only to timely and appropriate prevention, health promotion, curative, rehabilitative and palliative services, but also to a right to grow and develop to their full potential and live in conditions that enable them to attain the highest standard of health through the implementation of programmes that address the underlying determinants of health. A holistic approach to health places the realization of children's right to health within the broader framework of international human rights obligations.

3. The Committee addresses this general comment to a range of stakeholders working in the fields of children's rights and public health, including policymakers, programme implementers and activists, as well as parents and children themselves. It is explicitly generic in order to ensure its relevance to a wide range of children's health problems, health systems and the varied contexts that exist in different countries and regions. It focuses primarily on article 24, paragraphs 1 and 2, and also addresses article 24, paragraph 4.¹ Implementation of article 24 must take into account all human rights principles, especially the guiding principles of the Convention, and must be shaped by evidence-based public health standards and best practices.

4. In the Constitution of the World Health Organization, States have agreed to regard health as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.² This positive understanding of health provides the public health foundation for the present general comment. Article 24 explicitly mentions primary health care, an approach to which was defined in the Declaration of Alma-Ata³ and reinforced by the World Health Assembly.⁴ This approach emphasizes the need to eliminate exclusion and reduce social disparities in health; organize health services around people's needs and expectations; integrate health into related sectors; pursue collaborative models of

¹ Article 24, paragraph 3, is not covered because a general comment on harmful practices is currently being developed.

² Preamble to the Constitution of the World Health Organization (WHO) as adopted by the International Health Conference, New York, 22 July 1946.

³ Declaration of Alma-Ata, International Conference on Primary Health Care, Alma-Ata, 6–12 September 1978.

⁴ World Health Assembly, Primary health care including health systems strengthening, document A62/8.

policy dialogue; and increase stakeholder participation, including the demand for and appropriate use of services.

5. Children's health is affected by a variety of factors, many of which have changed during the past 20 years and are likely to continue to evolve in the future. This includes the attention given to new health problems and changing health priorities, such as: HIV/AIDS, pandemic influenza, non-communicable diseases, importance of mental health care, care of the new born, and neonatal and adolescent mortality; increased understanding of the factors that contribute to death, disease and disability in children, including structural determinants, such as the global economic and financial situation, poverty, unemployment, migration and population displacements, war and civil unrest, discrimination and marginalization. There is also a growing understanding of the impact of climate change and rapid urbanization on children's health; the development of new technologies, such as vaccines and pharmaceuticals; a stronger evidence base for effective biomedical, behavioural and structural interventions, as well as some cultural practices that relate to child-rearing and have proved to have a positive impact on children.

6. Advances in information and communication technologies have created new opportunities and challenges to achieve children's right to health. Despite the additional resources and technologies that have now become available to the health sector, many countries still fail to provide universal access to basic children's health promotion, prevention and treatment services. A wide range of different duty bearers need to be involved if children's right to health is to be fully realized and the central role played by parents and other caregivers needs to be better recognized. Relevant stakeholders will need to be engaged, working at national, regional, district and community levels, including governmental and non-governmental partners, private sector and funding organizations. States have an obligation to ensure that all duty bearers have sufficient awareness, knowledge and capacity to fulfil their obligations and responsibilities, and that children's capacity is sufficiently developed to enable them to claim their right to health.

II. Principles and premises for realizing children's right to health

A. The indivisibility and interdependence of children's rights

7. The Convention recognizes the interdependence and equal importance of all rights (civil, political, economic, social and cultural) that enable all children to develop their mental and physical abilities, personalities and talents to the fullest extent possible. Not only is children's right to health important in and of itself, but also the realization of the right to health is indispensable for the enjoyment of all the other rights in the Convention. Moreover, achieving children's right to health is dependent on the realization of many other rights outlined in the Convention.

B. Right to non-discrimination

8. In order to fully realize the right to health for all children, States parties have an obligation to ensure that children's health is not undermined as a result of discrimination, which is a significant factor contributing to vulnerability. A number of grounds on which discrimination is proscribed are outlined in article 2 of the Convention, including the child's, parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. These also include sexual orientation, gender identity and health status, for example HIV status

and mental health.⁵ Attention should also be given to any other forms of discrimination that might undermine children's health, and the implications of multiple forms of discrimination should also be addressed.

9. Gender-based discrimination is particularly pervasive, affecting a wide range of outcomes, from female infanticide/foeticide to discriminatory infant and young child feeding practices, gender stereotyping and access to services. Attention should be given to the differing needs of girls and boys, and the impact of gender-related social norms and values on the health and development of boys and girls. Attention also needs to be given to harmful gender-based practices and norms of behaviour that are ingrained in traditions and customs and undermine the right to health of girls and boys.

10. All policies and programmes affecting children's health should be grounded in a broad approach to gender equality that ensures young women's full political participation; social and economic empowerment; recognition of equal rights related to sexual and reproductive health; and equal access to information, education, justice and security, including the elimination of all forms of sexual and gender-based violence.

11. Children in disadvantaged situations and under-served areas should be a focus of efforts to fulfil children's right to health. States should identify factors at national and subnational levels that create vulnerabilities for children or that disadvantage certain groups of children. These factors should be addressed when developing laws, regulations, policies, programmes and services for children's health, and work towards ensuring equity.

C. The best interests of the child

12. Article 3, paragraph 1, of the Convention places an obligation on public and private social welfare institutions, courts of law, administrative authorities and legislative bodies to ensure that the best interests of the child are assessed and taken as a primary consideration in all actions affecting children. This principle must be observed in all health-related decisions concerning individual children or children as a group. Individual children's best interests should be based on their physical, emotional, social and educational needs, age, sex, relationship with parents and caregivers, and their family and social background, and after having heard their views according to article 12 of the Convention.

13. The Committee urges States to place children's best interests at the centre of all decisions affecting their health and development, including the allocation of resources, and the development and implementation of policies and interventions that affect the underlying determinants of their health. For example, the best interests of the child should:

- (a) Guide treatment options, superseding economic considerations where feasible;
- (b) Aid the resolution of conflict of interest between parents and health workers; and
- (c) Influence the development of policies to regulate actions that impede the physical and social environments in which children live, grow and develop.

14. The Committee underscores the importance of the best interests of the child as a basis for all decision-making with regard to providing, withholding or terminating

⁵ General comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 41 (A/59/41)*, annex X, para. 6.

treatment for all children. States should develop procedures and criteria to provide guidance to health workers for assessing the best interests of the child in the area of health, in addition to other formal, binding processes that are in place for determining the child's best interests. The Committee in its general comment No. 3⁶ has underlined that adequate measures to address HIV/AIDS can be undertaken only if the rights of children and adolescents are fully respected. The child's best interests should therefore guide the consideration of HIV/AIDS at all levels of prevention, treatment, care and support.

15. In its general comment No. 4, the Committee underlined the best interests of the child to have access to appropriate information on health issues.⁷ Special attention must be given to certain categories of children, including children and adolescents with psychosocial disabilities. Where hospitalization or placement in an institution is being considered, this decision should be made in accordance with the principle of the best interests of the child, with the primary understanding that it is in the best interests of all children with disabilities to be cared for, as far as possible, in the community in a family setting and preferably within their own family with the necessary supports made available to the family and the child.

D. Right to life, survival and development and the determinants of children's health

16. Article 6 highlights the States parties' obligation to ensure the survival, growth and development of the child, including the physical, mental, moral, spiritual and social dimensions of their development. The many risks and protective factors that underlie the life, survival, growth and development of the child need to be systematically identified in order to design and implement evidence-informed interventions that address a wide range of determinants during the life course.

17. The Committee recognizes that a number of determinants need to be considered for the realization of children's right to health, including individual factors such as age, sex, educational attainment, socioeconomic status and domicile; determinants at work in the immediate environment of families, peers, teachers and service providers, notably the violence that threatens the life and survival of children as part of their immediate environment; and structural determinants, including policies, administrative structures and systems, social and cultural values and norms.⁸

18. Among the key determinants of children's health, nutrition and development are the realization of the mother's right to health⁹ and the role of parents and other caregivers. A significant number of infant deaths occur during the neonatal period, related to the poor health of the mother prior to, and during, the pregnancy and the immediate post-partum

⁶ General comment No. 3 (2003) on HIV/AIDS and the rights of the child, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 41 (A/59/41)*, annex IX.

⁷ General comment No. 4 (2003) on adolescent health and development in the context of the Convention, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 41 (A/59/41)*, annex X, para. 10.

⁸ See general comment No. 13 (2011) on the right of the child to be free from all forms of violence, *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 41 (A/67/41)*, annex V.

⁹ See Committee on the Elimination of Discrimination against Women, general recommendation No. 24 (1999) on women and health, *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 38 (A/54/38/Rev.1)*, chap. I, sect. A.

period, and to suboptimal breastfeeding practices. The health and health-related behaviours of parents and other significant adults have a major impact on children's health.

E. Right of the child to be heard

19. Article 12 highlights the importance of children's participation, providing for children to express their views and to have such views seriously taken into account, according to age and maturity.¹⁰ This includes their views on all aspects of health provisions, including, for example, what services are needed, how and where they are best provided, barriers to accessing or using services, the quality of the services and the attitudes of health professionals, how to strengthen children's capacities to take increasing levels of responsibility for their own health and development, and how to involve them more effectively in the provision of services, as peer educators. States are encouraged to conduct regular participatory consultations, which are adapted to the age and maturity of the child, and research with children, and to do this separately with their parents, in order to learn about their health challenges, developmental needs and expectations as a contribution to the design of effective interventions and health programmes.

F. Evolving capacities and the life course of the child

20. Childhood is a period of continuous growth from birth to infancy, through the preschool age to adolescence. Each phase is significant as important developmental changes occur in terms of physical, psychological, emotional and social development, expectations and norms. The stages of the child's development are cumulative and each stage has an impact on subsequent phases, influencing the children's health, potential, risks and opportunities. Understanding the life course is essential in order to appreciate how health problems in childhood affect public health in general.

21. The Committee recognizes that children's evolving capacities have a bearing on their independent decision-making on their health issues. It also notes that there are often serious discrepancies regarding such autonomous decision-making, with children who are particularly vulnerable to discrimination often less able to exercise this autonomy. It is therefore essential that supportive policies are in place and that children, parents and health workers have adequate rights-based guidance on consent, assent and confidentiality.

22. To respond and understand children's evolving capacities and the different health priorities along the life cycle, data and information that are collected and analysed should be disaggregated by age, sex, disability, socioeconomic status and sociocultural aspects and geographic location, in accordance with international standards. This makes it possible to plan, develop, implement and monitor appropriate policies and interventions that take into consideration the changing capacities and needs of children over time, and that help to provide relevant health services for all children.

¹⁰ See general comment No. 12 (2009) on the right of the child to be heard, *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 41 (A/65/41)*, annex IV.

III. Normative content of article 24

A. Article 24, paragraph 1

“States parties recognize the right of the child to the enjoyment of the highest attainable standard of health”

23. The notion of “the highest attainable standard of health” takes into account both the child’s biological, social, cultural and economic preconditions and the State’s available resources, supplemented by resources made available by other sources, including non-governmental organizations, the international community and the private sector.

24. Children’s right to health contains a set of freedoms and entitlements. The freedoms, which are of increasing importance in accordance with growing capacity and maturity, include the right to control one’s health and body, including sexual and reproductive freedom to make responsible choices. The entitlements include access to a range of facilities, goods, services and conditions that provide equality of opportunity for every child to enjoy the highest attainable standard of health.

“and to facilities for the treatment of illness and rehabilitation of health”

25. Children are entitled to quality health services, including prevention, promotion, treatment, rehabilitation and palliative care services. At the primary level, these services must be available in sufficient quantity and quality, functional, within the physical and financial reach of all sections of the child population, and acceptable to all. The health-care system should not only provide health-care support but also report the information to relevant authorities for cases of rights violations and injustice. Secondary and tertiary level care should also be made available, to the extent possible, with functional referral systems linking communities and families at all levels of the health system.

26. Comprehensive primary health-care programmes should be delivered alongside proven community-based efforts, including preventive care, treatment of specific diseases and nutritional interventions. Interventions at the community level should include the provision of information, services and commodities as well as prevention of illness and injury through, e.g., investment in safe public spaces, road safety and education on injury, accident and violence prevention.

27. States should ensure an appropriately trained workforce of sufficient size to support health services for all children. Adequate regulation, supervision, remuneration and conditions of service are also required, including for community health workers. Capacity development activities should ensure that service providers work in a child-sensitive manner and do not deny children any services to which they are entitled by law. Accountability mechanisms should be incorporated to ensure that quality assurance standards are maintained.

“States parties shall strive to ensure that no child is deprived of his or her right of access to such health care services”

28. Article 24, paragraph 1, imposes a strong duty of action by States parties to ensure that health and other relevant services are available and accessible to all children, with special attention to under-served areas and populations. It requires a comprehensive primary health-care system, an adequate legal framework and sustained attention to the underlying determinants of children’s health.

29. Barriers to children’s access to health services, including financial, institutional and cultural barriers, should be identified and eliminated. Universal free birth registration is a

prerequisite and social protection interventions, including social security such as child grants or subsidies, cash transfers and paid parental leave, should be implemented and seen as complementary investments.

30. Health-seeking behaviour is shaped by the environment in which it takes place, including, *inter alia*, the availability of services, levels of health knowledge, life skills and values. States should seek to ensure an enabling environment to encourage appropriate health-seeking behaviour by parents and children.

31. In accordance with their evolving capacities, children should have access to confidential counselling and advice without parental or legal guardian consent, where this is assessed by the professionals working with the child to be in the child's best interests. States should clarify the legislative procedures for the designation of appropriate caregivers for children without parents or legal guardians, who can consent on the child's behalf or assist the child in consenting, depending on the child's age and maturity. States should review and consider allowing children to consent to certain medical treatments and interventions without the permission of a parent, caregiver, or guardian, such as HIV testing and sexual and reproductive health services, including education and guidance on sexual health, contraception and safe abortion.

B. Article 24, paragraph 2

32. In accordance with article 24, paragraph 2, States should put in place a process for identifying and addressing other issues relevant to children's right to health. This requires, *inter alia*, an in-depth analysis of the current situation in terms of priority health problems and responses, and the identification and implementation of evidence-informed interventions and policies that respond to key determinants and health problems, in consultation with children when appropriate.

Article 24, paragraph 2 (a). "To diminish infant and child mortality"

33. States have an obligation to reduce child mortality. The Committee urges particular attention to neonatal mortality, which constitutes an increasing proportion of under-5 mortality. Additionally, States parties should also address adolescent morbidity and mortality, which is generally under-prioritized.

34. Interventions should include attention to still births, pre-term birth complications, birth asphyxia, low birth weight, mother-to-child transmission of HIV and other sexually transmitted infections, neonatal infections, pneumonia, diarrhoea, measles, under- and malnutrition, malaria, accidents, violence, suicide and adolescent maternal morbidity and mortality. Strengthening health systems to provide such interventions to all children in the context of the continuum of care for reproductive, maternal, newborn and children's health, including screening for birth defects, safe delivery services and care for the newborn are recommended. Maternal and perinatal mortality audits should be conducted regularly for the purposes of prevention and accountability.

35. States should put particular emphasis on scaling up simple, safe and inexpensive interventions that have proven to be effective, such as community-based treatments for pneumonia, diarrhoeal disease and malaria, and pay particular attention to ensuring full protection and promotion of breastfeeding practices.

Article 24, paragraph 2 (b). “To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care”

36. States should prioritize universal access for children to primary health-care services provided as close as possible to where children and their families live, particularly in community settings. While the exact configuration and content of services will vary from country to country, in all cases effective health systems will be required, including: a robust financing mechanism; a well-trained and adequately paid workforce; reliable information on which to base decisions and policies; well-maintained facilities and logistics systems to deliver quality medicines and technologies; and strong leadership and governance. Health-service provision within schools provides an important opportunity for health promotion, to screen for illness, and increases the accessibility of health services for in-school children.

37. Recommended packages of services should be used, for example the Essential Interventions, Commodities and Guidelines for Reproductive, Maternal, Newborn and Child Health.¹¹ States have an obligation to make all essential medicines on the World Health Organization Model Lists of Essential Medicines, including the list for children (in paediatric formulations where possible) available, accessible and affordable.

38. The Committee is concerned by the increase in mental ill-health among adolescents, including developmental and behavioural disorders; depression; eating disorders; anxiety; psychological trauma resulting from abuse, neglect, violence or exploitation; alcohol, tobacco and drug use; obsessive behaviour, such as excessive use of and addiction to the Internet and other technologies; and self-harm and suicide. There is growing recognition of the need for increased attention for behavioural and social issues that undermine children’s mental health, psychosocial wellbeing and emotional development. The Committee cautions against over-medicalization and institutionalization, and urges States to undertake an approach based on public health and psychosocial support to address mental ill-health among children and adolescents and to invest in primary care approaches that facilitate the early detection and treatment of children’s psychosocial, emotional and mental problems.

39. States have the obligation to provide adequate treatment and rehabilitation for children with mental health and psychosocial disorders while abstaining from unnecessary medication. The 2012 resolution of the World Health Assembly on the global burden of mental health disorders and the need for a comprehensive coordinated response from health and social sectors at the country level¹² notes that there is increasing evidence of the effectiveness and cost-effectiveness of interventions to promote mental health and prevent mental disorders, particularly in children. The Committee strongly encourages States to scale up these interventions by mainstreaming them through a range of sectoral policies and programmes, including health, education and protection (criminal justice), with the involvement of families and communities. Children at risk because of their family and social environments require special attention in order to enhance their coping and life skills and promote protective and supportive environments.

40. There is a need to recognize the particular challenges to children’s health for children affected by humanitarian emergencies, including those resulting in large-scale displacements due to natural or man-made disasters. All possible measures should be taken to ensure that children have uninterrupted access to health services, to (re)unite them with their families and to protect them not only with physical support, such as food and clean

¹¹ The Partnership for Maternal, Newborn and Child Health, *A Global Review of the Key Interventions Related to Reproductive, Maternal, Newborn and Child Health* (Geneva, 2011).

¹² Resolution WHA65.4, adopted at the Sixty-fifth World Health Assembly on 25 May 2012.

water, but also to encourage special parental or other psychosocial care to prevent or address fear and traumas.

Article 24, paragraph 2 (c). “To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution”

(a) The application of readily available technology

41. As new, proven technologies in children’s health, including drugs, equipment and interventions, become available, States should introduce them into policies and services. Mobile arrangements and community-based efforts can substantially reduce some risks and should be made universally available and these include: immunization against the common childhood diseases; growth and developmental monitoring, especially in early childhood; vaccination against human papillomavirus for girls; tetanus toxoid injections for pregnant women; access to oral rehydration therapy and zinc supplementation for diarrhoea treatment; essential antibiotics and antiviral drugs; micronutrient supplements, such as vitamins A and D, iodized salt and iron supplements; and condoms. Health workers should advise parents how they can access and administer these simple technologies as required.

42. The private sector, which includes business enterprises and not-for-profit organizations that impact on health, is taking an increasingly important role in the development and refinement of technology, drugs, equipment, interventions and processes that can contribute to significant advances in children’s health. States should ensure that benefits reach all children who need them. States can also encourage public-private partnerships and sustainability initiatives that can increase access and affordability of health technology.

(b) The provision of adequate nutritious foods

43. Measures for fulfilling States’ obligations to ensure access to nutritionally adequate, culturally appropriate and safe food¹³ and to combat malnutrition will need to be adopted according to the specific context. Effective direct nutrition interventions for pregnant women include addressing anaemia and folic acid and iodine deficiency and providing calcium supplementation. Prevention and management of pre-eclampsia and eclampsia, should be ensured for all women of reproductive age to benefit their health and ensure healthy foetal and infant development.

44. Exclusive breastfeeding for infants up to 6 months of age should be protected and promoted and breastfeeding should continue alongside appropriate complementary foods preferably until two years of age, where feasible. States’ obligations in this area are defined in the “protect, promote and support” framework, adopted unanimously by the World Health Assembly.¹⁴ States are required to introduce into domestic law, implement and enforce internationally agreed standards concerning children’s right to health, including the International Code on Marketing of Breast-milk Substitutes and the relevant subsequent World Health Assembly resolutions, as well as the World Health Organization Framework

¹³ See International Covenant on Economic, Social and Cultural Rights, art. 11, and Committee on Economic, Social and Cultural Rights, general comment No. 12 (1999) on the right to adequate food, *Official Records of the Economic and Social Council, 2011, Supplement No. 2 (E/2000/22)*, annex V.

¹⁴ See WHO and United Nations Children’s Fund (UNICEF), *Global Strategy for Infant and Young Child Feeding* (Geneva, 2003).

Convention on Tobacco Control. Special measures should be taken to promote community and workplace support for mothers in relation to pregnancy and breastfeeding and feasible and affordable childcare services; and compliance with the International Labour Organization Convention No. 183 (2000) concerning the revision of the Maternity Protection Convention (Revised), 1952.

45. Adequate nutrition and growth monitoring in early childhood are particularly important. Where necessary, integrated management of severe acute malnutrition should be expanded through facility and community-based interventions, as well as treatment of moderate acute malnutrition, including therapeutic feeding interventions.

46. School feeding is desirable to ensure all pupils have access to a full meal every day, which can also enhance children's attention for learning and increase school enrolment. The Committee recommends that this be combined with nutrition and health education, including setting up school gardens and training teachers to improve children's nutrition and healthy eating habits.

47. States should also address obesity in children, as it is associated with hypertension, early markers of cardiovascular disease, insulin resistance, psychological effects, a higher likelihood of adult obesity, and premature death. Children's exposure to "fast foods" that are high in fat, sugar or salt, energy-dense and micronutrient-poor, and drinks containing high levels of caffeine or other potentially harmful substances should be limited. The marketing of these substances – especially when such marketing is focused on children – should be regulated and their availability in schools and other places controlled.

(c) The provision of clean drinking water

48. Safe and clean drinking water and sanitation are essential for the full enjoyment of life and all other human rights.¹⁵ Government departments and local authorities responsible for water and sanitation should recognize their obligation to help realize children's right to health, and actively consider child indicators on malnutrition, diarrhoea and other water-related diseases and household size when planning and carrying out infrastructure expansion and the maintenance of water services, and when making decisions on amounts for free minimum allocation and service disconnections. States are not exempted from their obligations, even when they have privatized water and sanitation.

(d) Environmental pollution

49. States should take measures to address the dangers and risks that local environmental pollution poses to children's health in all settings. Adequate housing that includes non-dangerous cooking facilities, a smoke-free environment, appropriate ventilation, effective management of waste and the disposal of litter from living quarters and the immediate surroundings, the absence of mould and other toxic substances, and family hygiene are core requirements to a healthy upbringing and development. States should regulate and monitor the environmental impact of business activities that may compromise children's right to health, food security and access to safe drinking water and to sanitation.

50. The Committee draws attention to the relevance of the environment, beyond environmental pollution, to children's health. Environmental interventions should, inter alia, address climate change, as this is one of the biggest threats to children's health and exacerbates health disparities. States should, therefore, put children's health concerns at the centre of their climate change adaptation and mitigation strategies.

¹⁵ General Assembly resolution 64/292 on the human right to water and sanitation.

Article 24, paragraph 2 (d). “To ensure appropriate pre-natal and post-natal health care for mothers”

51. The Committee notes that preventable maternal mortality and morbidity constitute grave violations of the human rights of women and girls and pose serious threats to their own and their children’s right to health. Pregnancy and child birth are natural processes, with known health risks that are susceptible to both prevention and therapeutic responses, if identified early. Risk situations can occur during pregnancy, delivery and the ante- and postnatal periods and have both short- and long-term impact on the health and well-being of both mother and child.

52. The Committee encourages States to adopt child-sensitive health approaches throughout different periods of childhood such as (a) the baby-friendly hospital initiative¹⁶ which protects, promotes and supports rooming-in and breastfeeding; (b) child-friendly health policies focused on training health workers to provide quality services in a way that minimizes the fear, anxiety and suffering of children and their families; and (c) adolescent-friendly health services which require health practitioners and facilities to be welcoming and sensitive to adolescents, to respect confidentiality and to deliver services that are acceptable to adolescents.

53. The care that women receive before, during and after their pregnancy has profound implications for the health and development of their children. Fulfilling the obligation to ensure universal access to a comprehensive package of sexual and reproductive health interventions should be based on the concept of a continuum of care from pre-pregnancy, through pregnancy, childbirth and throughout the post-partum period. Timely and good-quality care throughout these periods provides important opportunities to prevent the intergenerational transmission of ill-health and has a high impact on the health of the child throughout the life course.

54. The interventions that should be made available across this continuum include, but are not limited to: essential health prevention and promotion, and curative care, including the prevention of neonatal tetanus, malaria in pregnancy and congenital syphilis; nutritional care; access to sexual and reproductive health education, information and services; health behaviour education (e.g. relating to smoking and substance use); birth preparedness; early recognition and management of complications; safe abortion services and post-abortion care; essential care at childbirth; and prevention of mother-to-child HIV transmission, and care and treatment of HIV-infected women and infants. Maternal and newborn care following delivery should ensure no unnecessary separation of the mother from her child.

55. The Committee recommends that social protection interventions include ensuring universal coverage or financial access to care, paid parental leave and other social security benefits, and legislation to restrict the inappropriate marketing and promotion of breast-milk substitutes.

56. Given the high rates of pregnancy among adolescents globally and the additional risks of associated morbidity and mortality, States should ensure that health systems and services are able to meet the specific sexual and reproductive health needs of adolescents, including family planning and safe abortion services. States should work to ensure that girls can make autonomous and informed decisions on their reproductive health. Discrimination based on adolescent pregnancy, such as expulsion from schools, should be prohibited, and opportunities for continuous education should be ensured.

¹⁶ UNICEF/WHO, Baby-Friendly Hospital Initiative (1991).

57. Taking into account that boys and men are crucial to planning and ensuring healthy pregnancies and deliveries, States should integrate education, awareness and dialogue opportunities for boys and men into their policies and plans for sexual, reproductive and children's health services.

Article 24, paragraph 2 (e). "To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of children's health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents"

58. The obligations under this provision include providing health-related information and support in the use of this information. Health-related information should be physically accessible, understandable and appropriate to children's age and educational level.

59. Children require information and education on all aspects of health to enable them to make informed choices in relation to their lifestyle and access to health services. Information and life skills education should address a broad range of health issues, including: healthy eating and the promotion of physical activity, sports and recreation; accident and injury prevention; sanitation, hand washing and other personal hygiene practices; and the dangers of alcohol, tobacco and psychoactive substance use. Information and education should encompass appropriate information about children's right to health, the obligations of Governments, and how and where to access health information and services, and should be provided as a core part of the school curriculum, as well as through health services and in other settings for children who are not in school. Materials providing information about health should be designed in collaboration with children and disseminated in a wide range of public settings.

60. Sexual and reproductive health education should include self-awareness and knowledge about the body, including anatomical, physiological and emotional aspects, and should be accessible to all children, girls and boys. It should include content related to sexual health and well-being, such as information about body changes and maturation processes, and designed in a manner through which children are able to gain knowledge regarding reproductive health and the prevention of gender-based violence, and adopt responsible sexual behaviour.

61. Information about children's health should be provided to all parents individually or in groups, the extended family and other caregivers through different methods, including health clinics, parenting classes, public information leaflets, professional bodies, community organizations and the media.

Article 24, paragraph 2 (f). "To develop preventive health care, guidance for parents and family planning education and services"

(a) Preventive health care

62. Prevention and health promotion should address the main health challenges facing children within the community and the country as a whole. These challenges include diseases and other health challenges, such as accidents, violence, substance abuse and psychosocial and mental health problems. Preventive health care should address communicable and non-communicable diseases and incorporate a combination of biomedical, behavioural and structural interventions. Preventing non-communicable diseases should start early in life through the promotion and support of healthy and non-violent lifestyles for pregnant women, their spouses/partners and young children.

63. Reducing the burden of child injuries requires strategies and measures to reduce the incidence of drowning, burns and other accidents. Such strategies and measures should

include legislation and enforcement; product and environmental modification; supportive home visits and promotion of safety features; education, skills development and behaviour change; community-based projects; and pre-hospital and acute care, as well as rehabilitation. Efforts to reduce road traffic accidents should include legislating for the use of seatbelts and other safety devices, ensuring access to safe transport for children and according them due consideration in road planning and traffic control. The support of the related industry and the media is essential in this respect.

64. Recognizing violence as a significant cause of mortality and morbidity in children, particularly adolescents, the Committee emphasizes the need to create an environment that protects children from violence and encourages their participation in attitudinal and behavioural changes at home, in schools and in public spaces; to support parents and caregivers in healthy child-rearing; and to challenge attitudes which perpetuate the tolerance and condoning of violence in all forms, including by regulating the depiction of violence by mass media.

65. States should protect children from solvents, alcohol, tobacco and illicit substances, increase the collection of relevant evidence and take appropriate measures to reduce the use of such substances among children. Regulation of the advertising and sale of substances harmful to children's health and of the promotion of such items in places where children congregate, as well as in media channels and publications that are accessed by children are recommended.

66. The Committee encourages States parties that have not yet done so to ratify the international drug control conventions¹⁷ and the World Health Organization Framework Convention on Tobacco Control. The Committee underscores the importance of adopting a rights-based approach to substance use and recommends that, where appropriate, harm reduction strategies should be employed to minimize the negative health impacts of substance abuse.

(b) Guidance for parents

67. Parents are the most important source of early diagnosis and primary care for small children, and the most important protective factor against high-risk behaviours in adolescents, such as substance use and unsafe sex. Parents also play a central role in promoting healthy child development, protecting children from harm due to accidents, injuries and violence and mitigating the negative effects of risk behaviours. Children's socialization processes, which are crucial for understanding and adjusting to the world in which they grow up, are strongly influenced by their parents, extended family and other caregivers. States should adopt evidence-based interventions to support good parenting, including parenting skills education, support groups and family counselling, in particular for families experiencing children's health and other social challenges.

68. In the light of the impact of corporal punishment on children's health, including fatal and non-fatal injury and the psychological and emotional consequences, the Committee reminds States of their obligation to take all appropriate legislative, administrative, social and educational measures to eliminate corporal punishment and other cruel or degrading forms of punishment in all settings, including the home.¹⁸

¹⁷ Single Convention on Narcotic Drugs, 1961; Convention on Psychotropic Substances, 1971; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

¹⁸ General comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, *Official Records of the General Assembly, Sixty-third Session, Supplement No. 41 (A/63/41)*, annex II.

(c) **Family planning**

69. Family planning services should be situated within comprehensive sexual and reproductive health services and should encompass sexuality education, including counselling. They can be considered part of the continuum of services described in article 24, paragraph 2 (d), and should be designed to enable all couples and individuals to make sexual and reproductive decisions freely and responsibly, including the number, spacing and timing of their children, and to give them the information and means to do so. Attention should be given to ensuring confidential, universal access to goods and services for both married and unmarried female and male adolescents. States should ensure that adolescents are not deprived of any sexual and reproductive health information or services due to providers' conscientious objections.

70. Short-term contraceptive methods such as condoms, hormonal methods and emergency contraception should be made easily and readily available to sexually active adolescents. Long-term and permanent contraceptive methods should also be provided. The Committee recommends that States ensure access to safe abortion and post-abortion care services, irrespective of whether abortion itself is legal.

IV. Obligations and responsibilities

A. State parties' obligations to respect, protect and fulfil

71. States have three types of obligations relating to human rights, including children's right to health: to respect freedoms and entitlements, to protect both freedoms and entitlements from third parties or from social or environmental threats, and to fulfil the entitlements through facilitation or direct provision. In accordance with article 4 of the Convention, States parties shall fulfil the entitlements contained in children's right to health to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

72. All States, regardless of their level of development, are required to take immediate action to implement these obligations as a matter of priority and without discrimination of any kind. Where the available resources are demonstrably inadequate, States are still required to undertake targeted measures to move as expeditiously and effectively as possible towards the full realization of children's right to health. Irrespective of resources, States have the obligation not to take any retrogressive steps that could hamper the enjoyment of children's right to health.

73. The core obligations, under children's right to health, include:

(a) Reviewing the national and subnational legal and policy environment and, where necessary, amending laws and policies;

(b) Ensuring universal coverage of quality primary health services, including prevention, health promotion, care and treatment services, and essential drugs;

(c) Providing an adequate response to the underlying determinants of children's health; and

(d) Developing, implementing, monitoring and evaluating policies and budgeted plans of actions that constitute a human rights-based approach to fulfilling children's right to health.

74. States should demonstrate their commitment to progressive fulfilment of all obligations under article 24, prioritizing this even in the context of political or economic

crisis or emergency situations. This requires that children's health and related policies, programmes and services be planned, designed, financed and implemented in a sustainable manner.

B. Responsibilities of non-State actors

75. The State is responsible for realizing children's right to health regardless of whether or not it delegates the provision of services to non-State actors. In addition to the State, a wide range of non-State actors who provide information and services related to children's health and its underlying determinants have specific responsibilities and impact in this regard.

76. States' obligations include a duty to promote awareness of non-State actors' responsibilities and to ensure that all non-State actors recognize, respect and fulfil their responsibilities to the child, applying due diligence procedures where necessary.

77. The Committee calls on all non-State actors engaged in health promotion and services, especially the private sector, including the pharmaceutical and health-technology industry as well as the mass media and health service providers, to act in compliance with the provisions of the Convention and to ensure compliance by any partners who deliver services on their behalf. Such partners include international organizations, banks, regional financial institutions, global partnerships, the private sector (private foundations and funds), donors and any other entities providing services or financial support to children's health, particularly in humanitarian emergencies or politically unstable situations.

1. Responsibilities of parents and other caregivers

78. The responsibilities of parents and other caregivers are expressly referred to in several provisions of the Convention. Parents should fulfil their responsibilities while always acting in the best interests of the child, if necessary with the support of the State. Taking the child's evolving capacity into account, parents and caregivers should nurture, protect and support children to grow and develop in a healthy manner. Although not explicit in article 24, paragraph 2 (f), the Committee understands any reference to parents to also include other caregivers.

2. Non-State service providers and other non-State actors

(a) Non-State service providers

79. All health service providers, including non-State actors, must incorporate and apply to the design, implementation and evaluation of their programmes and services all relevant provisions of the Convention, as well as the criteria of availability, accessibility, acceptability and quality, as described in chapter VI, section E, of the present general comment.

(b) Private sector

80. All business enterprises have an obligation of due diligence with respect to human rights, which include all rights enshrined under the Convention. States should require businesses to undertake children's rights due diligence. This will ensure that business enterprises identify, prevent and mitigate their negative impact on children's right to health including across their business relationships and within any global operations. Large business enterprises should be encouraged and, where appropriate, required to make public their efforts to address their impact on children's rights.

81. Among other responsibilities and in all contexts, private companies should: refrain from engaging children in hazardous labour while ensuring they comply with the minimum age for child labour; comply with the International Code of Marketing of Breast-milk Substitutes and the relevant subsequent World Health Assembly resolutions; limit advertisement of energy-dense, micronutrient-poor foods, and drinks containing high levels of caffeine or other substances potentially harmful to children; and refrain from the advertisement, marketing and sale to children of tobacco, alcohol and other toxic substances or the use of child images.

82. The Committee acknowledges the profound impact of the pharmaceutical sector on the health of children and calls on pharmaceutical companies to adopt measures towards enhancing access to medicines for children, paying particular attention to the Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines.¹⁹ At the same time, States should ensure that pharmaceutical companies monitor the use, and refrain from promoting excessive prescription and use of, drugs and medicines on children. Intellectual property rights should not be applied in ways that cause necessary medicines or goods to be unaffordable for the poor.

83. Private health insurance companies should ensure that they do not discriminate against pregnant women, children or mothers on any prohibited grounds and that they promote equality through partnerships with State health insurance schemes based on the principle of solidarity and ensuring that inability to pay does not restrict access to services.

(c) Mass and social media

84. Article 17 of the Convention delineates the responsibilities of mass media organizations. In the context of health, these can be further expanded to include promoting health and healthy lifestyles among children; providing free advertising space for health promotion; ensuring the privacy and confidentiality of children and adolescents; promoting access to information; not producing communication programmes and material that are harmful to child and general health; and not perpetuating health-related stigma.

(d) Researchers

85. The Committee underscores the responsibility of entities, including academics, private companies and others, undertaking research involving children to respect the principles and provisions of the Convention and the International Ethical Guidelines for Biomedical Research Involving Human Subjects.²⁰ The Committee reminds researchers that the best interests of the child shall always prevail over the interest of general society or scientific advancement.

V. International cooperation

86. States parties to the Convention have obligations not only to implement children's right to health within their own jurisdiction, but also to contribute to global implementation through international cooperation. Article 24, paragraph 4, requires States and inter-State agencies to pay particular attention to the children's health priorities among the poorest parts of the population and in developing States.

¹⁹ See also Human Rights Council resolution 15/22 on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

²⁰ Council for International Organizations of Medical Sciences/WHO, Geneva, 1993.

87. The Convention should guide all international activities and programmes of donor and recipient States related directly or indirectly to children's health. It requires partner States to identify the major health problems affecting children, pregnant women and mothers in recipient countries and to address them in accordance with the priorities and principles established by article 24. International cooperation should support State-led health systems and national health plans.

88. States have individual and joint responsibility, including through United Nations mechanisms, to cooperate in providing disaster relief and humanitarian assistance in times of emergency. In these cases, States should consider prioritizing efforts to realize children's right to health, including through appropriate international medical aid; distribution and management of resources, such as safe and potable water, food and medical supplies; and financial aid to the most vulnerable or marginalized children.

89. The Committee reminds States to meet the United Nations target of allocating 0.7 per cent of gross national income to international development assistance, as financial resources have important implications for the realization of children's right to health in resource-limited States. In order to ensure the highest impact, States and inter-State agencies are encouraged to apply the Paris Principles on Aid Effectiveness and the principles of the Accra Agenda for Action.

VI. Framework for implementation and accountability

90. Accountability is at the core of the enjoyment of children's right to health. The Committee reminds the State party of their obligations to ensure that relevant government authorities and service providers are held accountable for maintaining the highest possible standards of children's health and health care until they reach 18 years of age.

91. States should provide an environment that facilitates the discharge of all duty bearers' obligations and responsibilities with respect to children's right to health and a regulatory framework within which all actors should operate and can be monitored, including by mobilizing political and financial support for children's health-related issues and building the capacity of duty bearers to fulfil their obligations and children to claim their right to health.

92. With the active engagement of the Government, parliament, communities, civil society and children, national accountability mechanisms must be effective and transparent and aim to hold all actors responsible for their actions. They should, inter alia, devote attention to the structural factors affecting children's health including laws, policies and budgets. Participatory tracking of financial resources and their impact on children's health is essential for State accountability mechanisms.

A. Promoting knowledge of children's right to health (art. 42)

93. The Committee encourages States to adopt and implement a comprehensive strategy to educate children, their caregivers, policymakers, politicians and professionals working with children about children's right to health, and the contributions they can make to its realization.

B. Legislative measures

94. The Convention requires States parties to adopt all appropriate legislative, administrative and other measures for the implementation of children's right to health

without discrimination. National laws should place a statutory obligation on the State to provide the services, programmes, human resources and infrastructure needed to realize children's right to health and provide a statutory entitlement to essential, child sensitive, quality health and related services for pregnant women and children irrespective of their ability to pay. Laws should be reviewed to assess any potential discriminatory effect or impediment to realizing children's right to health and repealed where required. Where necessary, international agencies and donors should provide development aid and technical assistance for such legal reforms.

95. Legislation should fulfil a number of additional functions in the realization of children's right to health by defining the scope of the right and recognizing children as rights-holders; clarifying the roles and responsibilities of all duty bearers; clarifying what services children, pregnant women and mothers are entitled to claim; and regulating services and medications to ensure that they are of good quality and cause no harm. States must ensure that adequate legislative and other safeguards exist to protect and promote the work of human rights defenders working on children's right to health.

C. Governance and coordination

96. States are encouraged to ratify and implement international and regional human rights instruments relevant to children's health and to report on all aspects of children's health accordingly.

97. Sustainability in children's health policy and practice requires a long-term national plan that is supported and entrenched as a national priority. The Committee recommends that States establish and make use of a comprehensive and cohesive national coordinating framework on children's health, built upon the principles of the Convention, to facilitate cooperation between government ministries and different levels of government as well as interaction with civil society stakeholders, including children. Given the high number of government agencies, legislative branches and ministries working on children's health-related policies and services at different levels, the Committee recommends that the roles and responsibilities of each be clarified in the legal and regulatory framework.

98. Particular attention must be given to identifying and prioritizing marginalized and disadvantaged groups of children, as well as children who are at risk of any form of violence and discrimination. All activities should be fully costed, financed and made visible within the national budget.

99. A "child health in all policies" strategy should be used, highlighting the links between children's health and its underlying determinants. Every effort should be made to remove bottlenecks that obstruct transparency, coordination, partnership and accountability in the provision of services affecting children's health.

100. While decentralization is required to meet the particular needs of localities and sectors, this does not reduce the direct responsibility of the central or national Government to fulfil its obligations to all children within its jurisdiction. Decisions about allocations to the various levels of services and geographical areas should reflect the core elements of the approach to primary health care.

101. States should engage all sectors of society, including children, in implementation of children's right to health. The Committee recommends that such engagement include: the creation of conditions conducive to the continual growth, development and sustainability of civil society organizations, including grass-roots and community-level groups; active facilitation of their involvement in the development, implementation and evaluation of children's health policy and services; and provision of appropriate financial support or assistance in obtaining financial support.

1. The role of parliaments in national accountability

102. In children's health-related issues, parliaments have the responsibility to legislate, ensuring transparency and inclusiveness, and encourage continued public debate and a culture of accountability. They should create a public platform for reporting and debating performance and promoting public participation in independent review mechanisms. They should also hold the executive accountable for implementing the recommendations emerging from independent reviews and ensure that the results of the reviews inform subsequent national plans, laws, policies, budgets and further accountability measures.

2. The role of national human rights institutions in national accountability

103. National human rights institutions have an important role to play in reviewing and promoting accountability, providing children with relief for violations of their right to health and advocating systemic change for the realization of that right. The Committee recalls its general comment No. 2, and reminds States that the mandate of children's commissioners or children's ombudsmen should include ensuring the right to health, and the mandate holders should be well-resourced and independent from the Government.²¹

D. Investing in children's health

104. In their decisions about budget allocation and spending, States should strive to ensure availability, accessibility, acceptability and quality of essential children's health services for all, without discrimination.

105. States should continually assess the impact of macroeconomic policy decisions on children's right to health, particularly children in vulnerable situations, prevent any decisions that may compromise children's rights, and apply the "best interests" principle when making such decisions. States should also consider obligations under article 24 in all aspects of their negotiations with international financial institutions and other donors, to ensure that children's right to health is given adequate consideration in international cooperation.

106. The Committee recommends that States parties:

(a) Legislate for a specific proportion of public expenditure to be allocated to children's health and create an accompanying mechanism that allows for systematic independent evaluation of this expenditure;

(b) Meet World Health Organization-recommended minimum health expenditure per capita and prioritize children's health in budgetary allocations;

(c) Make investment in children visible in the State budget through detailed compilation of resources allocated to them and expended; and

(d) Implement rights-based budget monitoring and analysis, as well as child impact assessments on how investments, particularly in the health sector, may serve the best interests of the child.

107. The Committee underlines the importance of assessment tools in the use of resources and recognizes the need to develop measurable indicators to assist States parties in monitoring and evaluating progress in the implementation of children's right to health.

²¹ See general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 41 (A/59/41)*, annex VIII.

E. The action cycle

108. States parties' fulfilment of their obligations under article 24 requires engagement in a cyclical process of planning, implementation, monitoring and evaluation to then inform further planning, modified implementation and renewed monitoring and evaluation efforts. States should ensure the meaningful participation of children and incorporate feedback mechanisms to facilitate necessary adjustments throughout the cycle.

109. At the heart of the development, implementation and monitoring of policies, programmes and services that aim to realize children's right to health is the availability of relevant and reliable data. This should include: appropriately disaggregated data across the life course of the child, with due attention to vulnerable groups; data on priority health problems, including new and neglected causes of mortality and morbidity; and data on the key determinants of children's health. Strategic information requires data collected through routine health information systems, special surveys and research, and should include both quantitative and qualitative data. These data should be collected, analysed, disseminated and used to inform national and subnational policies and programmes.

1. Planning

110. The Committee notes that, in order to inform the implementation, monitoring and evaluation of activities to fulfil obligations under article 24, States should carry out situation analyses of existing problems, issues and infrastructure for delivery of services. The analysis should assess the institutional capacity and the availability of human, financial, and technical resources. Based on the outcome of the analysis, a strategy should be developed involving all stakeholders, both State and non-State actors and children.

111. The situation analysis will provide a clear idea of national and subnational priorities and strategies for their achievement. Benchmarks and targets, budgeted action plans and operational strategies should be established along with a framework for monitoring and evaluating policies, programmes and services and promoting accountability for children's health. This will highlight how to build and strengthen existing structures and systems to be consonant with the Convention.

2. Criteria for performance and implementation

112. States should ensure that all children's health services and programmes comply with the criteria of availability, accessibility, acceptability and quality.

(a) Availability

113. States should ensure that there are functioning children's health facilities, goods, services and programmes in sufficient quantity. States need to ensure that they have sufficient hospitals, clinics, health practitioners, mobile teams and facilities, community health workers, equipment and essential drugs to provide health care to all children, pregnant women and mothers within the State. Sufficiency should be measured according to need with particular attention given to under-served and hard to reach populations.

(b) Accessibility

114. The element of accessibility has four dimensions:

(a) *Non-discrimination*: Health and related services as well as equipment and supplies must be accessible to all children, pregnant women and mothers, in law and in practice, without discrimination of any kind;

(b) *Physical accessibility*: Health facilities must be within accessible distance for all children, pregnant women and mothers. Physical accessibility may require additional attention to the needs of children and women with disabilities. The Committee encourages States to prioritize the establishment of facilities and services in under-served areas and to invest in mobile outreach approaches, innovative technologies, and well-trained and supported community health workers, as ways of reaching especially vulnerable groups of children;

(c) *Economic accessibility/affordability*: Lack of ability to pay for services, supplies or medicines should not result in the denial of access. The Committee calls on States to abolish user fees and implement health-financing systems that do not discriminate against women and children on the basis of their inability to pay. Risk-pooling mechanisms such as tax and insurance should be implemented on the basis of equitable, means-based contributions;

(d) *Information accessibility*: Information on health promotion, health status and treatment options should be provided to children and their caregivers in a language and format that is accessible and clearly understandable to them.

(c) Acceptability

115. In the context of children's right to health, the Committee defines acceptability as the obligation to design and implement all health-related facilities, goods and services in a way that takes full account of and is respectful of medical ethics as well as children's needs, expectations, cultures, views and languages, paying special attention to certain groups, where necessary.

(d) Quality

116. Health-related facilities, goods and services should be scientifically and medically appropriate and of good quality. Ensuring quality requires, inter alia, that (a) treatments, interventions and medicines are based on the best available evidence; (b) medical personnel are skilled and provided with adequate training on maternal and children's health, and the principles and provisions of the Convention; (c) hospital equipment is scientifically approved and appropriate for children; (d) drugs are scientifically approved, have not expired, are child-specific (when necessary) and are monitored for adverse reactions; and (e) regular quality of care assessments of health institutions are conducted.

3. Monitoring and evaluation

117. A well-structured and appropriately disaggregated set of indicators should be established for monitoring and evaluation to meet the requirements under the performance criteria above. The data should be used to redesign and improve policies, programmes and services in support of fulfilment of children's right to health. Health information systems should ensure that data should be reliable, transparent, and consistent, while protecting the right to privacy for individuals. States should regularly review their health information system, including vital registration and disease surveillance, with a view to its improvement.

118. National accountability mechanisms should monitor, review and act on their findings. Monitoring means providing data on the health status of children, regularly reviewing the quality of children's health services and how much is spent thereon and where, on what and on whom it is spent. This should include both routine monitoring and periodic, in-depth evaluations. Reviewing means analysing the data and consulting children, families, other caregivers and civil society to determine whether children's health has improved and whether Governments and other actors have fulfilled their commitments.

Acting means using evidence emerging from these processes to repeat and expand what is working and to remedy and reform what is not.

F. Remedies for violations of the right to health

119. The Committee strongly encourages States to put in place functional and accessible complaints mechanisms for children that are community-based and render it possible for children to seek and obtain reparations when their right to health is violated or at risk. States should also provide for broad rights of legal standing, including class actions.

120. States should ensure and facilitate access to courts for individual children and their caregivers and take steps to remove any barriers to access remedies for violations of children's right to health. National human rights institutions, children's ombudspersons, health-related professional associations and consumers' associations can play an important role in this regard.

VII. Dissemination

121. The Committee recommends that States widely disseminate the present general comment with parliament and across Government, including within ministries, departments and municipal and local-level bodies working on children's health issues.



Convention on the Elimination of All Forms of Discrimination against Women

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General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change

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I. Introduction

1. Climate change is exacerbating both the risk and the impacts of disasters globally, by increasing the frequency and severity of weather and climate hazards, which heightens the vulnerability of communities to those hazards.¹ There is scientific evidence that a large proportion of extreme weather events around the world are a result of human-caused changes to the climate.² The human rights consequences of such disasters are apparent in the form of political and economic instability, growing inequality, declining food and water security and increased threats to health and livelihoods.³ Although climate change affects everyone, those countries and populations that have contributed the least to climate change, including people living in poverty, young people and future generations, are the most vulnerable to its impacts.

2. Women, girls, men and boys are affected differently by climate change and disasters, with many women and girls experiencing greater risks, burdens and impacts.⁴ Situations of crisis exacerbate pre-existing gender inequalities and compound the intersecting forms of discrimination against, among others, women living in poverty, indigenous women, women belonging to ethnic, racial, religious and sexual minority groups, women with disabilities, refugee and asylum-seeking women, internally displaced, stateless and migrant women, rural women, unmarried women, adolescents and older women, who are often disproportionately affected compared with men or other women.⁵

3. In many contexts, gender inequalities limit the control that women and girls have over decisions governing their lives, as well as their access to resources such as food, water, agricultural input, land, credit, energy, technology, education, health services, adequate housing, social protection and employment.⁶ As a result of those inequalities, women and girls are more likely to be exposed to disaster-induced risks and losses relating to their livelihoods, and they are less able to adapt to changes in climatic conditions. Although climate change mitigation and adaptation programmes may provide new employment and livelihood opportunities in sectors such as agricultural production, sustainable urban development and clean energy, failure to address the structural barriers faced by women in gaining access to their rights will increase gender-based inequalities and intersecting forms of discrimination.

¹ Intergovernmental Panel on Climate Change, *Climate Change 2014: Synthesis Report — Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Geneva, 2013). The Panel notes that climate change “refers to a change in the state of the climate that can be identified (e.g. using statistical tests) by changes in the mean and/or the variability of its properties, and that persists for an extended period, typically decades or longer”.

² Susan J. Hassol and others, “(Un)Natural disasters: communicating linkages between extreme events and climate change”, *WMO Bulletin*, vol. 65, No. 2 (Geneva, World Meteorological Organization, 2016).

³ United Nations Development Programme (UNDP), “Climate change and disaster risk reduction”, 23 March 2016.

⁴ See Commission on the Status of Women, resolutions 56/2 and 58/2 on gender equality and the empowerment of women in natural disasters, adopted by consensus in March 2012 and March 2014.

⁵ See, for example, general recommendation No. 27 (2010) on older women and the protection of their human rights.

⁶ For the purposes of the present general recommendation, all references to “women” should be read to include women and girls, unless otherwise noted.

4. Mortality and morbidity levels in situations of disaster are higher among women and girls.⁷ Owing to gender-based economic inequalities, women, and women heads of household in particular, are at a higher risk of poverty and more likely to live in inadequate housing in urban and rural areas of low land value that are vulnerable to such impacts of climate-related events as floods, storms, avalanches, earthquakes, landslides and other hazards.⁸ Women and girls in situations of conflict are particularly exposed to risks associated with disasters and climate change. The higher levels of mortality and morbidity among women during and following disasters are also a result of the inequalities that they face in gaining access to adequate health care, food and nutrition, water and sanitation, education, technology and information.⁹ In addition, failure to engage in gender-responsive disaster planning and implementation often results in protective facilities and infrastructure, such as early warning mechanisms, shelters and relief programmes, that neglect the specific accessibility needs of diverse groups of women, including women with disabilities, older women and indigenous women.¹⁰

5. Women and girls also face a heightened risk of gender-based violence during and following disasters. In the absence of social protection schemes and in situations in which there is food insecurity combined with impunity for gender-based violence, women and girls are often exposed to sexual violence and exploitation as they attempt to gain access to food and other basic needs for family members and themselves. In camps and temporary settlements, the lack of physical security, as well as the lack of safe and accessible infrastructure and services, including drinking water and sanitation, also result in increased levels of gender-based violence against women and girls. Women and girls with disabilities are at particular risk of gender-based violence and sexual exploitation during and following disasters, owing to discrimination on the basis of physical limitations and barriers to communication and the inaccessibility of basic services and facilities. Domestic violence, early and/or forced marriage, trafficking in persons and forced prostitution are also more likely to occur during and following disasters.

6. As the higher vulnerability and exposure of women and girls to disaster risk and climate change are economically, socially and culturally constructed, they can be reduced. The level of vulnerability may vary according to the type of disaster and the geographical and sociocultural contexts.

7. The categorization of women and girls as passive “vulnerable groups” in need of protection from the impacts of disasters is a negative gender stereotype that fails to recognize the important contributions of women in the areas of disaster risk reduction, post-disaster management and climate change mitigation and adaptation strategies.¹¹ Well-designed disaster risk reduction and climate change initiatives that

⁷ Eric Neumayer and Thomas Plümper, “The gendered nature of natural disasters: the impact of catastrophic events on the gender gap in life expectancy, 1981–2002”, *Annals of the Association of American Geographers*, vol. 97, No. 3 (2007).

⁸ United Nations, *Global Assessment Report on Disaster Risk Reduction 2015: Making Development Sustainable—The Future of Disaster Risk Management* (New York, 2015); *Disasters without Borders: Regional Resilience for Sustainable Development: Asia-Pacific Disaster Report 2015* (United Nations publication, Sales No. E.15.II.F.13).

⁹ C. Bern and others, “Risk factors for mortality in the Bangladesh cyclone of 1991”, *Bulletin of the World Health Organization*, vol. 71, No. 1 (1993).

¹⁰ Tripartite Core Group, “Post-Nargis joint assessment”, July 2008; Lorena Aguilar and others, “Training manual on gender and climate change” (San José, International Union for Conservation of Nature, UNDP and Gender and Water Alliance, 2009).

¹¹ United Nations, *Global Assessment Report on Disaster Risk Reduction 2015*; UNDP, “Clean development mechanism: exploring the gender dimensions of climate finance mechanisms”, November 2010; UNDP, “Ensuring gender equity in climate change financing” (New York, 2011).

provide for the full and effective participation of women can advance substantive gender equality and the empowerment of women, while ensuring that sustainable development, disaster risk reduction and climate change objectives are achieved.¹² It should be underlined that gender equality is a precondition for the realization of the Sustainable Development Goals.

8. In the light of the significant challenges in, and opportunities for, the realization of women's human rights presented by climate change and disaster risk, the Committee on the Elimination of Discrimination against Women has provided specific guidance for States parties on the implementation of their obligations relating to disaster risk reduction and climate change under the Convention on the Elimination of All Forms of Discrimination against Women. In its concluding observations on the reports of States parties and in several of its general recommendations, the Committee has underlined that States parties and other stakeholders have obligations to take specific steps to address discrimination against women in the fields of disaster risk reduction and climate change, through the adoption of targeted laws, policies, mitigation and adaptation strategies, budgets and other measures.¹³ In its statement on gender and climate change, the Committee outlined that all stakeholders should ensure that climate change and disaster risk reduction measures were gender responsive and sensitive to indigenous knowledge systems and that they respected human rights. The right of women to participate at all levels of decision-making must be guaranteed in climate change policies and programmes ([A/65/38](#), part one, annex II).

9. The Committee notes that other United Nations human rights mechanisms, including the Human Rights Council and the special procedures mandate holders, the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of Persons with Disabilities and the Committee on the Rights of the Child, refer with increasing frequency to the negative consequences of climate change, environmental degradation and disasters. Those mechanisms have also affirmed the obligations of Governments and other stakeholders to take immediate, targeted steps to prevent and mitigate the negative human rights impacts of climate change and disasters and to provide technical and financial support for disaster risk reduction and climate change adaptation measures.

II. Objective and scope

10. Pursuant to article 21 (1) of the Convention, the present general recommendation provides guidance to States parties on the implementation of their obligations under the Convention in relation to disaster risk reduction and climate change. In their reports submitted to the Committee pursuant to article 18, States parties should address general obligations to ensure substantive equality between

¹² Senay Habtezion, "Gender and disaster risk reduction", Gender and Climate Change Asia and the Pacific Policy Brief, No. 3 (New York, UNDP, 2013); World Health Organization (WHO), "Gender, climate change and health" (Geneva, 2010).

¹³ For concluding observations, see [CEDAW/C/SLB/CO/1-3](#), paras. 40-41; [CEDAW/C/PER/CO/7-8](#), paras. 37-38; [CEDAW/C/GIN/CO/7-8](#), para. 53; [CEDAW/C/GRD/CO/1-5](#), paras. 35-36; [CEDAW/C/JAM/CO/6-7](#), paras. 31-32; [CEDAW/C/SYC/CO/1-5](#), paras. 36-37; [CEDAW/C/TGO/CO/6-7](#), para. 17; [CEDAW/C/DZA/CO/3-4](#), paras. 42-43; [CEDAW/C/NLZ/CO/7](#), paras. 9 and 36-37; [CEDAW/C/CHI/CO/5-6](#), paras. 38-39; [CEDAW/C/BLR/CO/7](#), paras. 37-38; [CEDAW/C/LKA/CO/7](#), paras. 38-39; [CEDAW/C/NPL/CO/4-5](#), para. 38; and [CEDAW/C/TUV/CO/2](#), paras. 55-56. See also general recommendation No. 27 (2010) on older women and the protection of their human rights, para. 25, and general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 11.

women and men in all areas of life, as well as the specific guarantees in relation to those rights under the Convention that may be particularly affected by climate change and disasters, including extreme weather events such as floods and hurricanes, as well as slow-onset phenomena, such as the melting of polar ice caps and glaciers, drought and sea-level rise.

11. The present general recommendation may also be used to inform the work of civil society organizations, international and regional intergovernmental organizations, educators, the scientific community, medical personnel, employers and any other stakeholders engaged in activities connected to disaster risk reduction and climate change.

12. The objective of the present general recommendation is to underscore the urgency of mitigating the adverse effects of climate change and to highlight the steps necessary to achieve gender equality, the realization of which will reinforce the resilience of individuals and communities globally in the context of climate change and disasters. It is also intended to contribute to coherence, accountability and the mutual reinforcement of international agendas on disaster risk reduction and climate change adaptation, by focusing on the impacts of climate change and disasters on women's human rights.

13. In the present general recommendation, the Committee does not exhaustively cover the gender-related dimensions of climate change mitigation and adaptation measures, nor does it differentiate between disasters relating to climate change and other disasters. It should be emphasized, however, that a large proportion of contemporary disasters may be attributed to human-induced climatic changes and that the recommendations provided herein are also applicable to hazards, risks and disasters that are not directly linked to climate change. For the purposes of the present general recommendation, disasters are defined as including all those events, small-scale and large-scale, frequent and infrequent, sudden- and slow-onset, caused by natural or human-made hazards, and related environmental, technological and biological hazards and risks, mentioned in the Sendai Framework for Disaster Risk Reduction 2015–2030, as well as any other chemical, nuclear and biological hazards and risks. Such hazards and risks include the testing and use of all types of weapons by State and non-State actors.

14. The obligations of States parties to effectively mitigate and adapt to the adverse effects of climate change, in order to reduce the increased disaster risk, have been recognized by international human rights mechanisms. Limiting fossil fuel use and greenhouse gas emissions and the harmful environmental effects of extractive industries such as mining and fracking, and the allocation of climate financing, are regarded as crucial steps in mitigating the negative human rights impacts of climate change and disasters. Any mitigation or adaptation measures should be designed and implemented in accordance with the human rights principles of substantive equality and non-discrimination, participation and empowerment, accountability and access to justice, transparency and the rule of law.

15. The present general recommendation is focused on the obligations of States parties and non-State actors to take effective measures to prevent, mitigate the adverse effects of and respond to disasters and climate change and, in that context, to ensure that the human rights of women and girls are respected, protected and fulfilled in accordance with international law. Three mutually reinforcing areas for action by stakeholders are identified, centring on the general principles of the Convention applicable to disaster risk and climate change, specific measures to address disaster risk reduction and climate change and specific areas of concern.

III. Convention on the Elimination of All Forms of Discrimination against Women and other relevant international frameworks

16. The Convention promotes and protects women's human rights, and this should be understood to apply at all stages of climate change and disaster prevention, mitigation, response, recovery and adaptation. In addition to the Convention, several specific international frameworks govern disaster risk reduction, climate change mitigation and adaptation, humanitarian assistance and sustainable development, and a number of them also address gender equality. Those instruments should be read together with the provisions of the Convention.

17. In the Rio Declaration on Environment and Development, of 1993, and reiterated in the outcome document of the United Nations Conference on Sustainable Development, entitled "The future we want", of 2012, the particularly vulnerable situation of small island developing States was acknowledged and the principle of gender equality and the need to ensure the effective participation of women and indigenous peoples in all initiatives relating to climate change were reaffirmed.

18. In the Sendai Framework, it was emphasized that women and their participation were critical to effectively managing disaster risk and designing, resourcing and implementing gender-sensitive disaster risk reduction policies, plans and programmes, and that adequate capacity-building measures needed to be taken to empower women for preparedness, as well as to build their capacity to secure alternate livelihood means in post-disaster situations. Empowering women to publicly lead and promote gender-equitable and universally accessible response, recovery, rehabilitation and reconstruction approaches was also emphasized.¹⁴

19. In the United Nations Framework Convention on Climate Change, States parties were called upon to take action on climate change on the basis of equity and in accordance with their common but differentiated responsibilities and capabilities. It was recognized that, although climate change affected everyone, countries who had contributed the least to greenhouse gas emissions, as well as people living in poverty, children and future generations, were the most affected. Climate equity required that, in global efforts to mitigate the adverse effects of and adapt to climate change, the needs of countries, groups and individuals, including women and girls, which were the most vulnerable to its adverse impacts, were prioritized.

20. In 2014, the Conference of the Parties to the United Nations Framework Convention on Climate Change adopted decision 18/CP.20, entitled "Lima work programme on gender", in which it established a plan for promoting gender balance and achieving gender-responsive climate policies developed for the purpose of guiding the effective participation of women in the bodies established under the Convention. In 2017, the Conference of the Parties adopted decision 3/CP.23, entitled "Establishment of a gender action plan", in which it agreed to advance the full, equal and meaningful participation of women and promote gender-responsive climate policy and the mainstreaming of a gender perspective into all elements of climate action.

21. In the Paris Agreement under the United Nations Framework Convention on Climate Change, the Conference of the Parties noted that Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable

¹⁴ General Assembly resolution 69/283, annex II, paras. 36 (a) (i) and 32, respectively.

situations and the right to development, as well as gender equality, the empowerment of women and intergenerational equity. They also acknowledged that adaptation, including capacity-building for mitigation and adaptation action, should be gender-responsive, participatory and fully transparent, taking into consideration vulnerable groups, communities and ecosystems.

22. The Sustainable Development Goals contain important targets on gender equality, including those in Goals 3–6 and 10, and on climate change and disaster risk reduction, in Goals 11 and 13.

23. At the third International Conference on Financing for Development, held in Addis Ababa in 2015, participants adopted documents that link gender equality and women's rights with climate change adaptation and disaster risk reduction and called upon States to integrate those issues into development financing.

24. Participants in the World Humanitarian Summit, in 2016, called for gender equality, the empowerment of women and women's rights to become pillars of humanitarian action, including in disaster preparedness and response. Also in 2016, in the New Urban Agenda, the participants in the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) recognized the need for gender-responsive measures to ensure that urban development was sustainable, resilient and contributed to climate change mitigation and adaptation.

IV. General principles of the Convention applicable to disaster risk reduction and climate change

25. Several cross-cutting principles and provisions of the Convention are of crucial importance and should serve as guidance in the drafting of legislation, policies, plans of action, programmes, budgets and other measures relating to disaster risk reduction and climate change.

26. States parties should ensure that all policies, legislation, plans, programmes, budgets and other activities relating to disaster risk reduction and climate change are gender responsive and grounded in human rights-based principles, including the following:

(a) **Equality and non-discrimination, with priority being accorded to the most marginalized groups of women and girls, such as those from indigenous, racial, ethnic and sexual minority groups, women and girls with disabilities, adolescents, older women, unmarried women, women heads of household, widows, women and girls living in poverty in both rural and urban settings, women in prostitution and internally displaced, stateless, refugee, asylum-seeking and migrant women;**

(b) **Participation and empowerment, through the adoption of effective processes and the allocation of the resources necessary to ensure that diverse groups of women have opportunities to participate in every stage of policy development, implementation and monitoring at each level of government, at the local, national, regional and international levels;**

(c) **Accountability and access to justice, which require the provision of appropriate and accurate information and mechanisms in order to ensure that all women and girls whose rights have been directly and indirectly affected by disasters and climate change are provided with adequate and timely remedies.**

27. Those three general principles — equality and non-discrimination, participation and empowerment, accountability and access to justice — are fundamental to

ensuring that all interventions relating to disaster risk reduction in the context of climate change are implemented in accordance with the Convention.

A. Substantive equality and non-discrimination

28. States parties have obligations under article 2 of the Convention to take targeted and specific measures to guarantee equality between women and men, including the adoption of participatory and gender-responsive policies, strategies and programmes relating to disaster risk reduction and climate change, across all sectors. Article 2 identifies the specific, core obligations of States parties to ensure substantive equality between women and men in all areas covered by the Convention and to take legislative, policy-based and other measures to that effect.¹⁵ The obligation to take all appropriate measures, including with regard to legislation, in all fields, to guarantee the full development and advancement of women on a basis of equality with men, is further expanded in articles 3 and 24 of the Convention.

29. Intersecting forms of discrimination may limit the access of particular groups of women to the information, political power, resources and assets that would help them to mitigate the adverse effects of disasters and climate change. In its general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, as well as in general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, general recommendation No. 33 (2015) on women's access to justice, general recommendation No. 34 (2016) on the rights of rural women, general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, and general recommendation No. 36 (2017) on the right of girls and women to education, the Committee reiterated that discrimination against women was inextricably linked to other factors that affected their lives.

30. The present general recommendation does not contain an exhaustive list of every group of right holders for which respect of their rights must be integrated into laws, policies, programmes and strategies on disaster risk reduction and climate change. The principles of non-discrimination and substantive equality, which form the foundation of the Convention, require that States parties take all measures necessary to ensure that direct and indirect discrimination, as well as intersecting forms of discrimination, are redressed. Specific measures, including temporary special measures, legislation that prohibits intersecting forms of discrimination and resource allocation, are necessary to ensure that all women and girls are able to participate in the development, implementation and monitoring of policies and plans relating to climate change and disasters.

31. As outlined in general recommendation No. 28, States parties have obligations to respect, protect and fulfil the principle of non-discrimination towards all women, against all forms of discrimination, in all areas, even those not explicitly mentioned in the Convention, and to ensure the equal development and advancement of women in all areas. To ensure substantive equality between women and men in the context of disaster risk reduction and climate change, States parties should take specific, targeted and measurable steps:

(a) To identify and eliminate all forms of discrimination, including intersecting forms of discrimination, against women in legislation, policies, programmes, plans and other activities relating to disaster risk reduction and climate change. Priority should be accorded to addressing discrimination in

¹⁵ See general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention.

relation to the ownership, access, use, disposal, control, governance and inheritance of property, land and natural resources, as well as barriers that impede the exercise by women of their full legal capacity and autonomy in areas such as freedom of movement and equal access to economic, social and cultural rights, including to food, health, work and social protection. Women and girls should be empowered through specific policies, programmes and strategies so that they are able to exercise their right to seek, receive and impart information relating to climate change and disaster risk reduction;

(b) To create effective mechanisms to guarantee that the rights of women and girls are a primary consideration in devising measures relating to disaster risk reduction and climate change at the local, national, regional and international levels. Measures must be taken to ensure that high-quality infrastructure and critical services are available, accessible and culturally acceptable for all women and girls on a basis of equality.

B. Participation and empowerment

32. The participation of diverse groups of women and girls, and the development of their leadership capacity, at various levels of government and within local communities is essential to ensuring that the prevention of and response to disasters and the adverse effects of climate change are effective and incorporate perspectives from all sectors of society. Promoting the participation of girls and young women in the creation, development, implementation and monitoring of policies and plans relating to climate change and disaster risk reduction is essential, because those groups are often overlooked, even though they will experience the impacts of those phenomena throughout their lifetimes.

33. Women make significant contributions to household, local, national, regional and international economies and to environmental management, disaster risk reduction and climate change resilience at various levels. At the local level, the traditional knowledge held by women in agricultural regions is particularly important in that respect, because those women are well positioned to observe changes in the environment and respond to them through adaptive practices in crop selection, planting, harvesting, land conservation techniques and careful management of water resources.

34. The Intergovernmental Panel on Climate Change has noted that most local communities develop adaptation practices that could and should be identified and followed, in order to tailor effective adaptation and response strategies relating to disaster risk reduction and climate change.¹⁶ In the Paris Agreement, the Conference of the Parties acknowledged that climate change adaptation should be guided by the best available science and, as appropriate, by traditional, indigenous and local knowledge systems, a view that aligns with the many provisions in the Convention, including articles 7, 8 and 14, that provide that States parties should ensure that all women are provided with meaningful opportunities to participate in political decision-making and development planning.

35. Articles 7 and 8 of the Convention provide that women should have equality in political and public life at the local, national and international levels, and article 14 reiterates that rural women have the right to participate in development planning and agricultural reform activities. That guarantee of political equality encompasses

¹⁶ Intergovernmental Panel on Climate Change, *Climate Change 2007: Synthesis Report—Contribution of Working Groups I, II and III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (Geneva, 2007).

leadership by women and the representation and participation of women, which are components that are essential to the development and implementation of effective programmes and policies relating to disaster risk reduction and climate change that take into account the needs of the population, in particular those of women.

36. To ensure that women and girls are provided with equal opportunities to lead and to participate and engage in decision-making in activities relating to disaster risk reduction and climate change, the Committee recommends that States parties:

(a) **Adopt targeted policies, such as temporary special measures, including quotas, as provided for in article 4 of the Convention and in general recommendation No. 25 (2004) on temporary special measures, as one element of a coordinated and regularly monitored strategy to achieve the equal participation of women in all decision-making and development planning relating to disaster risk reduction and climate change;**¹⁷

(b) **Develop programmes to ensure the participation of and leadership by women in political life, including through civil society organizations, in particular women's organizations, at various levels, in particular in the context of local and community planning and climate change and disaster preparedness, response and recovery;**

(c) **Ensure the equal representation of women in forums and mechanisms on disaster risk reduction and climate change, at the community, local, national, regional and international levels, in order to enable them to participate in and influence the development of policies, legislation and plans relating to disaster risk reduction and climate change and their implementation. States parties should also take positive measures to ensure that girls, young women and women belonging to indigenous and other marginalized groups are provided with opportunities to be represented in those mechanisms;**

(d) **Strengthen national institutions concerned with gender-related issues and women's rights, civil society and women's organizations and provide them with adequate resources, skills and authority to lead, advise, monitor and carry out strategies to prevent and respond to disasters and mitigate the adverse effects of climate change;**

(e) **Allocate adequate resources to building the leadership capacity of women and creating an enabling environment for strengthening their active role in disaster risk reduction and response and climate change mitigation, at all levels and across all relevant sectors.**

C. Accountability and access to justice

37. In line with article 15 (1) of the Convention, women should be accorded equality before the law, which is extremely important in situations of disaster and in the context of climate change, given that women, who often face barriers to gaining access to justice, may encounter significant difficulties in claiming compensation and other forms of reparation to mitigate their losses and to adapt to climate change. The recognition of the legal capacity of women as identical to that of men and equal between groups of women, including women with disabilities and indigenous women, as well as their equal access to justice, are essential elements of disaster and climate change policies and strategies.¹⁸

¹⁷ See CEDAW/C/TUV/CO/2, paras. 55–56.

¹⁸ See also general recommendation No. 33 (2015) on women's access to justice.

38. States parties should ensure that legal frameworks are non-discriminatory and that all women have effective access to justice, in line with general recommendation No. 33, including by:

(a) Conducting a gender impact analysis of current laws, incorporating those that are applied in plural legal systems, including customary, traditional and religious norms and practices, to assess their effect on women with regard to their vulnerability to disaster risk and climate change, and adopt, repeal or amend laws, norms and practices accordingly;

(b) Increasing awareness among women of the available legal remedies and dispute resolution mechanisms and their legal literacy, by providing them with information on their rights and on policies and programmes relating to disaster risk reduction and climate change and empowering them to exercise their right to information in that context;

(c) Ensuring affordable or, if necessary, free access to legal services, including legal aid, as well as to official documents such as birth, death and marriage certificates and land registration documents and deeds. Reliable and low-cost administrative systems should be implemented to make such documentation accessible and available to women in situations of disaster so that they are able to benefit from such services as relief payments and compensation;

(d) Dismantling barriers to women's access to justice by ensuring that formal and informal justice mechanisms, including alternative dispute resolution mechanisms, are in conformity with the Convention and made available and accessible, in order to enable women to claim their rights. Measures to protect women from reprisals when claiming their rights should also be developed;

(e) Minimizing disruptions to legal and justice systems that may result from disasters and climate change, by developing response plans that provide for the deployment of mobile or specialized reporting mechanisms, investigative teams and courts. Flexible and accessible legal and judicial mechanisms are of particular importance for women and girls wishing to report incidents of gender-based violence.

V. Specific principles of the Convention relevant to disaster risk reduction and climate change

A. Assessment and data collection

39. The gender-related dimensions of disaster risk reduction and the impacts of climate change are often not well understood. Limited technical capacity at the national and local levels has resulted in a lack of data disaggregated by sex, age, disability, ethnicity and geographical location, which continues to impede the development of appropriate and targeted strategies for disaster risk reduction and climate change response.

40. States parties should:

(a) Establish or identify existing national and local mechanisms to collect, analyse and manage, and for the application of, data disaggregated by sex, age, disability, ethnicity and region. Such data should be made publicly available and used to inform gender-responsive national and regional disaster risk reduction and climate resilience legislation, policies, programmes and budgets;

(b) Develop, on the basis of disaggregated data, specific and gender-responsive indicators and monitoring mechanisms to enable States parties to

establish baselines and measure progress in areas such as the participation of women in initiatives relating to disaster risk reduction and climate change and in political, economic and social institutions. Integration with and coordination in the implementation of other existing frameworks, such as the United Nations Framework Convention on Climate Change, the 2030 Agenda for Sustainable Development and the Sendai Framework, are essential to ensuring a consistent and effective approach;

(c) Empower, build the capacity of and provide resources to, if necessary through donor support, the national institutions responsible for collecting, consolidating and analysing disaggregated data, across all relevant sectors, such as economic planning, disaster risk management, planning and monitoring of implementation of the Sustainable Development Goals, including at the local level;

(d) Incorporate climate information into disaster planning and decision-making at the subnational and national levels by ensuring that diverse groups of women are consulted as valuable sources of community knowledge on climate change.

B. Policy coherence

41. It is only recently that concerted efforts have been made to coordinate policies on gender equality, disaster risk reduction, climate change and sustainable development. While certain policy documents, such as the 2030 Agenda and the Sustainable Development Goals, integrate those objectives into their frameworks for implementation, much remains to be done at the national, regional and international levels to align policies. Programmes of action, budgets and strategies should be coordinated across sectors, including trade, development, energy, environment, water, climate science, agriculture, education, health and planning, and at levels of government, including local and subnational, national, regional and international, in order to ensure an effective and human rights-based approach to disaster risk reduction and climate change mitigation and adaptation.

42. **States parties should:**

(a) Engage in a comprehensive audit of policies and programmes across sectors and areas, including climate, trade and investment, environment and planning, water, food, agriculture, technology, social protection, education and employment, in order to identify the degree of integration of a gender equality perspective and any inconsistencies, with a view to reinforcing efforts aimed at disaster risk reduction and climate change mitigation and adaptation;

(b) Improve coordination between sectors, including those involved in disaster risk management, climate change, gender equality, health care, education, social protection, agriculture, environmental protection and urban planning, through such measures as the adoption of integrated national strategies and plans relating to disaster risk reduction and climate change that explicitly integrate a gender equality perspective into their approaches;

(c) Undertake gender impact assessments during the design, implementation and monitoring phases of plans and policies relating to disaster risk reduction and climate change;

(d) Develop, compile and share practical tools, information and best practices and methodologies for the effective integration of a gender equality perspective into legislation, policies and programmes in all sectors relevant to disaster risk reduction and climate change;

(e) **Promote and strengthen the vital role played by subnational governments in disaster risk reduction, service provision, emergency response, land-use planning and climate change. To that end, adequate budgets should be allocated and mechanisms developed to monitor the implementation of legislation and policies at the subnational level.**

C. Extraterritorial obligations, international cooperation and resource allocation

43. States parties have obligations both within and outside their territories to ensure the full implementation of the Convention, including in the areas of disaster risk reduction and climate change mitigation and adaptation. Measures such as limiting fossil fuel use, reducing transboundary pollution and greenhouse gas emissions and promoting the transition to renewable energy sources are regarded as crucial steps in mitigating climate change and the negative human rights impacts of the adverse effects of climate change and disasters globally. In its resolutions 26/27 and 29/15, the Human Rights Council noted that the global nature of climate change called for the widest possible cooperation by all countries and their participation in an effective and appropriate international response.¹⁹

44. There is currently an insufficient level of resources being dedicated to addressing the underlying structural causes of gender inequality that increase the exposure of women to disaster risk and the effects of climate change and to developing gender-responsive programmes in those areas. Low-income, climate-vulnerable countries face particular challenges in developing, implementing and monitoring gender-responsive disaster risk reduction and climate change prevention, mitigation and adaptation policies and programmes, as well as in promoting access to affordable technology, owing to the limited availability of national public financing and development assistance.

45. In accordance with the Convention and other international human rights instruments, an adequate and effective allocation of financial and technical resources for gender-responsive disaster and climate change prevention, mitigation and adaptation must be ensured through both national budgets and international cooperation. Any steps taken by States parties to prevent, mitigate and respond to climate change and disasters within their own jurisdictions or extraterritorially must be firmly grounded in the human rights principles of substantive equality and non-discrimination, participation and empowerment, accountability and access to justice, transparency and the rule of law.

46. States parties, separately and in cooperation with others, should:

(a) **Take effective steps to equitably manage shared natural resources, in particular water, and limit carbon emissions, fossil fuel use, deforestation, near-surface permafrost degradation, soil degradation and transboundary pollution, including the dumping of toxic waste, and all other environmental, technological and biological hazards and risks that contribute to climate change and disasters, which tend to disproportionately negatively affect women and girls;**

(b) **Increase dedicated budget allocations, at the international, regional, national and local levels, to respond to gender-specific disaster and climate**

¹⁹ In his 2016 report (A/HRC/31/52, footnote 27), the Special Rapporteur on human rights and the environment noted that “the failure of States to effectively address climate change through international cooperation would prevent individual States from meeting their duties under human rights law to protect and fulfil the human rights of those within their own jurisdiction”.

change prevention, preparedness, mitigation, recovery and adaptation needs in the infrastructure and service sectors;

(c) **Invest in adaptability by identifying and supporting livelihoods that are resilient to disasters and climate change, sustainable and empowering for women, and in gender-responsive services that enable women to gain access to and benefit from those livelihoods;**

(d) **Increase access for women to appropriate risk reduction schemes, such as social protection, livelihood diversification and insurance;**

(e) **Integrate a gender equality perspective into relevant international, regional, national, sectoral and local programmes and projects, including those financed with international climate and sustainable development funds;**

(f) **Share resources, knowledge and technology to build disaster risk reduction and climate change adaptation capacity among women and girls, including by providing adequate, effective and transparent financing administered through participatory, accountable and non-discriminatory processes;**

(g) **Ensure that States, international organizations and other entities that provide technical and financial resources for disaster risk reduction, sustainable development and climate change incorporate a gender equality and women's rights perspective into the design, implementation and monitoring of all programmes and establish appropriate and effective human rights accountability mechanisms.**

D. Non-State actors and extraterritorial obligations

47. The private sector and civil society organizations can play an important role in disaster risk reduction, climate resilience and the promotion of gender equality, at the national level and when operating transnationally. The development of public-private partnerships is promoted through a number of mechanisms, including in the context of the 2030 Agenda. Such partnerships may provide the financial and technical resources necessary to enable the creation of new infrastructure for disaster risk reduction and climate-resilient livelihoods.

48. In the United Nations Guiding Principles on Business and Human Rights, it is stipulated that businesses have a direct responsibility to respect and protect human rights, to act with due diligence to prevent human rights violations and to provide effective remedies for human rights violations connected to their operations. To ensure that private sector activities in the fields of disaster risk reduction and climate change respect and protect women's human rights, they must guarantee accountability and be participatory, gender-responsive and subject to regular human rights-based monitoring and evaluation.

49. States parties should regulate the activities of non-State actors within their jurisdiction, including when they operate extraterritorially. General recommendation No. 28 reaffirms the requirement under article 2 (e) to eliminate discrimination by any public or private actor, which extends to acts of national corporations operating extraterritorially.

50. Civil society organizations operating locally and internationally, sometimes in partnership with government authorities and the private sector, also have responsibilities to ensure that their activities in the fields of climate change and disaster risk reduction and management do no harm to local populations, and those

organizations should take steps to minimize the harm that they may inadvertently be causing simply by being present and providing assistance.²⁰

51. In relation to non-State actors, States parties should:

(a) **Create environments conducive to gender-responsive investment in disaster and climate change prevention, mitigation and adaptation, including through sustainable urban and rural development, the promotion of renewable energy and social insurance schemes;**

(b) **Encourage entrepreneurship among women and create incentives for women to engage in businesses involved in sustainable development and climate-resilient livelihood activities in areas such as the clean energy sector and agroecological food systems. Businesses working in those areas should also be encouraged to increase the number of women whom they employ, in particular in leadership positions;**

(c) **Conduct gender impact analyses of any proposed public-private partnerships in the areas of disaster risk reduction and climate change and ensure that diverse groups of women are involved in their design, implementation and monitoring. Particular attention should be paid to guaranteeing that all groups of women have physical and economic access to any infrastructure and services provided through public-private partnerships;**

(d) **Adopt regulatory measures to protect women from human rights violations by private business actors and ensure that their own activities, including those conducted in partnership with the private sector and civil society, respect and protect human rights and that effective remedies are available in the event of human rights violations relating to the activities of non-State actors. Such measures should be applied to activities occurring both within and outside of the territory the State party concerned.**

E. Capacity development and access to technology

52. A lack of active participation by women in programmes relating to disaster risk reduction and climate change, in particular at the local level, impedes progress towards the implementation of gender equality commitments and the development of coordinated and effective policies and strategies for disaster risk reduction and climate resilience. Measures should be taken to build the capacity and capabilities of women, women's rights organizations and State entities to participate in gender-responsive disaster risk and climate assessments at the local, national, regional and international levels.

53. In its statement on gender and climate change, the Committee noted that policies that supported gender equality in access to and use and control of science and technology and formal and informal education and training would enhance a nation's capability in the areas of disaster reduction, mitigation and adaptation to climate change (A/65/38, part one, annex II). Too often, however, women have been unable to gain access to technology, training opportunities and information, owing to gender-based inequalities.

54. States parties should:

(a) **Increase the participation of women in the development of plans relating to disaster risk reduction and climate change, by supporting their technical capacity and providing adequate resources for that purpose;**

²⁰ See A/HRC/28/76, paras. 40 (g), 99 and 104.

(b) **Institutionalize leadership by women at all levels in disaster prevention, preparedness, including the development and dissemination of early warning systems, response and recovery and climate change mitigation and adaptation;**

(c) **Ensure that early warning information is provided using technology that is modern, culturally appropriate, accessible and inclusive, taking into account the needs of diverse groups of women. In particular, the extension of Internet and mobile telephone coverage, as well as other reliable and cost-effective communications technology such as radios, and the accessibility of that technology for all women, including women belonging to indigenous and minority groups, older women and women with disabilities, should be actively promoted within the context of programmes relating to disaster risk reduction and climate change;**

(d) **Ensure that women have access to technology for preventing and mitigating the adverse effects of disasters and climate change on crops, livestock, homes and businesses and that they can use and economically benefit from climate change adaptation and mitigation technology, including that relating to renewable energy and sustainable agricultural production;**

(e) **Promote the understanding, application and use of the traditional knowledge and skills of women in disaster risk reduction and response and climate change mitigation and adaptation;**

(f) **Promote and facilitate contributions by women to the conceptualization, development and use of disaster risk reduction and climate science technology.**

VI. Specific areas of concern

A. Right to live free from gender-based violence against women and girls

55. In its general recommendation No. 35, the Committee noted that gender-based violence against women was one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles were perpetuated. It also highlighted situations of disaster and the degradation and destruction of natural resources as factors that affected and exacerbated gender-based violence against women and girls.

56. The Committee has also observed that sexual violence is common in humanitarian crises and may become acute in the wake of a national disaster. In a time of heightened stress, lawlessness and homelessness, women face an increased threat of violence ([A/65/38](#), part two, annex II, para. 6).²¹

57. In accordance with the Convention and general recommendation No. 35, States parties should:

(a) **Develop policies and programmes to address existing and new risk factors for gender-based violence against women, including domestic violence, sexual violence, economic violence, trafficking in persons and forced marriage,**

²¹ See also general commendation No. 19 (1992) on violence against women and general recommendation No. 35 (2017) on gender-based violence against women, updating general commendation No. 19, para. 14.

in the context of disaster risk reduction and climate change, and promote the participation and leadership of women in their development;

(b) Ensure that the minimum legal age of marriage is 18 years for both women and men. States parties should include training on the prevalence of early and forced marriage for all personnel involved in disaster response activities. In partnership with women's associations and other stakeholders, mechanisms should be established, within local and regional disaster management plans, to prevent, monitor and address early and forced marriages;

(c) Provide accessible, confidential, supportive and effective mechanisms for all women wishing to report gender-based violence;

(d) Develop, in partnership with a wide range of stakeholders, including women's associations, a system for the regular monitoring and evaluation of interventions designed to prevent and respond to gender-based violence against women, within programmes relating to disaster risk reduction and climate change;

(e) Provide training, sensitization and awareness-raising for the authorities, emergency services workers and other groups on the various forms of gender-based violence that are prevalent in situations of disaster and how to prevent and address them. The training should include information on the rights and needs of women and girls, including those from indigenous and minority groups, women and girls with disabilities, lesbian, bisexual and transgender women and girls and intersex persons, and the ways in which they may be exposed to and affected by gender-based violence;

(f) Adopt long-term policies and strategies to address the root causes of gender-based violence against women in situations of disaster, including by engaging with men and boys, the media, traditional and religious leaders and educational institutions, in order to identify and eliminate social and cultural stereotypes concerning the status of women.

B. Rights to education and to information

58. Article 10 of the Convention concerns the elimination of discrimination in education.²² Education improves the capacity of women to participate within their households, families, communities and businesses and to identify the means to reduce disaster risk, mitigate climate change, develop more effective recovery strategies and thus build more resilient communities. Education also increases access to opportunities, resources, technology and information that aids in disaster risk reduction and the development of effective policies relating to climate change. The prevention and mitigation of disasters and climate change require well-trained women and men in disciplines including economics, agriculture, water resources management, climatology, engineering, law, telecommunications and emergency services.

59. In the aftermath of disasters, girls and women, whose access to education is often already limited as a result of social, cultural and economic barriers, may face even greater obstacles to participation in education, owing to the destruction of infrastructure, lack of teachers and other resources, economic hardship and security concerns.

²² See general recommendation No. 36 (2017) on the right of girls and women to education.

60. In accordance with article 10 of the Convention and general recommendation No. 36, States parties should:

(a) Ensure, through regular inspections, that educational infrastructure is safe and resilient enough to withstand disasters and that adequate resources are dedicated to the protection of students and educators from the impacts of climate change and disasters;

(b) Allocate adequate resources and budgets so that schools and other educational facilities are built to withstand hazards, reconstructed on the basis of sound disaster risk assessment and building codes and rendered operational as expeditiously as possible following disasters. The reintegration of girls and other groups for which education has not traditionally been valued should be prioritized through specific outreach programmes, with a view to ensuring that girls and women are not excluded from education in the wake of disasters;

(c) Ensure that women and girls have equal access to information, including scientific research, and education regarding disasters and climate change. That information should form part of the core educational curricula at each level of instruction;

(d) Prioritize innovative and flexible gender-responsive educational programmes, including at the community level, to enable women to develop the skills required to adapt to the changing climate and engage in sustainable development initiatives. Specific programmes and scholarships should be established to support girls and women in undertaking education and training in all areas relating to disaster risk reduction and management and environmental and climate science.

C. Rights to work and to social protection

61. Disasters and climate change directly affect women, in particular those living in poverty, by having an impact on their livelihoods. Economic inequalities between women and men are entrenched and reinforced through discrimination, including restrictions on ownership and control of land and property, unequal remuneration, the concentration of women in precarious, informal and unstable employment, sexual harassment and other forms of workplace violence, pregnancy-related discrimination in employment, gendered divisions of household labour and the undervaluing of the contributions of women in domestic, community and care work, as well as workplace discrimination including labour and sexual exploitation, land grabs and environmental destruction by abusive extractive industries and due to unregulated industrial and/or agro-industrial activities. All such gender-based discrimination limits the capacity of women to prevent and adapt to the harm generated by disasters and climate change.

62. The burden of caregiving and domestic work often increases for women following disasters. The destruction of food stocks, housing and infrastructure such as water and energy supplies and an absence of social protection systems and health-care services all have specific consequences for women and girls. The result of such gendered inequalities is the increased vulnerability and mortality levels among women and girls, and they are frequently left with less time to engage in economic activities or to gain access to the resources, including information and education, necessary for recovery and adaptation.²³

²³ See, for example, [A/55/38](#), para. 339.

63. Social and legal inequalities further restrict the ability of women to move to safer, less disaster-prone areas and may limit women's rights to access to financial services, credit, social security benefits and secure tenure of land and other productive resources.²⁴

64. **States parties should:**

(a) **Invest in gender-responsive social protection systems and social services that reduce economic inequalities between women and men and enable women to mitigate disaster risk and adapt to the adverse effects of climate change. Eligibility criteria for social protection schemes should be closely monitored to ensure that they are accessible to all groups of women, including women heads of household, unmarried women, internally displaced, migrant and refugee women and women with disabilities;**

(b) **Ensure the resilience to disasters of workplaces and critical infrastructure, including nuclear reactors and plants, through regular inspections and the adoption of building safety codes and other systems to guarantee that such infrastructure, in particular that which is necessary for income-generating and domestic activities, is rendered operational as expeditiously as possible following disasters;**

(c) **Guarantee women's equal right to decent and sustainable employment opportunities, as provided for in article 11 of the Convention, and apply that right in the context of disaster prevention, management and recovery and in connection with climate change adaptation in both urban and rural areas;**

(d) **Facilitate equal access for women to markets, financial services, credit and insurance schemes and regulate the informal economy to ensure that women are able to claim pensions and other employment-related social security entitlements;**

(e) **Acknowledge and address the unequal burden of the unpaid and care work performed by women, including within disaster and climate policies. Policies and programmes should be developed to assess, reduce and redistribute the gendered burden of care tasks, such as awareness-raising programmes on the equal sharing of domestic work and unpaid care work, the introduction of time-saving measures and the inclusion of appropriate technology, services and infrastructure;**

(f) **Protect and promote women's right to access to training in non-traditional areas of work, including within the green economy, and sustainable livelihoods, which would enable them to design, participate in, manage and monitor disaster and climate change prevention, preparedness, mitigation and adaptation initiatives and better equip them to benefit from such interventions.**

D. Right to health

65. Under article 12 of the Convention, States parties are to guarantee substantive equality between women and men in the provision of health-care services, including sexual and reproductive health services and mental and psychological health services. The measures that States parties must take, under article 12, in order to respect, protect and fulfil the right to health for all women are detailed in the Committee's general recommendation No. 24 (1999) on women and health. Health services and

²⁴ See general recommendation No. 29 (2013) on the economic consequences of marriage, family relations and their dissolution and general recommendation No. 34 (2016) on the rights of rural women.

systems, including sexual and reproductive health services, should be available, accessible, acceptable and of good quality, even in the context of disasters.²⁵ To that end, measures should be taken to ensure that gender-responsive climate change and disaster resilience policies, budgets and monitoring activities are fully integrated into health services and systems.²⁶

66. Climate change and disasters, including pandemics, influence the prevalence, distribution and severity of new and re-emerging diseases. The susceptibility of women and girls to disease is heightened as a result of inequalities in access to food, nutrition and health care and the social expectations that women will act as primary caregivers for children, older persons and the sick.

67. States parties should ensure that detailed policies and budget allocations are made to promote, protect and fulfil women's right to health, including sexual and reproductive health and comprehensive, age-appropriate sexuality education, mental and psychological health, hygiene and sanitation. Provisions for antenatal and postnatal care, such as emergency obstetric care and support for breastfeeding, should form part of strategies, plans and programmes relating to climate change and disasters.

68. **In particular, States parties should:**

(a) **Ensure participation, including in decision-making positions, by diverse groups of women and girls in the planning, implementation and monitoring of health policies and programmes and in the design and management of integrated health services for women in the context of disaster risk management and climate change;**

(b) **Invest in climate- and disaster-resilient health systems and services and allocate the maximum of their available resources to the underlying determinants of health, such as clean water, adequate nutrition and sanitation facilities and menstrual hygiene management. Those investments should be geared towards transforming health systems so that they are responsive to the changing health-care needs arising from climate change and disasters and sufficiently resilient to cope with those new demands;**

(c) **Ensure the removal of all barriers to access for women and girls to health services, education and information, including in the areas of mental and psychological health, oncological treatment and sexual and reproductive health, and, in particular, allocate resources for cancer screening, mental health and counselling programmes and programmes for the prevention and treatment of sexually transmitted infections, including HIV, and treatment for AIDS, before, during and after disasters;**

(d) **Accord priority to the provision of family-planning and sexual and reproductive health information and services, within disaster preparedness and response programmes, including access to emergency contraception, post-exposure prophylaxis for HIV, treatment for AIDS and safe abortion, and reduce maternal mortality rates through safe motherhood services, the provision of qualified midwives and prenatal assistance;**

(e) **Monitor the provision of health services to women by public, non-governmental and private organizations, to ensure equal access to and quality of**

²⁵ WHO, "Gender inequities in environmental health", EUR/5067874/151 (2008).

²⁶ Intergovernmental Panel on Climate Change, *Climate Change 2014: Impacts, Adaptation, and Vulnerability—Part A: Global and Sectoral Aspects, Working Group II Contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (New York, Cambridge University Press, 2014), p. 733.

care that responds to the specific health needs of diverse groups of women, in the context of disasters and climate change;

(f) Require that all health services operating in situations of disaster function to promote the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent, non-discrimination and choice. Specific measures to ensure the promotion and protection of the rights of women and girls with disabilities, women and girls belonging to indigenous and minority groups, lesbian, bisexual and transgender women and girls, intersex persons, older women and women and girls belonging to other marginalized groups should be explicitly included in health-care policies and standards relating to situations of disaster;

(g) Ensure that training curricula for health workers, including in emergency services, incorporate comprehensive, mandatory, gender-responsive courses on women's health and human rights, in particular gender-based violence. Health-care providers should be made aware of the linkages between increased disaster risk, climate change and the growing potential for public health emergencies as a result of shifting disease patterns. The training should also include information on the rights of women with disabilities and women belonging to indigenous, minority and other marginalized groups;

(h) Collect and share data on gender-based differences in vulnerability to infectious and non-infectious diseases occurring in situations of disaster and as a result of climate change. That information should be used to develop integrated rights-based disaster and climate change action plans and strategies.

E. Right to an adequate standard of living

Food, land, housing, water and sanitation

69. The impacts of climate change are already being experienced in many areas, in connection with decreased food security, land degradation and more limited availability of water and other natural resources. There is evidence that the effects of food, land and water insecurity are not gender-neutral and that women are more likely to suffer from undernourishment and malnutrition in times of food scarcity.²⁷ It has also been shown that women and girls, who are those with the primary responsibility for growing, gathering and preparing food and collecting fuel and water in many societies, are disproportionately affected by a lack of available, affordable, safe and accessible drinking water and fuel sources. The additional burden placed on women and girls by such climate-related resource scarcity drains time, causes physical hardship, increases exposure to the risk of violence and increases stress.²⁸

70. Women, in particular rural and indigenous women, are directly affected by disasters and climate change, as food producers and as agricultural workers because they make up the majority of the world's smallholder and subsistence farmers and a significant proportion of farmworkers. As a result of discriminatory laws and social norms, women have limited access to secure land tenure, and the farmland that they are allotted tends to be of inferior quality and more prone to flooding, erosion or other adverse climatic events. Owing to the increasing rate of out-migration among men in climate change-affected areas, women are left with the sole responsibility for farming, yet they do not possess the legal and socially recognized land ownership necessary to

²⁷ See, for example, [CEDAW/C/NPL/CO/4-5](#).

²⁸ WHO, "Gender, climate change and health".

adapt to the changing climatic conditions effectively. Women are also indirectly affected by the impacts of weather-related events on the price of foodstuffs.

71. Articles 12 and 14 of the Convention contain specific guarantees on nutrition and the equal participation of women in decision-making about food production and consumption. In addition, the core obligations of States parties to eliminate discrimination, outlined in article 2, to modify cultural patterns of behaviour based on discriminatory stereotypes, in article 5 (a), to ensure equality before the law, in article 15, and to guarantee equality within marriage and family relations, in article 16, are of central importance to addressing women's rights to land and productive resources, which are vital to ensuring the right to food and sustainable livelihoods.

72. States parties should:

(a) **Promote and protect women's equal rights to food, housing, sanitation, land and natural resources, including adequate drinking water, water for domestic use and for food production, and take positive measures to guarantee the availability and accessibility of those rights, even during times of scarcity. Particular attention should be paid to ensuring that women living in poverty, in particular those in informal settlements in both urban and rural areas, have access to adequate housing, drinking water, sanitation and food, especially in the context of disasters and climate change;**

(b) **Increase resilience to the impacts of disasters and climate change among women by identifying and supporting livelihoods that are sustainable and empowering, and develop gender-responsive services, including extension services to assist women farmers, that enable women to gain access to and benefit from those livelihoods;**

(c) **Develop participatory, gender-responsive development plans and policies that integrate a human rights-based approach, in order to guarantee sustainable access to adequate housing, food, water and sanitation. Priority should be given to ensuring the accessibility of services for all women;**

(d) **Adopt legislation, programmes and policies and allocate budgets to eliminate homelessness and to ensure that adequate and disaster resilient housing is available and accessible to all women, including those with disabilities. Measures must be taken to protect women against forced eviction and to ensure that public housing and rental assistance schemes accord priority and respond to the specific needs of groups of women.**

F. Right to freedom of movement

73. The increasing frequency and intensity of extreme weather events and environmental degradation resulting from climate change are likely to lead to significant population displacement both within countries and across borders.²⁹

74. The Committee and many other international human rights bodies, including the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, have recognized that disasters and climate change are among the push

²⁹ United Nations Entity for Gender Equality and the Empowerment of Women, "Addressing gender dimensions in large-scale movements of refugees and migrants", joint statement by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Elimination of Discrimination against Women, the United Nations Entity for Gender Equality and the Empowerment of Women and the Office of the United Nations High Commissioner for Human Rights, 19 September 2016.

factors for migration, in particular among women.³⁰ In several regions, climate change and disasters are contributing to an increase in the migration of women, on their own, into sectors of work done predominantly by women, for the purposes of supporting family members who no longer have local livelihood opportunities.

75. Women migrants face a heightened risk of gender-based violence, including trafficking in persons, and other forms of discrimination in transit, in camps, at borders and in destination countries. Women may also face specific human rights violations during migration and at their destination, owing to a lack of adequate sexual, reproductive and mental health services and discrimination in gaining access to employment, social security, education, housing, legal documents such as birth or marriage certificates, and justice. Migrant women and girls are frequently subject to intersecting forms of discrimination. Women who migrate may also be vulnerable to the impacts of climate change in destination areas, in particular in urban centres in developing countries.

76. In many contexts, however, women are impeded from leaving regions that are at high risk of disaster or migrating to re-establish their lives in the wake of extreme climatic events.³¹ Gender-based stereotypes, household responsibilities, discriminatory laws, lack of economic resources and limited access to social capital frequently restrict the ability of women to migrate.

77. Women who are left behind when male family members migrate may also find themselves having to take on non-traditional economic and community leadership tasks for which they have had little preparation or training, such as when disasters occur and women must assume primary responsibility for coordinating mitigation, recovery and adaptation efforts.

78. In accordance with the Convention and general recommendation No. 26 (2008) on women migrant workers and general recommendation No. 32, States parties should:

(a) **Ensure that migration and development policies are gender responsive and that they include sound disaster risk considerations and recognize disasters and climate change as important push factors for internal displacement and migration. That information should be incorporated into national and local plans for monitoring and supporting the rights of women and girls during migration and displacement;**

(b) **Facilitate the participation of migrant women, including those who have been displaced as a result of disasters and climate change, in the development, implementation and monitoring of policies designed to protect and promote their human rights at all phases of migration. Particular efforts must be made to involve migrant women in designing appropriate services in areas including mental health and psychosocial support, sexual and reproductive health, education and training, employment, housing and access to justice;**

(c) **Ensure gender balance among the border police, military personnel and government officials responsible for the reception of migrants and train those groups on the gender-specific harm that migrant women may face, including the increased risk of violence;**

(d) **Integrate human mobility-related considerations into disaster risk reduction and climate change mitigation and adaptation policies, taking into**

³⁰ Ibid. See also general recommendation No. 26 (2008) on women migrant workers.

³¹ Asian Development Bank, *Gender Equality and Food Security: Women's Empowerment as a Tool against Hunger* (Mandaluyong City, Philippines, 2013), p. 12.

account the specific rights and needs of women and girls, including unmarried women and women heads of household, before, during and after disasters.

VII. Dissemination and reporting

79. To effectively prevent and mitigate the impacts of disasters and climate change, States parties and other stakeholders should take measurable and targeted steps to collect, analyse and disseminate information and data concerning the development of strategies, policies and programmes designed to address gender inequalities, reduce disaster risk and increase resilience to the adverse effects of climate change.

80. Cooperative networks between civil society organizations working in the field of gender equality and those working in humanitarian assistance, disaster risk reduction and climate change should be established and should include national human rights institutions, government agencies at all levels and international organizations.

81. To ensure that effective monitoring and reporting systems are established, States parties should:

(a) Design and institutionalize reliable mechanisms to collect and analyse data and monitor and disseminate findings across all areas relevant to disaster risk reduction, climate change and gender equality;

(b) Ensure the participation of women at the subnational, national, regional and international levels in data collection and analysis and the monitoring and dissemination of findings;

(c) Include information in their periodic reports to the Committee on the legal frameworks, strategies, budgets and programmes that they have implemented to ensure that the human rights of women are promoted and protected within policies relating to climate change and disaster risk reduction;

(d) Translate the present general recommendation into national and local languages, including indigenous and minority languages, and disseminate it widely to all branches of government, civil society, the media, academic institutions and women's organizations.



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Committee on Economic, Social and Cultural Rights

Climate change and the International Covenant on Economic, Social and Cultural Rights

Statement by the Committee on Economic, Social and Cultural Rights*

I. Introduction

1. The Committee on Economic, Social and Cultural Rights welcomes the special report of the Intergovernmental Panel on Climate Change on the impacts of global warming of 1.5°C above pre-industrial levels, which was published on 8 October 2018. The report further demonstrates that climate change constitutes a massive threat to the enjoyment of economic, social and cultural rights.

2. In 1992, when they adopted the United Nations Framework Convention on Climate Change, States agreed that they would seek to achieve stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system (art. 2). In December 2015, reference was made in the Paris Agreement to the global goal of keeping temperatures well below 2°C, while also committing its parties to pursue efforts to limit the temperature increase to 1.5°C (art. 2). In the report published on 8 October, the Intergovernmental Panel shows that complying with this limit is imperative.

3. The Committee welcomes the pledges already made. Quite apart from such voluntary commitments made under the climate change regime, however, all States have human rights obligations, which should guide them in the design and implementation of measures to address climate change.

II. Human rights implications of climate change

4. The impacts of climate change on a range of rights guaranteed under the International Covenant on Economic, Social and Cultural Rights have been amply documented (A/HRC/32/23). Climate change already affects, in particular, the rights to health, food, water and sanitation; and it will do so at an increasing pace in the future. Projected increases in average seasonal temperatures and the frequency and intensity of heatwaves will contribute to an increase in heat-related deaths. Compared with a future without climate change, this is anticipated to result in nearly 38,000 additional deaths annually as of 2030 and nearly 100,000 additional deaths annually as of 2050, with the

* The present statement, which was adopted by the Committee at its sixty-fourth session, held from 24 September to 12 October 2018, was prepared pursuant to the Committee's practice on the adoption of statements (see *Official Records of the Economic and Social Council, 2011, Supplement No. 2* (E/2011/22), chap. II, sect. K).



largest impacts to be felt in South-East Asia. Climate change also affects nutrition through changes in crop yields, loss of livelihoods, increases in poverty, and reduced access to food, water and sanitation. Disrupted supplies of water and high temperatures stress crops and promote algal blooms in reservoirs, while rising ocean acidification affects fisheries. Indeed, according to the World Bank,¹ a 2°C increase in the average global temperature would put between 100 million and 400 million more persons at risk of hunger and could result in more than 3 million additional deaths from malnutrition each year. In 2014, the World Health Organization estimated approximately 95,000 additional deaths a year on account of undernutrition of children aged 5 years or less by 2030. The right to housing will also be affected. Both sea-level rise and extreme weather events, such as hurricanes and floods, will impact human settlements, especially in urban and coastal areas in which there is a higher density of human settlements, and especially for those already in vulnerable situations. Indigenous peoples and communities dependent on natural resources for their livelihoods are, and will be, particularly hit.

III. Human rights duties of States

5. Under the Covenant, States parties are required to respect, protect and fulfil all human rights for all. They owe such duties not only to their own populations, but also to populations outside their territories, in accordance with articles 55 and 56 of the Charter of the United Nations.² In so doing, they should act on the basis of the best scientific evidence available and in accordance with the Covenant.

6. This Committee has already noted that a failure to prevent foreseeable harm to human rights caused by climate change, or a failure to mobilize the maximum available resources in an effort to do so, could constitute a breach of this obligation.³ The nationally determined contributions that have been announced so far are insufficient to meet what scientists tell us is required to avoid the most severe impacts of climate change. In order to act consistently with their human rights obligations, those contributions should be revised to better reflect the “highest possible ambition” referred to in the Paris Agreement (art. 4 (3)). The future implementation guidelines of the Agreement should require States to take into account their human rights duties in the design of their nationally determined contributions. This implies acting in accordance with the principles of gender sensitivity, participation, transparency and accountability; and building on local and traditional knowledge.

7. Moreover, States parties should adopt measures to adapt to the negative consequences of climate change, and integrate such measures within existing social, environmental and budgetary policies at national level. Finally, as part of their duties of international assistance and cooperation for the realization of human rights, high-income States should also support adaptation efforts, particularly in developing countries, by facilitating the transfer of green technologies, and by contributing to the Green Climate Fund. This would be consistent with the requirement under the Covenant that States ensure the right of everyone to enjoy the benefits of scientific progress, and with the Covenant’s acknowledgement of the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific field (art. 15 (1) (b) and (4)).

IV. Contribution of human rights mechanisms

8. In some countries, courts and other human rights mechanisms, including national human rights institutions, have taken an active role in ensuring that States comply with their duties under existing human rights instruments to combat climate change. In particular,

¹ World Bank, *World Development Report 2010: Development and Climate Change* (Washington, D.C., 2010).

² General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, para. 27.

³ See, for example, E/C.12/FIN/CO/6, para. 9; E/C.12/CAN/CO/6, para. 53; and E/C.12/RUS/CO/6, para. 42.

courts have accepted to hear claims filed by victims of climate change or by non-governmental organizations, and ordered States to adopt action plans reasonably tailored to the urgent need to mitigate climate change and, where necessary, to adapt to its unavoidable impacts.

9. The Committee welcomes this development. Human rights mechanisms have an essential role to play in protecting human rights by ensuring that States avoid taking measures that could accelerate climate change, and that they dedicate the maximum available resources to the adoption of measures that could mitigate climate change. Such measures include accelerating the shift to renewable sources of energy, such as wind or solar; slowing down deforestation and moving to agroecological farming allowing soils to function as carbon sinks; improving the insulation of buildings; and investing in public transport. A fundamental shift from hydrocarbon to renewable energy sources in the global energy order is urgently required, in order to avoid dangerous anthropogenic interference with the climate system and the significant human rights violations that such interference would cause.

10. Complying with human rights obligations in the context of climate change is a duty of both State and non-State actors. This requires respecting human rights, by refraining from the adoption of measures that could worsen climate change; protecting human rights, by effectively regulating private actors to ensure that their actions do not worsen climate change; and fulfilling human rights, by adopting policies that can channel modes of production and consumption towards a more environmentally sustainable pathway. Corporate entities are expected to respect Covenant rights regardless of whether national laws exist or are fully enforced in practice (see general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, para. 5). Courts and other human rights mechanisms should ensure that business activities are appropriately regulated to ensure that they support, rather than undermine, the efforts of States to combat climate change.

V. Role of the Committee

11. In its future work, the Committee will continue to keep under review the impacts of climate change on economic, social and cultural rights, and provide guidance to States on how they can discharge their duties under the Covenant in the mitigation of climate change and adaptation to its unavoidable effects.



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Human Rights Committee

General comment No. 36

Article 6: right to life* **

I. General remarks

1. This general comment replaces general comments No. 6, adopted by the Committee at its sixteenth session (1982), and No. 14, adopted by the Committee at its twenty-third session (1984).

2. Article 6 of the International Covenant on Civil and Political Rights recognizes and protects the right to life of all human beings. The right to life is the supreme right from which no derogation is permitted, even in situations of armed conflict and other public emergencies that threaten the life of the nation.¹ The right to life has crucial importance both for individuals and for society as a whole. It is most precious for its own sake as a right that inheres in every human being, but it also constitutes a fundamental right,² the effective protection of which is the prerequisite for the enjoyment of all other human rights and the content of which can be informed by other human rights.

3. The right to life is a right that should not be interpreted narrowly. It concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity. Article 6 of the Covenant guarantees this right for all human beings, without distinction of any kind, including for persons suspected or convicted of even the most serious crimes.

4. Paragraph 1 of article 6 of the Covenant provides that no one shall be arbitrarily deprived of life and that this right shall be protected by law. It lays the foundation for the obligation of States parties to respect and ensure the right to life, to give effect to it through legislative and other measures, and to provide effective remedies and reparation to all victims of violations of the right to life.

5. Paragraphs 2, 4, 5 and 6 of article 6 of the Covenant set out specific safeguards to ensure that in States parties that have not yet abolished the death penalty, death sentences are not applied except for the most serious crimes, and then only in the most exceptional cases and under the strictest limits (see part IV below). The prohibition on arbitrary deprivation of life contained in article 6 (1) further limits the ability of States parties to apply the death penalty. The provisions in paragraph 3 regulate specifically the relationship between article 6 of the Covenant and the Convention on the Prevention and Punishment of the Crime of Genocide.

* Adopted by the Committee at its 124th session (8 October–2 November 2018).

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6. Deprivation of life involves intentional³ or otherwise foreseeable and preventable life-terminating harm or injury, caused by an act or omission. It goes beyond injury to bodily or mental integrity or a threat thereto.⁴

7. States parties must respect the right to life. This entails the duty to refrain from engaging in conduct resulting in arbitrary deprivation of life. States parties must also ensure the right to life and exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities whose conduct is not attributable to the State.⁵ The obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 even if such threats and situations do not result in loss of life.⁶

8. Although States parties may adopt measures designed to regulate voluntary termination of pregnancy, those measures must not result in violation of the right to life of a pregnant woman or girl, or her other rights under the Covenant. Thus, restrictions on the ability of women or girls to seek abortion must not, inter alia, jeopardize their lives, subject them to physical or mental pain or suffering that violates article 7 of the Covenant, discriminate against them or arbitrarily interfere with their privacy. States parties must provide safe, legal and effective access to abortion where the life and health of the pregnant woman or girl is at risk, or where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or where the pregnancy is not viable.⁷ In addition, States parties may not regulate pregnancy or abortion in all other cases in a manner that runs contrary to their duty to ensure that women and girls do not have to resort to unsafe abortions, and they should revise their abortion laws accordingly.⁸ For example, they should not take measures such as criminalizing pregnancy of unmarried women or applying criminal sanctions to women and girls who undergo abortion⁹ or to medical service providers who assist them in doing so, since taking such measures compels women and girls to resort to unsafe abortion. States parties should remove existing barriers¹⁰ to effective access by women and girls to safe and legal abortion,¹¹ including barriers caused as a result of the exercise of conscientious objection by individual medical providers,¹² and should not introduce new barriers. States parties should also effectively protect the lives of women and girls against the mental and physical health risks associated with unsafe abortions. In particular, they should ensure access for women and men, and especially girls and boys,¹³ to quality and evidence-based information and education on sexual and reproductive health¹⁴ and to a wide range of affordable contraceptive methods,¹⁵ and prevent the stigmatization of women and girls who seek abortion.¹⁶ States parties should ensure the availability of, and effective access to, quality prenatal and post-abortion health care for women and girls,¹⁷ in all circumstances and on a confidential basis.¹⁸

9. While acknowledging the central importance to human dignity of personal autonomy, States should take adequate measures, without violating their other Covenant obligations, to prevent suicides, especially among individuals in particularly vulnerable situations,¹⁹ including individuals deprived of their liberty. States parties that allow medical professionals to provide medical treatment or the medical means to facilitate the termination of life of afflicted adults, such as the terminally ill, who experience severe physical or mental pain and suffering and wish to die with dignity,²⁰ must ensure the existence of robust legal and institutional safeguards to verify that medical professionals are complying with the free, informed, explicit and unambiguous decision of their patients, with a view to protecting patients from pressure and abuse.²¹

II. Prohibition against arbitrary deprivation of life

10. Although it inheres in every human being,²² the right to life is not absolute. While the Covenant does not enumerate the permissible grounds for deprivation of life, by requiring that deprivations of life must not be arbitrary, article 6 (1) implicitly recognizes that some deprivations of life may be non-arbitrary. For example, the use of lethal force in self-defence, under the conditions specified in paragraph 12 below, would not constitute an arbitrary deprivation of life. Even those exceptional measures leading to deprivations of life that are not arbitrary per se must be applied in a manner that is not arbitrary in fact. Such exceptional

measures should be established by law and accompanied by effective institutional safeguards designed to prevent arbitrary deprivations of life. Furthermore, States that have not abolished the death penalty and that are not parties to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, or other treaties providing for the abolition of the death penalty can apply the death penalty only in a non-arbitrary manner, for the most serious crimes and subject to a number of strict conditions elaborated in part IV below.

11. The second sentence of article 6 (1) requires that the right to life be protected by law, while the third sentence requires that no one be arbitrarily deprived of life. The two requirements partly overlap in that a deprivation of life that lacks a legal basis or is otherwise inconsistent with life-protecting laws and procedures is, as a rule, arbitrary in nature. For example, a death sentence issued following legal proceedings conducted in violation of domestic laws of criminal procedure or evidence will generally be both unlawful and arbitrary.

12. Deprivation of life is, as a rule, arbitrary if it is inconsistent with international law or domestic law.²³ A deprivation of life may, nevertheless, be authorized by domestic law and still be arbitrary. The notion of “arbitrariness” is not to be fully equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law,²⁴ as well as elements of reasonableness, necessity and proportionality. In order not to be qualified as arbitrary under article 6, the application of potentially lethal force by a private person acting in self-defence, or by another person coming to his or her defence, must be strictly necessary in view of the threat posed by the attacker; it must represent a method of last resort after other alternatives have been exhausted or deemed inadequate;²⁵ the amount of force applied cannot exceed the amount strictly needed for responding to the threat;²⁶ the force applied must be carefully directed, only against the attacker; and the threat responded to must involve imminent death or serious injury.²⁷ The use of potentially lethal force for law enforcement purposes is an extreme measure²⁸ that should be resorted to only when strictly necessary in order to protect life or prevent serious injury from an imminent threat.²⁹ It cannot be used, for example, in order to prevent the escape from custody of a suspected criminal or a convict who does not pose a serious and imminent threat to the lives or bodily integrity of others.³⁰ The intentional taking of life by any means is permissible only if it is strictly necessary in order to protect life from an imminent threat.³¹

13. States parties are expected to take all necessary measures to prevent arbitrary deprivation of life by their law enforcement officials, including soldiers charged with law enforcement missions. These measures include putting in place appropriate legislation controlling the use of lethal force by law enforcement officials, procedures designed to ensure that law enforcement actions are adequately planned in a manner consistent with the need to minimize the risk they pose to human life,³² mandatory reporting, review and investigation of lethal incidents and other life-threatening incidents, and supplying forces responsible for crowd control with effective, less-lethal means and adequate protective equipment in order to obviate their need to resort to lethal force (see also para. 14 below).³³ In particular, all operations of law enforcement officials should comply with relevant international standards, including the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,³⁴ and law enforcement officials should undergo appropriate training designed to inculcate these standards³⁵ so as to ensure, in all circumstances, the fullest respect for the right to life.

14. While preferable to more lethal weapons, States parties should ensure that less-lethal weapons are subject to strict independent testing and evaluate and monitor the impact on the right to life of weapons such as electro-muscular disruption devices (Tasers),³⁶ rubber or foam bullets, and other attenuating energy projectiles,³⁷ which are designed for use or are actually used by law enforcement officials, including soldiers charged with law enforcement missions.³⁸ The use of such weapons must be restricted to law enforcement officials who have undergone appropriate training, and must be strictly regulated in accordance with applicable international standards, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.³⁹ Furthermore, less-lethal weapons must be employed only subject to strict requirements of necessity and proportionality, in situations in which other less harmful measures have proven to be or clearly are ineffective to address the

threat.⁴⁰ States parties should not resort to less-lethal weapons in situations of crowd control that can be addressed through less harmful means,⁴¹ especially situations involving the exercise of the right to peaceful assembly.

15. When private individuals or entities are empowered or authorized by a State party to employ force with potentially lethal consequences, the State party is under an obligation to ensure that such employment of force actually complies with article 6 and the State party remains responsible for any failure to comply.⁴² Among other things, a State party must rigorously limit the powers afforded to private actors and ensure that strict and effective measures of monitoring and control, as well as adequate training, are in place in order to guarantee, *inter alia*, that the powers granted are not misused and do not lead to arbitrary deprivation of life. For example, a State party must take adequate measures to ensure that persons who were involved or are currently involved in serious human rights violations or abuses are excluded from private security entities empowered or authorized to employ force.⁴³ It must also ensure that victims of arbitrary deprivation of life by private individuals or entities empowered or authorized by the State party are granted an effective remedy.⁴⁴

16. Paragraphs 2, 4 and 5 of article 6 implicitly recognize that countries that have not abolished the death penalty and have not ratified the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, are not legally barred under the Covenant from applying the death penalty with regard to the most serious crimes, subject to a number of strict conditions. Other procedures regulating activity that may result in deprivation of life, such as protocols for administering new drugs, must be established by law, accompanied by effective institutional safeguards designed to prevent arbitrary deprivation of life, and must be compatible with other provisions of the Covenant.

17. The deprivation of life of individuals through acts or omissions that violate provisions of the Covenant other than article 6 is, as a rule, arbitrary in nature. This includes, for example, the use of force resulting in the death of demonstrators exercising their right to freedom of assembly⁴⁵ and the passing of a death sentence following a trial that failed to meet the due process requirements of article 14 of the Covenant.⁴⁶

III. Duty to protect life

18. The second sentence of article 6 (1) provides that the right to life “shall be protected by law”. This implies that States parties must establish a legal framework to ensure the full enjoyment of the right to life by all individuals as may be necessary to give effect to the right to life. The duty to protect the right to life by law also includes an obligation for States parties to adopt any appropriate laws or other measures in order to protect life from all reasonably foreseeable threats, including from threats emanating from private persons and entities.

19. The duty to protect by law the right to life requires that any substantive ground for deprivation of life must be prescribed by law and must be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.⁴⁷ Since deprivation of life by the authorities of the State is a matter of the utmost gravity, the law must strictly control and limit the circumstances in which a person may be deprived of his or her life by those authorities,⁴⁸ and States parties must ensure full compliance with all of the relevant legal provisions. The duty to protect by law the right to life also requires States parties to organize all State organs and governance structures through which public authority is exercised in a manner consistent with the need to respect and ensure the right to life,⁴⁹ including establishing by law adequate institutions and procedures for preventing deprivation of life, investigating and prosecuting potential cases of unlawful deprivation of life, meting out punishment and providing full reparation.

20. States parties must enact a protective legal framework that includes effective criminal prohibitions on all manifestations of violence or incitement to violence that are likely to result in deprivation of life, such as intentional and negligent homicide, unnecessary or disproportionate use of firearms,⁵⁰ infanticide,⁵¹ “honour” killings,⁵² lynching,⁵³ violent hate crimes,⁵⁴ blood feuds,⁵⁵ ritual killings,⁵⁶ death threats and terrorist attacks. The criminal sanctions attached to these crimes must be commensurate with their gravity,⁵⁷ while remaining compatible with all the provisions of the Covenant.

21. The duty to take positive measures to protect the right to life derives from the general duty to ensure the rights recognized in the Covenant, which is articulated in article 2 (1) when read in conjunction with article 6, as well as from the specific duty to protect the right to life by law, which is articulated in the second sentence of article 6. States parties are thus under a due diligence obligation to take reasonable, positive measures that do not impose disproportionate burdens on them⁵⁸ in response to reasonably foreseeable threats to life originating from private persons and entities whose conduct is not attributable to the State.⁵⁹ Hence, States parties are obliged to take adequate preventive measures in order to protect individuals against reasonably foreseen threats of being murdered or killed by criminals and organized crime or militia groups, including armed or terrorist groups (see also para. 23 below).⁶⁰ States parties should also disband irregular armed groups, such as private armies and vigilante groups, that are responsible for deprivations of life⁶¹ and reduce the proliferation of potentially lethal weapons to unauthorized individuals.⁶² States parties must further take adequate measures of protection, including continuous supervision,⁶³ in order to prevent, investigate, punish and remedy arbitrary deprivation of life by private entities, such as private transportation companies, private hospitals⁶⁴ and private security firms.

22. States parties must take appropriate measures to protect individuals against deprivation of life by other States, international organizations and foreign corporations operating within their territory⁶⁵ or in other areas subject to their jurisdiction. They must also take appropriate legislative and other measures to ensure that all activities taking place in whole or in part within their territory and in other places subject to their jurisdiction, but having a direct and reasonably foreseeable impact on the right to life of individuals outside their territory, including activities undertaken by corporate entities based in their territory or subject to their jurisdiction,⁶⁶ are consistent with article 6, taking due account of related international standards of corporate responsibility⁶⁷ and of the right of victims to obtain an effective remedy.

23. The duty to protect the right to life requires States parties to take special measures of protection towards persons in vulnerable situations whose lives have been placed at particular risk because of specific threats⁶⁸ or pre-existing patterns of violence. Such persons include human rights defenders (see also para. 53 below),⁶⁹ officials fighting corruption and organized crime, humanitarian workers, journalists,⁷⁰ prominent public figures, witnesses to crime⁷¹ and victims of domestic and gender-based violence and human trafficking. They may also include children,⁷² especially children in street situations, unaccompanied migrant children and children in situations of armed conflict, members of ethnic and religious minorities,⁷³ indigenous peoples,⁷⁴ lesbian, gay, bisexual, transgender and intersex persons,⁷⁵ persons with albinism,⁷⁶ alleged witches,⁷⁷ displaced persons, asylum seekers, refugees⁷⁸ and stateless persons. States parties must respond urgently and effectively in order to protect individuals who find themselves under a specific threat, by adopting special measures such as the assignment of around-the-clock police protection, the issuance of protection and restraining orders against potential aggressors and, in exceptional cases, and only with the free and informed consent of the threatened individual, protective custody.

24. Persons with disabilities, including psychosocial or intellectual disabilities, are also entitled to specific measures of protection so as to ensure their effective enjoyment of the right to life on an equal basis with others.⁷⁹ Such measures of protection must include the provision of reasonable accommodation when necessary to ensure the right to life, such as ensuring access of persons with disabilities to essential facilities and services,⁸⁰ and specific measures designed to prevent unwarranted use of force by law enforcement agents against persons with disabilities.⁸¹

25. States parties also have a heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State,⁸² since by arresting, detaining, imprisoning or otherwise depriving individuals of their liberty, States parties assume the responsibility to care for their lives⁸³ and bodily integrity, and they may not rely on lack of financial resources or other logistical problems to reduce this responsibility.⁸⁴ The same heightened duty of care attaches to individuals held in private incarceration facilities operating pursuant to an authorization by the State. The duty to protect the life of all detained individuals includes providing them with the necessary medical care and appropriate regular monitoring of their health,⁸⁵ shielding them from inter-prisoner violence,⁸⁶ preventing

suicides and providing reasonable accommodation for persons with disabilities.⁸⁷ A heightened duty to protect the right to life also applies to individuals quartered in liberty-restricting State-run facilities, such as mental health facilities,⁸⁸ military camps,⁸⁹ refugee camps and camps for internally displaced persons,⁹⁰ juvenile institutions and orphanages.

26. The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include high levels of criminal and gun violence,⁹¹ pervasive traffic and industrial accidents,⁹² degradation of the environment (see also para. 62 below),⁹³ deprivation of indigenous peoples' land, territories and resources,⁹⁴ the prevalence of life-threatening diseases, such as AIDS, tuberculosis and malaria,⁹⁵ extensive substance abuse, widespread hunger and malnutrition and extreme poverty and homelessness.⁹⁶ The measures called for to address adequate conditions for protecting the right to life include, where necessary, measures designed to ensure access without delay by individuals to essential goods and services such as food,⁹⁷ water, shelter, health care,⁹⁸ electricity and sanitation, and other measures designed to promote and facilitate adequate general conditions, such as the bolstering of effective emergency health services, emergency response operations (including firefighters, ambulance services and police forces) and social housing programmes. States parties should also develop strategic plans for advancing the enjoyment of the right to life, which may comprise measures to fight the stigmatization associated with disabilities and diseases, including sexually transmitted diseases, which hamper access to medical care;⁹⁹ detailed plans to promote education for non-violence; and campaigns for raising awareness of gender-based violence¹⁰⁰ and harmful practices,¹⁰¹ and for improving access to medical examinations and treatments designed to reduce maternal and infant mortality.¹⁰² Furthermore, States parties should also develop, when necessary, contingency plans and disaster management plans designed to increase preparedness and address natural and man-made disasters that may adversely affect enjoyment of the right to life, such as hurricanes, tsunamis, earthquakes, radioactive accidents and massive cyberattacks resulting in disruption of essential services.

27. An important element of the protection afforded to the right to life by the Covenant is the obligation on the States parties, where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute the perpetrators of such incidents, including incidents involving allegations of excessive use of force with lethal consequences (see also para. 64 below).¹⁰³ The duty to investigate also arises in circumstances in which a serious risk of deprivation of life was caused by the use of potentially lethal force, even if the risk did not materialize (see also para. 7 above). This obligation is implicit in the obligation to protect and is reinforced by the general duty to ensure the rights recognized in the Covenant, which is articulated in article 2 (1), when read in conjunction with article 6 (1), and the duty to provide an effective remedy to victims of human rights violations¹⁰⁴ and their relatives,¹⁰⁵ which is articulated in article 2 (3) of the Covenant, when read in conjunction with article 6 (1). Investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice,¹⁰⁶ at promoting accountability and preventing impunity,¹⁰⁷ at avoiding denial of justice¹⁰⁸ and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations.¹⁰⁹ Investigations should explore, inter alia, the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates.¹¹⁰ Given the importance of the right to life, States parties must generally refrain from addressing violations of article 6 merely through administrative or disciplinary measures, and a criminal investigation is normally required, which should lead, if enough incriminating evidence is gathered, to a criminal prosecution.¹¹¹ Immunities and amnesties provided to perpetrators of intentional killings and to their superiors, and comparable measures leading to de facto or de jure impunity, are, as a rule, incompatible with the duty to respect and ensure the right to life, and to provide victims with an effective remedy.¹¹²

28. Investigations into allegations of violations of article 6 must always be independent,¹¹³ impartial,¹¹⁴ prompt,¹¹⁵ thorough,¹¹⁶ effective,¹¹⁷ credible¹¹⁸ and transparent (see also para. 64 below).¹¹⁹ In the event that a violation is found, full reparation must be provided, including,

in view of the particular circumstances of the case, adequate measures of compensation, rehabilitation and satisfaction.¹²⁰ States parties are also under an obligation to take steps to prevent the occurrence of similar violations in the future.¹²¹ Where relevant, the investigation should include an autopsy of the victim's body,¹²² whenever possible, in the presence of a representative of the victim's relatives.¹²³ States parties need to take, among other things, appropriate measures to establish the truth relating to the events leading to the deprivation of life, including the reasons and legal basis for targeting certain individuals and the procedures employed by State forces before, during and after the time at which the deprivation occurred,¹²⁴ and identify the bodies of the individuals who have lost their lives.¹²⁵ States parties should also disclose relevant details about the investigation to the victim's next of kin,¹²⁶ allow the next of kin to present new evidence, afford the next of kin legal standing in the investigation,¹²⁷ and make public information about the investigative steps taken and the findings, conclusions and recommendations emanating from the investigation,¹²⁸ subject to absolutely necessary redactions justified by a compelling need to protect the public interest or the privacy and other legal rights of directly affected individuals. States parties must also take the necessary steps to protect witnesses, victims and their relatives and persons conducting the investigation from threats, attacks and any act of retaliation. An investigation into violations of the right to life should commence when appropriate *ex officio*.¹²⁹ States should support and cooperate in good faith with international mechanisms of investigation and prosecutions addressing possible violations of article 6.¹³⁰

29. Loss of life occurring in custody, in unnatural circumstances, creates a presumption of arbitrary deprivation of life by State authorities, which can only be rebutted on the basis of a proper investigation that establishes the State's compliance with its obligations under article 6.¹³¹ States parties also have a particular duty to investigate allegations of violations of article 6 whenever State authorities have used or appear to have used firearms or other potentially lethal force outside the immediate context of an armed conflict, for example, when live fire has been used against demonstrators,¹³² or when civilians have been found dead in circumstances fitting a pattern of alleged violations of the right to life by State authorities.¹³³

30. The duty to respect and ensure the right to life requires States parties to refrain from deporting, extraditing or otherwise transferring individuals to countries in which there are substantial grounds for believing that a real risk exists that their right to life under article 6 of the Covenant would be violated.¹³⁴ Such a risk must be personal in nature¹³⁵ and cannot derive merely from the general conditions in the receiving State, except in the most extreme cases.¹³⁶ For example, as explained in paragraph 34 below, it would be contrary to article 6 to extradite an individual from a country that had abolished the death penalty to a country in which he or she might face the death penalty.¹³⁷ Similarly, it would be inconsistent with article 6 to deport an individual to a country in which a fatwa had been issued against him or her by local religious authorities, without verifying that the fatwa was not likely to be followed;¹³⁸ or to deport an individual to an extremely violent country in which he or she had never lived, had no social or family contacts and could not speak the local language.¹³⁹ In cases involving allegations of risk to the life of the removed individual emanating from the authorities of the receiving State, the situation of the removed individual and the conditions in the receiving States need to be assessed, *inter alia*, based on the intent of the authorities of the receiving State, the pattern of conduct they have shown in similar cases,¹⁴⁰ and the availability of credible and effective assurances about their intentions. When the alleged risk to life emanates from non-State actors or foreign States operating in the territory of the receiving State, credible and effective assurances for protection by the authorities of the receiving State may be sought and internal flight options could be explored. When relying upon assurances from the receiving State of treatment upon removal, the removing State should put in place adequate mechanisms for ensuring compliance with the issued assurances from the moment of removal onwards.¹⁴¹

31. The obligation not to extradite, deport or otherwise transfer, pursuant to article 6 of the Covenant, may be broader than the scope of the principle of non-refoulement under international refugee law, since it may also require the protection of aliens not entitled to refugee status. States parties must, however, allow all asylum seekers claiming a real risk of a violation of their right to life in the State of origin access to refugee or other individualized or group status determination procedures that could offer them protection against refoulement.¹⁴²

IV. Imposition of the death penalty

32. Paragraphs 2, 4, 5 and 6 of article 6 regulate the imposition of the death penalty by those countries that have not yet abolished it.

33. Paragraph 2 of article 6 strictly limits the application of the death penalty, firstly, to States parties that have not abolished the death penalty, and secondly, to the most serious crimes. Given the anomalous nature of regulating the application of the death penalty in an instrument enshrining the right to life, the contents of paragraph 2 have to be narrowly construed.¹⁴³

34. States parties to the Covenant that have abolished the death penalty, through amending their domestic laws, becoming parties to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, or adopting another international instrument obligating them to abolish the death penalty, are barred from reintroducing it. Like the Covenant, the Second Optional Protocol does not contain termination provisions and States parties cannot denounce it. Abolition of the death penalty is therefore legally irrevocable. Furthermore, States parties may not transform into a capital offence any offence that, upon ratification of the Covenant or at any time thereafter, did not entail the death penalty. Nor can they remove legal conditions from an existing offence with the result of permitting the imposition of the death penalty in circumstances in which it was not possible to impose it before. States parties that have abolished the death penalty cannot deport, extradite or otherwise transfer persons to a country in which they are facing criminal charges that carry the death penalty, unless credible and effective assurances against the imposition of the death penalty have been obtained.¹⁴⁴ In the same vein, the obligation not to reintroduce the death penalty for any specific crime requires States parties not to deport, extradite or otherwise transfer an individual to a country in which he or she is expected to stand trial for a capital offence, if the same offence does not carry the death penalty in the removing State, unless credible and effective assurances against exposing the individual to the death penalty have been obtained.

35. The term “the most serious crimes” must be read restrictively¹⁴⁵ and appertain only to crimes of extreme gravity¹⁴⁶ involving intentional killing.¹⁴⁷ Crimes not resulting directly and intentionally in death,¹⁴⁸ such as attempted murder,¹⁴⁹ corruption and other economic and political crimes,¹⁵⁰ armed robbery,¹⁵¹ piracy,¹⁵² abduction,¹⁵³ drug¹⁵⁴ and sexual offences, although serious in nature, can never serve as the basis, within the framework of article 6, for the imposition of the death penalty. In the same vein, a limited degree of involvement or of complicity in the commission of even the most serious crimes, such as providing the physical means for the commission of murder, cannot justify the imposition of the death penalty. States parties are under an obligation to review their criminal laws so as to ensure that the death penalty is not imposed for crimes that do not qualify as the most serious crimes.¹⁵⁵ They should also revoke death sentences issued for crimes not qualifying as the most serious crimes and pursue the necessary legal procedures to resentence those convicted for such crimes.

36. Under no circumstances can the death penalty ever be applied as a sanction against conduct the very criminalization of which violates the Covenant, including adultery, homosexuality, apostasy,¹⁵⁶ establishing political opposition groups¹⁵⁷ or offending a head of State.¹⁵⁸ States parties that retain the death penalty for such offences commit a violation of their obligations under article 6, read alone and in conjunction with article 2 (2) of the Covenant, as well as of other provisions of the Covenant.

37. In all cases involving the application of the death penalty, the personal circumstances of the offender and the particular circumstances of the offence, including its specific attenuating elements,¹⁵⁹ must be considered by the sentencing court. Hence, mandatory death sentences that leave domestic courts with no discretion as to whether to designate the offence as a crime warranting the death penalty, and whether to issue the death sentence in the particular circumstances of the offender, are arbitrary in nature.¹⁶⁰ The availability of a right to seek pardon or commutation on the basis of the special circumstances of the case or the accused is not an adequate substitute for the need for judicial discretion in the application of the death penalty.¹⁶¹

38. Article 6 (2) also requires States parties to ensure that any death sentence would be “in accordance with the law in force at the time of the commission of the crime”. This application of the principle of legality complements and reaffirms the application of the principle of *nulla poena sine lege* found in article 15 (1) of the Covenant. As a result, the death penalty can never be imposed if it was not provided by law for the offence at the time of its commission. Nor can the imposition of the death penalty be based on vaguely defined criminal provisions,¹⁶² whose application to the convicted individual depend on subjective or discretionary considerations,¹⁶³ the application of which is not reasonably foreseeable.¹⁶⁴ On the other hand, the abolition of the death penalty should apply retroactively to individuals charged or convicted of a capital offence in accordance with the retroactive leniency (*lex mitior*) principle, which finds partial expression in the third sentence of article 15 (1), requiring States parties to grant offenders the benefit of lighter penalties adopted after the commission of the offence. The retroactive application of the abolition of the death penalty to all individuals charged or convicted of a capital crime also derives from the fact that the need for applying the death penalty cannot be justified once it has been abolished.

39. Article 6 (3) reminds all States parties that are also parties to the Convention on the Prevention and Punishment of the Crime of Genocide of their obligations to prevent and punish the crime of genocide, which include the obligation to prevent and punish all deprivations of life, which constitute part of a crime of genocide. Under no circumstances can the death penalty be imposed as part of a policy of genocide against members of a national, ethnic, racial or religious group.

40. States parties that have not abolished the death penalty must respect article 7 of the Covenant, which prohibits certain methods of execution. Failure to respect article 7 would inevitably render the execution arbitrary in nature and thus also in violation of article 6. The Committee has already opined that stoning,¹⁶⁵ injection of untested lethal drugs,¹⁶⁶ gas chambers,¹⁶⁷ burning and burying alive¹⁶⁸ and public executions¹⁶⁹ are contrary to article 7. For similar reasons, other painful and humiliating methods of execution are also unlawful under the Covenant. Failure to provide individuals on death row with timely notification about the date of their execution constitutes, as a rule, a form of ill-treatment, which renders the subsequent execution contrary to article 7 of the Covenant.¹⁷⁰ Extreme delays in the implementation of a death penalty sentence that exceed any reasonable period of time necessary to exhaust all legal remedies¹⁷¹ may also entail the violation of article 7 of the Covenant, especially when the long time on death row exposes sentenced persons to harsh¹⁷² or stressful conditions, including solitary confinement,¹⁷³ and when sentenced persons are particularly vulnerable due to factors such as age, health or mental state.¹⁷⁴

41. Violation of the fair trial guarantees provided for in article 14 of the Covenant in proceedings resulting in the imposition of the death penalty would render the sentence arbitrary in nature, and in violation of article 6 of the Covenant.¹⁷⁵ Such violations might involve the use of forced confessions;¹⁷⁶ the inability of the accused to question relevant witnesses;¹⁷⁷ lack of effective representation involving confidential attorney-client meetings during all stages of the criminal proceedings,¹⁷⁸ including criminal interrogation,¹⁷⁹ preliminary hearings,¹⁸⁰ trial¹⁸¹ and appeal;¹⁸² failure to respect the presumption of innocence, which may manifest itself in the accused being placed in a cage or being handcuffed during the trial;¹⁸³ lack of an effective right of appeal;¹⁸⁴ lack of adequate time and facilities for the preparation of the defence, including the inability to access legal documents essential for conducting the legal defence or appeal, such as official prosecutorial applications to the court,¹⁸⁵ the court’s judgment¹⁸⁶ or the trial transcript; lack of suitable interpretation;¹⁸⁷ failure to provide accessible documents and procedural accommodation for persons with disabilities; excessive and unjustified delays in the trial¹⁸⁸ or the appeal process;¹⁸⁹ and general lack of fairness of the criminal process,¹⁹⁰ or lack of independence or impartiality of the trial or appeal court.

42. Other serious procedural flaws not explicitly covered by article 14 of the Covenant may nonetheless render the imposition of the death penalty contrary to article 6. For example, a failure to promptly inform detained foreign nationals of their right to consular notification pursuant to the Vienna Convention on Consular Relations, resulting in the imposition of the death penalty,¹⁹¹ and failure to afford individuals about to be deported to a country in which

their lives are claimed to be at real risk the opportunity to avail themselves of available appeal procedures¹⁹² would violate article 6 (1) of the Covenant.

43. The execution of sentenced persons whose guilt has not been established beyond reasonable doubt also constitutes an arbitrary deprivation of life. States parties must therefore take all feasible measures in order to avoid wrongful convictions in death penalty cases,¹⁹³ to review procedural barriers to reconsideration of convictions and to re-examine past convictions on the basis of new evidence, including new DNA evidence. States parties should also consider the implications for the evaluation of evidence presented in capital cases of new reliable studies, including studies suggesting the prevalence of false confessions and the unreliability of eyewitness testimony.

44. The death penalty must not be imposed in a discriminatory manner contrary to the requirements of articles 2 (1) and 26 of the Covenant. Data suggesting that members of religious, racial or ethnic minorities, indigent persons or foreign nationals are disproportionately likely to face the death penalty may indicate an unequal application of the death penalty, which raises concerns under article 2 (1) read in conjunction with article 6, as well as under article 26.¹⁹⁴

45. According to the last sentence of article 6 (2), the death penalty can only be carried out pursuant to a judgment of a competent court. Such a court must be established by law within the judiciary, be independent of the executive and legislative branches and be impartial.¹⁹⁵ It should be established before the commission of the offence. As a rule, civilians must not be tried for capital crimes before military tribunals¹⁹⁶ and military personnel can be tried for offences carrying the death penalty only before a tribunal affording all fair trial guarantees. Furthermore, the Committee does not consider courts of customary justice to constitute judicial institutions offering sufficient fair trial guarantees to enable them to try capital crimes. The issuance of a death penalty without any trial, for example in the form of a religious edict¹⁹⁷ or military order that the State plans to carry out or allows to be carried out, violates both articles 6 and 14 of the Covenant.

46. Any penalty of death can be carried out only pursuant to a final judgment, after an opportunity to resort to all judicial appeal procedures has been provided to the sentenced person, and after petitions to all other available non-judicial avenues have been resolved, including supervisory review by prosecutors or courts, and consideration of requests for official or private pardon. Furthermore, death sentences must not be carried out as long as international interim measures requiring a stay of execution are in place. Such interim measures are designed to allow review of the sentence before international courts, human rights courts and commissions, and international monitoring bodies, such as the United Nations treaty bodies. Failure to implement such interim measures is incompatible with the obligation to respect in good faith the procedures established under the specific treaties governing the work of the relevant international bodies.¹⁹⁸

47. States parties are required pursuant to article 6 (4) to allow individuals sentenced to death to seek pardon or commutation, to ensure that amnesties, pardons and commutation can be granted to them in appropriate circumstances, and to ensure that sentences are not carried out before requests for pardon or commutation have been meaningfully considered and conclusively decided upon according to applicable procedures.¹⁹⁹ No category of sentenced persons can be a priori excluded from such measures of relief, nor should the conditions for attainment of relief be ineffective, unnecessarily burdensome, discriminatory in nature or applied in an arbitrary manner.²⁰⁰ Article 6 (4) does not prescribe a particular procedure for the exercise of the right to seek pardon or commutation and States parties consequently retain discretion in spelling out the relevant procedures.²⁰¹ Still, such procedures should be specified in domestic legislation,²⁰² and they should not afford the families of victims of crime a preponderant role in determining whether the death sentence should be carried out.²⁰³ Furthermore, pardon or commutation procedures must offer certain essential guarantees, including certainty about the processes followed and the substantive criteria applied and the rights for individuals sentenced to death to initiate pardon or commutation procedures and to make representations about their personal or other relevant circumstances, to be informed in advance when the request will be considered, and to be informed promptly about the outcome of the procedure.²⁰⁴

48. Article 6 (5) prohibits the imposition of the death penalty for crimes committed by persons below the age of 18 at the time of the offence.²⁰⁵ This necessarily implies that such persons can never face the death penalty for that offence, regardless of their age at the time of sentencing or at the time foreseen for carrying out the sentence.²⁰⁶ If there is no reliable and conclusive proof that the person was not below the age of 18 at the time the crime was committed, he or she will have the right to the benefit of the doubt and the death penalty cannot be imposed.²⁰⁷ Article 6 (5) also prohibits States parties from carrying out the death penalty on pregnant women.

49. States parties must refrain from imposing the death penalty on individuals who face special barriers in defending themselves on an equal basis with others, such as persons whose serious psychosocial or intellectual disabilities impede their effective defence,²⁰⁸ and on persons who have limited moral culpability. They should also refrain from executing persons who have a diminished ability to understand the reasons for their sentence, and persons whose execution would be exceptionally cruel or would lead to exceptionally harsh results for them and their families, such as persons of advanced age,²⁰⁹ parents of very young or dependent children, and individuals who have suffered serious human rights violations in the past.²¹⁰

50. Article 6 (6) reaffirms the position that States parties that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, *de facto* and *de jure*, in the foreseeable future. The death penalty cannot be reconciled with full respect for the right to life, and abolition of the death penalty is both desirable²¹¹ and necessary for the enhancement of human dignity and progressive development of human rights.²¹² It is contrary to the object and purpose of article 6 for States parties to take steps to increase *de facto* the rate of use of and the extent to which they resort to the death penalty,²¹³ or to reduce the number of pardons and commutations they grant.

51. Although the allusion to the conditions for application of the death penalty in article 6 (2) suggests that when drafting the Covenant, the States parties did not universally regard the death penalty as a cruel, inhuman or degrading punishment *per se*,²¹⁴ subsequent agreements by the States parties or subsequent practice establishing such agreements may ultimately lead to the conclusion that the death penalty is contrary to article 7 of the Covenant under all circumstances.²¹⁵ The increasing number of States parties to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, other international instruments prohibiting the imposition or carrying out of the death penalty, and the growing number of non-abolitionist States that have nonetheless introduced a *de facto* moratorium on the exercise of the death penalty, suggest that considerable progress may have been made towards establishing an agreement among the States parties to consider the death penalty as a cruel, inhuman or degrading form of punishment.²¹⁶ Such a legal development is consistent with the pro-abolitionist spirit of the Covenant, which manifests itself, *inter alia*, in the texts of article 6 (6) and the Second Optional Protocol.

V. Relationship of article 6 with other articles of the Covenant and other legal regimes

52. The standards and guarantees of article 6 both overlap and interact with other provisions of the Covenant. Some forms of conduct simultaneously violate both article 6 and another article. For example, applying the death penalty in response to a crime that does not constitute a most serious crime (see also para. 35 above) would violate both article 6 (2) and, in light of the extreme nature of the punishment, article 7.²¹⁷ At other times, the contents of article 6 (1) are informed by the contents of other articles. For example, application of the death penalty may amount to an arbitrary deprivation of life under article 6 by virtue of the fact that it represents a punishment for exercising freedom of expression, in violation of article 19.

53. Article 6 also reinforces the obligations of States parties under the Covenant and the Optional Protocol to protect individuals against reprisals for promoting and striving to protect and realize human rights, including through cooperation or communication with the Committee.²¹⁸ States parties must take the necessary measures to respond to death threats and

to provide adequate protection to human rights defenders,²¹⁹ including the creation and maintenance of a safe and enabling environment for defending human rights.

54. Torture and ill-treatment, which may seriously affect the physical and mental health of the mistreated individual, could also generate the risk of deprivation of life. Furthermore, criminal convictions resulting in the death penalty that are based on information procured by torture or cruel, inhuman or degrading treatment of interrogated persons would violate articles 7 and 14 (3) (g) of the Covenant, as well as article 6 (see also para. 41 above).²²⁰

55. Returning individuals to countries where there are substantial grounds for believing that they face a real risk to their lives violates articles 6 and 7 of the Covenant (see also para. 31 above).²²¹ In addition, making an individual who has been sentenced to death believe that the sentence has been commuted only to inform him or her later that it has not,²²² and placing an individual on death row pursuant to a death sentence that is void ab initio,²²³ would run contrary to both articles 6 and 7.

56. The arbitrary deprivation of life of an individual may cause his or her relatives mental suffering, which could amount to a violation of their own rights under article 7 of the Covenant. Furthermore, even when the deprivation of life is not arbitrary, failure to provide relatives with information on the circumstances of the death of an individual may violate their rights under article 7,²²⁴ as could failure to inform them of the location of the body,²²⁵ and, where the death penalty is applied, of the date on which the State party plans to carry out the death penalty.²²⁶ Relatives of individuals deprived of their life by the State must be able to receive the remains, if they so wish.²²⁷

57. The right to life guaranteed by article 6 of the Covenant, including the right to protection of life under article 6 (1), may overlap with the right to security of person guaranteed by article 9 (1). Extreme forms of arbitrary detention that are themselves life-threatening, in particular enforced disappearances, violate the right to personal liberty and personal security and are incompatible with the right to life (see also para. 58 below).²²⁸ Failure to respect the procedural guarantees found in article 9 (3) and (4), designed inter alia to prevent disappearances, could also result in a violation of article 6.²²⁹

58. Enforced disappearance constitutes a unique and integrated series of acts and omissions representing a grave threat to life.²³⁰ The deprivation of liberty, followed by a refusal to acknowledge that deprivation of liberty or by concealment of the fate of the disappeared person, in effect removes that person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable.²³¹ It thus results in a violation of the right to life as well as other rights recognized in the Covenant, in particular, article 7 (prohibition of torture or cruel, inhuman or degrading treatment or punishment), article 9 (liberty and security of person) and article 16 (right to recognition as a person before the law). States parties must take adequate measures to prevent the enforced disappearance of individuals, and conduct an effective and speedy inquiry to establish the fate and whereabouts of persons who may have been subject to enforced disappearance. States parties should also ensure that the enforced disappearance of persons is punished with appropriate criminal sanctions, and introduce prompt and effective procedures for cases of disappearance to be investigated thoroughly by independent and impartial bodies²³² that operate, as a rule, within the ordinary criminal justice system. They should bring to justice the perpetrators of such acts and omissions and ensure that victims of enforced disappearance and their relatives are informed about the outcome of the investigation and are provided with full reparation.²³³ Under no circumstances should families of victims of enforced disappearance be obliged to declare them dead in order to be eligible for reparation.²³⁴ States parties should also provide families of victims of disappeared persons with the means to regularize their legal status in relation to the disappeared persons after an appropriate period of time.²³⁵

59. A particular connection exists between article 6 and article 20, which prohibits any propaganda for war and certain forms of advocacy constituting incitement to discrimination, hostility or violence. Failure to comply with these obligations under article 20 may also constitute a failure to take the necessary measures to protect the right to life under article 6.²³⁶

60. Article 24 (1) of the Covenant entitles every child to such measures of protection as are required by his or her status as a minor, on the part of his or her family, society and the

State. This article requires adoption of special measures designed to protect the life of every child, in addition to the general measures required by article 6 for protecting the lives of all individuals.²³⁷ When taking special measures of protection, States parties should be guided by the best interests of the child,²³⁸ and by the need to ensure all children's survival, development²³⁹ and well-being.²⁴⁰

61. The right to life must be respected and ensured without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or any other status, including caste,²⁴¹ ethnicity, membership of an indigenous group, sexual orientation or gender identity,²⁴² disability,²⁴³ socioeconomic status,²⁴⁴ albinism²⁴⁵ and age.²⁴⁶ Legal protections for the right to life must apply equally to all individuals and provide them with effective guarantees against all forms of discrimination, including multiple and intersectional forms of discrimination.²⁴⁷ Any deprivation of life based on discrimination in law or in fact is ipso facto arbitrary in nature. Femicide, which constitutes an extreme form of gender-based violence that is directed against girls and women, is a particularly grave form of assault on the right to life.²⁴⁸

62. Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.²⁴⁹ The obligations of States parties under international environmental law should thus inform the content of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law.²⁵⁰ Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, *inter alia*, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors. States parties should therefore ensure sustainable use of natural resources, develop and implement substantive environmental standards, conduct environmental impact assessments and consult with relevant States about activities likely to have a significant impact on the environment, provide notification to other States concerned about natural disasters and emergencies and cooperate with them, provide appropriate access to information on environmental hazards and pay due regard to the precautionary approach.²⁵¹

63. In light of article 2 (1) of the Covenant, a State party has an obligation to respect and ensure the rights under article 6 of all persons who are within its territory and all persons subject to its jurisdiction, that is, all persons over whose enjoyment of the right to life it exercises power or effective control.²⁵² This includes persons located outside any territory effectively controlled by the State whose right to life is nonetheless affected by its military or other activities in a direct and reasonably foreseeable manner (see para. 22 above).²⁵³ States also have obligations under international law not to aid or assist activities undertaken by other States and non-State actors that violate the right to life.²⁵⁴ Furthermore, States parties must respect and protect the lives of individuals located in places that are under their effective control, such as occupied territories, and in territories over which they have assumed an international obligation to apply the Covenant. States parties are also required to respect and protect the lives of all individuals located on marine vessels and aircraft registered by them or flying their flag, and of those individuals who find themselves in a situation of distress at sea, in accordance with their international obligations on rescue at sea.²⁵⁵ Given that the deprivation of liberty brings a person within a State's effective control, States parties must respect and protect the right to life of all individuals arrested or detained by them, even if held outside their territory.²⁵⁶

64. Like the rest of the Covenant, article 6 continues to apply also in situations of armed conflict to which the rules of international humanitarian law are applicable, including to the conduct of hostilities.²⁵⁷ While rules of international humanitarian law may be relevant for the interpretation and application of article 6 when the situation calls for their application, both spheres of law are complementary, not mutually exclusive.²⁵⁸ Use of lethal force consistent with international humanitarian law and other applicable international law norms is, in general, not arbitrary. By contrast, practices inconsistent with international humanitarian law, entailing a risk to the lives of civilians and other persons protected by international humanitarian law, including the targeting of civilians, civilian objects and objects indispensable to the survival of the civilian population, indiscriminate attacks, failure

to apply the principles of precaution and proportionality, and the use of human shields would also violate article 6 of the Covenant.²⁵⁹ States parties should, in general, disclose the criteria for attacking with lethal force individuals or objects whose targeting is expected to result in deprivation of life, including the legal basis for specific attacks, the process of identification of military targets and combatants or persons taking a direct part in hostilities, the circumstances in which relevant means and methods of warfare have been used,²⁶⁰ and whether less harmful alternatives were considered. They must also investigate alleged or suspected violations of article 6 in situations of armed conflict in accordance with the relevant international standards (see paras. 27–28 above).²⁶¹

65. States parties engaged in the deployment, use, sale or purchase of existing weapons and in the study, development, acquisition or adoption of weapons, and means or methods of warfare, must always consider their impact on the right to life.²⁶² For example, the development of autonomous weapon systems lacking in human compassion and judgment raises difficult legal and ethical questions concerning the right to life, including questions relating to legal responsibility for their use. The Committee is therefore of the view that such weapon systems should not be developed and put into operation, either in times of war or in times of peace, unless it has been established that their use conforms with article 6 and other relevant norms of international law.²⁶³

66. The threat or use of weapons of mass destruction, in particular nuclear weapons, which are indiscriminate in effect and are of a nature to cause destruction of human life on a catastrophic scale, is incompatible with respect for the right to life and may amount to a crime under international law. States parties must take all necessary measures to stop the proliferation of weapons of mass destruction, including measures to prevent their acquisition by non-State actors, to refrain from developing, producing, testing, acquiring, stockpiling, selling, transferring and using them, to destroy existing stockpiles, and to take adequate measures of protection against accidental use, all in accordance with their international obligations.²⁶⁴ They must also respect their international obligations to pursue in good faith negotiations in order to achieve the aim of nuclear disarmament under strict and effective international control,²⁶⁵ and to afford adequate reparation to victims whose right to life has been or is being adversely affected by the testing or use of weapons of mass destruction, in accordance with principles of international responsibility.²⁶⁶

67. Article 6 is included in the list of non-derogable rights in article 4 (2) of the Covenant. Hence, the guarantees against arbitrary deprivation of life contained in article 6 continue to apply in all circumstances, including in situations of armed conflict and other public emergencies.²⁶⁷ The existence and nature of a public emergency that threatens the life of the nation may, however, be relevant to a determination of whether a particular act or omission leading to deprivation of life is arbitrary and to a determination of the scope of the positive measures that States parties must take. Although some Covenant rights other than the right to life may be subject to derogation, derogable rights that support the application of article 6 must not be diminished by measures of derogation.²⁶⁸ Such rights include procedural guarantees, such as the right to fair trial in death penalty cases, and accessible and effective measures to vindicate rights, such as the duty to take appropriate measures to investigate, prosecute, punish and remedy violations of the right to life.

68. Reservations with respect to the peremptory and non-derogable obligations set out in article 6 are incompatible with the object and purpose of the Covenant. In particular, no reservation is permitted to the prohibition against arbitrary deprivation of life of persons and to the strict limits provided in article 6 with respect to the application of the death penalty.²⁶⁹

69. Wars and other acts of mass violence continue to be a scourge of humanity resulting in the loss of many thousands of lives every year.²⁷⁰ Efforts to avert the risks of war and any other armed conflict, and to strengthen international peace and security, are among the most important safeguards of the right to life.²⁷¹

70. States parties engaged in acts of aggression as defined in international law, resulting in deprivation of life, violate ipso facto article 6 of the Covenant. At the same time, all States are reminded of their responsibility as members of the international community to protect lives and to oppose widespread or systematic attacks on the right to life,²⁷² including acts of aggression, international terrorism, genocide, crimes against humanity and war crimes, while

respecting all of their obligations under international law. States parties that fail to take all reasonable measures to settle their international disputes by peaceful means might fall short of complying with their positive obligation to ensure the right to life.

Notes

- ¹ International Covenant on Civil and Political Rights, art. 4; Human Rights Committee, general comment No. 6 (1982) on the right to life, para. 1; general comment No. 14 (1984) on the right to life, para. 1; *Camargo v. Colombia*, communication No. 45/1979, para. 13.1; *Baboeram-Adhin et al. v. Suriname*, communications Nos. 146/1983 and 148–154/1983, para. 14.3.
- ² Universal Declaration of Human Rights, preamble.
- ³ *Camargo v. Colombia*, para. 13.2.
- ⁴ Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, paras. 9 and 55.
- ⁵ Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 8. See also European Court of Human Rights, *Osman v. United Kingdom* (case No. 87/1997/871/1083), judgment of 28 October 1998, para. 116.
- ⁶ *Chongwe v. Zambia* (CCPR/C/70/D/821/1998), para. 5.2. See also European Court of Human Rights, *İlhan v. Turkey* (application No. 22277/93), judgment of 27 June 2000, paras. 75–76; Inter-American Court of Human Rights, *Rochela massacre v. Colombia*, judgment of 11 May 2007, para. 127.
- ⁷ *Mellet v. Ireland* (CCPR/C/116/D/2324/2013), paras. 7.4–7.8; CCPR/C/IRL/CO/4, para. 9.
- ⁸ Human Rights Committee, general comment No. 28 (2000) on the equality of rights between men and women, para. 10. See also, e.g., CCPR/C/ARG/CO/4, para. 13; CCPR/C/JAM/CO/3, para. 14; CCPR/C/MDG/CO/3, para. 14.
- ⁹ CCPR/C/79/Add.97, para. 15.
- ¹⁰ See, e.g., CCPR/CO/79/GNQ, para. 9; CCPR/C/ZMB/CO/3, para. 18; CCPR/C/COL/CO/7, para. 21; CCPR/C/MAR/CO/6, para. 22; CCPR/C/CMR/CO/5, para. 22.
- ¹¹ See, e.g., CCPR/C/PAN/CO/3, para. 9; CCPR/C/MKD/CO/3, para. 11. See also World Health Organization, *Safe abortion: technical and policy guidance for health systems*, 2nd ed. (Geneva, 2012), pp. 96–97.
- ¹² CCPR/C/POL/CO/7, para. 24; CCPR/C/COL/CO/7, para. 21.
- ¹³ CCPR/C/CHL/CO/6, para. 15; CCPR/C/KAZ/CO/1, para. 11; CCPR/C/ROU/CO/5, para. 26.
- ¹⁴ CCPR/C/LKA/CO/5, para. 10; CCPR/C/MWI/CO/1/Add.1, para. 9; CCPR/C/ARG/CO/5, para. 12.
- ¹⁵ CCPR/C/POL/CO/6, para. 12; CCPR/C/COD/CO/4, para. 22.
- ¹⁶ CCPR/C/PAK/CO/1, para. 16; CCPR/C/BFA/CO/1, para. 20; CCPR/C/NAM/CO/2, para. 16.
- ¹⁷ CCPR/C/PAK/CO/1, para. 16.
- ¹⁸ Committee on the Rights of the Child, general comment No. 4 (2003) on adolescent health and development in the context of the Convention, para. 11.
- ¹⁹ CCPR/C/79/Add.92, para. 11.
- ²⁰ Committee on Economic, Social and Cultural Rights' general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 25.
- ²¹ CCPR/C/NLD/CO/4, para. 7.
- ²² Universal Declaration of Human Rights, preamble.
- ²³ African Commission on Human and Peoples' Rights, *General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)* (2015), para. 12.
- ²⁴ *Gorji-Dinka v. Cameroon* (CCPR/C/83/D/1134/2002), para. 5.1; *Van Alphen v. Netherlands*, communication No. 305/1988, para. 5.8.
- ²⁵ *Camargo v. Colombia*, para. 13.2.
- ²⁶ *Ibid.*, paras. 13.2–13.3.
- ²⁷ A/HRC/17/28, para. 60.
- ²⁸ Code of Conduct for Law Enforcement Officials, commentary to art. 3.
- ²⁹ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, para. 9.
- ³⁰ African Commission on Human and Peoples' Rights, *Kazingachire et al v. Zimbabwe* (communication No. 295/04), decision of 12 October 2013, paras. 118–120.
- ³¹ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, para. 9.
- ³² European Court of Human Rights, *McCann and others v. United Kingdom* (application No. 18984/91), judgment of 27 September 1995, para. 150.
- ³³ A/HRC/31/66, para. 54.
- ³⁴ CCPR/C/NPL/CO/2, para. 10; CCPR/CO/81/LIE, para. 10.
- ³⁵ CCPR/C/KEN/CO/3, para. 11; CCPR/C/CAF/CO/2, para. 12.
- ³⁶ CCPR/C/USA/CO/4, para. 11; CCPR/C/USA/CO/3/Rev.1, para. 30.
- ³⁷ CCPR/C/GBR/CO/6, para. 11.
- ³⁸ Code of Conduct for Law Enforcement Officials, commentary to art. 1.

- ³⁹ A/HRC/31/66, para. 55.
- ⁴⁰ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), para. 14.
- ⁴¹ CCPR/CO/74/SWE, para. 10.
- ⁴² See, in the context of armed conflicts, the Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict (A/63/467-S/2008/636, annex).
- ⁴³ CCPR/C/GTM/CO/3, para. 16.
- ⁴⁴ Ibid.; Human Rights Committee, general comment No. 31, para. 15.
- ⁴⁵ A/HRC/26/36, para. 75.
- ⁴⁶ See, e.g., *Burdyko v. Belarus* (CCPR/C/114/D/2017/2010), para. 8.6.
- ⁴⁷ Human Rights Committee, general comment No. 35, para. 22.
- ⁴⁸ Human Rights Committee, general comment No. 6, para. 3; *Camargo v. Colombia*, para. 13.1.
- ⁴⁹ Inter-American Court of Human Rights, *González et al. ("Cotton Field") v. Mexico*, judgment of 16 November 2009, para. 236.
- ⁵⁰ CCPR/CO/81/LIE, para. 10.
- ⁵¹ CCPR/C/MDG/CO/3, para. 17.
- ⁵² CCPR/C/TUR/CO/1, para. 13.
- ⁵³ CCPR/C/MOZ/CO/1, para. 12; CCPR/C/GTM/CO/3, para. 18.
- ⁵⁴ CCPR/C/IDN/CO/1, para. 17; CCPR/C/RUS/CO/6 and Corr.1, para. 11.
- ⁵⁵ CCPR/C/ALB/CO/2, para. 10.
- ⁵⁶ A/HRC/24/57, para. 31.
- ⁵⁷ CCPR/C/RUS/CO/6 and Corr.1, para. 14.
- ⁵⁸ Inter-American Court of Human Rights, *Sawhoyamaya Indigenous Community v. Paraguay*, judgment of 29 March 2006, para. 155.
- ⁵⁹ *Peiris et al. v. Sri Lanka* (CCPR/C/103/D/1862/2009), para. 7.2.
- ⁶⁰ CCPR/C/79/Add.93, para. 17.
- ⁶¹ CCPR/C/PHL/CO/4, para. 14.
- ⁶² CCPR/C/AGO/CO/1, para. 12; CCPR/C/USA/CO/4, para. 10.
- ⁶³ Inter-American Court of Human Rights, *Ximenes-Lopes v. Brazil*, judgment of 4 July 2006, para. 96.
- ⁶⁴ *Da Silva Pimentel v. Brazil* (CEDAW/C/49/D/17/2008), para. 7.5; European Court of Human Rights, *Nitecki v. Poland* (application No. 65653/01), admissibility decision of 21 March 2002, and *Calvelli and Ciglio v. Italy* (application No. 32967/96), judgment of 17 January 2002, para. 49.
- ⁶⁵ CCPR/C/POL/CO/6, para. 15.
- ⁶⁶ *Yassin et al. v. Canada* (CCPR/C/120/D/2285/2013), para. 6.5; CCPR/C/CAN/CO/6, para. 6; CCPR/C/DEU/CO/6, para. 16; CCPR/C/KOR/CO/4, para. 10.
- ⁶⁷ Guiding Principles on Business and Human Rights, principle 2.
- ⁶⁸ Inter-American Court of Human Rights, *Barrios Family v. Venezuela*, judgment of 24 November 2011, para. 124.
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- ¹⁵⁴ CCPR/CO/84/THA, para. 14.
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- ¹⁵⁶ CCPR/C/MRT/CO/1, para. 21.
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Statement on human rights and climate change

Joint statement by the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities

1. The Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities welcome the convening of the Climate Action Summit by the United Nations Secretary-General in September 2019, to mobilize more ambitious emissions reduction plans and actions. The Committees urge all States to take into consideration their human rights obligations as they review their climate commitments.

2. The Committees also welcome the work of the international scientific community to further understand the implications of climate change and the solutions that could contribute to avoiding the most dangerous impacts of climate change. The Committees welcome in particular the report released in 2018 by the Intergovernmental Panel on Climate Change on global warming of 1.5°C above pre-industrial levels.¹

3. That report confirms that climate change poses significant risks to the enjoyment of the human rights protected in the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities. The adverse impacts identified in the report threaten, among others, the rights to life, to adequate food, to adequate housing, to health and to water, and cultural rights. These negative impacts are also illustrated in the damage suffered by ecosystems, which in turn affect the enjoyment of human rights.² The risk of harm is particularly high for those sectors of the population that are already marginalized or in vulnerable situations or that, owing to discrimination and pre-existing inequalities, have limited access to decision-making or resources, such as women, children, persons with disabilities, indigenous peoples and persons living in rural areas.³ Children are

¹ See www.ipcc.ch/sr15/.

² See the report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment on the human rights obligations relating to the conservation and sustainable use of biological diversity (A/HRC/34/49).

³ See the analytical study conducted by the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and the full and effective enjoyment of the rights of the child (A/HRC/35/13).



at a particularly heightened risk of harm to their health, owing to the immaturity of their body systems.⁴

4. As reflected by the Committee on the Elimination of Discrimination against Women in its general recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, climate change and disasters affect women and men, girls and boys differently, with many women and girls facing disproportionate risks and impacts on their health, safety and livelihoods. Situations of crisis exacerbate pre-existing gender inequalities and compound the intersecting forms of discrimination that disproportionately affect disadvantaged groups of women and girls, particularly those with disabilities. Moreover, climate change and disasters, including pandemics, influence the prevalence, distribution and severity of new and re-emerging diseases. The susceptibility of women and girls to disease is heightened as a result of inequalities in access to food, nutrition and health care and the social expectations that women will act as primary caregivers for children, the elderly and the sick.

5. Such adverse impacts on human rights are already occurring with 1°C of global warming; every additional increase in temperature will further undermine the realization of rights. The report of the Intergovernmental Panel on Climate Change makes it clear that, in order to avoid the risk of irreversible and large-scale systemic impacts, urgent and decisive climate action is required.

6. The report of the Intergovernmental Panel on Climate Change also highlights the fact that adequate action to mitigate climate change would have significant social, environmental and economic benefits. The Panel warns of the risk of social and environmental damage resulting from poorly designed climate measures, thereby highlighting the importance for human rights norms to be applied at every stage of the decision-making process of climate policies.

7. As emphasized by the Committee on Economic, Social and Cultural Rights in its 2018 statement on climate change and the International Covenant on Economic, Social and Cultural Rights, human rights mechanisms have an essential role to play in ensuring that States avoid taking measures that could accelerate climate change, and that they dedicate the maximum available resources to the adoption of measures aimed at mitigating climate change. In its statement, the Committee also welcomed the fact that national judiciary and human rights institutions are increasingly engaged in ensuring that States comply with their duties under existing human rights instruments to combat climate change.

Agency and climate action

8. Women, children and other persons, such as persons with disabilities, should not be seen only as victims or in terms of vulnerability. They should be recognized as agents of change and essential partners in local, national and international efforts to tackle climate change.⁵ The Committees emphasize that States must guarantee these individuals' human right to participate⁶ in climate policymaking and that, given the scale and complexity of the climate challenge, States must ensure that they take an inclusive multi-stakeholder approach that harnesses the ideas, energy and ingenuity of all stakeholders.

9. The Committees welcome international cooperation to tackle climate change under the auspices of the United Nations Framework Convention on Climate Change and the Paris Agreement, and the national commitments and contributions made by all individual States to mitigate climate change. They also welcome the mobilization by civil society, particularly women, children and young people, to urge Governments to take more

⁴ See Fiona Stanley and Brad Farrant, "Climate change and children's health: a commentary", *Children*, vol. 2, No. 4 (October 2015); and Council on Environmental Health, "Global climate change and children's health", *Pediatrics*, vol. 136, No. 5 (November 2015).

⁵ Committee on the Elimination of Discrimination against Women, general recommendation No. 37, paras. 7–8.

⁶ *Ibid.*, paras. 32–36; Convention on the Elimination of All Forms of Discrimination against Women, arts. 7, 8 and 14; Convention on the Rights of the Child, art. 12; Universal Declaration of Human Rights, art. 21; International Covenant on Civil and Political Rights, art. 25; and Convention on the Rights of Persons with Disabilities, arts. 4 (3), 29 and 33 (3).

ambitious climate action. However, the Committees note with great concern that States' current commitments under the Paris Agreement are insufficient to limit global warming to 1.5°C above pre-industrial levels,⁷ and that many States are not on track to meet their commitments. Consequently, States are exposing their populations and future generations to the significant threats to human rights associated with greater temperature increases.

States' human rights obligations

10. Under the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities, States parties have obligations, including extraterritorial obligations, to respect, protect and fulfil all human rights of all peoples.⁸ Failure to take measures to prevent foreseeable harm to human rights caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States' human rights obligations.⁹

11. In order for States to comply with their human rights obligations and to realize the objectives of the Paris Agreement, they must adopt and implement policies aimed at reducing emissions. These policies must reflect the highest possible ambition, foster climate resilience and ensure that public and private investments are consistent with a pathway towards low carbon emissions and climate resilient development.¹⁰

12. In their efforts to reduce emissions, States parties should contribute effectively to phasing out fossil fuels, promoting renewable energy and addressing emissions from the land sector, including by combating deforestation.¹¹ In addition, States must regulate private actors, including by holding them accountable for harm they generate both domestically and extraterritorially.¹² States should also discontinue financial incentives or investments in activities and infrastructure that are not consistent with low greenhouse gas emissions pathways, whether undertaken by public or private actors, as a mitigation measure to prevent further damage and risk.

13. When reducing emissions and adapting to climate impacts, States must seek to address all forms of discrimination and inequality, including advancing substantive gender equality, protecting the rights of indigenous peoples and of persons with disabilities, and taking into consideration the best interests of the child.

14. A growing number of people are forced to migrate because their States of origin cannot ensure the enjoyment of adequate living conditions, owing to the increase in hydrometeorological disasters, evacuations of areas at high risk of disasters, environmental

⁷ See www.ipcc.ch/sr15/.

⁸ In this context, see also the Charter of the United Nations, Arts. 55–56; Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, paras. 26–28; E/C.12/AUS/CO/5, paras. 11–12; E/C.12/ARG/CO/4, paras. 13–14; CRC/C/NOR/CO/5-6, para. 27; CRC/C/JPN/CO/4-5, para. 37; Committee on the Elimination of Discrimination against Women, general recommendation No. 37, paras. 43–46; CEDAW/C/AUS/CO/8, paras. 29–30; and CEDAW/C/NOR/CO/9, paras. 14–15.

⁹ CRC/C/ESP/CO/5-6, para. 36; CRC/C/GBR/CO/5 and Corr.1, paras. 68–69; Committee on Economic, Social and Cultural Rights, statement on climate change and the International Covenant on Economic, Social and Cultural Rights; E/C.12/AUS/CO/5; Committee on the Elimination of Discrimination against Women, general recommendation No. 37, para. 14; and CEDAW/C/NOR/CO/9.

¹⁰ Paris Agreement, art. 2.1.

¹¹ Committee on the Elimination of Discrimination against Women, general recommendation No. 37; CEDAW/C/AUS/CO/8; CRC/C/NER/CO/3-5; Committee on Economic, Social and Cultural Rights, statement on climate change and the International Covenant on Economic, Social and Cultural Rights; and E/C.12/ARG/CO/4.

¹² Committee on Economic, Social and Cultural Rights, statement on climate change and the International Covenant on Economic, Social and Cultural Rights; Committee on the Elimination of Discrimination against Women, general recommendation No. 37; CEDAW/C/FJI/CO/5; and CRC/C/ESP/CO/5-6.

degradation and slow-moving disasters, the disappearance of small island States as a result of rising sea levels, and even the occurrence of conflicts over access to resources. Migration is a normal human adaptation strategy in the face of the effects of climate change and natural disasters, and the only option for entire communities. Climate change-related migration has to be addressed by the United Nations and by States as an emerging form of migration and internal displacement.

15. States must therefore address the effects of climate change, environmental degradation and natural disasters as drivers of migration and ensure that such factors do not hinder the enjoyment of the human rights of migrants and their families. In addition, States should offer migrant workers displaced across international borders in the context of climate change or disasters and who cannot return to their countries complementary protection mechanisms and temporary protection or stay arrangements.

16. In the design and implementation of climate policies, States must also respect, protect and fulfil the rights of all, including by mandating human rights due diligence and ensuring access to education, awareness-raising and environmental information, and public participation in decision-making. In particular, States have the responsibility to protect and defend effectively the rights of environmental human rights defenders, including women, indigenous and child environmental defenders.

International cooperation

17. As part of international assistance and cooperation towards the realization of human rights, high-income States should support adaptation and mitigation efforts in developing countries by facilitating transfers of green technologies and by contributing to financing climate mitigation and adaptation. In addition, States must cooperate in good faith in the establishment of global responses addressing climate-related loss and damage suffered by the most vulnerable countries, paying particular attention to safeguarding the rights of those who are at particular risk of climate harm and addressing the devastating impact of climate disruptions, including on women, children, persons with disabilities and indigenous peoples.

Role of the Committees

18. In their future work, the Committees will continue to keep under review the impacts of climate change and climate-induced disasters on the rights holders protected under their respective treaties. They will also continue to provide States parties with guidance on how they can meet their obligations under these instruments in relation to mitigation and adaptation to climate change.



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

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against Women**

**General recommendation No. 39 (2022) on the rights of
Indigenous women and girls**

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I. Introduction

1. The present general recommendation provides guidance to States parties on legislative, policy and other relevant measures to ensure the implementation of their obligations in relation to the rights of Indigenous women and girls under the Convention on the Elimination of All Forms of Discrimination against Women. There are an estimated 476.6 million Indigenous Peoples globally, of whom more than half (238.4 million) are women.¹ Discrimination and violence are recurrent phenomena in the lives of many Indigenous women and girls living in rural, remote and urban areas. The present general recommendation applies to Indigenous women and girls both inside and outside Indigenous territories.

2. The present general recommendation takes into account the voices of Indigenous women and girls as driving actors and leaders inside and outside their communities. It identifies and addresses different forms of intersectional discrimination faced by Indigenous women and girls and their key role as leaders, knowledge-bearers and transmitters of culture among their peoples, communities and families, as well as society as a whole. The Committee on the Elimination of Discrimination against Women has consistently identified patterns of discrimination faced by Indigenous women and girls in the exercise of their human rights,² and the factors that continue to exacerbate discrimination against them. Such discrimination is often intersectional and based on factors such as sex; gender; Indigenous origin, status or identity; race; ethnicity; disability; age; language; socioeconomic status; and HIV/AIDS status.³

3. Intersectional discrimination against Indigenous women and girls must be understood in the context of the multifaceted nature of their identity. They face discrimination and gender-based violence, frequently committed by State and non-State actors. These forms of violence and discrimination are widespread and are often treated with impunity. Indigenous women and girls often have an inextricable link and relation to their peoples, lands, territories, natural resources and culture. To ensure compliance with articles 1 and 2 and other relevant provisions of the Convention, State action, legislation and policies must reflect and respect the multifaceted identity of Indigenous women and girls. States parties should also take into consideration the intersectional discrimination experienced by Indigenous women and girls on the basis of factors such as sex; gender; Indigenous origin, status or identity; race; ethnicity; disability; age; language; socioeconomic status; and HIV/AIDS status.

4. State action to prevent and address discrimination against Indigenous women and girls throughout their lifespan must integrate a gender perspective, an intersectional perspective, an Indigenous women and girls perspective, an intercultural perspective and a multidisciplinary perspective. A gender perspective takes into consideration the discriminatory norms, harmful social practices,

¹ International Labour Organization (ILO), *Implementing the ILO Indigenous and Tribal Peoples Convention No. 169: Towards an Inclusive, Sustainable and Just Future* (Geneva, 2019), p. 13; and Department of Economic and Social Affairs, *State of the World's Indigenous Peoples*, vol. 5, *Rights to Lands, Territories and Resources* (United Nations publication, 2021), p. 119.

² See, for example, general recommendation No. 34 (2016) on the rights of rural women, paras. 14–15. For more discussion of the work of the Committee in the area of Indigenous women, see United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and Committee on the Elimination of Discrimination against Women, “Recomendaciones Generales y Observaciones Finales del Comité para la Eliminación de la Discriminación contra la Mujer sobre mujeres indígenas y/o afrodescendientes realizadas a Estados de América Latina” (Clayton, Panama, 2017).

³ United Nations Declaration on the Rights of Indigenous Peoples, art. 2.

stereotypes and inferior treatment that have affected Indigenous women and girls historically and still affect them in the present. An intersectional perspective requires States to consider the multitude of factors that combine to increase the exposure of Indigenous women and girls to, and exacerbate the consequences of, unequal and arbitrary treatment on the basis of sex; gender; Indigenous origin, status or identity; race; ethnicity; disability; age; language; socioeconomic status; and HIV/AIDS status, among other factors. States should take into consideration the interdependence and interconnectedness of all these factors in their adoption of laws, policies, national budgets and interventions related to Indigenous women and girls. Indigenous women and girls suffer intersectional discrimination both inside and outside their territories. Intersectional discrimination against them is structural, embedded in constitutions, laws and policies, as well as government programmes, action and services.

5. An Indigenous women and girls perspective entails understanding the distinction between their experiences, realities and needs in the area of human rights protection and those of Indigenous men, based on their sex and gender differences. It also involves considering the status of Indigenous girls as developing women, which requires interventions to be appropriate to their age, development and condition. An intercultural perspective involves considering the diversity of Indigenous Peoples, including their cultures, languages, beliefs and values, and the social appreciation and value of this diversity. Lastly, a multidisciplinary perspective requires an appreciation of the multifaceted identity of Indigenous women and girls and of how law, health, education, culture, spirituality, anthropology, economy, science and work, among other aspects, have shaped and continue to shape the social experience of Indigenous women and girls and to promote discrimination against them. These perspectives and approaches are key to preventing and eradicating discrimination against Indigenous women and girls and to achieving the goal of social justice when their human rights are violated.

6. The prohibition of discrimination under articles 1 and 2 of the Convention must be strictly applied to ensure the rights of Indigenous women and girls, including those living in voluntary isolation or initial contact, to self-determination and to access to and the integrity of their lands, territories and resources, culture and environment. The prohibition of discrimination should also be implemented to ensure their rights to effective and equal participation in decision-making and to consultation, in and through their own representative institutions, in order to obtain their free, prior and informed consent before the adoption and implementation of legislative or administrative measures that may affect them. This set of rights lays the foundation for a holistic understanding of the individual and collective rights of Indigenous women. The violation of any of these or related rights constitutes discrimination against Indigenous women and girls.

7. In implementing the present general recommendation, the Committee calls upon States parties to take into consideration the challenging context in which Indigenous women and girls exercise and defend their human rights. They are heavily affected by existential threats connected to climate change, environmental degradation, the loss of biodiversity and barriers in gaining access to food and water security.⁴ Extractive activities carried out by business enterprises and other industrial, financial, public and private actors often have a devastating impact on the environment, air, land, waterways, oceans, territories and natural resources of Indigenous Peoples and may infringe the rights of Indigenous women and girls. Indigenous women and girls are at the forefront of the local, national and international demand and action for a clean, safe, healthy and sustainable environment. Many Indigenous women who are

⁴ General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, paras. 1–9.

environmental human rights defenders face killings, harassment, criminalization and the ongoing discrediting of their work. States parties have an obligation to ensure that State actors and business enterprises take measures without delay to guarantee a clean, healthy and sustainable environment and planetary system, including the prevention of foreseeable loss and damage, socioeconomic and environmental violence, and all forms of violence against Indigenous women who are environmental human rights defenders and their communities and territories. States parties also have an obligation to address the effects of colonialism, racism, assimilation policies, sexism, poverty, armed conflicts, militarization, forced displacement and the loss of territories, sexual violence as a tool of war, and other alarming human rights abuses frequently perpetrated against Indigenous women and girls and their communities.

II. Objectives and scope

8. The Committee considers self-identification, according to international standards,⁵ to be a guiding principle in international law in determining the status of rights holders as Indigenous women and girls.⁶ However, the Committee recognizes that some Indigenous women and girls may prefer not to disclose their status owing to structural and systemic racism and discrimination, as well as colonial and colonization policies. The present general recommendation and the rights under the Convention are applicable to all Indigenous women and girls, inside and outside their territories; in their countries of origin, in transit and in their countries of destination; and as migrants, as refugees during their forced or involuntary displacement cycle and as stateless persons.

9. Gender-based violence, including psychological, physical, sexual, economic, spiritual, political and environmental violence, is adversely affecting the lives of many Indigenous women and girls. Indigenous women often suffer violence in the home, in the workplace and in public and educational institutions; while receiving health services and navigating child welfare systems; as leaders in political and community life; as human rights defenders; when deprived of liberty; and when confined to institutions. Indigenous women and girls are disproportionately at risk of rape and sexual harassment; gender-based killings and femicide; disappearances and kidnapping; trafficking in persons;⁷ contemporary forms of slavery; exploitation, including exploitation of prostitution of women;⁸ sexual servitude; forced labour; coerced pregnancies; State policies mandating forced contraception and intrauterine devices; and domestic work that is not decent, safe or adequately remunerated.⁹ The Committee highlights, in particular, the gravity of discrimination and gender-based violence against Indigenous women and girls with disabilities who are living in institutions.

10. The Committee calls upon States parties to promptly engage in data collection efforts to fully assess the situation of Indigenous women and girls and the forms of discrimination and gender-based violence that they face. States must undertake efforts to collect data, disaggregated by a range of factors, including sex; age; Indigenous origin, status or identity; and disability status, and collaborate with Indigenous women and their organizations, as well as academic institutions and non-profit

⁵ United Nations Declaration on the Rights of Indigenous Peoples, arts. 9 and 33.

⁶ *Ibid.*, art. 33.1; see also ILO, Indigenous and Tribal Peoples Convention No. 169, art. 1; United Nations Permanent Forum on Indigenous Issues, “Who are Indigenous Peoples?”, fact sheet; and working paper on the concept of Indigenous Peoples (E/CN.4/Sub.2/AC.4/1996/2, paras. 69–70).

⁷ General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, paras. 18–35.

⁸ Convention on the Elimination of All Forms of Discrimination against Women, art. 6.

⁹ CEDAW/C/OP.8/CAN/1, paras. 95–99 and 111–127.

organizations, in that regard. The Committee also underscores that Indigenous Peoples must have control over data collection processes in their communities and over how the data are stored, interpreted, used and shared.

11. One of the root causes of discrimination against Indigenous women and girls is the lack of effective implementation of their rights to self-determination and autonomy and related guarantees, as manifested, inter alia, in their continued dispossession of their lands, territories and natural resources. The Committee acknowledges that the vital link between Indigenous women and their lands often forms the basis of their culture, identity, spirituality, ancestral knowledge and survival. Indigenous women face a lack of legal recognition of their rights to land and territories and wide gaps in the implementation of existing laws to protect their collective rights. Governments and third-party actors frequently carry out activities related to investment, infrastructure, development, conservation, climate change adaptation and mitigation initiatives, tourism, mining, logging and extraction without securing the effective participation and obtaining the consent of the Indigenous Peoples affected. The Committee has a broad understanding of the right of Indigenous women and girls to self-determination, including their ability to make autonomous, free and informed decisions concerning their life plans and health.

12. The Committee acknowledges that Indigenous women and girls have struggled and continue to struggle against forced assimilation policies and other large-scale human rights violations, which may in certain instances amount to genocide.¹⁰ Some of these assimilation policies – in particular the forced placement in residential schools and institutions and the displacement of Indigenous Peoples from their territories in the name of development – have resulted in killings, disappearances, sexual violence and psychological abuse, and may amount to cultural genocide.¹¹ It is critical for States parties to address the consequences of historic injustices and to provide support and reparations to the affected communities as part of the process of ensuring justice, reconciliation and the building of societies free from discrimination and gender-based violence against Indigenous women and girls. The Committee highlights, in particular, the need for States to act proactively to protect the rights of Indigenous women and girls living in urban settings, where they face racism, discrimination, assimilation policies and gender-based violence.

III. Legal framework

13. The rights of Indigenous women and girls derive from the articles of the Convention, as further developed in the Committee's general recommendations, and from specific international instruments for the protection of the rights of Indigenous Peoples, such as the United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organization (ILO) Convention, 1989 (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries. The Committee considers the Declaration an authoritative framework for interpreting State party and core obligations under the Convention on the Elimination of All Forms of Discrimination against Women. All of the rights recognized in the Declaration are relevant to Indigenous women, both as members of their peoples and communities and as individuals, and, ultimately, in relation to the guarantees against discrimination

¹⁰ See United Nations Declaration on the Rights of Indigenous Peoples, art. 8; Convention on the Prevention and Punishment of the Crime of Genocide, art. II; and Rome Statute of the International Criminal Court, art. 6.

¹¹ See United Nations Declaration on the Rights of Indigenous Peoples, art. 8.

in the Convention itself. In addition, all core international human rights treaties contain relevant protections for the rights of Indigenous women and girls.¹²

14. In addressing the rights of Indigenous girls, the Committee also makes reference to the Convention on the Rights of the Child and to the Committee on the Rights of the Child general comment No. 11 (2009) on indigenous children and their rights. States parties have an obligation to protect Indigenous girls from all forms of discrimination. The creation of an enabling and safe environment for the leadership and effective participation of Indigenous girls is paramount to the full enjoyment of their rights to territories, culture and a clean, healthy and sustainable environment.¹³ The Committee on the Elimination of Discrimination against Women recognizes, moreover, the status of Indigenous girls as developing women, which calls for a State response tailored to their best interests and needs and the adaptation of government procedures and services to the age, development, evolving capacities, and condition of Indigenous girls.

15. The Convention on the Elimination of All Forms of Discrimination against Women should also be interpreted in a manner that takes into consideration the 2030 Agenda for Sustainable Development, in which States agreed that the achievement of gender equality and the empowerment of women and girls is paramount to sustainable development and the end of poverty.¹⁴ The Beijing Declaration and Platform for Action is also an important reference document in the present general recommendation. The Committee also makes reference to the resolutions adopted by the Commission on the Status of Women related to Indigenous women.¹⁵

IV. General obligations of States parties in relation to the rights of Indigenous women and girls under articles 1 and 2 of the Convention

A. Equality and non-discrimination, with a focus on Indigenous women and girls and intersecting forms of discrimination

16. The prohibition of discrimination in articles 1 and 2 of the Convention applies to all rights of Indigenous women and girls under the Convention, including, by extension, those set out in the Declaration, which is of fundamental importance to the interpretation of the Convention in the current context. The prohibition of discrimination is an important pillar and foundational principle of international human rights law. Indigenous women and girls have the right to be free from all forms of discrimination on the basis of their sex; gender; Indigenous origin, status or identity; race; ethnicity; disability; age; language; socioeconomic status; and HIV/AIDS status, among other factors.¹⁶

17. Discrimination against Indigenous women and girls and its effects should be understood in both their individual and collective dimensions. In its individual

¹² See Committee on the Elimination of Racial Discrimination, general recommendation No. 23 (1997) on the rights of indigenous peoples, paras. 3–6.

¹³ Committee on the Rights of the Child, general comment No. 12 (2009) on the right of the child to be heard, para. 2.

¹⁴ General Assembly resolution 70/1, para. 20. See also targets 2.3 and 4.5 of the Sustainable Development Goals, as well as Goal 5.

¹⁵ See Commission on the Status of Women resolutions 49/7 and 56/4. See also the agreed conclusions of the Commission at its sixty-sixth session (E/2022/27, chap. I, sect. A.).

¹⁶ General recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 9; and United Nations Declaration on the Rights of Indigenous Peoples, para. 2.

dimension, discrimination against Indigenous women and girls takes intersecting forms and is carried out by both State and non-State actors, including those in the private sphere, on the basis of sex; gender; Indigenous origin, status or identity; race; ethnicity; disability; age; language; socioeconomic status; and HIV/AIDS status; among other factors. Racism, discriminatory stereotypes, marginalization and gender-based violence are interrelated violations experienced by Indigenous women and girls. Discrimination and gender-based violence threaten the individual autonomy, personal liberty and security, privacy and integrity of all Indigenous women and girls and may also harm the collective and its well-being. As indicated in general recommendation No. 29 (2013) on the economic consequences of marriage, family relations and their dissolution, Indigenous women as individuals can suffer discrimination in the name of ideology, tradition, culture, religious and customary laws and practices. In addition, Indigenous women, including those with disabilities, often face the arbitrary removal and abduction of their children. They also face discriminatory and gender-biased decisions concerning the custody of their children – whether married or unmarried – or alimony following divorce. Indigenous women and girls as individuals have the right to be free from discrimination and human rights violations throughout their life cycle and to choose their own paths and life plans.

18. In its collective dimension, discrimination, together with gender-based violence, against Indigenous women and girls threatens and disrupts the spiritual life, connection with Mother Earth, cultural integrity and survival, and social fabric of Indigenous Peoples and communities. Discrimination and gender-based violence have a harmful effect on the continuance and preservation of the knowledge, cultures, views, identities and traditions of Indigenous Peoples. The failure to protect the rights to self-determination, collective security of tenure over ancestral lands and resources, and effective participation and consent of Indigenous women in all matters affecting them constitutes discrimination against them and their communities.

19. As indicated in the preamble to the Declaration, collective rights are indispensable for the existence, well-being and integral development of Indigenous Peoples, including Indigenous women and girls. The individual rights of Indigenous women and girls should never be neglected or violated in the pursuit of collective or group interests, as respect for both dimensions of their human rights is essential.¹⁷

20. Discrimination against Indigenous women and girls is perpetuated by gender stereotypes but also by forms of racism fuelled by colonialism and militarization. These underlying causes of discrimination are reflected directly and indirectly in laws and policies that impede the access of Indigenous women and girls to land use and ownership, the exercise of their rights over their territories, natural and economic resources, and their access to credit, financial services and income-generating opportunities. The underlying causes also impede the recognition and protection of and support for collective and cooperative forms of land ownership and use. Legal protections for the land rights of Indigenous women remain weak, which frequently exposes them to dispossession, displacement, confinement, expropriation and exploitation.¹⁸ The lack of legal title to the territories of Indigenous Peoples increases their vulnerability to illegal incursions and to the implementation of development projects without their free, prior and informed consent by both State and non-State actors. Indigenous women and girls – in particular those who are widows, heads of households or orphans – disproportionately face barriers in gaining access to land, resulting in the loss of their livelihoods and threatening their culture, their intrinsic link to their environment, their food and water security and their health.

¹⁷ Committee on the Rights of the Child, general comment No. 11 (2009) on indigenous children and their rights under the Convention, para. 30.

¹⁸ [A/HRC/30/41](#), paras. 15–17.

21. Indigenous women and girls worldwide still do not enjoy equality before the law under article 15 of the Convention. In many parts of the world, Indigenous women lack the capacity to conclude contracts and administer property independent of their husband or a male guardian. They also experience challenges in owning, holding, controlling, inheriting and administering land, in particular when they are widowed and have to care for their families on their own. Inheritance laws – in both the State and Indigenous legal systems – frequently discriminate against Indigenous women. Indigenous women with disabilities commonly experience the denial of legal capacity, which leads to further human rights violations, including in the areas of access to justice, institutionalized violence and forced sterilization. Contrary to article 9 of the Convention, many laws still discriminate against Indigenous women and girls in relation to the transmission of their nationality and Indigenous status to their children when they marry non-Indigenous persons. These laws can result in transgenerational discrimination and forced assimilation, which fall within the scope and meaning of discrimination against women as defined in article 1 of the Convention.¹⁹ Therefore, States must ensure that Indigenous women and girls can acquire, change, retain or renounce their nationality and/or Indigenous status, transfer it to their children and spouse and have access to information on these rights, as part of ensuring their rights to self-determination and self-identification.

22. The Committee, in its general recommendation No. 34 (2016) on the rights of rural women, underscored the importance of the rights of Indigenous women to land and collective ownership, natural resources, water, seeds, forests and fisheries under article 14 of the Convention.²⁰ These rights are also guaranteed to Indigenous women as members of their peoples and communities by the Declaration and related international legal norms. The key barriers to these rights are the incompatibility of national laws with international law; the ineffective implementation of laws at the national and local levels; discriminatory gender stereotypes and practices, in particular in rural areas; lack of political will; and the commercialization, commodification and financialization of land and natural resources. Indigenous customary laws, misogyny and existing institutions may also be barriers. Indigenous women with disabilities often face intersecting forms of discrimination on the basis of their sex; gender; disability; and Indigenous origin, status or identity, reflected in the denial of their full legal capacity, which further increases their risk exposure to exploitation, violence and abuse and undermines their rights to land, territories and resources.²¹ Moreover, lesbian, bisexual, transgender and intersex Indigenous women and girls regularly face intersecting forms of discrimination. The Committee is concerned about the forms of inequality, discrimination and gender-based violence that affect Indigenous women and girls in the digital space, including the Internet, social media and all technology platforms.

23. The Committee recommends that States parties:

(a) Develop comprehensive policies to eliminate discrimination against Indigenous women and girls, centred around the effective participation of those living inside and outside Indigenous territories, and pursue collaboration with Indigenous Peoples more broadly. The policies should include measures to address intersectional discrimination faced by Indigenous women and girls, including persons with disabilities and those with albinism; older women; lesbian, bisexual, transgender and intersex women; women and girls in situations of poverty; women living in rural and urban areas; forcibly displaced, refugee and migrant women inside and outside their countries; and women and girls who are

¹⁹ See, for example, CEDAW/C/81/D/68/2014, para. 18.3.

²⁰ Para. 56.

²¹ Department of Economic and Social Affairs, *State of the World's Indigenous Peoples*, vol. 5, p. 121.

widows, heads of households or orphaned owing to national and international armed conflicts. States parties should collect data, disaggregated by age and disability status, on the forms of gender-based discrimination and violence faced by Indigenous women and girls, and undertake these efforts in ways that respect the languages and cultures of Indigenous Peoples;

(b) Provide, in their periodic reports to the Committee, information on legislative, judicial, administrative, budgetary, and monitoring and evaluation measures, as well as other measures, specific to Indigenous women and girls;

(c) Repeal and amend all legislative and policy instruments, such as laws, policies, regulations, programmes, administrative procedures, institutional structures, budgetary allocations and practices, that directly or indirectly discriminate against Indigenous women and girls;

(d) Ensure that Indigenous women are equal before the law and have equal capacity to conclude contracts and administer and inherit property, and also ensure the recognition of the legal capacity of Indigenous women with disabilities and support mechanisms for the exercise of legal capacity;

(e) Adopt legislation to fully ensure the rights of Indigenous women and girls to land, water and other natural resources, including their right to a clean, healthy and sustainable environment, and that their equality before the law is recognized and respected, as well as ensuring that Indigenous women in rural and urban areas have equal access to ownership, title, possession and control of land, water, forests, fisheries, aquaculture and other resources that they have owned, occupied or otherwise used or acquired, including by protecting them against discrimination and dispossession;²²

(f) Ensure that Indigenous women and girls have adequate access to information on existing laws and remedies to claim their rights under the Convention. Information should be accessible in their own languages and in culturally appropriate formats of communication, such as community radio. Information should also be made available for Indigenous women and girls with disabilities in Braille, easy to read, sign language and other modes;

(g) Guarantee that Indigenous women and girls are protected from discrimination by both State and non-State actors, including businesses and companies, inside and outside their territories, especially in the areas of political participation, representation, education, employment, health, social protection, decent work, justice and security;

(h) Adopt effective measures to legally recognize and protect the lands, territories, natural resources, intellectual property, scientific, technical and Indigenous knowledge, genetic information and cultural heritage of Indigenous Peoples, and take steps to fully ensure respect for their rights to free, prior and informed consent; to self-determination of their own life plan; and to effective participation, in particular marginalized groups of Indigenous women and girls, such as those with disabilities, in decision-making on matters affecting them;

(i) Adopt effective measures to eliminate and prevent all forced assimilation policies and other patterns of denials of cultural and other rights vested in Indigenous Peoples, including the prompt investigation, accountability, justice and reparations for past and present assimilation policies and practices that significantly compromise Indigenous cultural identity, and establish and

²² General recommendation No. 34, para. 59.

ensure that truth, justice and reconciliation bodies are vested with adequate and sufficient resources.

B. Access to justice and plural legal systems

24. Access to justice for Indigenous women requires a multidisciplinary and holistic approach that reflects an understanding that their access is linked to other human rights challenges that they face, including racism, racial discrimination and the effects of colonialism; sex- and gender-based discrimination; discrimination on the basis of socioeconomic status; disability-based discrimination; barriers in gaining access to their lands, territories and natural resources; the lack of adequate and culturally pertinent health and education services; and disruptions and threats to their spiritual lives.²³ As indicated by other global human rights mechanisms, Indigenous Peoples must have access to justice that is guaranteed both by States and through their Indigenous customary and legal systems.²⁴

25. The Committee reiterates that the right of Indigenous Peoples to maintain their own judicial structures and systems is a fundamental component of their rights to autonomy and self-determination.²⁵ At the same time, Indigenous justice systems and their practices should be consistent with international human rights standards, as indicated in the Declaration.²⁶ Accordingly, the Committee considers the Convention an important reference for both non-Indigenous and Indigenous justice systems in addressing cases related to discrimination against Indigenous women and girls.

26. In its general recommendation No. 33 (2015) on women's access to justice, the Committee recognized six essential components of access.²⁷ These interrelated components – justiciability, availability, accessibility, good quality, provision of remedies for victims, and accountability of justice systems – are also applicable in the case of Indigenous women and girls, who should be provided with access to justice and remedies with a gender perspective, an intersectional perspective, an Indigenous women and girls perspective, an intercultural perspective and a multidisciplinary perspective, as defined in paragraphs 4 and 5 of the present general recommendation.

27. According to the six essential components, States must ensure that all justice systems, both Indigenous and non-Indigenous, act in a timely fashion to offer appropriate and effective remedies for Indigenous women and girls who are victims and survivors of discrimination and gender-based violence. Doing so entails having available interpreters, translators, anthropologists, psychologists, health-care professionals, lawyers, cultural mediators with experience, and Indigenous spiritual and medicinal authorities, as well as training, incorporating a gender perspective, on the realities, cultures and views of Indigenous women and girls. Justice systems should also have in place methods to collect evidence that are appropriate and compatible with their culture and views. Justice officials should be consistently trained on the rights of Indigenous women and girls and the individual and collective dimensions of their identity, with the goal of instilling in the officials a substantial

²³ See [A/HRC/EMRIP/2014/3/Rev.1](#), paras. 35–42; and Inter-American Commission on Human Rights, *Indigenous Women and their Human Rights in the Americas* (OEA/Ser.L/V/II. Doc. 44/17, para. 138).

²⁴ [A/HRC/24/50](#), para. 5.

²⁵ United Nations Declaration on the Rights of Indigenous Peoples, art. 34; and general recommendation No. 33 (2015) on women's access to justice, para. 5.

²⁶ Article 34 of the Declaration provides that Indigenous Peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

²⁷ Para. 14.

degree of Indigenous cultural competence. In that regard, it is key to respect the different conceptions of justice and processes that non-Indigenous and Indigenous systems have, and to actively listen to and collaborate with Indigenous Peoples. Justice can be a process of reconciliation and healing for them, with the goal of restoring harmony to their territories and communities.²⁸ States should also proactively recruit and appoint Indigenous women justices.

28. States parties should ensure the establishment, maintenance and funding of courts and judicial and other bodies throughout their territories in urban, rural and remote areas. Indigenous justice systems should also be easily available, adequate and effective. Information on how to avail themselves of judicial avenues in both the non-Indigenous and Indigenous justice systems should be available to and disseminated among Indigenous women and girls. Basic judicial services and free legal aid services should be available in close proximity to Indigenous women and communities. States must adopt measures to ensure that Indigenous women know where to seek justice and that justice systems are accessible, fair and affordable.

29. Indigenous women face obstacles in their access to both non-Indigenous and Indigenous justice systems which can be particularly acute in the case of Indigenous women and girls with disabilities. They are routinely denied their right to a legal remedy. As a result, many cases of discrimination and gender-based violence against Indigenous women and girls end in impunity. The barriers that they encounter in gaining access to justice and reparations include a lack of information in Indigenous languages on the legal remedies available in both non-Indigenous and Indigenous justice systems. Other barriers include the costs of legal assistance and the lack of free legal aid; disrespect of due process guarantees; absence of interpreters, including for sign language; court fees; long distances to courts; reprisals and retribution against those who report crimes; lack of identity cards and forms of identification; and lack of training for justice officials on the rights and specific needs of Indigenous women and girls. Indigenous women and girls with disabilities frequently face barriers with regard to the physical accessibility of buildings that house law enforcement agencies and the judiciary, and to the accessibility of critical information, transportation, communications, procedures and support services.

30. In non-Indigenous justice systems, Indigenous women and girls frequently face racism, structural and systemic racial discrimination, and forms of marginalization, and often have to participate in procedures that are not culturally appropriate and do not take into account Indigenous traditions and practices. Judicial structures tend to reflect ongoing colonialism. Obstacles include the remoteness of Indigenous territories, which force Indigenous women and girls to travel long distances to file complaints; illiteracy; and lack of knowledge of existing laws and judicial avenues. Indigenous women are often not provided with the interpretation services that are necessary for them to fully participate in legal proceedings, and there is a lack of culturally appropriate methods of evidence collection. Among justice officials, there is a dearth of training on the rights of Indigenous women and girls in their individual and collective dimensions. Indigenous women and girls also have limited access to specialized medical care when they suffer acts of rape and sexual violence.

31. Often, Indigenous justice systems are male dominated, and they discriminate against women and girls, providing limited space for them to participate, voice their concerns and hold decision-making positions.²⁹ The Committee has expressed its concern in the past about the influence of gender stereotypes on the activity of Indigenous legal systems.³⁰ In general, the Committee has recommended that both

²⁸ [A/HRC/42/37](#), para. 25.

²⁹ [A/HRC/30/41](#), para. 42.

³⁰ [CEDAW/C/MEX/CO/7-8](#), para. 34.

Indigenous and non-Indigenous justice systems adopt measures to comply with international human rights standards.³¹

32. Indigenous women also tend to be overrepresented in prisons, affected by arbitrary pretrial detention and face discrimination, gender-based violence, inhumane treatment and forms of torture when they are in conflict with the law. These problems are aggravated by deficiencies in the legal support provided by legal aid counsel. The Committee highlights the right of every Indigenous girl who is in conflict with the law to a fair trial, equality before the law and the equal protection of the law.³²

33. **The Committee recommends that States parties:**

(a) **Ensure that Indigenous women and girls have effective access to adequate non-Indigenous and Indigenous justice systems, free from racial and/or gender-based discrimination, bias, stereotypes, retribution and reprisals;**

(b) **Adopt measures to ensure that Indigenous women and girls with disabilities have physical access to law enforcement and judiciary buildings, information, transportation, support services, and procedures critical to their access to justice;**³³

(c) **Provide continuous training to judges and all law enforcement officials in both the non-Indigenous and Indigenous justice systems on the rights of Indigenous women and girls and the need for an approach to justice that is guided by gender, intersectional, Indigenous women and girls, intercultural and multidisciplinary perspectives, as defined in paragraphs 4 and 5. Training on Indigenous justice should be part of training for all legal professionals;**

(d) **Recruit, train and appoint Indigenous women justices and other court personnel in both non-Indigenous and Indigenous justice systems;**

(e) **Ensure equal access to justice for all Indigenous women and girls, including through the provision of procedural accommodations and adjustments for those who need them owing to age, disability or illness, which may include sign language interpretation and other communication support, as well as longer time frames for submissions;**

(f) **Ensure that justice systems include interpreters, translators, anthropologists, psychologists and health-care professionals specialized and trained in the needs of Indigenous women and girls, giving priority to qualified Indigenous women,³⁴ and provide information on legal remedies in both the non-Indigenous and Indigenous justice systems in Indigenous languages and in accessible formats. Awareness-raising campaigns should be undertaken to make known these legal remedies and avenues, as well as the means to report cases of structural and systemic violence. Follow-up mechanisms are critical in cases of gender-based violence and discrimination against Indigenous women and girls;**

(g) **Ensure that Indigenous women and girls without sufficient means and whose legal capacity has been removed have access to free and quality legal aid, including in cases of gender-based violence against women. States parties should**

³¹ General recommendation No. 33, para. 62.

³² Committee on the Rights of the Child, general comment No. 24 (2019) on children's rights in the child justice system, paras. 40, 49 and 103.

³³ Committee on the Rights of Persons with Disabilities, general comment No. 2 (2014) on accessibility, para. 37.

³⁴ Inter-American Commission on Human Rights, *Indigenous Women and their Rights in the Americas*, para. 156.

financially support non-governmental organizations that provide free and specialized legal assistance to Indigenous women and girls;

(h) Guarantee that judicial institutions, remedies and services are available in urban areas and in proximity to Indigenous territories;

(i) Adopt criminal justice, civil and administrative measures and policies that consider the historical conditions of poverty, racism and gender-based violence, which have affected and continue to affect Indigenous women and girls;

(j) Adopt measures to ensure that all Indigenous women and girls have access to information and education on existing laws, the legal system and how to gain access to both non-Indigenous and Indigenous justice systems. These measures can take the form of awareness-raising campaigns, community trainings, and legal and mobile clinics that offer this information;

(k) Ensure that Indigenous women and girls effectively enjoy the rights to a fair trial, equality before the law and equal protection of the law;

(l) Ensure that integral reparations for human rights violations are a key component of the administration of justice in both non-Indigenous and Indigenous systems, including consideration for spiritual and collective harm.

V. Obligations of States parties in relation to specific dimensions of the rights of Indigenous women and girls

A. Prevention of and protection from gender-based violence against Indigenous women and girls (arts. 3, 5, 6, 10 (c), 11, 12, 14 and 16)

34. Gender-based violence against Indigenous women and girls is a form of discrimination under article 1 of the Convention and, therefore, engages all obligations under the Convention. Under article 2 of the Convention, States parties must adopt measures without delay to prevent and eliminate all forms of gender-based violence against Indigenous women and girls.³⁵ Similarly, article 22 of the Declaration requires States to pay particular attention to the full protection of the rights of Indigenous women and to ensure their right to live free from violence and discrimination. The prohibition of gender-based violence against women is a principle of customary international law and applies to Indigenous women and girls.³⁶

35. Gender-based violence disproportionately affects Indigenous women and girls. Available statistics indicate that Indigenous women are more likely to experience rape than non-Indigenous women.³⁷ It is estimated that one in three Indigenous women is raped during her lifetime.³⁸ While there is a growing body of evidence of the magnitude, nature and consequences of gender-based violence globally, knowledge of its incidence against Indigenous women is limited and tends to vary considerably by issue and region.³⁹ The Committee highlights the need for States to engage in data collection efforts, in collaboration with Indigenous organizations and communities,

³⁵ General recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, para. 21.

³⁶ *Ibid.*, para. 2.

³⁷ [A/HRC/30/41](#), para. 47.

³⁸ *Ibid.*

³⁹ UN-Women and others, *Breaking the Silence on Violence against Indigenous Girls, Adolescents and Young Women* (New York, 2013), p. 4. See also Inter-Agency Support Group on Indigenous Peoples' Issues, "Elimination and responses to violence, exploitation and abuse of indigenous girls, adolescents and young women", thematic paper towards the preparation on of the World Conference on Indigenous Peoples, pp. 1–2 and 4–10.

to understand the scope of the problem of gender-based violence against Indigenous women and girls. It also highlights the need for discrimination, stereotypes and social legitimization of gender-based violence against them to be addressed by States.

36. The Committee is alarmed at the many forms of gender-based violence committed against Indigenous women and girls,⁴⁰ which occurs in all spaces and spheres of human interaction, including the family,⁴¹ community, public spaces, the workplace, educational settings and the digital space.⁴² Violence can be psychological, physical, sexual, economic, political or a form of torture. Spiritual violence is frequently perpetrated against Indigenous women and girls, harming the collective identity of their communities and their connection to their spiritual life, culture, territories, environment and natural resources. Violence against Indigenous women and girls with disabilities and older Indigenous women often occurs in institutions, in particular those that are closed and segregated. Indigenous women and girls are frequently victims of rape, harassment, disappearances, killings and femicide.

37. Forced displacement is a major form of violence that affects Indigenous women and girls, severing their connection to their lands, territories and natural resources and permanently harming their life plans and communities. They are also adversely affected by environmental violence, which can take the form of environmental harm, degradation, pollution or State failures to prevent foreseeable harm connected to climate change. Other forms of violence affecting them include the exploitation of prostitution; contemporary forms of slavery, such as domestic servitude; forced surrogacy; the targeting of older unmarried women as witches or carriers of bad spirits; the stigmatization of married women who cannot bear children; and female genital mutilation. The Committee underscores, in particular, the problem of trafficking in persons affecting Indigenous women and girls, resulting from the militarization of Indigenous territories by national armies, organized crime, mining and logging operations and drug cartels, as well as the expansion of military bases on Indigenous lands and territories.

38. Gender-based violence against Indigenous women and girls is drastically underreported, and perpetrators regularly enjoy impunity, owing to Indigenous women's and girls' extremely limited access to justice, as well as biased or flawed criminal justice systems.⁴³ Racism, marginalization, poverty, and alcohol and substance abuse increase the risk of gender-based violence against them.⁴⁴ They suffer gender-based violence perpetrated or tolerated by both State and non-State actors. State actors include members of governments, armed forces, law enforcement authorities and public institutions, including in the health and education sectors and in prisons.⁴⁵ Non-State actors include private individuals, businesses, private companies, paramilitary and rebel groups, illegal actors, and religious institutions.⁴⁶

39. States parties have a due diligence obligation to prevent, investigate and punish perpetrators and to provide reparations to Indigenous women and girls who are victims of gender-based violence. This obligation is applicable to both non-Indigenous and Indigenous justice systems.⁴⁷ Due diligence should be implemented with gender, intersectional, Indigenous women, intercultural and

⁴⁰ A/HRC/50/26, paras. 7–10 and 24–34.

⁴¹ A/HRC/30/41, paras. 113–117.

⁴² General recommendation No. 35, para. 20.

⁴³ CEDAW/C/OP.8/CAN/1, paras. 132–172.

⁴⁴ Inter-American Commission on Human Rights, *Indigenous Women and their Rights in the Americas*, paras. 85 and 86.

⁴⁵ UN-Women and others, *Breaking the Silence*, pp. 13–16, 19 and 20.

⁴⁶ *Ibid.*

⁴⁷ Inter-American Commission on Human Rights, *Indigenous Women*, para. 230. See also general recommendation No. 33, para. 64.

multidisciplinary perspectives, as defined in paragraphs 4 and 5, and bearing in mind the gendered causes and impacts of the violence experienced by Indigenous women.

40. Gender-based violence against Indigenous women and girls undermines the collective spiritual, cultural and social fabric of Indigenous Peoples and their communities and causes collective and sometimes intergenerational harm. Sexual violence against Indigenous women and girls has been used by a plurality of actors during armed conflicts and times of unrest as a weapon of war and as a strategy to control and harm Indigenous communities.

41. States should have an effective legal framework and adequate support services in place to address such gender-based violence. Such frameworks must include measures to prevent, investigate, punish perpetrators, and provide assistance and reparations to Indigenous women and girls who are victims, as well as services to address and mitigate the harmful effects of gender-based violence. This general obligation extends to all areas of State action, including legislative, executive and judicial branches, at the regional, national and local levels, as well as privatized services. It requires the formulation of legal norms, including at the constitutional level, and the design of public policies, programmes, institutional frameworks and monitoring mechanisms aimed at eliminating all forms of gender-based violence against Indigenous women and girls, whether committed by State or non-State actors.⁴⁸

42. **The Committee recommends that States parties:**

(a) **Adopt and effectively implement legislation that prevents, prohibits and responds to gender-based violence against Indigenous women and girls, incorporating gender, intersectional, Indigenous women and girls, intercultural, and multidisciplinary perspectives, as defined in paragraphs 4 and 5. Legislation and its implementation should also adequately consider the life cycle of all Indigenous women and girls, including those with disabilities;**

(b) **Recognize, prevent, address, sanction and eradicate all forms of gender-based violence against Indigenous women and girls, including environmental, spiritual, political, structural, institutional and cultural violence, as well as violence attributable to extractive industries;**

(c) **Ensure that Indigenous women and girls have timely and effective access to both non-Indigenous and Indigenous justice systems, including protection orders and prevention mechanisms, when needed, and the effective investigation of cases of missing and murdered Indigenous women and girls, free from all forms of discrimination and bias;**

(d) **Repeal all laws that prevent or deter Indigenous women and girls from reporting gender-based violence, such as guardianship laws that deprive women of legal capacity or restrict the ability of women with disabilities to testify in court; the practice of so-called “protective custody”; restrictive immigration laws that discourage women, including migrant and non-migrant domestic workers, from reporting such violence; and laws allowing for dual arrests in cases of domestic violence or for the prosecution of women when the perpetrator is acquitted;⁴⁹**

(e) **Ensure that support services, including medical treatment, psychosocial counselling and professional training, and reintegration services and shelters are available, accessible and culturally appropriate for Indigenous women and girls who are victims of gender-based violence. All services should be**

⁴⁸ General recommendation No. 35, para. 24 (b).

⁴⁹ *Ibid.*, para. 29 (c) (iii).

designed with intercultural and multidisciplinary perspectives, as defined in paragraph 5, and be vested with sufficient financial resources;

(f) Provide resources for Indigenous women and girl survivors of gender-based violence to have access to the legal system to report cases of such violence. Resources can include transportation, legal aid and representation, and access to information in Indigenous languages;

(g) States should act with due diligence to prevent all forms of violence, inhumane treatment and torture against Indigenous women and girls who are deprived of liberty. States must ensure that when these acts do occur, they are appropriately investigated and sanctioned. States should also adopt measures to ensure that Indigenous women and girls who are deprived of liberty know where and how to report these acts. States should further prioritize policies and programmes to promote the social reintegration of Indigenous women and girls who have been deprived of liberty, with respect for their culture, views and languages;

(h) States must adhere to their obligations under international human rights law and international humanitarian law in situations of armed conflict, including the prohibition of all forms of discrimination and gender-based violence against civilians and enemy combatants, as well as of harm to land, natural resources and the environment;

(i) Systematically collect disaggregated data and undertake studies, in collaboration with Indigenous communities and organizations, to assess the magnitude, gravity and root causes of gender-based violence against Indigenous women and girls, in particular sexual violence and exploitation, to inform measures to prevent and respond to such violence.

B. Right to effective participation in political and public life (arts. 7, 8 and 14)

43. Indigenous women and girls tend to be excluded from decision-making in local, national and international processes, as well as in their own communities and Indigenous systems.⁵⁰ Under article 7 of the Convention, they have the right to effective participation at all levels in political, public and community life. This right includes participation in decision-making within their communities, as well as with ancestral and other authorities; consent and consultation processes over economic activities carried out by State and private actors in Indigenous territories; public service and decision-making positions at the local, national regional and international levels; and their work as human rights defenders.⁵¹

44. Indigenous women and girls face multiple and intersecting barriers to effective, meaningful and real participation. Such barriers include political violence; lack of or unequal educational opportunities; illiteracy; racism; sexism; discrimination based on class and economic status; language constraints; the need to travel long distances to gain access to any form of participation; the denial of access to health-care services, including sexual and reproductive health care and rights; and the lack of access to, economic support for and information on legal, political, institutional, community and civil society processes to vote, run for political office, organize campaigns and secure funding. The barriers to participation can be particularly high in armed conflict contexts, including in transitional justice processes, in which Indigenous women and

⁵⁰ [A/HRC/30/41](#), paras. 38 and 39.

⁵¹ See United Nations High Commissioner for Human Rights, guidelines for States on the effective implementation of the right to participate in public affairs, pp. 10–19.

girls and their organizations are often excluded from peace negotiations or attacked and threatened when they do try to participate. States parties should act promptly to ensure that all Indigenous women and girls have access to computers, the Internet and other forms of technology to facilitate their full inclusion in the digital world.

45. The Committee acknowledges the threats faced by Indigenous women human rights defenders, whose work is protected by the right to participate in political and public life. At particular risk are Indigenous women and girls who are environmental human rights defenders in the course of advancing their land and territorial rights, and those opposing the implementation of development projects without the free, prior and informed consent of the Indigenous Peoples concerned. In many cases, Indigenous women and girl human rights defenders face killings; threats and harassment; arbitrary detentions; forms of torture; and the criminalization, stigmatization and discrediting of their work. Many Indigenous women and girls' organizations face obstacles to their recognition as legal entities at the national level, the lack of which challenges their access to funding and their ability to work freely and independently. The Committee considers that States parties should adopt immediate gender-responsive measures to publicly recognize, support and protect the life, liberty, security and self-determination of Indigenous women and girl human rights defenders, and to ensure safe conditions and an enabling environment for their advocacy work, free from discrimination, racism, killings, harassment and violence.

46. **The Committee recommends that States parties:**

(a) **In accordance with the general recommendations No. 23 (1997) on women in political and public life and No. 25 (2004) on temporary special measures, and articles 18, 19, 32.1 and 44 of the Declaration, promote the meaningful, real and informed participation of Indigenous women and girls in political and public life and at all levels, including in decision-making positions, which may include temporary special measures, such as quotas, targets, incentives and efforts to ensure parity in representation;⁵²**

(b) **Establish accountability mechanisms to prevent political parties and trade unions from discriminating against Indigenous women and girls, and ensure that they have effective access to gender-responsive judicial remedies to report such violations when they occur. It is also critical to train public servants on the right of Indigenous women and girls to effectively participate in public life;**

(c) **Disseminate accessible information among Indigenous women and girls, as well as in society in general, on opportunities to exercise their right to vote, participate in public life and stand for election, and promote their recruitment into public service, including at the decision-making level. Measures to facilitate accessibility for women and girls with disabilities can include the use of sign language, easy read and Braille;**

(d) **Act with due diligence to prevent, investigate and punish all forms of political violence against Indigenous women politicians, candidates, human rights defenders and activists at the national, local and community levels, and recognize and respect ancestral forms of organization and the election of representatives;**

(e) **Create, promote and ensure the access of Indigenous women to political office through campaign financing; skills training; incentives; awareness-raising activities for political parties to nominate them as candidates; and adequate health-care and childcare facilities, as well as support services for**

⁵² General recommendation No. 34, para. 54.

caring for older persons, adopt the necessary legislative measures and reforms to ensure the right of political participation of Indigenous women and girls, and create incentives and monitoring mechanisms, as well as penalties for failure by political parties to implement temporary special measures to increase the political participation of Indigenous women and girls;

(f) Ensure that economic activities, including those related to logging, development, investment, tourism, extraction, mining, climate mitigation and adaptation programmes, and conservation projects are only implemented in Indigenous territories and protected areas with the effective participation of Indigenous women, including full respect for their right to free, prior and informed consent and the adequate consultation processes. It is key that these economic activities do not adversely impact human rights, including those of Indigenous women and girls;⁵³

(g) In line with general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations and Security Council resolution 1325 (2000) and subsequent resolutions, ensure and create spaces for Indigenous women and girls to participate as decision makers and actors in peacebuilding efforts and transitional justice processes;

(h) Take proactive and effective steps to recognize, support and protect the life, integrity and work of Indigenous women human rights defenders, and ensure that they conduct their activities in safe, enabling and inclusive environments. State measures should include the creation of specialized government mechanisms to protect women human rights defenders with their genuine and meaningful participation and in collaboration with Indigenous Peoples.

C. Right to education (arts. 5 and 10)

47. Indigenous women and girls face multiple barriers to enrolment, retention, and completion at all levels of education and in non-traditional fields.⁵⁴ Some of the most important educational barriers for them include: the lack of education facilities designed, established or controlled by Indigenous Peoples; poverty; discriminatory gender stereotypes and marginalization;⁵⁵ limited cultural relevance of educational curricula; instruction solely in the dominant language; and the scarcity of sexuality education. Indigenous women and girls frequently must travel long distances to schools and are at risk of gender-based violence en route and upon arrival. While at school, they may experience sexual violence, corporal punishment or bullying. Gender-based violence and discrimination in education is particularly acute when forced assimilation policies are implemented in schools. Indigenous girls with disabilities face particular barriers to access and retention, including lack of physical accessibility; school officials' refusal to enrol them; and reliance on segregated schools for children with disabilities. Forced and/or child marriages, sexual violence and adolescent pregnancies, the disproportionate burden of family responsibilities, child work, natural disasters and armed conflicts can also hamper Indigenous girls' access to school.

⁵³ Ibid.

⁵⁴ General recommendation No. 36 (2017) on the right of girls and women to education, para. 41; and general recommendation No. 34, para. 42.

⁵⁵ Ibid.

48. **The Committee recommends that States parties:**

(a) **Ensure that Indigenous women and girls fully enjoy the right to education by:**

(i) **Guaranteeing their equal access to quality education at all levels of education, including by supporting Indigenous Peoples to realize the rights guaranteed in articles 14 and 15 of the Declaration;**

(ii) **Addressing discriminatory stereotypes related to Indigenous origin, history, culture and the experiences of Indigenous women and girls;**

(iii) **Creating scholarship and financial aid programmes to promote Indigenous women's and girls' enrolment, including in non-traditional fields such as science, technology, engineering and mathematics and information and communication technology (ICT), and recognize and protect Indigenous knowledge and the contributions of Indigenous Peoples, including women, to science and technology;**

(iv) **Creating interdisciplinary support systems for Indigenous women and girls to reduce their unequal share of unpaid care work and combat child marriage and to assist victims in reporting acts of gender-based violence and labour exploitation. Social support systems should be operationally effective, accessible and culturally responsive;**

(b) **Ensure quality education that is inclusive, accessible and affordable for all Indigenous women and girls, including those with disabilities. States should remove barriers and provide adequate resources and facilities to ensure that Indigenous women and girls with disabilities have access to an education. States should guarantee the availability of age-appropriate sexual education based on scientific research;⁵⁶**

(c) **Promote the adoption of curricula that reflect Indigenous education, languages, cultures, history, knowledge systems and epistemologies.⁵⁷ These efforts should extend to all schools, including those in the mainstream. The adoption of curricula should be done with the participation of Indigenous women and girls.**

D. Right to work (arts. 11 and 14)

49. Indigenous women have limited access to decent, safe and adequately remunerated employment, which undermines their economic autonomy. They contribute significantly to the agricultural sector but are overrepresented in subsistence agriculture; low-skilled, part-time, seasonal, low-paid or unpaid jobs; and home-based activities. A significant number of Indigenous women and girls also engage in domestic work with low remuneration and unsafe working conditions. Their overrepresentation in informal employment translates into weak income, benefits and social protection. They also face discriminatory gender stereotypes and racial prejudice in the workplace, including frequent prohibition from wearing their attire or using their languages. Indigenous women often face forms of gender-based violence and harassment at work, and their treatment can amount to forced labour and forms of slavery. States should create equal opportunities for Indigenous women and girls to gain access to the needed education and training necessary to increase their employment prospects and to facilitate their transition from the informal to the formal economy. States should also guarantee that Indigenous Peoples and women continue to pursue and benefit from their occupations, without discrimination.

⁵⁶ General recommendation No. 34, para. 43.

⁵⁷ Ibid.

50. **The Committee recommends that States parties:**
- (a) **Ensure equal, safe, just and favourable conditions of work and income security for Indigenous women and girls, including by:**
 - (i) **Expanding and promoting vocational and professional training opportunities for them;**
 - (ii) **Expanding opportunities for Indigenous women to run businesses and become entrepreneurs. States should support Indigenous-women-led businesses and help Indigenous communities to generate wealth by improving access to capital and business opportunities;**
 - (iii) **Facilitating their transition from the informal to the formal economy, if desired;**
 - (iv) **Protecting the occupational health and safety of Indigenous women in all forms of work;**
 - (v) **Expanding the coverage of social protection and provide adequate childcare services for Indigenous women, including those who are self-employed;⁵⁸**
 - (vi) **Guaranteeing that Indigenous Peoples and women can continue to pursue and benefit from their occupations, without discrimination, and also guaranteeing the collective rights to the land on which these occupations take place;**
 - (vii) **Fully incorporating the right to just and favourable conditions of work and the principle of equal pay for work of equal value into legal and policy frameworks, paying special attention to Indigenous women and girls who are working legally.⁵⁹ States parties should promote entrepreneurship by ensuring that Indigenous women have equal access to loans and other forms of financial credit, without collateral, to enable them to create their own businesses and advance their economic autonomy;**
 - (b) **Take steps to prevent discrimination, racism, stereotypes, gender-based violence and sexual harassment against Indigenous women in the workplace and to establish and enforce effective reporting and accountability mechanisms, including through regular labour inspections;**
 - (c) **Ensure that Indigenous women and girls have access to vocational and professional skills training, including in science, technology, engineering and mathematics, as well as ICT and other fields from which Indigenous Peoples have historically been excluded.**

E. Right to health (arts. 10 and 12)

51. Indigenous women and girls have limited access to adequate health-care services, including sexual and reproductive health services and information, and face racial and gender-based discrimination in health systems. Their right to free, prior and informed consent is often not respected in the health sector. Health professionals are often race- and gender-biased, insensitive to the realities, culture and views of Indigenous women and do not speak Indigenous languages, and they rarely offer services respecting the dignity, privacy, informed consent and reproductive autonomy of Indigenous women. Indigenous women frequently experience difficulties in

⁵⁸ Ibid., paras. 40–41.

⁵⁹ Ibid., para. 50.

securing access to sexual and reproductive health information and education, including about family planning methods, contraception and access to safe and legal abortion. They are often victims of gender-based violence in the health system, including obstetrics violence; coercive practices, such as involuntary sterilizations or forced contraception; and barriers to their ability to decide on the number and spacing of their children. Indigenous midwives and birth attendants are often criminalized, and technical knowledge is undervalued by non-Indigenous health systems. Pandemics have a disproportionate impact on Indigenous women and girls, and States parties must ensure access to culturally acceptable health-care services, testing and vaccination during such emergencies.

52. The Committee recommends that States parties:

(a) Ensure that quality health services and facilities are available, accessible, affordable, culturally appropriate and acceptable for Indigenous women and girls, including those with disabilities, older women, and lesbian, bisexual, transgender and intersex women and girls, and ensure that free, prior and informed consent, confidentiality and privacy are respected in the provision of health services;

(b) Guarantee that Indigenous women and girls receive prompt, comprehensive and accurate information, in accessible formats, on sexual and reproductive health services and affordable access to such services, including safe abortion services and modern forms of contraception;

(c) Ensure that health information is widely disseminated in Indigenous languages, including through conventional and social media;

(d) Ensure the recognition of Indigenous health systems, ancestral knowledge, practices, sciences and technologies, and prevent and sanction the criminalization thereof;

(e) Provide gender-responsive and culturally responsive training, with gender and intercultural perspectives, as defined in paragraphs 4 and 5, to health professionals, including community health workers and birth attendants, who treat Indigenous women and girls, and encourage Indigenous women to enter the medical profession;

(f) Adopt steps to prevent all forms of gender-based violence, coercive practices, discrimination, gender stereotypes and racial prejudice in the provision of health services.

F. Right to culture (arts. 3, 5, 13 and 14)

53. Culture is an essential component of the lives of Indigenous women and girls. It is intrinsically linked to their lands, territories, histories and community dynamics. There are many sources of culture for Indigenous women and girls, including languages, dress and the way they prepare food, practice Indigenous medicine, respect sacred places, practice religion and their traditions, and transmit the history and heritage of their communities and peoples. Indigenous women have a right not only to enjoy their culture but also to challenge aspects of their culture that they consider discriminatory, such as outdated laws, policies and practices contrary to international human rights law and gender equality. According to article 12 of the Convention on the Rights of the Child, Indigenous Girls also have the right to express their views and to participate in cultural matters affecting them, either directly or through a representative, in accordance with their age and maturity.⁶⁰ States should also ensure

⁶⁰ Committee on the Rights of the Child, general comment No. 11, para. 38.

that Indigenous women and girls can participate fully in sports and recreational activities, free from all forms of discrimination.

54. The dispossession, lack of legal recognition and unauthorized use of Indigenous territories, lands and natural resources, as well as environmental degradation, including biodiversity loss, pollution and climate change, are direct threats to the self-determination, cultural integrity and survival of Indigenous women and girls, as are the unauthorized use and appropriation of their technical knowledge, spiritual practice, and cultural heritage by State actors and third parties. States should protect and preserve Indigenous languages, culture and knowledge, including through the use of digital tools; sanction the unauthorized appropriation and use of such languages, culture and knowledge; and respect and protect the lands, territories and sacred places of Indigenous Peoples.

55. **The Committee recommends that States parties:**

(a) **Ensure the individual and collective rights of Indigenous women and girls to maintain their culture, identity and traditions and to choose their own path and life plans;**

(b) **Respect, protect and expand the rights of Indigenous Peoples to land, territories, resources and a safe, clean, sustainable and healthy environment as a precondition for preserving the culture of Indigenous women and girls;**

(c) **Act with due diligence to prevent, investigate, punish transgressors and provide reparations to victims in cases of unauthorized use or appropriation of the cultural knowledge and heritage of Indigenous women and girls without their free, prior and informed consent and adequate benefit-sharing;**

(d) **Collaborate with Indigenous Peoples, including women, to develop culturally appropriate education programmes and curricula;**

(e) **Study the relationship between technology and culture, as digital tools can be important in transmitting and preserving Indigenous languages and culture. Where digital tools are used to support the transmission and preservation of Indigenous cultures, they should be made accessible to and be culturally appropriate for Indigenous women and girls;**

(f) **Recognize and protect Indigenous women's intellectual property; cultural heritage; scientific and medical knowledge; forms of literary, artistic, musical and dance expressions; and natural resources. In adopting measures, States parties must take into account the preferences of Indigenous women and girls. Measures can include the recognition, registration and protection of the individual or collective authorship of Indigenous women and girls under national intellectual property rights regimes and should prevent the unauthorized use of their intellectual property, cultural heritage, scientific and medical knowledge, forms of literary, artistic, musical and dance expressions; and natural resources by third parties. States should also respect the principle of free, prior and informed consent of Indigenous women authors and artists and the oral or other customary forms of transmission of their traditional knowledge, cultural heritage and scientific, literary or artistic expressions;⁶¹**

(g) **Act with due diligence to respect and protect the sacred places of Indigenous Peoples and their territories, and hold those who violate them accountable.**

⁶¹ Committee on Economic, Social and Cultural Rights, general comment No. 17 (2005) on the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author, para. 32.

G. Rights to land, territories and natural resources (arts. 13 and 14)

56. Land and territories are an integral part of the identity, views, livelihood, culture and spirit of Indigenous women and girls. Their lives, well-being, culture and survival are intrinsically linked to the use and enjoyment of their lands, territories and natural resources. The limited recognition of ownership of their ancestral territories; the absence of titles to their lands and legal protection of their traditions and heritage; and the lack of recognition of Indigenous Peoples' land and native title rights at the treaty, constitutional and legislative levels in many countries⁶² undermine and fuel disrespect for their rights by State and private actors, specifically the rights to collective ownership, possession use and enjoyment of land and resources. Lack of recognition of Indigenous land rights can lead to poverty; food and water insecurity; and barriers to access to natural resources needed for survival, and can create unsafe conditions, which give rise to gender-based violence against Indigenous women and girls. States are required under international law to delimit, demarcate, title and ensure security of title to Indigenous Peoples' territories to prevent discrimination against Indigenous women and girls.

57. **The Committee recommends that States parties:**

(a) **Recognize the rights of Indigenous Peoples and women to individual and collective ownership and control over lands encompassed by their customary land tenure systems, and develop policies and laws that adequately reflect this recognition in the local and national economies;**

(b) **Recognize legally the right to self-determination and the existence and rights of Indigenous Peoples to their lands, territories and natural resources in treaties, constitutions and laws at the national level;**

(c) **Require the free, prior and informed consent of Indigenous women and girls before authorizing economic, development, extractive and climate mitigation and adaptation projects on their lands and territories and affecting their natural resources. It is recommended to design free, prior and informed consent protocols to guide these processes;**

(d) **Prevent and regulate activities by businesses, corporations and other private actors that may undermine the rights of Indigenous women and girls to their lands, territories and environment, including measures to punish, ensure the availability of remedies, grant reparations and prevent the repetition of these human rights violations;**

(e) **Adopt a comprehensive strategy to address discriminatory stereotypes, attitudes and practices that undermine Indigenous women's rights to land, territories and natural resources.**⁶³

H. Rights to food, water and seeds (arts. 12 and 14)

58. Indigenous women and girls have a key role in their communities in securing food, water and forms of livelihood and survival. The dispossession of their territories, forced displacement and lack of recognition of Indigenous land rights limits their opportunities to achieve food and water security and to manage these needed natural resources. The implementation of extractive and other economic activities and development projects can cause food and water contamination, disruption and degradation and can obstruct key forms of ancestral farming. Climate change and

⁶² A/HRC/45/38, paras. 5–9.

⁶³ General recommendation No. 34, para. 57.

other forms of environmental degradation also threaten food security and contaminate and disrupt water supplies. States should adopt urgent measures to ensure that Indigenous women and girls have adequate access to sufficient food, nutrition and water. Of particular concern is the increasing commercialization of seeds, which are an essential part of the ancestral knowledge and cultural heritage of Indigenous Peoples. This commercialization of seeds often occurs without benefit-sharing with Indigenous women. The proliferation of transgenic or genetically modified crops is of concern to Indigenous Peoples and often occurs without the participation of Indigenous women or girls.

59. **The Committee recommends that States parties:**

(a) **Ensure adequate access of Indigenous women and girls to sufficient food, water and seeds, and acknowledge their contribution to food production, sovereignty and sustainable development;**

(b) **Protect ancestral forms of farming and sources of livelihood for Indigenous women, and ensure the meaningful participation of Indigenous women and girls in the design, adoption and implementation of agrarian reform schemes and the management and control of natural resources;**

(c) **Exercise due diligence to prevent, investigate and punish gender-based violence committed against Indigenous women and girls when they are performing agricultural work, procuring food and fetching water for their families and communities, and ensure that they have access to the benefits of scientific progress and technological innovation to be able to achieve food and water security and that they are compensated for their contributions and technical knowledge. Their scientific contributions should also be recognized by States parties.**

I. Right to a clean, healthy and sustainable environment (arts. 12 and 14)

60. The right to a clean, healthy and sustainable environment encompasses a safe and stable climate; safe and adequate food and water; healthy ecosystems and biodiversity; a non-toxic environment; participation; access to information; and access to justice in environmental matters.⁶⁴ Indigenous women and girls refer to “Mother Earth”, a concept that reflects the vital link that they have with a healthy environment and their lands, territories and natural resources. Human-caused pollution, contamination, deforestation, burning of fossil fuels and loss of biodiversity threaten that link. The failure of States to take adequate action to prevent, adapt to and remediate these serious instances of environmental harm constitutes a form of discrimination and violence against Indigenous women and girls that needs to be promptly addressed. Moreover, States should take steps to recognize the contribution of Indigenous women through their technical knowledge of biodiversity conservation and restoration, including them in decision-making, negotiations and discussions concerning climate action and mitigation and adaptation measures. States should also act promptly to support the work of Indigenous women and girls who are environmental human rights defenders and ensure their protection and security.

61. **The Committee recommends that States parties:**

(a) **Ensure that laws and policies related to the environment, climate change and disaster risk reduction reflect the specific impacts of climate change**

⁶⁴ See Human Rights Council resolution [48/13](#).

and other forms of environmental degradation and harm, including the triple planetary crisis;⁶⁵

(b) Ensure that Indigenous women and girls have equal opportunities to meaningfully and effectively participate in decision-making related to the environment, disaster-risk reduction and climate change;⁶⁶

(c) Ensure that effective remedies and accountability mechanisms are in place to hold those responsible for environmental harm accountable, and ensure access to justice for Indigenous women and girls in environmental matters;

(d) Ensure the free, prior and informed consent of Indigenous women and girls in matters affecting their environment, lands, cultural heritage and natural resources, including any proposal to designate their lands as a protected area for conservation or climate change mitigation purposes or carbon sequestration and trading or to implement a green energy project on their lands, and any other matter having a significant impact on their human rights.

⁶⁵ General recommendation No. 37, para. 26.

⁶⁶ *Ibid.*, para. 36.



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General comment No. 26 (2022) on land and economic, social and cultural rights*

I. Introduction

1. Land plays an essential role in the realization of a range of rights under the International Covenant on Economic, Social and Cultural Rights. Secure and equitable access to, use of and control over land for individuals and communities can be essential to eradicate hunger and poverty and to guarantee the right to an adequate standard of living. The sustainable use of land is essential to ensure the right to a clean, healthy and sustainable environment and to promote the right to development, among other rights. In many parts of the world, land is not only a resource for producing food, generating income and developing housing, it also constitutes the basis for social, cultural and religious practices and the enjoyment of the right to take part in cultural life. At the same time, secure land tenure systems are important to protect people's access to land as a means of guaranteeing livelihoods and avoiding and regulating disputes.

2. However, the current use and management of land are not conducive to the realization of the rights enshrined in the Covenant. The most important factors in this trend are the following:

(a) The increased competition for access to and control over land. Long-term trends in high demand for land and rapid urbanization in most parts of the world have had a significant impact on the rights of many, in particular peasants, rural communities, pastoralists, fisherfolk and Indigenous Peoples, as well as persons living in poverty in urban areas;

(b) In cities, the financialization of housing markets has led to competition between different groups for access to and control over land and has encouraged speculation and inflation, affecting the rights of those left behind to an adequate standard of living and to adequate housing;

(c) In rural areas, competition for arable land resulting from demographic growth, urbanization, large-scale development projects and tourism has significantly affected the livelihoods and rights of rural populations;

(d) Land degradation owing to overuse, poor management and unsustainable agricultural practices has caused food insecurity and water degradation and is directly linked to climate change and environmental degradation, escalating the risk of widespread, abrupt and irreversible environmental changes, including massive desertification;¹

* Adopted by the Committee at its seventy-second session (26 September–14 October 2022).

¹ See United Nations Convention to Combat Desertification, *The Global Land Outlook*, 2nd ed. (Bonn, 2022), in which it is highlighted that between 20 and 40 per cent of land worldwide is already degraded.



(e) Measures to mitigate climate change, such as large-scale renewable energy projects or reforestation measures, might contribute to such trends when not adequately managed;

(f) Global trends, including climate change and the resulting increase in internal and cross-border migration, are likely to increase tensions over the access to and use and tenure of land, with negative implications for human rights;

(g) Weak, mismanaged, corrupt or non-existent legal and institutional frameworks for the governance of land tenure exacerbate these problems and lead to land disputes and conflicts, social inequality, hunger and poverty.

3. Concerns relating to access to, use of and control over land have led in recent years to the adoption of a number of international instruments that have significantly influenced national legislation and policy and have been widely endorsed by Governments. In 2004, the Council of the Food and Agriculture Organization of the United Nations (FAO) adopted the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security,² which contain several provisions relating to access to natural resources, including land and water. In 2012, the Committee on World Food Security endorsed the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security,³ which have acquired a high degree of legitimacy owing to, inter alia, the inclusive nature of that Committee. In 2014, the Committee on World Food Security endorsed the Principles for Responsible Investment in Agriculture and Food Systems, which address, inter alia, the human rights implications of agricultural investments.⁴ In 2007, in its resolution 61/295, the General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples and in 2018, in its resolution 73/165, it adopted the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, in both of which the Assembly recognized a right to land for these populations. Indeed, the importance of land for the realization of many human rights has led some scholars, civil society organizations and special rapporteurs to consider land as a human right, with reference to all the rights, entitlements and State obligations relating to land. One example is the basic principles and guidelines on development-based evictions and displacement, which were drawn up by the Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living.⁵

4. The present general comment was formulated on the basis of the Committee's experience in its review of State party reports⁶ and in the light of its other general comments and its Views and decisions on communications. It is aimed at clarifying States' obligations relating to the impact of access to, use of and control over land on the enjoyment of the rights enshrined in the Covenant, especially for the most disadvantaged and marginalized individuals and groups. Thus, it is aimed at clarifying the specific obligations contained in the Covenant that relate to land, particularly in the context of the rights enshrined in articles 1–3, 11, 12 and 15.

II. Provisions of the Covenant relating to land

5. Secure and equitable access to, use of and control over land can have direct and indirect implications for the enjoyment of a range of rights enshrined in the Covenant.

6. First, land is crucial to guarantee the enjoyment of the right to adequate food, as land is used in rural areas for the purpose of food production. Consequently, if land users are deprived of the land they use for productive purposes, their right to adequate food might be

² See <https://www.fao.org/3/y7937e/y7937e00.htm>.

³ See <https://doi.org/10.4060/i2801e>.

⁴ See https://www.fao.org/fileadmin/templates/cfs/Docs1314/rai/CFS_Principles_Oct_2014_EN.pdf.

⁵ A/HRC/4/18, annex I.

⁶ The Committee has referred to land-related issues in approximately 50 concluding observations since 2001. See, for example, E/C.12/IND/CO/5, E/C.12/KHM/CO/1, E/C.12/MDG/CO/2 and E/C.12/TZA/CO/1.

endangered. Article 11 (2) of the Covenant provides that States parties, recognizing the connection between the right to be free from hunger and the utilization of natural resources, which include land, should develop or reform agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources. In the Committee's general comment No. 12 (1999) on the right to adequate food and in the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, the importance of access to productive resources is highlighted as a key element for the realization of the right to adequate food, particularly in rural areas, where most peasants and pastoralists live and where people are more likely to experience hunger.

7. Second, as access to land provides space for housing, the enjoyment of the right to adequate housing depends largely on having secure access to land. Without such access, people could be subject to displacement and forced eviction, which could violate their right to adequate housing. Secure access to land in rural areas serves the rights to both adequate food and housing, as housing is often built on land used for the purpose of food production.

8. Third, land is also directly linked to the enjoyment of the right to water. For example, the enclosure of communal grounds deprives people from access to water sources that are necessary to meet their personal and domestic needs.

9. Fourth, the use of land may affect the enjoyment of the right to the highest attainable standard of physical and mental health. For example, land use that relies on pesticides, fertilizers and plant growth regulators or that results in the production of animal waste and other microorganisms has contributed to various respiratory diseases.

10. Fifth, land is closely and often intrinsically related to the enjoyment of the right to take part in cultural life owing to the particular spiritual or religious significance of land to many communities, for example, when land serves as a basis for social, cultural and religious practices or the expression of cultural identity.⁷ This is particularly relevant for Indigenous Peoples and for peasants and other local communities living traditional lifestyles.

11. Sixth, land is also closely linked to the right to self-determination, enshrined in article 1 of the Covenant, the importance of which was emphasized in Declaration on the Right to Development (1986). The realization of self-determination is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights.⁸ Indigenous Peoples can freely pursue their political, economic, social and cultural development and dispose of their natural wealth and resources for their own ends only if they have land or territory in which they can exercise their self-determination.⁹ The present general comment deals only with the internal self-determination of Indigenous Peoples, which has to be exercised in accordance with international law and respecting the territorial integrity of States.¹⁰ Thus, according to their right to internal self-determination, the collective ownership of lands, territories and resources of Indigenous Peoples shall be respected, which implies that these lands and territories shall be demarcated and protected by States parties.

⁷ African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya*, communication No. 276/03, Decision, forty-sixth ordinary session, 11–25 November 2005, para. 241; Inter-American Court of Human Rights, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment, 31 August 2001, paras. 148–149 and 151, and *Yakye Axa Indigenous Community v. Paraguay*, Judgment, 17 June 2005, paras. 131–132; and Human Rights Chamber for Bosnia and Herzegovina, *The Islamic Community in Bosnia and Herzegovina v. The Republika Srpska*, Case No. CH/96/29, Decision, 11 June 1999, paras. 182 and 187.

⁸ Human Rights Committee, general comment No. 12 (1984), para. 1.

⁹ United Nations Declaration on the Rights of Indigenous Peoples, preamble and arts. 10 and 26.

¹⁰ *Käkkäläjärvi et al. v. Finland (CCPR/C/124/D/2950/2017)*.

III. Obligations of States parties under the Covenant

A. Non-discrimination, equality and groups or persons requiring particular attention

12. Under articles 2 (2) and 3 of the Covenant, States parties are required to eliminate all forms of discrimination and to ensure substantive equality.¹¹ Accordingly, States parties shall undertake regular reviews to ensure that domestic laws and policies do not discriminate against people on any prohibited grounds. They should also adopt specific measures, including legislation, aimed at eliminating discrimination against both public and private entities in relation to rights under the Covenant in land-related contexts. In particular, women, Indigenous Peoples, peasants and other people working in rural areas deserve special attention, either because they have been traditionally discriminated against in terms of access to, use of and control over land or because of their particular relationship to land.

1. Women

13. Women are among those who are disproportionately affected by poor access to, use of, control over and bad governance of land, threatening their rights under the Covenant and potentially leading to discrimination, including intersectional discrimination. In several of its concluding observations, the Committee has drawn special attention to discrimination against women with regard to security of land tenure, access to, use of and control over land, marital property, inheritance and exclusion from decision-making processes, including in the context of communal forms of land tenure.¹² In its general comment No. 16 (2005), the Committee noted that women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so (para. 28).¹³ In its general comment No. 12 (1999), the Committee recognized the importance of full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land (para. 26).¹⁴

14. For women, land is a pivotal resource for meeting subsistence needs and for accessing other goods and services, such as credit. Furthermore, land is important to enhance women's engagement in household decision-making and for their participation in rural institutions that could strengthen their decision-making power and leverage over collective rights and resources. In addition, women's property ownership improves children's welfare and increases access to sexual and reproductive health services. It also reduces women's exposure to violence, in part because women who have security in access to tenure can flee domestic violence more easily by seeking access to protection, and also by making women's households more secure, by enhancing women's self-confidence and self-esteem and their role in decision-making, and by allowing them to garner more social, familial and community support.¹⁵ Thus, in cases of agrarian reform or any redistribution of land, the right of women,

¹¹ Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009), paras. 7–8.

¹² With regard to discrimination in relation to access to land, particularly access and ownership, see, for example, [E/C.12/GIN/CO/1](#), [E/C.12/CMR/CO/4](#), [E/C.12/MLI/CO/1](#), [E/C.12/NER/CO/1](#), [E/C.12/ZAF/CO/1](#) and [E/C.12/CAF/CO/1](#). Concerning the very small number of women who own land, see, for example, [E/C.12/ZAF/CO/1](#). Regarding traditional and customary law and practice depriving women of their inheritance and property rights, see, for example, [E/C.12/BEN/CO/3](#), [E/C.12/CMR/CO/4](#), [E/C.12/ZAF/CO/1](#), [E/C.12/NER/CO/1](#) and [E/C.12/CAF/CO/1](#). Regarding patriarchal attitudes and attitudes based on stereotypes, see, for example, [E/C.12/NER/CO/1](#).

¹³ See also Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, arts. 15–16, 18 and 19 (c).

¹⁴ See also Committee on the Elimination of Discrimination against Women, general recommendation No. 34 (2016), in which that Committee recognized rural women's rights to land, natural resources, including water, seeds and forests, and fisheries as fundamental human rights and emphasized that States parties should take all measures necessary to achieve the substantive equality of rural women in relation to land and natural resources (paras. 56–57).

¹⁵ International Center for Research on Women, *Property Ownership & Inheritance Rights of Women for Social Protection – The South Asia Experience* (Washington, D.C., 2006), pp. 12 and 100. See

regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed. States should also monitor and regulate customary law, which in many countries has an important role in governing land, to protect the rights of women and girls who are affected by traditional inheritance rules of male primogeniture.

15. However, laws and social customs such as those providing that, upon the death of a man, his land belongs to his sons and not his widow or daughters, remain in place, despite their flagrant violation of women's rights under the Covenant.¹⁶ Ensuring that women enjoy the rights enshrined in the Covenant on an equal basis to men requires the removal of traditional land regulations and structures that discriminate against women. This could be achieved by a combination of traditional and modern land governance regimes.¹⁷

2. Indigenous Peoples

16. The right of Indigenous Peoples over the lands and territories they have traditionally occupied is recognized in international law. The Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization and the United Nations Declaration on the Rights of Indigenous Peoples (arts. 25–28)¹⁸ both recognize Indigenous Peoples' right to land and territory.¹⁹ These sources of international human rights law provide for respect for and the protection of the relationship that Indigenous Peoples have with their lands, territories and resources, requiring States to demarcate their lands, protect those lands from encroachment and respect their right to manage the lands according to their internal modes of organization. The spiritual relationship of Indigenous Peoples to land is linked not only to spiritual ceremonies but also to every activity on land, such as hunting, fishing, herding and gathering plants, medicines and foods. Thus, States parties should ensure Indigenous Peoples' right to maintain and strengthen their spiritual relationship with their lands, territories and resources, including waters and seas in their possession or no longer in their possession but which they owned or used in the past. Indigenous Peoples have the right to have their lands demarcated, and relocation should be allowed only under narrowly defined circumstances and with the prior, free and informed consent of the groups concerned.²⁰ Laws and policies should protect Indigenous Peoples from the risk of State encroachment on their land, for instance for the development of industrial projects or for large-scale investments in agricultural production.²¹ Regional human rights courts have contributed to strengthening the rights of Indigenous Peoples to their lands and territories.²² Both the Inter-American Court of Human Rights and the African Commission on Human and Peoples' Rights have taken the view that Indigenous Peoples who have unwillingly lost possession of their lands without

also Committee on the Elimination of Discrimination against Women, general recommendation No. 34 (2016), paras. 55–78.

¹⁶ Committee on the Elimination of Discrimination against Women, general recommendation No. 34 (2016), paras. 55–78.

¹⁷ African Union, African Development Bank and Economic Commission for Africa, *Framework and guidelines on land governance in Africa* (Addis Ababa, 2010), para. 3.1.3.

¹⁸ See also the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, guideline 9.

¹⁹ See also [A/HRC/45/38](#).

²⁰ Arts. 10–11, 19, 28–29 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples refer to the necessity to seek Indigenous Peoples' free, prior and informed consent on measures affecting them. This operates as a safeguard for the collective rights of Indigenous Peoples. See [A/HRC/39/62](#).

²¹ United Nations Declaration on the Rights of Indigenous Peoples, arts. 28 and 32.

²² Inter-American Court of Human Rights, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, paras. 151 and 164. For a discussion of the case law of the Inter-American bodies in that area, see Fergus MacKay, "From 'sacred commitment' to justiciable norms: indigenous peoples' rights in the Inter-American system," in *Casting the Net Wider: Human Rights, Development and New Duty-Bearers*, Margot E. Salomon, Arne Tostensen and Wouter Vandenhoe, eds. (Antwerp, Intersentia, 2007). See also African Court on Human and Peoples' Rights, *African Commission on Human and Peoples' Rights v. Republic of Kenya*, Application No. 006/2012, Judgment, 26 May 2017.

their free and prior consent after a lawful transfer to third parties “are entitled to restitution thereof or to obtain other lands of equal extension and quality”.²³

17. In recent jurisprudence of regional human rights courts, some of the rights applicable to Indigenous Peoples concerning land have been extended to some traditional communities that maintain a similar relationship to their ancestral lands, centred on the community rather than the individual.²⁴

3. Peasants and other people working in rural areas

18. Access to land has particular importance for the realization of the rights of peasants and other people working in rural areas worldwide.²⁵ For peasants, access to land and other productive resources is so important for the realization of most rights under the Covenant that it implies for them a right to land. Articles 5 and 17 of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas recognize this right to land for peasants and other people working in rural areas, which include agricultural workers, pastoralists and fisherfolk. This right can be exercised individually and collectively. It includes the right to have access to, sustainably use and manage land to achieve an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures.²⁶ States should take measures to support peasants to use the land in a sustainable manner, to maintain soil fertility and its productive resources, and to ensure that their methods of production do not endanger the environment for others, in terms of aspects such as access to clean water and preservation of biodiversity.

19. If disputes over land arise between Indigenous Peoples or peasants, States shall provide mechanisms for the adequate settlement of those disputes, making every effort to satisfy the right to land of both groups.²⁷ Both groups depend to a large extent on access to communal lands or to collective ownership. Respect for Indigenous Peoples’ self-determination and their customary land tenure system necessitates recognition of their collective ownership of lands, territories and resources.²⁸ There are also other groups, including peasants, pastoralists and fisherfolk, for whom access to communal lands or the commons for gathering firewood, collecting water or medicinal plants or for hunting and fishing is essential. Customary forms of property may provide security for people who depend on commons and for whom formal property rights are generally not an appropriate solution. However, ill-conceived attempts to formalize customary tenure rights through titling schemes and the enclosure of communal lands might exclude such people from access to resources on which they depend, affecting the right to food, the right to water and other rights enshrined in the Covenant. Consequently, States have an obligation to guarantee secure access to legitimate land users without discrimination, including those who depend on collective or communal land.

B. Participation, consultation and transparency

20. Participation, consultation and transparency are key principles for the implementation of obligations arising from the Covenant, including in relation to land. Individuals and

²³ Inter-American Court of Human Rights, *Sawhoyamaya Indigenous Community v. Paraguay*, Judgment, 29 March 2006, para. 128; and African Commission on Human and Peoples’ Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya*, para. 209. The Committee on the Elimination of Racial Discrimination, in its general recommendation No. 23 (1997), also highlighted that compensation “should as far as possible take the form of land and territories” (para. 5).

²⁴ Inter-American Court of Human Rights, *Moiwana Community v. Suriname*, Judgment, 15 June 2005, paras. 132–133, and *Saramaka People v. Suriname*, Judgment, 28 November 2007, para. 86.

²⁵ For an example of the importance of land for peasants’ civil and political rights, see *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016).

²⁶ Human Rights Council resolution 39/12, annex, art. 17 (1).

²⁷ On the need to harmonize the right to land of peasants and Indigenous Peoples, see Inter-American Court of Human Rights, *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Judgment, 6 February 2020.

²⁸ A/HRC/45/38. See also *Käikkäläjärvi et al. v. Finland* (CCPR/C/124/D/2950/2017).

communities shall be properly informed about and allowed to meaningfully participate in decision-making processes that may affect their enjoyment of rights under the Covenant in land-related contexts, without retaliation.²⁹ Equal access to sufficient and transparent information for all parties involved in decision-making is key for human rights-based participation in decision-making. States parties should develop relevant laws, policies and procedures to ensure transparency, participation and consultation in relation to decision-making affecting land, including in relation to land registration, land administration and land transfers, as well as prior to evictions from land. Decision-making processes should be transparent, organized in the relevant languages, without barriers and with reasonable accommodation for all involved.

21. Decision-making processes should be widely publicized and include procedures to grant access to all relevant documents. Affected persons need to be contacted prior to any decision that might affect their rights under the Covenant. The international legal standard for Indigenous Peoples is that of free, prior and informed consent,³⁰ which needs to be a process of dialogue and negotiation where consent is the objective. Indigenous Peoples shall not only be involved in decision-making processes, but shall also be able to actively influence their outcome. Consent is required for relocation, as stated in article 10 of the United Nations Declaration on the Rights of Indigenous Peoples. The right to participate is meaningful only when its use does not entail any form of retaliation.

C. Specific obligations of States parties

1. Obligation to respect

22. The obligation to respect requires that States parties do not interfere directly or indirectly with the rights enshrined in the Covenant relating to land, including the access to, use of and control over land. The obligation to respect means not doing any of the following: (a) interfering with land users' legitimate tenure rights,³¹ in particular by evicting occupants from land on which they depend for their livelihoods; (b) evicting by force and demolishing property as punitive measures; (c) committing any discriminatory acts in the process of land registration and land administration, including on the basis of marital status, legal capacity or access to economic resources; or (d) committing any act of corruption with regard to tenure administration and tenure transfers. The obligation to respect also entails respecting existing access to land of all legitimate tenure holders and respecting decisions of concerned communities to manage their lands according to internal modes of organization.

23. States should provide all persons with a reasonable degree of tenure security that guarantees legal protection against forced evictions. More generally, the Covenant imposes on States a duty to abstain from interfering with land users' legitimate tenure rights, particularly by not evicting occupants from the land on which they depend for their livelihoods. Forced evictions are *prima facie* incompatible with the requirements of the Covenant.³² The relevant authorities shall ensure that evictions are only carried out in accordance with legislation that is compatible and in conformity with the Covenant and in accordance with the general principles of reasonableness and proportionality between the

²⁹ Committee on Economic, Social and Cultural Rights, general comment No. 16 (2005), para. 37, and general comment No. 21 (2009), para. 16 (c). See also African Commission on Human and Peoples' Rights, "State reporting guidelines and principles on articles 21 and 24 of the African Charter relating to extractive industries, human rights and the environment" (Niamey, 2017), pp. 26–27; and Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, para. 3B (6).

³⁰ Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, para. 9.9.

³¹ The term "legitimate tenure right holder" was developed during the negotiations of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security in 2012 in order to clarify the fact that legitimate tenure right holders include not only those with formal land titles, but also those with customary, collective or traditional tenure rights that might not be recognized by law.

³² Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997), para. 1.

legitimate objective of the eviction and its consequences for the evicted persons.³³ That obligation arises from the interpretation of the State party's obligations under article 2 (1) of the Covenant, read in conjunction with article 11, and in accordance with the requirements of article 4, which stipulates the conditions under which limitations on the enjoyment of the rights under the Covenant are permitted. Firstly, the limitation shall be determined by law. Secondly, it shall promote the general welfare or "public purpose" in a democratic society. Thirdly, it shall be suited to the legitimate purpose cited. Fourthly, the limitation shall be necessary, in the sense that it is the least restrictive measure to fulfil the legitimate purpose. Lastly, the benefits of the limitation in promoting the general welfare shall outweigh the impact on the enjoyment of the right being limited.³⁴ States parties shall clearly define the concepts of public purpose in law, in order to allow for judicial review. States parties shall introduce and implement national legislation that explicitly prohibits forced evictions and sets out a framework for eviction and resettlement processes to be carried out in line with international human rights law and standards.³⁵

24. Where people have been relocated and given alternative accommodation, alternative housing shall be safe and provide security of tenure, enabling access to public services, including education, health care, community engagement and livelihood opportunities.³⁶ Every effort shall be made not to break up communities, given their crucial role in supporting and sustaining neighbour networks and livelihood support. Prior to carrying out any evictions or shifts in land use which could result in depriving individuals of access to their productive resources, States parties should ensure that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to resort to evictions.³⁷ In all cases, effective legal remedies or procedures shall be provided to those who are affected by eviction orders.

25. Where the State owns or controls land, it should ensure that the legitimate land tenure rights of individuals and communities, even within customary tenure systems, are recognized and respected. Collective systems of use and management of land, be they traditional systems, cooperatives or other forms of common management, should be identified, recognized and registered. Policies aimed at granting tenure rights of publicly owned land to landless peasants should follow broader social and environmental objectives in accordance with human rights obligations. Local communities that have traditionally used the land should be prioritized in the reallocation of tenure rights.

2. Obligation to protect

26. The obligation to protect requires States parties to adopt measures to prevent any person or entity from interfering with the rights enshrined in the Covenant relating to land, including the access to, use of and control over land. States parties shall protect access to land by ensuring that no one is forcibly evicted and that their access rights to land are not otherwise infringed by third parties. States parties should also ensure that legitimate tenure rights are protected in all processes relating to transfer of these rights, including voluntary or involuntary transactions because of investments, land consolidation policies or other land-related readjustment and redistribution measures.

27. Notwithstanding the type of land tenure systems put in place, States parties shall take measures to ensure that all persons possess a reasonable degree of security in relation to their relationship with land and to protect legitimate tenure rights holders from eviction, illegal land dispossession, appropriation, harassment and other threats. In addition, States parties should take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with the

³³ *Ben Djazia et al. v. Spain* (E/C.12/61/D/5/2015), para. 13.4.

³⁴ *Gómez-Limón Pardo v. Spain* (E/C.12/67/D/52/2018), para. 9.4.

³⁵ For further reference, see the basic principles and guidelines on development-based evictions and displacement.

³⁶ See Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991).

³⁷ *A/HRC/13/33/Add.2*, annex, principle 2; and African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights* (2012), paras. 51–55 and 77–79.

persons and groups concerned.³⁸ States parties should also recognize and protect communal dimensions of tenure, particularly in relation to Indigenous Peoples, peasants and other traditional communities who have a material and spiritual relationship with their traditional lands that is indispensable to their existence, well-being and full development. That includes the collective rights of access to, use of and control over lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired.³⁹ Legal frameworks should therefore avoid the increased concentration of land ownership and privileges within land tenure systems, including when the motivation to change the legal framework stems from international agreements.⁴⁰

28. States parties should develop laws and policies to guarantee that land-based investments are made in a responsible manner. That requires the early participation of all affected parties and the fair regulation of transfer processes. In all land-related investment processes, affected persons or groups shall have access to complaint mechanisms that allow them to challenge decisions of local governments, investment boards or other relevant parties before the start of the investment and up to the payment of fair compensation. Human rights impact assessments shall be conducted to identify potential harm and options to mitigate it. Principles for responsible investors and investment need to be determined by law and shall be enforceable. Responsible investments shall respect legitimate tenure rights and shall not harm human rights and legitimate policy objectives such as food security and the sustainable use of natural resources. States parties should provide transparent rules on the scale, scope and nature of allowable transactions in tenure rights and should define what constitutes large-scale transactions in tenure rights in their national contexts.⁴¹

29. States parties should have safeguards and policies in place to protect legitimate tenure rights from risks that could derive from large-scale transactions in tenure rights. Large-scale land investments risk violating rights under the Covenant because they often affect many smallholders, whose informal land use titles are often not recognized.⁴² Such safeguards could include ceilings on permissible land transactions and the requirement that transfers exceeding a certain level should be approved at the highest level of Government or by the national parliament. States should consider the promotion of a range of production and investment models that do not result in large-scale displacements from land, including models encouraging partnerships with local tenure rights holders.

30. The obligation to protect entails a positive duty to take legislative and other measures to provide clear standards for non-State actors such as business entities and private investors, especially in the context of large-scale land acquisitions and leases at home and abroad.⁴³ States parties shall adopt a legal framework requiring business entities to exercise human rights due diligence⁴⁴ in order to identify, prevent and mitigate the negative impact on rights enshrined in the Covenant caused by their decisions and operations.

³⁸ Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991), para. 8 (a).

³⁹ Committee on Economic, Social and Cultural Rights, general comment No. 21 (2009), para. 36. See also Inter-American Court of Human Rights, *Xákmok Kásek Indigenous Community v. Paraguay*, Judgment, 24 August 2010, para. 86, and *Sawhoyamaxa Indigenous Community v. Paraguay*, para. 118; African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya*, paras. 252–268; and African Court on Human and Peoples' Rights, *African Commission on Human and Peoples' Rights v. Republic of Kenya*, paras. 195–201.

⁴⁰ African Commission on Human and Peoples' Rights, "State reporting guidelines and principles on articles 21 and 24 of the African Charter relating to extractive industries, human rights and the environment", p. 25, para. 18.

⁴¹ African Union, African Development Bank and Economic Commission for Africa, "Guiding principles on large scale land-based investments in Africa" (Addis Ababa, 2014).

⁴² *Ibid.*, chap. 2.

⁴³ African Commission on Human and Peoples' Rights, *Social and Economic Rights Action Centre and the Center for Economic and Social Rights v. Nigeria*, Decision, thirtieth ordinary session, 13–27 October 2001.

⁴⁴ African Union, African Development Bank and Economic Commission for Africa, "Guiding principles on large scale land based investments in Africa".

31. In recent years, titling has been encouraged to protect land users from eviction by the State and encroachment by private actors, particularly large landowners, and by investors. That process, sometimes referred as “formalization”, consists of demarcating the land effectively occupied and used by each land user (and generally recognized under customary law), increasingly using digital techniques, and attributing a deed protecting land users from expropriation, while at the same time enabling them to sell the land. The impact of titling has been mixed. Clarification of property rights was intended to provide security of tenure, to allow dwellers in informal settlements to be recognized as owners and to protect small farmers from being evicted from their land. It was also justified by the need to establish a market for land rights, allowing for more fluid transfer of property rights and a lowering of transaction costs in those markets. Those two objectives may be contradictory since commodification of property rights can be a source of exclusion and increase insecurity of tenure. Therefore, States should adopt laws and policies to guarantee that titling programmes are not implemented solely to support the sale of land and the commodification of land tenure. If such laws or regulations are missing, titling of pre-existing, customary forms of tenure may result in more conflicts rather than more clarity and may also result in less security rather than improved security, with a negative impact on rights under the Covenant, in particular the right to an adequate standard of living. States shall ensure that any titling process that involves determining competing claims to land protects the rights of those most at risk of marginalization and discrimination, while addressing historical injustices.

3. Obligation to fulfil

32. The obligation to fulfil requires that States adopt legislative, administrative, budgetary and other measures and establish effective remedies aimed at the full enjoyment of the rights under the Covenant relating to land, including the access to, use of and control over land. States parties shall facilitate secure, equitable and sustainable access to, use of and control over land for those who depend on land to realize their economic, social and cultural rights. This is especially important for those who are landless or live in poverty, especially women and those who are marginalized.⁴⁵

33. Land registration and land administration shall be carried out without any discrimination, including discrimination on the basis of a change of marital status, lack of legal capacity and lack of access to economic resources. The legal recognition and allocation of tenure rights to individuals shall be carried out systematically, without discrimination on the basis of gender, family and community and in a way that ensures that those living in poverty and other disadvantaged and marginalized individuals and groups have every opportunity to acquire legal recognition of their current tenure rights. States parties should identify all existing tenure rights and rights holders, not only those in written records. States parties shall, through public rules, establish the definition of land user rights that are legitimate, in line with all the relevant Covenant provisions and with the definitions contained in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.

34. Land administration shall be based on accessible and non-discriminatory services implemented by accountable agencies whose actions are reviewed by judicial bodies. Such services should be accessible and provided promptly and effectively. Disadvantaged and marginalized individuals and groups shall be supported in using those services and their access to justice shall be guaranteed. Such support should cover legal assistance, including affordable legal aid, particularly for those living in very remote areas. States parties should prevent corruption regarding tenure administration and tenure transfers by adopting and enforcing anti-corruption measures addressing, inter alia, conflicts of interests.

35. States parties shall also recognize the social, cultural, spiritual, economic, environmental and political value of land for communities with customary tenure systems and shall respect existing forms of self-governance of land. Traditional institutions for collective tenure systems shall ensure the meaningful participation of all members, including

⁴⁵ African Commission on Human and Peoples’ Rights, “State reporting guidelines and principles on articles 21 and 24 of the African Charter relating to extractive industries, human rights and the environment”, pp. 12–13, sect. III (g)–(h).

women and young people, in decisions regarding the distribution of user rights. Ensuring access to natural resources cannot be limited to the protections granted to the lands and territories of Indigenous Peoples. Other groups depend on the commons, in other words, global public goods. Fisherfolk need access to fishing grounds, yet strengthening individual property rights might entail fencing off the land that gives them access to the sea or to rivers. Pastoralists also form a particularly important group in sub-Saharan Africa, where almost half of the world's 120 million pastoralists or agropastoralists reside. In addition, throughout the developing world, many peasants and rural households still depend on gathering firewood for cooking and heating, and on commonly owned wells or water sources for their access to water. The formalization of property rights and the establishment of land registries should not worsen the situation of any of those groups, as cutting them off from the resources on which they depend would threaten their livelihoods.

36. Agrarian reform is an important measure to fulfil rights enshrined in the Covenant relating to land.⁴⁶ More equitable distribution of land through agrarian reform can have a significant impact on poverty reduction⁴⁷ and can contribute to social inclusion and economic empowerment.⁴⁸ It improves food security, since it makes food more available and affordable, providing a buffer against external shocks.⁴⁹ Land distribution schemes should also support small, family-owned farms, which often use the land in a more sustainable way and contribute to rural development owing to their labour intensity. However, land redistribution schemes should ensure that the beneficiaries receive proper support to enhance their capacity to use land productively and to engage in sustainable agricultural practices in order to maintain the productivity of the land. Policy options to support the economic success of family farmers should include education on access to credits, help in using marketing opportunities and the pooling of machines. Policies should be formulated in a way that enables beneficiaries to benefit from the land they acquire and avoids incentives to sell the land to support their minimum needs. Redistribution of land and agrarian reforms should focus particularly on the access to land of young people, women, communities facing racial and descent-based discrimination and others belonging to marginalized groups, and should respect and protect the collective and customary tenure of land.

37. States shall use the maximum available resources to progressively realize the rights under the Covenant relating to accessing productive resources, particularly to assist individuals and groups to access an adequate standard of living. Article 11 (2) (a) of the Covenant imposes on States parties the obligation to improve methods of production, conservation and distribution of food by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources. That implies that States have a duty to support agrarian reform schemes that ensure adequate access to land, particularly for small-scale peasants who depend on access to land for their livelihoods.⁵⁰ Policies and laws should be accompanied by adequate, gender-sensitive support measures, developed through participatory processes, and should aim to make agrarian reforms sustainable. Such policies and laws should include adequate safeguards

⁴⁶ On the importance of agrarian reform, see the Final Declaration adopted at the International Conference on Agrarian Reform and Rural Development of FAO, held in Porto Alegre, Brazil, in 2006 (ICARRD 2006/3), in which member States agreed on the principle of the “establishment of appropriate agrarian reform mainly in areas with strong social disparities, poverty and food insecurity, as a means to broaden sustainable access to and control over land and related resources”.

⁴⁷ M.R. El-Ghonemy, “Land reform development challenges of 1963–2003 continue into the twenty-first century”, *Land Reform, Land Settlement and Cooperatives*, vol. 2 (2003); and Veronika Penciakova, “Market-led agrarian reform: a beneficiary perspective of *Cédula da Terra*”, Working Paper Series No. 10–100 (London, London School of Economics and Political Science, 2010).

⁴⁸ Julian Quan, “Land access in the 21st century: issues, trends, linkages and policy options”, Livelihood Support Programme Working Paper No. 24 (Rome, FAO, 2006).

⁴⁹ M.R. Carter, “Designing land and property rights reform for poverty alleviation and food security”, *Land Reform, Land Settlement and Cooperatives*, vol. 2 (2003).

⁵⁰ Research has highlighted an inverse relationship between the size of production units and productivity per hectare. See, for example, Robert Eastwood, Michael Lipton and Andrew Newell, “Farm size”, in *Handbook of Agricultural Economics*, vol. 4, Prabhu L. Pingali and Robert E. Evenson, eds. (Amsterdam, Elsevier, 2010).

against land reconcentration following reform, such as land ceiling laws and legal safeguards to protect the collective and customary tenure of land.

38. States parties should engage in long-term regional planning to maintain the environmental functions of land. They should prioritize and support land uses with a human rights-based approach to conservation, biodiversity and the sustainable use of land and other natural resources.⁵¹ They should also, inter alia, facilitate the sustainable use of natural resources by recognizing, protecting and promoting traditional uses of land, adopting policies and measures to strengthen people's livelihoods based on natural resources and the long-term conservation of land. That includes specific measures to support communities and people to prevent, mitigate and adapt to the consequences of global warming. States should create the conditions for regeneration of biological and other natural capacities and cycles and cooperate with local communities, investors and others to ensure that land use for agricultural and other purposes respects the environment and does not accelerate soil depletion and the exhaustion of water reserves.⁵²

39. States parties shall put in place laws and policies that allow for the recognition of informal tenure through participatory, gender-sensitive processes, paying particular attention to tenant farmers, peasants and other small-scale food producers.

D. Extraterritorial obligations

40. Extraterritorial obligations are of particular significance to the implementation of obligations arising from the Covenant relating to access to, use of and control over land. Land transfers are quite often financed or fostered by international entities, including public investors such as development banks financing development projects requiring land, such as dams or renewable energy parks, or by private investors. In reviews of State party reports, the Committee has encountered an increasing number of references to the negative impact on individuals', groups', peasants' and Indigenous Peoples' access to productive resources as a result of international investment negotiations, agreements and practices, including in the form of public-private partnerships between State agencies and foreign private investors.

1. Extraterritorial obligation to respect

41. The extraterritorial obligation to respect requires States parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the rights under the Covenant in land-related contexts outside their territories. It also requires them to take specific measures to prevent their domestic and international policies and actions, such as trade, investment, energy, agricultural, development and climate change-mitigation policies, from interfering, directly or indirectly, with the enjoyment of human rights.⁵³ That applies to all forms of projects implemented by development agencies or financed by development banks. The safeguards developed by the World Bank and other international development banks are a form of recognition of that obligation, particularly relating to investments in land.⁵⁴ In the wake of the world food crisis in 2007–2008, the number of large-scale investments in land has increased worldwide, causing a variety of problems for persons living on or using the land, including forced or involuntary evictions without adequate compensation. In order to mitigate or prevent such situations, the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security were developed. Furthermore, the International Finance Corporation performance standards and

⁵¹ Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, guideline 8B.

⁵² [A/HRC/13/33/Add.2](#), annex, principle 6.

⁵³ See [E/C.12/BEL/CO/4](#), [E/C.12/AUT/CO/4](#) and [E/C.12/NOR/CO/5](#); Committee on the Elimination of Discrimination against Women, general recommendation No. 34 (2016), para. 13; [A/56/10](#) and [A/56/10/Corr.1](#), pp. 155–168 (on arts. 16–18); and guiding principles on human rights impact assessments of trade and investment agreements.

⁵⁴ Michael Windfuhr, *Safeguarding Human Rights in Land Related Investments: Comparison of the Voluntary Guidelines Land with the IFC Performance Standards and the World Bank Environmental and Social Safeguard Framework* (Berlin, German Institute for Human Rights, 2017).

the respective World Bank safeguards were updated. Moreover, States parties that are members of international financial institutions, notably the World Bank, the International Fund for Agricultural Development and regional development banks, should take steps to ensure that their lending policies and other practices do not impair the enjoyment of the rights enshrined in the Covenant relating to land.

2. Extraterritorial obligation to protect

42. The extraterritorial obligation to protect requires States parties to establish the necessary regulatory mechanisms to ensure that business entities, including transnational corporations, and other non-State actors that they are in a position to regulate do not impair the enjoyment of rights under the Covenant in land-related contexts in other countries. Thus, States parties shall take the necessary steps to prevent human rights violations abroad in land-related contexts by non-State actors over which they can exercise influence, without infringing on the sovereignty or diminishing the obligations of the host States.⁵⁵

43. In the context of land acquisitions and other business activities that have an impact on the enjoyment of access to productive resources, including land, States parties shall ensure that investors domiciled in other countries and investing in farmland overseas do not deprive individuals or communities of access to the land or land-associated resources on which they depend for their livelihoods. That may imply imposing a due diligence obligation on investors to ensure that they do not acquire or lease land in a way that violates international norms and guidelines.⁵⁶

44. States parties that promote or carry out land-related investments abroad, including through partially or fully State-owned or State-controlled companies, including sovereign wealth funds, public pension funds and private-public partnerships,⁵⁷ should ensure that they do not reduce the ability of other States to comply with their obligations arising from the Covenant. States parties shall conduct human rights impact assessments prior to making such investments and shall regularly assess and revise them. Such assessments shall be conducted with substantive public participation and the results shall be made public and shall inform measures to prevent, cease and remedy any human rights violations or abuses.⁵⁸

45. States parties shall ensure that the elaboration, conclusion, interpretation and implementation of international agreements, including but not limited to the areas of trade, investment, finance, development cooperation and climate change, are consistent with their obligations under the Covenant and do not have an adverse effect on access to productive resources in other countries.⁵⁹

3. Extraterritorial obligation to fulfil

46. States should take steps through international assistance and cooperation under article 2 (1) of the Covenant with a view to progressively achieving the full realization of rights under the Covenant relating to land, which would also benefit peoples and communities outside their territories. Support should include technical cooperation, financial assistance and institutional capacity-building for, inter alia, land administration, knowledge-sharing and assistance in developing national tenure policies, as well as the transfer of relevant technology.

⁵⁵ E/C.12/2011/1, paras. 5–6.

⁵⁶ Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017), para. 33.

⁵⁷ Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, para. 12.15.

⁵⁸ See E/C.12/NOR/CO/5; A/HRC/13/33/Add.2; Human Rights Committee, general comment No. 34 (2011), paras. 18–19; and European Court of Human Rights, *Társaság a Szabadságjogokért v. Hungary*, Application No. 37374/05, Judgment, 14 April 2009, paras. 26 and 35.

⁵⁹ Committee on Economic, Social and Cultural Rights, general comments No. 3 (1990), para. 2; No. 15 (2002), para. 35; No. 22 (2016), para. 31; and No. 24 (2017), paras. 12–13; E/C.12/CAN/CO/6; Committee on the Elimination of Discrimination against Women, general recommendation No. 34 (2016); European Court of Human Rights, *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland*, Application No. 45036/98, Judgment, 30 June 2005, para. 154; and Inter-American Court of Human Rights, *Sawhoyamaya Indigenous Community v. Paraguay*, para. 140.

47. International cooperation and assistance should be focused on supporting national policies to secure access to land tenure for those whose legitimate user rights have not been recognized. Policies should avoid leading to land concentration or commodification of land and should be aimed at improving the access of disadvantaged and marginalized individuals and groups and increasing their security of tenure. Adequate safeguard policies shall be in place, and persons and groups affected by measures of international cooperation and assistance shall have access to independent complaint mechanisms. International cooperation and assistance can facilitate efforts to ensure that land policies are sustainable and are or will become an integral part of official land use planning and States' broader spatial planning.

IV. Specific issues of relevance to the implementation of rights enshrined in the Covenant in land-related contexts

A. Internal armed conflicts and post-conflict situations

48. There are links between internal armed conflicts, land and the enjoyment of rights enshrined in the Covenant. Sometimes, land conflicts, especially those relating to structural unequal distribution of land tenure coming, for example, from colonial or apartheid systems, can be one of the root causes or a trigger of the conflict. In other cases, the conflicts may lead to forced displacements, land grabbing and land dispossession, especially for populations in vulnerable situations, such as peasants, Indigenous Peoples, ethnic minorities and women. It is noteworthy that addressing land disputes and conflicts might be a key to building resilience and sustaining peace.⁶⁰ Thus, States should make every effort to prevent land dispossession during internal armed conflicts. If dispossessions do nevertheless occur, States are obliged to establish restitution programmes to guarantee to all internally displaced persons the right to have restored to them any land of which they were arbitrarily or unlawfully deprived.⁶¹ States should also address all those land conflicts that might trigger the re-emergence of an armed conflict.

49. Preventive measures to avoid land dispossession during armed conflict should include at least the following: (a) the establishment of mechanisms for the protection of land tenure for populations in vulnerable situations; (b) the coordination of humanitarian assistance and the implementation of international humanitarian law with measures to prevent land dispossession; (c) the inclusion in information systems of all those estates at risk of dispossession, not only to prevent dispossession but also to facilitate future land restitution; and (d) the possibility of freezing the land market in regions in which the risks of internal displacement and land dispossession are high. All such preventive measures should protect not only property, but all forms of land tenure, including customary tenure, as those at higher risk of being dispossessed of their land may not be the formal owners of it.

50. Land restitution programmes shall include measures to guarantee the right of refugees and internally displaced persons to a voluntary return to their former lands or places of habitual residence, in safety and dignity. If restitution is not possible, States should develop adequate compensation mechanisms.⁶² States shall establish and support equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce all land restitution claims. They should cover not only property rights but all forms of land tenure, especially when they are linked to the enjoyment of rights under the Covenant. Special attention should be paid to dealing adequately with "secondary occupants", who are mostly good faith purchasers, and persons in a vulnerable situation who occupy land after the legitimate tenants have fled owing to armed conflict. In particular, due process shall be guaranteed to secondary occupants; if their eviction is necessary, it shall be implemented with genuine consultation and States shall, if necessary, provide them with

⁶⁰ See the guidance note of the Secretary-General entitled "The United Nations and Land and Conflict", issued in March 2019.

⁶¹ See the principles on housing and property restitution for refugees and displaced persons, endorsed by the Sub-Commission on the Protection and Promotion of Human Rights (E/CN.4/Sub.2/2005/17).

⁶² Ibid.

alternative accommodation and social services to guarantee them an adequate standard of living.

51. In many post-conflict situations, land restitution programmes, even if successful, might be insufficient to prevent new conflicts and to guarantee rights under the Covenant to refugees and internally displaced persons, as such populations were often living in poverty and excluded from land rights before the conflict. In these circumstances, land restitution or compensation alone are insufficient as they would not lift refugees and internally displaced persons out of poverty or reduce social and gender inequality in land tenure. In such contexts, reparations for victims of internal displacement or violence should go beyond restitution. They should be transformative reparations,⁶³ in the sense that they should include policies and measures aimed at reducing inequality and improving those persons' standard of living. Specific measures should be taken to improve gender equality in land tenure, for instance, by giving preference to women when granting land rights. In addition, States should make efforts to ensure that land restitution programmes include rural reform policies that involve technical, financial and educational support for beneficiaries.

B. Corruption

52. Land administration is one of the areas in which corruption can be most pervasive. Corruption occurs and has a negative impact in the demarcation of land and in the rolling out of titling schemes; in the design of land use schemes and the identification of land as "underutilized" or "vacant"; in the use of "public purpose" or "eminent domain" provisions to justify expropriation from land; and in the selling or leasing out of land to investors by Governments.

53. States shall build up proper accountability mechanisms to prevent corruption concerning all relevant land policies and should endeavour to prevent corruption in all forms, at all levels and in all settings.⁶⁴ States should regularly review and monitor policy, legal and organizational frameworks to maintain their effectiveness. Implementing agencies and judicial authorities should engage with civil society, user representatives and the wider public to improve services and endeavour to prevent corruption through transparent processes and decision-making.⁶⁵ States should do so particularly through consultation, participation and respect for the rule of law and the principles of transparency and accountability.⁶⁶

C. Human rights defenders

54. The situation of human rights defenders is particularly difficult in conflicts over land.⁶⁷ The Committee has regularly received reports of threats and attacks aimed at those seeking to protect their rights under the Covenant or those of others, often in the form of harassment, criminalization, defamation and killings, particularly in the context of extractive

⁶³ Rodrigo Uprimny Yepes, "Transformative reparations of massive gross human rights violations: between corrective and distributive justice", *Netherlands Quarterly of Human Rights*, vol. 27, No. 4 (2009).

⁶⁴ Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, para. 3.1 (5).

⁶⁵ *Ibid.*, para. 5.8.

⁶⁶ The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security include recommendations specific to all components of land governance, such as recording of land rights, valuation of land and adoption of land planning schemes. Similarly, the Principles for Responsible Investment in Agriculture and Food Systems refer to the need to respect "the rule and application of law, free of corruption" (principle 9) and to the United Nations Convention against Corruption as relevant for the implementation of the principles.

⁶⁷ See Human Rights Council resolution 31/32 on protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights; and the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

and development projects.⁶⁸ In the context of land, many human rights defenders are also defenders of the environmental functions of land and of the sustainability of land use as a precondition for respecting human rights in the future. In accordance with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, States shall take all measures necessary to respect human rights defenders and their work, including in relation to land issues, and to refrain from imposing criminal penalties on them or enacting new criminal offences with the aim of hindering their work.

55. The specific measures that States should adopt to safeguard the work of human rights defenders in relation to land are dependent on national circumstances. However, the following measures are of crucial importance: (a) public recognition, by the highest level of Government, of the importance and legitimacy of the work of human rights defenders and a commitment that no violence or threats against them will be tolerated; (b) repeal of any State legislation or any measures that are intended to penalize or obstruct the work of human rights defenders; (c) strengthening of State institutions responsible for safeguarding the work of human rights defenders; (d) investigation and punishment of any form of violence or threat against human rights defenders; and (e) adoption and implementation of programmes, in consultation with potential beneficiaries, that are well resourced and have inbuilt coordination mechanisms that ensure that adequate protection measures are provided to human rights defenders at risk whenever necessary.⁶⁹

D. Climate change

56. The impact of climate change on access to land, affecting user rights, is severe in many countries. In coastal zones, sea level rise has an impact on housing, agriculture and access to fisheries. Climate change also contributes to land degradation and desertification. Rising temperatures, changing patterns of precipitation and the increasing frequency of extreme weather events such as droughts and floods are increasingly affecting access to land.⁷⁰ States shall cooperate at the international level and comply with their duty to mitigate emissions and their respective commitments made in the context of the implementation of the Paris Agreement. States have these duties also under human rights law, as the Committee has highlighted previously.⁷¹ Moreover, States shall avoid adopting policies to mitigate climate change, such as carbon sequestration through massive reforestation or protection of existing forests, that lead to different forms of land grabbing, especially when they affect the land and territories of populations in vulnerable situations, such as peasants or Indigenous Peoples. Mitigation policies should lead to absolute emissions reductions through the phasing out of fossil fuel production and use.

57. States have an obligation to design climate change adaptation policies at the national level that take into consideration all forms of land use change induced by climate change, to register all affected persons and to use the maximum available resources to address the impact of climate change, particularly on disadvantaged groups.

58. Climate change affects all countries, including those that may have contributed to it the least. Thus, those countries that have historically contributed most to climate change and those that are currently the main contributors to it shall assist the countries that are most affected by climate change but are least able to cope with its impact, including by supporting and financing land-related adaptation measures. Cooperation mechanisms for climate change mitigation and adaptation measures shall provide and implement a robust set of environmental and social safeguards to ensure that no project negatively affects human rights and the environment and to guarantee access to information and meaningful consultation with

⁶⁸ For example, [E/C.12/VNM/CO/2-4](#), para. 11, [E/C.12/1/Add.44](#), para. 19, [E/C.12/IND/CO/5](#), paras. 12 and 50, [E/C.12/PHIL/CO/4](#), para. 15, [E/C.12/COD/CO/4](#), para. 12, [E/C.12/LKA/CO/2-4](#), para. 10, and [E/C.12/IDN/CO/1](#), para. 28.

⁶⁹ [E/C.12/2016/2](#), para. 8.

⁷⁰ See Intergovernmental Panel on Climate Change, “[Climate Change and Land: summary for Policymakers](#)” (2019).

⁷¹ See [HRI/2019/1](#).

those affected by such projects. They shall also respect the free, prior and informed consent of Indigenous Peoples.⁷²

V. Implementation and remedies

59. States should ensure that individuals and groups are able to receive and impart information relevant to the enjoyment of land-related rights under the Covenant. States shall regularly monitor the implementation of tenure systems and all policies, laws and measures that affect the realization of rights enshrined in the Covenant in land-related contexts. Monitoring processes should rely on qualitative and disaggregated quantitative data collected by local communities and others, be inclusive and participatory, and pay particular attention to disadvantaged and marginalized individuals and groups. In countries where collective and customary tenure of land by rural communities is in place, monitoring should include participatory mechanisms to monitor the impact of specific policies on access to land for people living in the relevant communities.

60. States parties should ensure that they have administrative and judicial systems in place to effectively implement policy and legal frameworks relating to land, and that their administrative and judicial authorities act in accordance with the State's obligations under the Covenant. That includes taking measures to provide non-discriminatory, prompt and accessible services to all rights holders in order to protect tenure rights and to promote and facilitate the enjoyment of those rights, including in remote rural areas.⁷³ Access to justice is key: States parties shall guarantee that even in remote areas, it is accessible and affordable, particularly for disadvantaged and marginalized individuals and groups. Judicial remedies shall also be tailored to the conditions of rural areas and suited to the needs of victims of violations, giving them access to all relevant information and adequate redress and compensation, including, when appropriate, restitution of land and return of refugees and internally displaced persons. As highlighted in article 28 of the United Nations Declaration on the Rights of Indigenous Peoples, restitution of land is often the primary remedy for Indigenous Peoples.⁷⁴ Access to justice shall include access to procedures to address the impact of business activities, not only in the countries where they are domiciled but also where the violations have been caused.⁷⁵

61. States parties shall build the capacity of their administrative and judicial authorities to ensure access to timely, affordable and effective means of resolving disputes over tenure rights through impartial and competent judicial and administrative bodies, particularly in remote rural areas.⁷⁶ States parties should recognize and cooperate with customary and other established forms of dispute settlement where they exist, ensuring that they provide fair, reliable, accessible and non-discriminatory ways of promptly resolving disputes over tenure rights, in accordance with human rights.⁷⁷ For land, fisheries and forests that are used by more than one community, means of resolving conflict between communities should be strengthened or developed.⁷⁸ The respect for and protection and guarantee of secure and equitable access to, use of and control over land are preconditions for the enjoyment of many of the rights enshrined in the Covenant. Effective remedies are crucial for their realization.

⁷² In order to ensure coherence, the safeguards should be in line with the practice of the Green Climate Fund and those included in the Environmental and Social Policy of the Adaptation Fund established under the Kyoto Protocol to the United Nations Framework Convention on Climate Change.

⁷³ Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, paras. 6.2 and 6.4.

⁷⁴ Inter-American Court of Human Rights, *Yakye Axa Indigenous Community vs Paraguay*, paras. 146–148.

⁷⁵ Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017), paras. 49–57.

⁷⁶ Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, para. 21.1.

⁷⁷ *Ibid.*, para. 21.3.

⁷⁸ *Ibid.*, para. 9.11.



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General comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change*

I. Introduction

1. The extent and magnitude of the triple planetary crisis, comprising the climate emergency, the collapse of biodiversity and pervasive pollution, is an urgent and systemic threat to children's rights globally. The unsustainable extraction and use of natural resources, combined with widespread contamination through pollution and waste, have had a profound impact on the natural environment, fuelling climate change, intensifying the toxic pollution of water, air and soil, causing ocean acidification and devastating biodiversity and the very ecosystems that sustain all life.

2. The efforts of children to draw attention to these environmental crises created the motivation and were the momentum behind the present general comment. The Committee benefited immeasurably from the contributions of children at its 2016 day of general discussion on children's rights and the environment. A diverse and dedicated children's advisory team, comprising 12 advisors of between 11 and 17 years of age, supported the consultation process undertaken for the general comment, with 16,331 contributions from children, from 121 countries, through online surveys, focus groups and in-person national and regional consultations.

3. The children consulted reported on the negative effects of environmental degradation and climate change on their lives and communities. They asserted their right to live in a clean, healthy and sustainable environment: "The environment is our life." "Adults [should] stop making decisions for the future they won't experience. [We] are the key means [of] solving climate change, as it is [our] lives at stake." "I would like to tell [adults] that we are the future generations and, if you destroy the planet, where will we live?!"¹

4. Child human rights defenders, as agents of change, have made historic contributions to human rights and environmental protection. Their status should be recognized, and their demands for urgent and decisive measures to tackle global environmental harm should be realized.

5. While the present general comment is focused on climate change, its application should not be limited to any particular environmental issue. New environmental challenges may arise in the future, for example, those linked to technological and economic development and social change. States should ensure that the present general comment is widely disseminated to all relevant stakeholders, in particular children, and is made available in multiple languages and formats, including age-appropriate and accessible versions.

* Adopted by the Committee at its ninety-third session (8–26 May 2023).

¹ See <https://childrightsenvironment.org/reports/>.



A. Child rights-based approach to environmental protection

6. The application of a child rights-based approach to the environment requires the full consideration of all children's rights under the Convention on the Rights of the Child and the Optional Protocols thereto.

7. In a children's rights-based approach, the process of realizing children's rights is as important as the result. As rights holders, children are entitled to protection from infringements of their rights stemming from environmental harm and to be recognized and fully respected as environmental actors. In taking such an approach, particular attention is paid to the multiple barriers faced by children in disadvantaged situations in enjoying and claiming their rights.

8. A clean, healthy and sustainable environment is both a human right itself and necessary for the full enjoyment of a broad range of children's rights. Conversely, environmental degradation, including the consequences of the climate crisis, adversely affects the enjoyment of these rights, in particular for children in disadvantaged situations or children living in regions that are highly exposed to climate change. The exercise by children of their rights to freedom of expression, peaceful assembly and association, to information and education, to participate and be heard and to effective remedies can result in more rights-compliant, and therefore more ambitious and effective, environmental policies. In this way, children's rights and environmental protection form a virtuous circle.

B. Evolution of international law on human rights and the environment

9. The Convention explicitly addresses environmental issues in article 24 (2) (c), by which States are obliged to take measures to combat disease and malnutrition, taking into consideration the dangers and risks of environmental pollution, and under article 29 (1) (e), by which they are required to direct the education of children to the development of respect for the natural environment. Since the adoption of the Convention, growing acceptance has emerged of the wide-ranging interconnections between children's rights and environmental protection. Unprecedented environmental crises and the resulting challenges for the realization of children's rights require a dynamic interpretation of the Convention.

10. The Committee is mindful of efforts of relevance to its interpretation, including: (a) the recognition of the human right to a clean, healthy and sustainable environment by the General Assembly² and the Human Rights Council;³ (b) the framework principles on human rights and the environment;⁴ (c) the existing and evolving norms, principles, standards and obligations under international environmental law, such as the United Nations Framework Convention on Climate Change and the Paris Agreement; (d) the legal developments and jurisprudence at the regional level recognizing the relationship between human rights and the environment; and (e) the recognition of some form of the right to a clean, healthy and sustainable environment in international agreements, the jurisprudence of regional and national courts, national constitutions, laws and policies by a vast majority of States.⁵

C. Intergenerational equity and future generations

11. The Committee recognizes the principle of intergenerational equity and the interests of future generations, to which the children consulted overwhelmingly referred. While the rights of children who are present on Earth require immediate urgent attention, the children constantly arriving are also entitled to the realization of their human rights to the maximum extent. Beyond their immediate obligations under the Convention with regard to the environment, States bear the responsibility for foreseeable environment-related threats

² General Assembly resolution 76/300.

³ Human Rights Council resolution 48/13.

⁴ [A/HRC/37/59](#), annex.

⁵ See [A/HRC/43/53](#).

arising as a result of their acts or omissions now, the full implications of which may not manifest for years or even decades.

D. Objectives

12. In the present general comment, the Committee aims to:

(a) Emphasize the urgent need to address the adverse effects of environmental degradation, with a special focus on climate change, on the enjoyment of children's rights;

(b) Promote a holistic understanding of children's rights as they apply to environmental protection;

(c) Clarify the obligations of States to the Convention and provide authoritative guidance on legislative, administrative and other appropriate measures to address environmental harm, with a special focus on climate change.

II. Specific rights under the Convention as they relate to the environment

13. Children's rights, like all human rights, are indivisible, interdependent and interrelated. Some rights are particularly threatened by environmental degradation. Other rights play an instrumental role in safeguarding children's rights in relation to the environment. The right to education, for example, is a right that has both dimensions.

A. Right to non-discrimination (art. 2)

14. States have an obligation to effectively prevent, protect against and provide remedies for both direct and indirect environmental discrimination. Children in general, and certain groups of children in particular, face heightened barriers to the enjoyment of their rights, due to multiple and intersecting forms of discrimination; such grounds include those specifically prohibited under article 2 of the Convention and the "other status" referred to in the article. The impact of environmental harm has a discriminatory effect on certain groups of children, especially Indigenous children, children belonging to minority groups, children with disabilities and children living in disaster-prone or climate-vulnerable environments.

15. States should collect disaggregated data to identify the differential effects of environment-related harm on children and to better understand intersectionalities, paying special attention to groups of children who are most at risk, and to implement special measures and policies, as required. States must ensure that all legislation, policies and programmes that deal with environmental issues are not intentionally or unintentionally discriminatory towards children in their content or implementation.

B. Best interests of the child (art. 3)

16. Environmental decisions generally concern children, and the best interests of the child shall be a primary consideration in the adoption and implementation of environmental decisions, including laws, regulations, policies, standards, guidelines, plans, strategies, budgets, international agreements and the provision of development assistance. Where an environmental decision may have a significant impact on children, conducting a more detailed procedure to assess and determine children's best interests that provides opportunities for their effective and meaningful participation, is appropriate.

17. Determining the best interests of the child should include an assessment of the specific circumstances that place children uniquely at risk in the context of environmental harm. The purpose of assessing the best interests of the child shall be to ensure the full and effective enjoyment of all rights, including the right to a clean, healthy and sustainable environment.

States should not only protect children against environmental harm, but also ensure their well-being and development, taking into account the possibility of future risk and harm.⁶

18. The adoption of all measures of implementation should also follow a procedure that ensures that the best interests of the child are a primary consideration. A child rights impact assessment should be used to evaluate the environmental impact of all implementation measures, such as any proposed policy, legislation, regulation, budget or other administrative decision concerning children, and should complement ongoing monitoring and evaluation of the impact of measures on children's rights.

19. Potential conflicts of the best interests of the child with other interests or rights should be resolved on a case-by-case basis, carefully balancing the interests of all parties. Decision makers should analyse and weigh the rights and interests of all those concerned, giving appropriate weight to the primacy of the best interests of the child. States should take into account the possibility that environmental decisions that seem reasonable individually and on a shorter timescale can become unreasonable in aggregate and when considering the full harm that they will cause to children throughout their life courses.

C. Right to life, survival and development

20. The right to life is threatened by environmental degradation, including climate change, pollution and biodiversity loss, which are closely linked to other fundamental challenges impeding the realization of this right, including poverty, inequality and conflict. States should take positive measures to ensure that children are protected from foreseeable premature or unnatural death and threats to their lives that may be caused by acts and omissions, as well as the activities of business actors, and enjoy their right to life with dignity.⁷ Such measures include the adoption and effective implementation of environmental standards, for example, those related to air and water quality, food safety, lead exposure and greenhouse gas emissions, and all other adequate and necessary environmental measures that are protective of children's right to life.

21. The obligations of States under article 6 of the Convention also apply to structural and long-term challenges arising from environmental conditions that may lead to direct threats to the right to life and require taking appropriate measures to tackle those conditions, for example, the sustainable use of resources needed for covering basic needs and the protection of healthy ecosystems and biodiversity. Special measures of protection are needed to prevent and reduce child mortality from environmental conditions and for groups in vulnerable situations.

22. Environmental degradation increase children's risk of facing grave rights violations in armed conflict due to displacement, famine and increased violence. In the context of armed conflict, States should prohibit the development or retention of, and ensure the clean-up of areas contaminated by, unexploded ordnance and residue of biological, chemical and nuclear weapons, in line with international commitments.

23. Environmental degradation jeopardizes children's ability to achieve their full developmental potential, with implications for a wide range of other rights under the Convention. The development of children is intertwined with the environment in which they live. The developmental benefits of a healthy environment include those linked to opportunities to experience outdoor activities and to interact with and play in natural environments, including the animal world.

24. Younger children are particularly susceptible to environmental hazards due to their unique activity patterns, behaviours and physiology. Exposure to toxic pollutants, even at low levels, during developmental windows of increased vulnerability can easily disrupt the maturational processes of the brain, organs and the immune system and cause disease and impairments during and beyond childhood, sometimes after a substantial latency period. The

⁶ General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, paras. 16 (e), 71 and 74.

⁷ Human Rights Committee, general comment No. 36 (2018) on the right to life, para. 62.

effects of environmental contaminants may even persist in future generations. States should consistently and explicitly consider the impact of exposure to toxic substances and pollution in early life.

25. States should recognize each stage of childhood, the importance of each stage for subsequent stages of maturation and development and children's varying needs at each stage. To create an optimal environment for the right to development, States should explicitly and consistently consider all factors required for children of all different ages to survive, develop and thrive to their fullest potential and design and implement evidence-based interventions that address a wide range of environmental determinants during the life course.

D. Right to be heard (art. 12)

26. Children identify environmental issues as being highly important to their lives. Children's voices are a powerful global force for environmental protection, and their views add relevant perspectives and experience with respect to decision-making on environmental matters at all levels. Even from an early age, children can enhance the quality of environmental solutions, for example, by providing invaluable insights into issues such as the effectiveness of early warning systems for environmental hazards. Children's views should be proactively sought and given due weight in the design and implementation of measures aimed at addressing the significant and long-term environmental challenges that are fundamentally shaping their lives. Creative means of expression, such as art and music, may be used by children to participate and express their views. Additional support and special strategies may be required to empower children in disadvantaged situations, such as children with disabilities, children belonging to minority groups and children living in vulnerable areas, to exercise their right to be heard. The digital environment and tools can enhance consultations with children and expand their capacity and opportunities to be effectively engaged in environmental matters, including through collective advocacy, if carefully used, with due attention given to challenges regarding digital inclusion.⁸

27. States must ensure that age-appropriate, safe and accessible mechanisms are in place for children's views to be heard regularly and at all stages of environmental decision-making processes for legislation, policies, regulations, projects and activities that may affect them, at the local, national and international levels. For free, active, meaningful and effective participation, children should be provided with environmental and human rights education, age-appropriate and accessible information, adequate time and resources and a supportive and enabling environment. They should receive information about the outcomes of environment-related consultations and feedback on how their views were taken into account and have access to child-sensitive complaint procedures and remedies when their right to be heard in the environmental context is disregarded.

28. At the international level, States, intergovernmental organizations and international non-governmental organizations should facilitate the involvement of children's associations and child-led organizations or groups in environmental decision-making processes. States should ensure that their obligations concerning children's right to be heard are incorporated into international environmental decision-making processes, including in negotiations and the implementation of instruments of international environmental law. Efforts to enhance youth participation in environmental decision-making processes should be inclusive of children.

E. Freedom of expression, association and peaceful assembly (arts. 13 and 15)

29. Children across the world are taking action, individually and collectively, to protect the environment, including by highlighting the consequences of climate change. States shall respect and protect children's rights to freedom of expression, association and peaceful

⁸ General comment No. 25 (2021) on children's rights in relation to the digital environment, paras. 16 and 18.

assembly in relation to the environment, including by providing a safe and enabling environment and a legal and institutional framework within which children can effectively exercise their rights. Children's rights to freedom of expression, association and peaceful assembly shall not be subjected to restrictions other than those imposed in conformity with the law and that are necessary in a democratic society.

30. Children who exercise their right to freedom of expression or engage in protests on environmental matters, including children environmental human rights defenders, often face threats, intimidation, harassment and other serious reprisals. States are required to protect their rights, including by providing a safe and empowering context for initiatives organized by children to defend human rights in schools and other settings. States, State actors, such as the police, and other stakeholders, including teachers, should receive training on children's civil and political rights, including measures to ensure that children can enjoy them safely. States must take all appropriate measures to ensure that no restrictions other than those that are provided by law and that are necessary are imposed on forming and joining associations or taking part in environmental protests. Laws, including those relating to defamation and libel, should not be abused to suppress children's rights. States should adopt and implement laws to protect child human rights defenders in accordance with international human rights standards. States should provide effective remedies for violations of children's rights to freedom of expression, peaceful assembly and association.

31. States should foster, recognize and support the positive contribution of children to environmental sustainability and climate justice, as an important means of civil and political engagement through which children can negotiate and advocate for the realization of their rights, including their right to a healthy environment, and hold States accountable.

F. Access to information (arts. 13 and 17)

32. Access to information is essential for enabling children and their parents or caregivers to comprehend the potential effects of environmental harm on children's rights. It is also a crucial prerequisite for realizing the rights of children to express their views, to be heard and to effective remedy regarding environmental matters.

33. Children have the right to access to accurate and reliable environmental information, including about the causes, effects and actual and potential sources of climate and environmental harm, adaptive responses, relevant climate and environmental legislation, regulations, findings from climate and environmental impact assessments, policies and plans and sustainable lifestyle choices. Such information empowers children to learn what they can do in their immediate environment related to waste management, recycling and consumption behaviours.

34. States have an obligation to make environmental information available. Dissemination methods should be appropriate to children's ages and capacities and aimed at overcoming obstacles, such as illiteracy, disability, language barriers, distance and limited access to information and communications technology. States should encourage the media to disseminate accurate information and materials regarding the environment, for example, measures that children and their families can take to manage risks in the context of climate change-related disasters.

G. Right to freedom from all forms of violence (art. 19)

35. Environmental degradation, including the climate crisis, is a form of structural violence against children and can cause social collapse in communities and families. Poverty, economic and social inequalities, food insecurity and forced displacement aggravate the risk that children will experience violence, abuse and exploitation. For example, poorer households are less resilient to environment-related shocks, including those caused or exacerbated by climate change, such as rising sea levels, floods, cyclones, air pollution, extreme weather events, desertification, deforestation, droughts, fires, storms and biodiversity loss. The financial hardships, food and clean water shortages and fragile child protection systems brought about by such shocks undermine families' daily routines, place

an extra burden on children and increase their vulnerability to gender-based violence, child marriage, female genital mutilation, child labour, abduction, trafficking, displacement, sexual violence and exploitation and recruitment into criminal, armed and/or violent extremist groups. Children must be protected from all forms of physical and psychological violence and from exposure to violence, such as domestic violence or violence inflicted on animals.

36. Investment in children's services can considerably reduce the overall environmental risks faced by children worldwide. States should adopt cross-sectoral measures to address the drivers of violence against children linked to environmental degradation.

H. Right to the highest attainable standard of health (art. 24)

37. The right to health includes the enjoyment of a variety of facilities, goods, services and conditions that are necessary for the realization of the highest attainable standard of health, including a healthy environment. This right is dependent on and is indispensable to the enjoyment of many other rights under the Convention.

38. Environmental pollution is a major threat to children's health, as explicitly recognized in article 24 (2) (c) of the Convention. However, in many countries, pollution is often overlooked and its impact underestimated. Lack of potable water, inadequate sanitation and household air pollution pose serious threats to children's health. Pollution associated with past and present industrial activities, including exposure to toxic substances and hazardous waste, presents more complex threats to health, often resulting in effects long after exposure.

39. Climate change, biodiversity loss and the degradation of ecosystems are obstacles to the realization of children's right to health. These environmental factors often interact, exacerbating existing health disparities. For example, rising temperatures caused by climate change increase the risk of vector-borne and zoonotic diseases and concentrations of air pollutants that stunt brain and lung development and exacerbate respiratory conditions. Climate change, pollution and toxic substances all represent key drivers of the alarming loss in biodiversity and the degradation of ecosystems on which human health depends. Specific effects include reductions in microbial diversity, which is critical to the development of children's immune systems, and the increasing prevalence of autoimmune diseases, with long-term effects.

40. Air and water pollution, exposure to toxic substances, including chemical fertilizers, soil and land degradation and other types of environmental harm increase child mortality, especially among children under 5 years of age, and contribute to the prevalence of disease, impaired brain development and subsequent cognitive deficits. The effects of climate change, including water scarcity, food insecurity, vector-borne and waterborne diseases, the intensification of air pollution and physical trauma linked to both sudden- and slow-onset events, are disproportionately borne by children.⁹

41. Another concern is children's current and anticipated psychosocial and mental health conditions caused by environmental harm, including climate change-related events. The clear emerging link between environmental harm and children's mental health, such as depression and eco-anxiety, requires pressing attention, both in terms of response and prevention programmes, by public health and education authorities.

42. States should integrate measures to address environmental health concerns relevant to children into their national plans, policies and strategies relating to both health and the environment. Legislative, regulatory and institutional frameworks, including regulations dealing with the business sector, should effectively protect children's environmental health where they live, study, play and work. Environmental health standards should be consistent with the best available science and all relevant international guidelines, such as those established by the World Health Organization, and be strictly enforced. The obligations of

⁹ For example, Intergovernmental Panel on Climate Change, Sixth Assessment Report, Summary for Policymakers, figure SPM.1, The data show the disproportionate, cumulative and long-term effects of climate change on people born in 2020.

States under article 24 of the Convention also apply when developing and implementing environmental agreements to address transboundary and global threats to children's health.

43. The right to health includes access for children affected by environmental harm to high-quality public health and health-care facilities, goods and services, and particular attention should be given to underserved and hard-to-reach populations and to delivering high-quality prenatal maternal health care nationwide. Facilities, programmes and services should be equipped to respond to environmental health hazards. Health protection also applies to the conditions that children need to lead a healthy life, such as a safe climate, safe and clean drinking water and sanitation, sustainable energy, adequate housing, access to nutritionally adequate and safe food and healthy working conditions.

44. The availability of high-quality data is crucial for adequate protection against climate and environmental health risks. States should assess the local, national and transboundary health effects of environmental harm, including the causes of mortality and morbidity, while taking into consideration the entire life course of children and the vulnerabilities and inequalities that they face at each life stage. Priority concerns, the impacts of climate change and emerging environmental health issues should be identified. In addition to data collected through routine health information systems, research is required, for example, for longitudinal cohort studies and studies of pregnant women, infants and children that capture risks at critical windows of development.

I. Right to social security and adequate standard of living (arts. 26 and 27)

45. Children have the right to a standard of living adequate for their physical, mental, spiritual, moral and social development. A clean, healthy and sustainable environment is a prerequisite for the realization of this right, including to adequate housing, food security and safe and clean drinking water and sanitation.¹⁰

46. The Committee underlines that the rights to adequate housing, food, water and sanitation should be realized sustainably, including with respect to material consumption, resource and energy use and the appropriation of space and nature.

47. Exposure to environmental harm has both direct and structural causes and exacerbates the effects of multidimensional child poverty. In the environmental context, social security, as guaranteed under article 26 of the Convention, is particularly relevant. States are urged to introduce features into social security policies and social protection floors that provide children and their families with protection against environmental shocks and slow-onset harms, including from climate change. States should strengthen child-centred poverty alleviation programmes in the areas that are most vulnerable to environmental risks.

48. Children, including displaced children, should have access to adequate housing that conforms to international human rights standards. Housing should be sustainable and resilient and should not be built on polluted sites or in areas facing a high risk of environmental degradation. Homes should have safe and sustainable sources of energy for cooking, heating, lighting and appropriate ventilation and be free from mould, toxic substances and smoke. There should be effective management of waste and litter, protection from traffic, excessive noise and overcrowding and access to safe drinking water and sustainable sanitation and hygiene facilities.

49. Children should not be subject to forced evictions without prior provision of adequate alternative accommodation, including relocation linked to development and infrastructure projects addressing energy and/or climate mitigation and adaptation action. Child rights impact assessments should be a prerequisite for such projects. Particular attention should be paid to preserving the traditional land of Indigenous children and protecting the quality of

¹⁰ Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water, para. 3; and Committee on the Rights of the Child, general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, para. 48.

the natural environment for the enjoyment of their rights, including their right to an adequate standard of living.¹¹

50. In situations of cross-border displacement and migration linked to climate-related and environment-related events and related to armed conflict situations, the Committee underlines the importance of international cooperation and the obligation of States to undertake all appropriate legislative, administrative and other measures to ensure the rights under the Convention for all children within their jurisdiction, without discrimination. Relevant authorities should consider the risk of children's rights violations caused by the impacts of environmental degradation, including climate change, when deciding upon admission and when reviewing claims for international protection, in particular given, for example, the particularly serious consequences for children of the insufficient provision of food or health services. States should not deport children and their families to any place where they would face a real risk of grave violations as a result of the adverse effects of environmental degradation.

J. Right to education (arts. 28 and 29 (1) (e))

51. Education is one of the cornerstones of a child rights-based approach to the environment. Children have highlighted that education is instrumental in protecting their rights and the environment and in increasing their awareness and preparedness for environmental damage; however, the right to education is highly vulnerable to the impact of environmental harm, as it can result in school closures and disruptions, school dropout and the destruction of schools and places to play.

52. Article 29 (1) (e) of the Convention, requiring that the education of a child be directed to the development of respect for the natural environment, should be read in conjunction with article 28, to ensure that every child has the right to receive an education that reflects environmental values.¹²

53. A rights-based environmental education should be transformative, inclusive, child-centred, child-friendly and empowering. It should pursue the development of the child's personality, talents and abilities, acknowledge the close interrelationship between respect for the natural environment and other ethical values enshrined in article 29 (1) of the Convention and have both a local and global orientation.¹³ School curricula should be tailored to children's specific environmental, social, economic and cultural contexts and promote understanding of the contexts of other children affected by environmental degradation. Teaching materials should provide scientifically accurate, up-to-date and developmentally and age-appropriate environmental information. All children should be equipped with the skills necessary to face expected environmental challenges in life, such as disaster risks and environment-related health impacts, including the ability to critically reflect upon such challenges, solve problems, make well-balanced decisions and assume environmental responsibility, such as through sustainable lifestyles and consumption, in accordance with their evolving capacities.

54. Environmental values should be reflected in the education and training of all professionals involved in education, encompassing teaching methods, technologies and approaches used in education, school environments and preparing children for green jobs. Environmental education extends beyond formal schooling to embrace the broad range of lived experiences and learning. Exploratory, non-formal and practical methods, such as outdoor learning, are a preferred way of delivering this aim of education.

55. States should build safe, healthy and resilient infrastructure for effective learning. This includes ensuring the availability of pedestrian and biking routes and public transportation to school and that schools and alternative learning facilities are located at safe distances from sources of pollution, flooding, landslides and other environmental hazards, including

¹¹ General comment No. 11 (2009) on Indigenous children and their rights under the Convention, paras. 34 and 35.

¹² General comment No. 1 (2001) on the aims of education, para. 13.

¹³ *Ibid.*, paras. 2, 12 and 13.

contaminated sites, and the construction of buildings and classrooms with adequate heating and cooling and access to sufficient, safe and acceptable drinking water¹⁴ and sanitation facilities. Environmentally friendly school facilities, such as those with lighting and heating sourced from renewable energy and edible gardens, can benefit children and ensure compliance by States with their environmental obligations.

56. During and after water scarcity, sandstorms, heatwaves and other severe weather events, States should ensure physical access to schools, especially for children in remote or rural communities, or consider alternative teaching methods, such as mobile educational facilities and distance learning. Underserved communities should be prioritized for the climate-proofing and renovation of schools. States should ensure alternative housing for displaced populations as soon as possible to ensure that schools are not used as shelters. When responding to emergencies caused by severe weather events in areas already affected by armed conflict, States should ensure that schools do not become targets for armed groups' activity.

57. States should recognize and address the disproportionate indirect and knock-on effects of environmental degradation on children's education, paying special attention to gender-specific situations, such as children leaving school due to additional domestic and economic burdens in households facing environment-related shocks and stress.

K. Rights of Indigenous children and children belonging to minority groups (art. 30)

58. Indigenous children are disproportionately affected by biodiversity loss, pollution and climate change. States should closely consider the impact of environmental harm, such as deforestation, on traditional land and culture and the quality of the natural environment, while ensuring the rights to life, survival and development of Indigenous children. States must undertake measures to meaningfully engage with Indigenous children and their families in responding to environmental harm, including harm caused by climate change, taking due account of and integrating concepts from Indigenous cultures and traditional knowledge in mitigation and adaptation measures. While children in Indigenous communities face unique risks, they can also act as educators and advocates in applying traditional knowledge to reduce the impact of local hazards and strengthen resilience, if this knowledge is passed on and supported. Comparable measures should be taken regarding the rights of children belonging to non-Indigenous minority groups whose rights, way of life and cultural identity are intimately related to nature.

L. Right to rest, play, leisure and recreation (art. 31)

59. Play and recreation are essential to the health and well-being of children and promote the development of creativity, imagination, self-confidence, self-efficacy and physical, social, cognitive and emotional strength and skills. Play and recreation contribute to all aspects of learning, are critical to children's holistic development¹⁵ and afford important opportunities for children to explore and experience the natural world and biodiversity, benefiting their mental health and well-being and contributing to understanding, appreciation and care for the natural environment.

60. Conversely, unsafe and hazardous environments undermine the realization of the rights under article 31 (1) of the Convention and are risk factors for children's health, development and safety. Children need inclusive spaces for play that are close to their homes and free from environmental hazards. The impacts of climate change exacerbate these challenges, while climate change-related stress on household incomes may reduce children's available time for, and ability to engage in, rest, leisure, recreation and play.

¹⁴ Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002), paras. 12 (c) (i) and 16 (b).

¹⁵ General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts, paras. 9 and 14 (c).

61. States shall take effective legislative, administrative and other measures to ensure that all children, without discrimination, are able to play and engage in recreational activities in safe, clean and healthy environments, including natural spaces, parks and playgrounds. In public planning, in rural and urban settings, children's views should be given due weight and the creation of environments promoting their well-being should be prioritized. Consideration should be given to: (a) providing access, by means of safe, affordable and accessible transportation, to green areas, large open spaces and nature for play and recreation; (b) creating a safe local environment that is for free play, free from pollution, hazardous chemicals and waste; and (c) undertaking road traffic measures to reduce pollution levels near households, schools and playgrounds, including through the design of zones in which children playing, walking and cycling have priority.

62. States should introduce legislation, regulations and guidelines, accompanied by necessary budgetary allocations and effective monitoring and enforcement mechanisms, to ensure that third parties comply with article 31 of the Convention, including by establishing safety standards for all toys and play and recreational facilities, in particular concerning toxic substances, in urban and rural development projects. In situations of climate change-related disasters, measures should be taken to restore and protect these rights, including through the creation or restoration of safe spaces and by encouraging play and creative expression to promote resilience and psychological healing.

III. Right to a clean, healthy and sustainable environment

63. Children have the right to a clean, healthy and sustainable environment. This right is implicit in the Convention and directly linked to, in particular, the rights to life, survival and development, under article 6, to the highest attainable standard of health, including taking into consideration the dangers and risks of environmental pollution, under article 24, to an adequate standard of living, under article 27, and to education, under article 28, including the development of respect for the natural environment, under article 29.

64. The substantive elements of this right are profoundly important for children, given that they include clean air, a safe and stable climate, healthy ecosystems and biodiversity, safe and sufficient water, healthy and sustainable food and non-toxic environments.¹⁶

65. Towards the realization of this right for children, the Committee considers that States should immediately take the following action:

- (a) Improve air quality, by reducing both outdoor and household air pollution, to prevent child mortality, especially among children under 5 years of age;
- (b) Ensure access to safe and sufficient water and sanitation and healthy aquatic ecosystems to prevent the spread of waterborne illnesses among children;
- (c) Transform industrial agriculture and fisheries to produce healthy and sustainable food aimed at preventing malnutrition and promoting children's growth and development;
- (d) Equitably phase out the use of coal, oil and natural gas, ensure a fair and just transition of energy sources and invest in renewable energy, energy storage and energy efficiency to address the climate crisis;
- (e) Conserve, protect and restore biodiversity;
- (f) Prevent marine pollution, by banning the direct or indirect introduction of substances into the marine environment that are hazardous to children's health and marine ecosystems;¹⁷

¹⁶ See [A/74/161](#), [A/75/161](#), [A/76/179](#), [A/HRC/40/55](#), [A/HRC/46/28](#) and [A/HRC/49/53](#).

¹⁷ Convention for the Protection of the Marine Environment of the North-East Atlantic, art. 2.2 (a).

(g) Closely regulate and eliminate, as appropriate, the production, sale, use and release of toxic substances that have disproportionate adverse health effects on children, in particular those substances that are developmental neurotoxins.¹⁸

66. Procedural elements, including access to information, participation in decision-making and child-friendly access to justice, with effective remedies, have equal importance to the empowerment of children, including through education, to become agents of their own destiny.

67. States should incorporate children's right to a clean, healthy and sustainable environment into their national legislation and take adequate measures to implement it in order to strengthen accountability. This right should be mainstreamed across all decisions and measures concerning children, including policies related to education, leisure, play, access to green spaces, child protection, children's health and migration, and national frameworks for the implementation of the Convention.

IV. General measures of implementation (art. 4)

A. Obligation of States to respect, protect and fulfil children's rights

68. States must ensure a clean, healthy and sustainable environment in order to respect, protect and fulfil children's rights. The obligation to respect children's rights requires States to refrain from violating them by causing environmental harm. They shall protect children against environmental damage from other sources and third parties, including by regulating business enterprises. States parties are also under the obligation to prevent and remediate the impacts of environmental hazards on children's rights, even where such threats are beyond human control, for example, by establishing inclusive early warning systems. States must take urgent steps to fulfil their obligation to facilitate, promote and provide for the enjoyment by children of their rights, including their right to a clean, healthy and sustainable environment, such as by transitioning to clean energy and adopting strategies and programmes to ensure the sustainable use of water resources.

69. States have a due diligence obligation to take appropriate preventive measures to protect children against reasonably foreseeable environmental harm and violations of their rights, paying due regard to the precautionary principle. This includes assessing the environmental impacts of policies and projects, identifying and preventing foreseeable harm, mitigating such harm if it is not preventable and providing for timely and effective remedies to redress both foreseeable and actual harm.

70. States are also obliged to respect, protect and fulfil children's rights that are exercised in relation to the environment. The obligation to respect rights requires that they refrain from any action that would limit children's right to express their views on matters relating to the environment and from impeding access to accurate environmental information, and protect children from misinformation concerning environmental risks and from the risk of violence or other reprisals. The obligation to fulfil rights requires that States combat negative societal attitudes to children's right to be heard and to facilitate their meaningful participation in environmental decision-making.

71. States must take deliberate, specific and targeted steps towards achieving the full and effective enjoyment of children's rights related to the environment, including their right to a healthy environment, including through the development of legislation, policies, strategies or plans that are science-based and consistent with relevant international guidelines related to environmental health and safety and by refraining from taking retrogressive measures that are less protective of children.

72. States are obliged to devote financial, natural, human, technological, institutional and informational resources to realize children's rights in relation to the environment to the

¹⁸ See [A/HRC/49/53](#).

maximum extent of their available resources and, where needed, within the framework of international cooperation.¹⁹

73. Subject to any obligations under international law, including those contained in multilateral environmental agreements to which they are party, States retain discretion in arriving at a reasonable balance between determining the appropriate levels of environmental protection and achieving other social goals in the light of available resources. Nevertheless, such leeway is limited by the obligations of States under the Convention. Children are far more likely than adults to suffer serious harm, including irreversible and lifelong consequences and death, from environmental degradation. Given their heightened duty of care, States should therefore set and enforce environmental standards that protect children from such disproportionate and long-term effects.²⁰

74. States should ensure the collection of reliable, regularly updated and disaggregated data and research on environmental harm, including the risks and actual impacts of climate change-related harm on children's rights. They should include longitudinal data on the effects of environmental harm on children's rights, in particular on health, education and standard of living at different ages. Such data and research should inform the formulation and evaluation of environmental legislation, policies, programmes and plans at all levels and must be made publicly available.

B. Child rights impact assessments

75. All proposed environment-related legislation, policies, projects, regulations, budgets and decisions, and those already in force, require vigorous children's rights impact assessments, in accordance with article 3 (1) of the Convention. States should require the assessment, both before and after implementation, of the possible direct and indirect impact on the environment and climate, including the transboundary, cumulative, and both production and consumption effects, on the enjoyment of children's rights.

76. Whether child rights impact assessments are included within the framework of an environmental or integrated impact assessment, or carried out as a standalone assessment, they should incorporate a special regard for the differential impact of environmental decisions on children, in particular young children and other groups of children most at risk, as measured against all relevant rights under the Convention, including short-, medium- and long-term, combined and irreversible impacts, interactive and cumulative impacts and impacts in the different stages of childhood. For example, States that have substantial fossil fuel industries should assess the social and economic impact on children of their related decisions.

77. Child rights impact assessments should be undertaken as early as possible in the decision-making process, at crucial stages of decision-making and in follow up to the measures taken. Such assessments should be conducted with the participation of children and due weight should be given to their views and those of thematic experts. The findings should be published in child-friendly language and in the languages that children use.

C. Children's rights and the business sector

78. Businesses have the responsibility to respect children's rights in relation to the environment. States have the obligation to protect against the abuse of child rights by third parties, including business enterprises.²¹

79. Business activity is a source of significant environmental damage, contributing to child rights abuses. Such damage results, for example, from the production, use, release and disposal of hazardous and toxic substances, the extraction and burning of fossil fuels,

¹⁹ General comment No. 19 (2016) on public budgeting for the realization of children's rights, para. 75.

²⁰ A/HRC/37/58, paras. 56 and 57.

²¹ General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, paras. 28, 42 and 82.

industrial air and water pollution and unsustainable agriculture and fishing practices. Businesses contribute significantly to greenhouse gas emissions, which adversely affect children's rights, and to short- and long-term infringements of their rights linked to the consequences of climate change. The impacts of business activities and operations may undermine the ability of children and their families to adapt to the impacts of climate change, for example, where land has been degraded, thereby exacerbating climate stress. States should strengthen the realization of children's rights by sharing and making accessible existing technologies and exerting influence on business operations and value chains to prevent, mitigate and adapt to climate change.

80. States have obligations to provide a framework to ensure that businesses respect children's rights through effective, child-sensitive legislation, regulation, enforcement and policies and remedial, monitoring, coordination, collaboration and awareness-raising measures. States should require businesses to undertake child rights due diligence procedures to identify, prevent, mitigate and account for their impact on the environment and children's rights. Such due diligence is a risk-based process that involves focusing efforts where the risks from environmental damage are severe and likely to materialize, paying special attention to the risk exposure of certain groups of children, such as working children. Immediate steps should be taken in the event that children are identified as victims to prevent further harm to their health and development and to adequately and effectively repair the damage done in a timely and effective manner.

81. The Committee recommends the development by businesses, in partnership with stakeholders, including children, of due diligence procedures that integrate children's rights impact assessments into their operations. Marketing standards should ensure that businesses do not mislead consumers, in particular children, through practices of green-washing or green-sheening, by which businesses falsely portray efforts to prevent or mitigate environmental harm.

D. Access to justice and remedies

82. Effective remedies should be available to redress violations and promote social justice.²² Despite children having been at the vanguard of several environmental and climate change cases and their recognition under the Convention as rights holders, children, due to their status, encounter barriers to attaining legal standing in many States, thereby limiting their means of asserting their rights in the environmental context.

83. States should provide access to justice pathways for children, including complaint mechanisms that are child-friendly, gender-responsive and disability-inclusive, to ensure their engagement with effective judicial, quasi-judicial and non-judicial mechanisms, including child-centred national human rights institutions, for violations of their rights relating to environmental harm. This includes removing barriers for children to initiate proceedings themselves, adjusting the rules of standing and empowering national human rights institutions with mandates to receive complaints from children.

84. Mechanisms should be available for claims of imminent or foreseeable harms and past or current violations of children's rights. States should ensure that these mechanisms are readily available to all children under their jurisdiction, without discrimination, including children outside their territory affected by transboundary harm resulting from States' acts or omissions occurring within their territories.

85. States should provide for collective complaints, such as class action suits and public interest litigation,²³ and extend the limitation periods regarding violations of children's rights due to environmental harm.

86. The complexity of cases involving environmental harm due to transboundary effects, causation and cumulative impacts necessitates effective legal representation. Litigation is

²² General comment No. 5 (2003) on general measures of implementation of the Convention, para. 24; and International Covenant on Civil and Political Rights, art. 2 (3).

²³ General comment No. 16 (2013), para. 68; and general comment No. 25 (2021), para. 44.

often a lengthy process, and supranational bodies generally require the exhaustion of domestic remedies prior to filing a complaint. Children should have access to free legal and other appropriate assistance, including legal aid and effective legal representation, and be provided the opportunity to be heard in any judicial or administrative proceedings affecting them. States should consider additional measures to lower the costs for children seeking remedies, for example, through protection from adverse cost orders, to limit the financial risk to children who bring cases in the public interest regarding environmental matters.

87. To enhance accountability and promote children's access to justice in environmental matters, States should explore options for shifting the onerous burden of proof from child plaintiffs to establish causation in the face of numerous variables and information deficits.

88. Children may face particular difficulties in obtaining remedies in cases involving business enterprises that may be causing or contributing to abuses of their rights, especially concerning transboundary and global impacts. States have an obligation to establish non-judicial and judicial mechanisms to provide access to effective remedies for abuses of children's rights by business enterprises, including as a result of their extraterritorial activities and operations, provided that there is a reasonable link between the State and the conduct concerned. In line with international standards, businesses are expected to establish or participate in effective grievance mechanisms for children who have been victims of such abuses of their rights. States should also ensure the availability of regulatory agencies, monitor abuses and provide adequate remedies for violations of children's rights related to environmental harm.

89. Appropriate reparation includes restitution, adequate compensation, satisfaction, rehabilitation and guarantees of non-repetition, with regard to both the environment and the children affected, including access to medical and psychological assistance. Remedial mechanisms should consider the specific vulnerabilities of children to the effects of environmental degradation, including the possible irreversibility and lifelong nature of the harm. Reparation should be swift, to limit ongoing and future violations. The application of novel forms of remedy is encouraged, such as orders to establish intergenerational committees, in which children are active participants, to determine and oversee the expeditious implementation of measures to mitigate and adapt to the impacts of climate change.

90. Access to applicable international and regional human rights mechanisms should be available, including through ratification of the Optional Protocol on a communications procedure. Information about such mechanisms and how to use them should be made widely known to children, parents, caregivers and professionals working with and for children.

E. International cooperation

91. States have an obligation to take action, separately and jointly, through international cooperation, to respect, protect and fulfil children's rights. Article 4 of the Convention emphasizes that the implementation of the Convention is a cooperative exercise for the States of the world,²⁴ and the full realization of children's rights under the Convention is in part contingent upon how States interact. Climate change, pollution and biodiversity loss clearly represent urgent examples of global threats to children's rights that require States to work together, calling for the widest possible cooperation by all countries and their participation in an effective and appropriate international response.²⁵ The obligations of international cooperation of each State depends in part on its situation. In the context of climate change, such obligations are appropriately guided by taking into account the historical and current emissions of greenhouse gases and the concept of common but differentiated responsibilities and States' respective capabilities, in the light of different national circumstances,²⁶ while requiring the provision of technical and financial assistance from developed States to

²⁴ General comment No. 5 (2003), para. 60.

²⁵ United Nations Framework Convention on Climate Change, preamble; and Human Rights Council resolutions 26/27 and 29/15.

²⁶ United Nations Framework Convention on Climate Change, preamble and art. 3 (1); Paris Agreement, art. 2 (2); and Human Rights Council resolutions 26/27 and 29/15.

developing States consistent with article 4 of the Convention. States should engage in international cooperation to ensure the conformity of standards for developing and implementing children's rights and environmental due diligence procedures.

92. In general, developed States have committed to supporting action to address the intersecting global environmental challenges in developing countries by facilitating the transfer of green technology and contributing to financing environmental measures, in line with internationally agreed climate and biodiversity finance goals. The Convention should be a core consideration in global environmental decisions, including in States' international mitigation, adaptation and loss and damage strategies.²⁷ The environment-related programmes of donor States should be rights-based, while States that receive international environmental finance and assistance should consider allocating a substantive part of that aid specifically to child-focused programmes. Implementation guidelines should be reviewed and updated to take into account the child rights obligations of States.

93. States should ensure that environmental measures supported by international environmental finance mechanisms and international organizations respect, protect and proactively seek to fulfil children's rights. States should integrate standards and procedures to assess the risk of harm to children into the planning and implementation of new environment-related projects and take measures to mitigate the risks of harm, in compliance with the Convention and the Optional Protocols thereto. States should cooperate to support the establishment and implementation of procedures and mechanisms to provide access to effective remedies for violations of children's rights in this context.

94. States should cooperate in good faith in the establishment and funding of global responses to address environmental harm suffered by people in vulnerable situations, paying particular attention to safeguarding the rights of children in the light of their specific vulnerabilities to environment-related risks and addressing the devastating impact of both sudden- and slow-onset forms of climate disruption on children, their communities and their nations. States should cooperate to invest in conflict prevention and efforts to sustain peace that will positively contribute to mitigating any environmental harm to children that could result from armed conflict and should consider the views of children in peacemaking and peacebuilding.

V. Climate change

A. Mitigation

95. The Committee calls for urgent collective action by all States to mitigate greenhouse gas emissions, in line with their human rights obligations. In particular, historical and current major emitters should take the lead in mitigation efforts.

96. Insufficient progress in achieving international commitments to limit global warming exposes children to continuous and rapidly increasing harms associated with greater concentrations of greenhouse gas emissions and the resulting temperature increases. Scientists warn about tipping points, which are thresholds beyond which certain effects can no longer be avoided, posing dire and uncertain risks to children's rights. Avoiding tipping points requires urgent and ambitious action to reduce atmospheric concentrations of greenhouse gases.

97. Mitigation objectives and measures should be based on the best available science and be regularly reviewed to ensure a pathway to net zero carbon emissions at the latest by 2050 in a manner that prevents harm to children. The Intergovernmental Panel on Climate Change has illustrated that it is imperative to accelerate mitigation efforts in the near term, to limit the temperature increase to below 1.5°C above pre-industrial levels, and that international cooperation, equity and rights-based approaches are critical to achieving ambitious climate change mitigation goals.²⁸

²⁷ United Nations Framework Convention on Climate Change, art. 4 (5); and Paris Agreement, art. 9 (1).

²⁸ See <https://www.ipcc.ch/assessment-report/ar6/>.

98. When determining the appropriateness of their mitigation measures in accordance with the Convention, and also mindful of the need to prevent and address any potential adverse effects of those measures, States should take into account the following criteria:

(a) Mitigation objectives and measures should clearly indicate how they respect, protect and fulfil children's rights under the Convention. States should transparently and explicitly focus on children's rights when preparing, communicating and updating nationally determined contributions.²⁹ This obligation extends to other processes, including biennial transparency reports, international assessments and reviews and international consultations and analyses;³⁰

(b) States have an individual responsibility to mitigate climate change in order to fulfil their obligations under the Convention and international environmental law, including the commitment contained in the Paris Agreement to hold the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels by 2030.³¹ Mitigation measures should reflect each State party's fair share of the global effort to mitigate climate change, in the light of the total reductions necessary to protect against continuing and worsening violations of children's rights. Each State, and all States working together, should continuously strengthen climate commitments in line with the highest possible ambition and their common but differentiated responsibilities and respective capacities. High-income States should continue to take the lead by undertaking economy-wide absolute emission reduction targets, and all States should enhance their mitigation measures in the light of their different national circumstances in a manner that protects children's rights to the maximum possible extent;³²

(c) Successive mitigation measures and updated pledges should represent the efforts of States in a progression over time,³³ keeping in mind that the time frame for preventing catastrophic climate change and harm to children's rights is shorter and requires urgent action;

(d) Short-term mitigation measures should take into consideration the fact that delaying a rapid phase out of fossil fuels will result in higher cumulative emissions and thereby greater foreseeable harm to children's rights;

(e) Mitigation measures cannot rely on removing greenhouse gases from the atmosphere in the future through unproven technologies. States should prioritize rapid and effective emissions reductions now in order to support children's full enjoyment of their rights in the shortest possible period of time and to avoid irreversible damage to nature.³⁴

99. States should discontinue subsidies to public or private actors for investments in activities and infrastructure that are inconsistent with low greenhouse gas emission pathways, as a mitigation measure to prevent further damage and risk.

100. Developed States should assist developing countries in planning and implementing mitigation measures, in order to help children in vulnerable situations. The assistance could include providing financial and technical expertise and information and other capacity-building measures that specifically contribute to the prevention of harm to children caused by climate change.³⁵

²⁹ Paris Agreement, art. 4 (2).

³⁰ *Ibid.*, art. 14 (4).

³¹ *Ibid.*, art. 2 (1) (a); and *Sacchi et al. v. Argentina* (CRC/C/88/D/104/2019), para. 10.6. See also *Sacchi et al. v. Brazil* (CRC/C/88/D/105/2019), *Sacchi et al. v. France* (CRC/C/88/D/106/2019) and *Sacchi et al. v. Germany* (CRC/C/88/D/107/2019) and *Sacchi et al. v. Turkey* (CRC/C/88/D/108/2019).

³² Paris Agreement, art. 4 (4).

³³ *Ibid.*, arts. 3 and 4 (3).

³⁴ United Nations Framework Convention on Climate Change, arts. 4 (1) (h)–(j) and (2) (b); and Paris Agreement, preamble and arts. 4 (8), 12 and 13.

³⁵ Paris Agreement, art. 13 (9).

B. Adaptation

101. Since climate change-related impacts on children's rights are intensifying, a sharp and urgent increase in the design and implementation of child-sensitive, gender-responsive and disability-inclusive adaptation measures and associated resources is necessary. States should identify climate change-related vulnerabilities among children concerning the availability, quality, equity and sustainability of essential services for children, such as water and sanitation, health care, protection, nutrition and education. States should enhance the climate resilience of their legal and institutional frameworks and ensure that their national adaptation plans and existing social, environmental and budgetary policies address climate change-related risk factors by assisting children within their jurisdiction to adapt to the unavoidable effects of climate change. Examples of such measures include strengthening child protection systems in risk-prone contexts, providing adequate access to water, sanitation and health care, as well as safe school environments, and strengthening social safety nets and protection frameworks, while giving priority to children's right to life, survival and development. Healthy ecosystems and biodiversity also play an important role in supporting resilience and disaster risk reduction.

102. In adaptation measures, including disaster risk reduction, preparedness, response and recovery measures, due weight should be given to the views of children. Children should be equipped to understand the effects of climate-related decisions on their rights and have opportunities to meaningfully and effectively participate in decision-making processes. Neither the design nor the implementation of adaptation measures should discriminate against groups of children at heightened risk, such as young children, girls, children with disabilities, children in situations of migration, Indigenous children and children in situations of poverty or armed conflict. States should take additional measures to ensure that children in vulnerable situations affected by climate change enjoy their rights, including by addressing the underlying causes of vulnerability.

103. Adaptation measures should be targeted at reducing both the short-term and the long-term impacts, such as by sustaining livelihoods, protecting schools and developing sustainable water management systems. Measures that are necessary to protect children's rights to life and health from imminent threats, such as extreme weather events, include establishing early warning systems and increasing the physical safety and resilience of infrastructure, including school, water and sanitation and health infrastructure, to reduce the risk of climate change-related hazards. States should adopt emergency response plans, such as measures to provide inclusive early warning systems, humanitarian assistance and access to food and water and sanitation for all. In formulating adaptive measures, the relevant national and international standards, such as those contained in the Sendai Framework for Disaster Risk Reduction 2015–2030, should also be considered. Adaptation frameworks should address climate change-induced migration and displacement and include provisions for ensuring a child rights-based approach to these issues. In the event of imminent threats of climate change-related harm, such as extreme weather events, States should ensure the immediate dissemination of all information that would enable children and their caregivers and communities to take protective measures. States should strengthen awareness among children and their communities of disaster risk reduction and prevention measures.

C. Loss and damage

104. In the Paris Agreement, the parties addressed the importance of averting, minimizing and addressing loss and damage associated with the adverse impacts of climate change. Through a human rights lens, the adverse impacts of climate change have led to significant losses and damages, in particular for those in the developing world.

105. The manner in which climate-related loss and damage affect children and their rights may be both direct and indirect. Direct impacts include instances where both sudden-onset extreme weather events, such as floods and heavy rains, and slow-onset events, such as droughts, lead to the violation of rights under the Convention. Indirect impacts may include situations in which States, communities and parents are forced to reallocate resources away

from intended programmes, such as those for education and health care, towards addressing environmental crises.

106. In this respect, it is critical to acknowledge loss and damage as a third pillar of climate action, along with mitigation and adaptation. States are encouraged to take note that, from a human rights perspective, loss and damage are closely related to the right to remedy and the principle of reparations, including restitution, compensation and rehabilitation.³⁶ States should undertake measures, including through international cooperation, to provide financial and technical assistance for addressing loss and damage that have an impact on the enjoyment of the rights under the Convention.

D. Business and climate change

107. States must take all necessary, appropriate and reasonable measures to protect against harms to children's rights related to climate change that are caused or perpetuated by business enterprises, while businesses have the responsibility to respect children's rights in relation to climate change. States should ensure that businesses rapidly reduce their emissions and should require businesses, including financial institutions, to conduct environmental impact assessments and children's rights due diligence procedures to ensure that they identify, prevent, mitigate and account for how they address actual and potential adverse climate change-related impacts on children's rights, including those resulting from production-related and consumption-related activities and those connected to their value chains and global operations.³⁷

108. Home States have obligations to address any harm and climate change-related risks to children's rights in the context of business enterprises' extraterritorial activities and operations, provided that there is a reasonable link between the State and the conduct concerned, and should enable access to effective remedies for rights violations. This includes cooperation to ensure the compliance of business enterprises operating transnationally with applicable environmental standards aimed at protecting children's rights from climate change-related harm and the provision of international assistance and cooperation with investigations and enforcement of proceedings in other States.³⁸

109. States should incentivize sustainable investment in and use of renewable energy, energy storage and energy efficiency, in particular by State-owned or controlled enterprises and those that receive substantial support and services from State agencies. States should enforce progressive taxation schemes and adopt strict sustainability requirements for public procurement contracts.³⁹ States can also encourage community control over the generation, management, transmission and distribution of energy to increase access to and the affordability of renewable technology and the provision of sustainable energy products and services, in particular at the community level.

110. States should ensure that their obligations under trade or investment agreements do not impede their ability to meet their human rights obligations and that such agreements promote rapid reductions in greenhouse gas emissions and other measures to mitigate the causes and effects of climate change, including through the facilitation of investment in renewable energy.⁴⁰ The climate change-related impacts on children's rights connected to the implementation of the agreements should be regularly assessed, allowing for corrective measures, as appropriate.

³⁶ [A/77/226](#), para. 26.

³⁷ General comment No. 16 (2013), para. 62.

³⁸ *Ibid.*, paras. 43 and 44.

³⁹ *Ibid.*, para. 27.

⁴⁰ Committee on Economic, Social and Cultural Rights general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, para. 13.

E. Climate finance

111. Both international climate finance providers and recipient States should ensure that climate finance mechanisms are anchored in a child rights-based approach aligned with the Convention and the Optional Protocols thereto. States should ensure that any climate finance mechanisms uphold and do not violate children's rights, increase policy coherence between children's rights obligations and other objectives, such as economic development, and strengthen the demarcation of roles of various stakeholders in climate finance, such as Governments, financial institutions, including banks, businesses and affected communities, especially children.

112. In line with the principle of common but differentiated responsibilities and respective capabilities, States' national circumstances need to be taken into account in efforts to address climate change. Developed States should cooperate with developing States in providing climate finance for climate action that upholds children's rights, in line with the international climate-related commitments that States have made. In particular, despite the link between various financing mechanisms, including on sustainable development, climate finance provided by developed States should be transparent, additional to other financial flows that support children's rights and properly accounted for, including by avoiding tracking challenges such as double counting.

113. Developed States need to urgently and collectively address the current climate finance gap. The current distribution of climate finance, which is overly slanted towards mitigation at the cost of adaptation and loss and damage measures, has discriminatory effects on children who reside in settings where more adaptation measures are needed and children who are confronted with the limitations of adaptation. States should bridge the global climate finance gap and ensure that measures are financed in a balanced manner with consideration given to measures on adaptation, mitigation, loss and damage and broader means of implementation, such as technical assistance and capacity-building. The determination by States of the total global climate finance required should be informed by the documented needs of communities, especially to protect children and their rights. Climate finance provided to developing countries should be in the form of grants, rather than loans, to avoid negative impacts on children's rights.

114. States should ensure and facilitate access for affected communities, especially children, to information on activities supported by climate finance, including possibilities to lodge complaints alleging violations of children's rights. States should devolve decision-making on climate finance to strengthen the participation of beneficiary communities, especially children, and make the approval and execution of climate finance subject to a child rights impact assessment to prevent and address the financing of measures that could lead to the violation of children's rights.

115. Children are calling for the collective action of States. According to two children consulted for the present general comment: "The Governments of each country should cooperate to reduce climate change." "They need to acknowledge us and say, 'we hear you; here is what we are going to do about this problem'."⁴¹

⁴¹ See <https://childrightsenvironment.org/reports/>.



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Corrigendum

Page 4

The heading of section II.C should read

C. Right to life, survival and development (art. 6)

