



Recommendations and relevant international human rights law

The Report recommendations have been cross referenced to the relevant international human rights law.

At the international level there are three broad categories of obligation to which a state may be subject: treaty law, customary international law and emerging international standards. Treaty obligations become binding on states once they have ratified a treaty. This means that the state allows itself to be bound by the conditions and obligations contained within the treaty. Customary international law is enshrined in continuous practice by a majority of states over an extended period of time. Emerging international standards are internationally recognised standards of state behaviour which are either not enshrined in treaties, or do not yet have the force of customary international law. These include Declarations and treaties which are in force, but lack the requisite authority to bind non-ratifying states.

Treaties enshrining human rights bind signatories and in addition, both the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) are tenants of customary international law. Australia has ratified both these treaties as well as the *International Convention on the Elimination of all forms of Racial Discrimination*.

Declarations identifying human rights standards do not contain positive obligations. The *Declaration on the Right to Development* (DRD) was adopted by the United Nations (UN) General Assembly and has been accepted by all governments including Australia. The *Declaration on the Rights of Indigenous Peoples* is an emerging international standard. This is primarily due to two reasons. Firstly, the Declaration is not a Convention, and therefore can only express an in principle agreement between affirming states rather than imposing positive obligations as a treaty. Secondly, at present the Declaration has been adopted by the United Nations Human Rights Council in June 2006 but has not yet been considered for adoption by the United Nations General Assembly.

The *Convention concerning Indigenous and Tribal Peoples in Independent Countries* (*International Labour Organisation Convention No. 169*) (ILO No. 169) has not yet been ratified by Australia. While this means Australia is not bound by the provisions of the Convention, it does represent internationally acknowledged standards of treatment of Indigenous and Tribal Peoples, of which all states should be cognisant.



The table below lists a series of recommendations flowing from the Report and identifies the provisions of International law to which they correlate. Binding obligations under the ICESCR and the ICCPR appear first, followed by emerging international standards under the DRIP and finally, best practice standards as codified in DRD and the ILO (No. 169).

Recommendations: Chapter 1	Applicable international human rights law
<p>1.1 That the Australian Government identify the enterprise aspirations of traditional owners and other Indigenous people and assess their capacity to engage in economic development by:</p> <ul style="list-style-type: none"> • consulting with communities on a regional basis; • auditing existing resources within regions; • auditing community access to government resources; and • strategically targeting resources to communities according to their relative disadvantage. 	<p><i>International Covenant on Civil and Political Rights</i> (ICCPR) and the <i>International Convention on Economic, Social and Cultural Rights</i> (ICESCR): Article 1(1) and (2)</p> <p>ICCPR: Article 27</p> <p><i>International Covenant on the Elimination of Racial Discrimination</i> (ICERD): Article 2(2)</p> <p><i>International Declaration on the Right to Development</i> (DRD): Articles 1(1),(2), 3(1) and 8(2)</p> <p><i>United Nations Declaration on the Rights of Indigenous Peoples</i> (DRIP): Article 18, 19, 32(1) and (2)</p> <p><i>International Labour Organisation Convention No. 169</i> (ILO No. 169): Articles 6(1)(b) and 7(3)</p>
<p>1.2 That the Australian Government develop a communication strategy to inform all Indigenous Australians, including those who are remotely located, of economic development policy, programs, initiatives and potential sources of funding.</p>	<p>ICCPR and ICESCR: Article 1(1) and (2)</p> <p>ICESCR: Article 11(1), with reference to General Comment No. 4: <i>The right to adequate housing</i>, para. 9</p> <p>ICERD: Article 2(1)</p> <p>DRD: Articles 1(3), 3(1) and 8(2)</p> <p>DRIP Articles 19, 32(2)</p> <p>ILO No. 169: Article 6(1)(a)</p>



<p>1.3 In consultation with the states and territories, that the Australian Government develop a mechanism to coordinate the reporting obligations of Indigenous corporations and community councils.</p>	<p>DRD: Article 2(3) ILO No. 169 Article 6(1)(a)</p>
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<p>Recommendations Chapter 2</p>	<p>Applicable international human rights law</p>
<p>2.1 That the Australian Government support a range of land leasing options on communal land including options where leases are held by traditional owners through their elected entities for varying periods of time. That the <i>Community Homes</i> program be extended to communities with alternative lease schemes where the lease period is commensurate with the maximum loan repayment period.</p>	<p>ICCPR and ICESCR: Article 1(2) ICCPR: Article 12(1) ICESCR: 11(1), also General Comment No. 4 para. 8(a), (c), (d), (f) and (g) DRIP: Articles 19, 26(1), (2) and (3) and 32(2) ILO No. 69: Article 6(1)</p>
<p>2.2 That all land leasing options on communal land be rigorously and progressively monitored and evaluated and that evaluative research be utilised to inform existing and future lease options.</p>	<p>DRD: Article 4(1) DRIP: Article 39 ILO No. 169: Article 7(3)</p>
<p>2.3 That the Australian Government provide evidence of models (domestically and internationally) where individual tenure rights have led to improved economic outcomes for indigenous peoples living on communal lands.</p>	<p>ICESCR: Article 11(1) with reference to General Comment No. 4: <i>The right to adequate housing</i> para. 9 ILO No. 169: Articles 7(3) DRIP: Articles 23, 27 and 39</p>



<p>2.4 Governments legislate to ensure that consent and authorisation processes for 99 year leases are consistent with those required by sections 203BE(5) and 251(A) of the <i>Native Title Act 1993</i> for authorising Indigenous Land Use Agreements (ILUAs).</p>	<p>ICCPR and ICESCR: Articles 1(1) and 1(2) ICCPR: Article 2(3)(a- c) ICERD: Article 5(c) DRIP: 18, 19, 20(1) and (2) ILO No. 169: Article 8(1)</p>
<p>2.5 That the Australian Government remove section 64(4A) from the <i>Aboriginal Land Rights (Northern Territory) Act 1976</i> (Cth).</p>	<p>ICCPR and ICESCR: Articles 1(1) and (2) ICCPR: Article 2(1) and (2) ICERD: Article 5(c) DRIP: Articles 4, 18, 20(1) and (2), 26(1),(2) and (3) and 28(1) and (2)</p>
<p>2.6 That governments ensure employment contingencies for remote Indigenous employees who are unemployed as a result of a transition from community administration to a shire council model.</p>	<p>ICESCR: Article 6(1) and (2), Article 7(a)(i) with reference to General Comment No. 13: The right to education para. 11 and 12 ILO No. 169: Article 2(2)(c), Article 4(1)</p>
<p>2.7 In recognition of the continuing disadvantage of remote Indigenous Australians, that governments commit to providing subsidised, quality community housing and public housing according to need, and that no funds from rental housing schemes be redistributed to home ownership schemes.</p>	<p>ICCPR: Article 12(1), Article 27 ICESCR: Articles 11(1) with reference to General Comment No. 4: The right to adequate housing, para. 1, 2, 7, 8(b-g) and 9; and Article 15(1)(a) with reference to General Comment No. 14: The right to the highest attainable standard of health, para. 1-3 and 11 DRD: Article 4(1) DRIP: Article 21(1) and (2)</p>



<p>2.8 That houses constructed under the home ownership scheme be of the highest quality and that regulations be developed to indemnify home owners for agreed periods against structural flaws in the house and the associated infrastructure.</p>	<p>ICESCR: Article 12(1), (2)(b) and (c) with reference to General Comment No. 14: <i>The right to the highest attainable standard of health</i>, para. 3,4 and 9 DRD: Article 8(1) DRIP: Article 21</p>
<p>2.9 That the Australian Government develop a planned, supervised and strategic approach to train CDEP employees working on the house building and maintenance programs by ensuring the highest industry construction standards. That the Government maintain national data on the program. That CDEP employees be provided with award wage employment once they have completed the training.</p>	<p>ICESCR: Articles 6(1) and (2), 7(a), (b) and (c), Article 13(1) and (2) with reference to General Comment No. 13: <i>The right to education</i>, para. 11-14 ICERD: Article 5(e)(i), (iii), (iv) and (v) DRIP: Articles 17(3), 21(1) and (2) and 23 ILO No. 169: Article 24</p>
<p>2.10 That the Australian Government direct ICCs to work with Indigenous land entities (including representative bodies) to strategically link Shared Responsibility Agreements to land agreements in ways that will increase economic development projects and opportunities.</p>	<p>ICESCR: Article 6(1) and (2) ICERD: Article 5(e)(i) and (v) DRD: Article 8(1), (2) DRIP: Articles 19, 23, 32(1) and (2) and 39 ILO No. 169: Article 6(1)(a),(b)</p>
<p>2.11 That governments provide bilateral support to fund and develop regional Indigenous governance structures that are attached to entities capable of the following:</p>	<p>ICESCR: Article 6(1) and (2), Article 13(2)(b) and (d) with reference to General Comment No. 13: <i>The right to education</i>, para. 11-14</p>



<ul style="list-style-type: none"> • developing and sustaining an economic development strategy for the region; • applying for funds from governments and other sources; and • coordinating appropriate training and development to support regional economic development. 	<p>ICERD: Articles 5(e)(i), (iv- v) DRD: Article 8(1),(2) DRIP: Article 4 ILO No. 169: Article 2(2)(b)</p>
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Australian Legislation and International Instruments

Native Title Act 1993 (Cth)

(5) A representative body must not certify under paragraph (1)(b) an application for registration of an indigenous land use agreement unless it is of the opinion that:

- (a) all reasonable efforts have been made to ensure that all persons who hold or may hold native title in relation to land or waters in the area covered by the agreement have been identified; and
- (b) all the persons so identified have authorised the making of the agreement.

Note: Section 251A deals with **authority** to make the agreement.

s251A: Authorising the making of indigenous land use agreements

For the purposes of this Act, persons holding native title in relation to land or waters in the area covered by an indigenous land use agreement authorise the making of the agreement if:

- (a) where there is a process of decision-making that, under the traditional laws and customs of the persons who hold or may hold the common or group rights comprising the native title, must be complied with in relation to authorising things of that kind—the persons authorise the making of the agreement in accordance with that process; or
- (b) where there is no such process—the persons authorise the making of the agreement in accordance with a process of decision-making agreed to and adopted, by the persons who hold or may hold the common or group rights comprising the native title, in relation to authorising the making of the agreement or of things of that kind.¹

¹ Available online at http://www.austlii.edu.au/au/legis/cth/consol_act/nta1993147/ accessed 28 February 2007.



Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)

s64(4A): There must be debited from the Account and paid by the Commonwealth such other amounts as the Minister directs to be paid in relation to:

- (a) the acquiring of leases by, or the administering of leases granted or transferred to, approved entities under section 19A; or
- (b) the payment of amounts under leases granted or transferred to approved entities under section 19A.²

International Covenant on the Elimination of all forms of Racial Discrimination

Article 2

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

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- (e) Economic, social and cultural rights, in particular:
 - (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
 - (ii) The right to form and join trade unions;
 - (iii) The right to housing;
 - (iv) The right to public health, medical care, social security and social services;
 - (v) The right to education and training;

² Available online at http://www.austlii.edu.au/au/legis/cth/consol_act/alrta1976444/s64.html accessed 28 February 2007.



International Covenant on Civil and Political Rights

Article 1

(1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

(2) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

Article 2

(1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(3) Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 12

(1) Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

International Covenant on Economic, Social and Cultural Rights

Article 1

(1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

(2) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.



Article 2

(1) Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

(2) The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(3) Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 6

(1) The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

(2) The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

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

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.

Article 11

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



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

- (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
- (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

(1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

(2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

Article 13

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

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

- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education.

Article 15

(1) The States Parties to the present Covenant recognize the right of everyone:

- (a) To take part in cultural life;
- (b) To enjoy the benefits of scientific progress and its applications;



Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.³

General Comments:

International Convention on Economic, Social and Cultural Rights

General Comment No. 4 (Article 11): *The right to adequate housing*

(Relevant sections only, footnotes omitted)

1. Pursuant to article 11 (1) of the Covenant, States parties “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. The human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights...

3. Although a wide variety of international instruments address the different dimensions of the right to adequate housing article 11 (1) of the Covenant is the most comprehensive and perhaps the most important of the relevant provisions...

7. In the Committee’s view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. This “the inherent dignity of the human person” from which the rights in the Covenant are said to derive requires that the term “housing” be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in article 11 (1) must be read as referring not just to housing but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: “Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost”.

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

3 Available online at http://www.unhchr.ch/html/menu3/b/a_ceschr.htm accessed 23 March 2007.



(a) **Legal security of tenure:** Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;

(b) **Availability of services, materials, facilities and infrastructure:** An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;

(c) **Affordability:** Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials;

(d) **Habitability:** Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the *Health Principles of Housing* prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;

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



(f) **Location:** Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants;

(g) **Cultural adequacy:** The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.

9. As noted above, the right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments. Reference has already been made in this regard to the concept of human dignity and the principle of non-discrimination. In addition, the full enjoyment of other rights – such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom of residence and the right to participate in public decision-making – is indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing.

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

19. Finally, article 11 (1) concludes with the obligation of States parties to recognize "the essential importance of international cooperation based on free consent". Traditionally, less than 5 per cent of all international assistance has been directed towards housing or human settlements, and often the manner by which such funding is provided does little to address the housing needs of disadvantaged groups. States parties, both recipients and providers, should ensure that a substantial proportion of financing is devoted to creating conditions leading to a higher number of persons being adequately housed. International financial institutions promoting measures of structural adjustment should ensure that such



measures do not compromise the enjoyment of the right to adequate housing. States parties should, when contemplating international financial cooperation, seek to indicate areas relevant to the right to adequate housing where external financing would have the most effect. Such requests should take full account of the needs and views of the affected groups.⁴

General Comment No. 14 (Article 12): *The right to the highest attainable standard of health* Relevant extracts only (footnotes omitted)

1. Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. The realization of the right to health may be pursued through numerous, complementary approaches, such as the formulation of health policies, or the implementation of health programmes developed by the World Health Organization (WHO), or the adoption of specific legal instruments. Moreover, the right to health includes certain components which are legally enforceable.

2. The human right to health is recognized in numerous international instruments. Article 25.1 of the *Universal Declaration of Human Rights* affirms: "Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services". The *International Covenant on Economic, Social and Cultural Rights* provides the most comprehensive article on the right to health in international human rights law. In accordance with article 12.1 of the Covenant, States parties recognize "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health", while article 12.2 enumerates, by way of illustration, a number of "steps to be taken by the States parties... to achieve the full realization of this right". Additionally, the right to health is recognized, inter alia, in article 5 (e) (iv) of the *International Convention on the Elimination of All Forms of Racial Discrimination* of 1965, in articles 11.1 (f) and 12 of the *Convention on the Elimination of All Forms of Discrimination against Women* of 1979 and in article 24 of the *Convention on the Rights of the Child* of 1989... Similarly, the right to health has been proclaimed by the Commission on Human Rights, as well as in the *Vienna Declaration and Programme of Action* of 1993 and other international instruments.

3. The right to health is closely related to and dependent upon the realization of other human rights, as contained in the *International Bill of Rights*, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health.

4. ... However, the reference in article 12.1 of the Covenant to "the highest attainable standard of physical and mental health" is not confined to the right to health care. On the contrary, the drafting history and the express wording of article 12.2 acknowledge that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition,

⁴ Available online at [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+4.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+4.En?OpenDocument) accessed 23 March 2007.



housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment...

9. The notion of “the highest attainable standard of health” in article 12.1 takes into account both the individual’s biological and socio-economic preconditions and a State’s available resources. There are a number of aspects which cannot be addressed solely within the relationship between States and individuals; in particular, good health cannot be ensured by a State, nor can States provide protection against every possible cause of human ill health. Thus, genetic factors, individual susceptibility to ill health and the adoption of unhealthy or risky lifestyles may play an important role with respect to an individual’s health. Consequently, the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health...

11. The Committee interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels...

19. With respect to the right to health, equality of access to health care and health services has to be emphasized. States have a special obligation to provide those who do not have sufficient means with the necessary health insurance and health-care facilities, and to prevent any discrimination on internationally prohibited grounds in the provision of health care and health services, especially with respect to the core obligations of the right to health. Inappropriate health resource allocation can lead to discrimination that may not be overt. For example, investments should not disproportionately favour expensive curative health services which are often accessible only to a small, privileged fraction of the population, rather than primary and preventive health care benefiting a far larger part of the population.

27. In the light of emerging international law and practice and the recent measures taken by States in relation to indigenous peoples, the Committee deems it useful to identify elements that would help to define indigenous peoples’ right to health in order better to enable States with indigenous peoples to implement the provisions contained in article 12 of the Covenant. The Committee considers that indigenous peoples have the right to specific measures to improve their access to health services and care. These health services should be culturally appropriate, taking into account traditional preventive care, healing practices and medicines. States should provide resources for indigenous peoples to design, deliver and control such services so that they may enjoy the highest attainable standard of physical and mental health. The vital medicinal plants, animals and minerals necessary to the full enjoyment of health of indigenous peoples should also be protected. The Committee notes that, in indigenous communities, the health of the individual is often linked to the health of the society as a whole and has a collective dimension. In this respect, the Committee considers that development-related activities that lead to the displacement of indigenous peoples against their will from their



traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health...

30. 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 health, such as the guarantee that the right will be exercised without discrimination of any kind (art. 2.2) and the obligation to take steps (art. 2.1) towards the full realization of article 12. Such steps must be deliberate, concrete and targeted towards the full realization of the right to health.

31. The progressive realization of the right to health over a period of time should not be interpreted as depriving States parties' obligations of all meaningful content. Rather, progressive realization means that States parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of article 12.⁵

General Comment No. 13 (Article 13): *The right to Education*

Relevant extracts only (footnotes omitted)

Article 13 (2) (b): The right to secondary education

11. Secondary education includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms and at all levels.

12. While the content of secondary education will vary among States parties and over time, it includes completion of basic education and consolidation of the foundations for life-long learning and human development. It prepares students for vocational and higher educational opportunities.

Article 13 (2) (b) applies to secondary education "in its different forms", thereby recognizing that secondary education demands flexible curricula and varied delivery systems to respond to the needs of students in different social and cultural settings. The Committee encourages "alternative" educational programmes which parallel regular secondary school systems.

13. According to article 13 (2) (b), secondary education "shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education". The phrase "generally available" signifies, firstly, that secondary education is not dependent on a student's apparent capacity or ability and, secondly, that secondary education will be distributed throughout the State in such a way that it is available on the same basis to all. For the Committee's interpretation of "accessible", see paragraph 6 above. The phrase "every appropriate means" reinforces the point that States parties should adopt varied and innovative approaches to the delivery of secondary education in different social and cultural contexts.

⁵ Available online at [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En?OpenDocument) accessed 22 March 2007.



14. “[P]rogressive introduction of free education” means that while States must prioritize the provision of free primary education, they also have an obligation to take concrete steps towards achieving free secondary and higher education.⁶

United Nations Declaration on the Right to Development

Article 1

(1) The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

(2) The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

Article 2

(3) States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.

Article 3

(1) States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.

Article 4

(1) States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development.

Article 8

(1) States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.

(2) States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.⁷

6 Available online at [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.1999.10.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.1999.10.En?OpenDocument) accessed 22 March 2007.

7 Available online at <http://www.unhchr.ch/html/menu3/b/74.htm> accessed 23 March 2007.



Declaration on the Rights of Indigenous Peoples

Article 17

(1) Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

(2) States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

(3) Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18 Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19 States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

(1) Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

(2) Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

(1) Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

(2) States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

**Article 26**

(1) Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

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

(3) States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

(1) Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

(2) Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 32

(1) Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

(2) States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of their mineral, water or other resources.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.⁸

8 Available online at <http://www1.umn.edu/humanrts/instree/indigenousdeclaration.html> accessed 23 March 2007.



International Labour Organisation Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries

Article 2

(1) Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

(2) Such action shall include measures for:

- (b) Promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;
- (c) Assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.

Article 4

(1) Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.

(2) Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned.

Article 6

(1) In applying the provisions of this Convention, Governments shall:

- (a) Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
- (b) Establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;

Article 7

(3) Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

**Article 8**

(1) In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

Article 24

Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.⁹

9 Available online at <http://www1.umn.edu/humanrts/instree/r1citp.htm> accessed 23 March 2007.

