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COMMITTEE ON ECONOMIC, SOCIAL
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**AN EVALUATION OF THE OBLIGATION TO TAKE STEPS TO THE
“MAXIMUM OF AVAILABLE RESOURCES” UNDER AN OPTIONAL
PROTOCOL TO THE COVENANT**

STATEMENT

1. The Committee on Economic, Social and Cultural Rights welcomes the decision by the Human Rights Council to draft an optional protocol to the Covenant. Such a protocol granting it authority to consider individual and collective communications will assist the Committee in monitoring the implementation of the Covenant by complementing the periodic review of reports, thus strengthening the Committee’s interpretation of the Covenant.

2. The Committee is aware of States parties’ interest in obtaining further clarification on how it would apply the obligation under article 2(1) “to take steps ... to the maximum of its available resources” to achieve progressively the full realization of the rights recognized in the Covenant.¹ Of particular relevance is how the Committee would examine communications concerning this obligation, while fully respecting the authority vested in relevant State organs to adopt what it considers to be its most appropriate

¹ Article 2(1) provides that “Each State party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, 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”.

policies and to allocate resources accordingly. On the basis of its practice under the periodic reporting process, the Committee in this present statement seeks to clarify how it might consider States Parties' obligations under article 2(1) in the context of an individual communications procedure.

3. Having already examined the terms of article 2(1) in its General Comment No. 3, the Committee reiterates that in order to achieve progressively the full realization of the Covenant, States parties must take deliberate, concrete and targeted steps within a reasonably short time after the Covenant's entry into force for the States concerned. The steps should include "all appropriate means, including particularly the adoption of legislative measures". In addition to legislation, the Committee understands the term "appropriate means" to include the provision of judicial or other remedies, where appropriate, as well as "administrative, financial, educational and social measures" (General Comment No. 3, para. 7, General Comment No. 9, paras. 3-5, 7).

4. The "availability of resources", although an important qualifier to the obligation to take steps, does not alter the immediacy of the obligation, nor can resource constraints alone justify inaction. Where the available resources are demonstrably inadequate, the obligation remains for a State party to ensure the widest possible enjoyment of economic, social and cultural rights under the prevailing circumstances. The Committee has already emphasized that, even in times of severe resource constraints, States parties must protect the most disadvantaged and marginalized members or groups of society by adopting relatively low-cost targeted programmes.

5. The undertaking by a State party to use "the maximum" of its available resources towards fully realizing the provisions of the Covenant entitles it to receive resources offered by the international community. In this regard, the phrase "to the maximum of its available resources" refers to both the resources existing within a State as well as those available from the international community through international cooperation and assistance.

6. As regards the core obligations of States parties in relation to each of the Covenant rights, General Comment No. 3 states that, in order for a State party to be able to attribute its failure to meet its core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposal in an effort to satisfy, as a matter of priority, those core obligations.

7. Apart from the obligation to take steps (art. 2.1), States parties have an immediate obligation to "guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind" (art. 2.2). This obligation frequently requires the adoption and implementation of appropriate legislation and does not necessarily require significant resource allocations. Similarly, the obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of Covenant rights and does not necessarily require significant State involvement. For example, the right of women to an equal salary for equal work should be implemented immediately. The obligation to protect and, to a greater extent, the obligation to fulfil, on the other hand, often require positive budgetary measures in order to prevent third parties from interfering with the rights recognized in the Covenant (obligation to protect) or to facilitate, provide and promote the enjoyment of these rights (obligation to fulfil).

8. In considering a communication concerning an alleged failure of a State party to take steps to the maximum of available resources, the Committee will examine the measures that the State party has effectively taken, legislative or otherwise. In assessing whether they are “adequate” or “reasonable”, the Committee may take into account, inter alia, the following considerations:

- (a) the extent to which the measures taken were deliberate, concrete and targeted towards the fulfilment of economic, social and cultural rights;
- (b) whether the State party exercised its discretion in a non-discriminatory and non-arbitrary manner;
- (c) whether the State party’s decision (not) to allocate available resources is in accordance with international human rights standards;
- (d) where several policy options are available, whether the State party adopts the option that least restricts Covenant rights;
- (e) the time frame in which the steps were taken;
- (f) whether the steps had taken into account the precarious situation of disadvantaged and marginalized individuals or groups and, whether they were non-discriminatory, and whether they prioritized grave situations or situations of risk.

9. The Committee notes that in case of failure to take any steps or of the adoption of retrogressive steps, the burden of proof rests with the State party to show that such a course of action was based on the most careful consideration and can be justified by reference to the totality of the rights provided for in the Covenant and by the fact that full use was made of available resources.

10. Should a State party use “resource constraints” as an explanation for any retrogressive steps taken, the Committee would consider such information on a country-by-country basis in the light of objective criteria such as:

- (a) the country’s level of development;
- (b) the severity of the alleged breach, in particular whether the situation concerned the enjoyment of the minimum core content of the Covenant;
- (c) the country’s current economic situation, in particular whether the country was undergoing a period of economic recession;
- (d) the existence of other serious claims on the State party’s limited resources; for example, resulting from a recent natural disaster or from recent internal or international armed conflict.
- (e) whether the State party had sought to identify low-cost options; and

- (f) whether the State party had sought cooperation and assistance or rejected offers of resources from the international community for the purposes of implementing the provisions of the Covenant without sufficient reason.

11. In its assessment of whether a State party has taken reasonable steps to the maximum of its available resources to achieve progressively the realization of the provisions of the Covenant, the Committee places great importance on transparent and participative decision-making processes at the national level. At all times the Committee bears in mind its own role as an international treaty body and the role of the State in formulating or adopting, funding and implementing laws and policies concerning economic, social and cultural rights. To this end, and in accordance with the practice of judicial and other quasi-judicial human rights treaty bodies, the Committee always respects the margin of appreciation of States to take steps and adopt measures most suited to their specific circumstances.

12. Where the Committee considers that a State party has not taken reasonable or adequate steps, it will make relevant recommendations to the State party. In line with the practice of other treaty bodies, the Committee will respect the margin of appreciation of the State party to determine the optimum use of its resources and to adopt national policies and prioritize certain resource demands over others.

13. In the context of an optional protocol, the Committee could make recommendations, inter alia, along four principal lines:

- (a) recommending remedial action, such as compensation, to the victim, as appropriate;
- (b) calling upon the State party to remedy the circumstances leading to a violation. In doing so, the Committee might suggest goals and parameters to assist the State party in identifying appropriate measures. These parameters could include suggesting overall priorities to ensure that resource allocation conformed with the State party's obligations under the Covenant; provision for the disadvantaged and marginalized individuals and groups; protection against grave threats to the enjoyment of economic, social and cultural rights; and respect for non-discrimination in the adoption and implementation of measures;
- (c) suggesting, on a case-by-case basis, a range of measures to assist the State party in implementing the recommendations, with particular emphasis on low-cost measures. The State party would nonetheless still have the option of adopting its own alternative measures;
- (d) recommending a follow-up mechanism to ensure ongoing accountability of the State party; for example, by including a requirement that in its next periodic report the State party explain the steps taken to redress the violation.