

Committee repeated its call for reform of Canadian human rights laws: “to expand protection in human rights legislation to include social and economic rights and to protect poor people in all jurisdictions from discrimination because of social or economic status.” The Committee further insisted that “enforcement mechanisms provided in human rights legislation need to be reinforced to ensure that all human rights claims not settled through mediation are promptly determined before a competent human rights tribunal, with the provision of legal aid to vulnerable groups.”<sup>15</sup>

### **The obligation to provide effective remedies for social and economic rights violations**

In 1998, the Committee on Economic, Social and Cultural adopted two *General Comments* which directly address the issue of justiciability and the provision of legal remedies for social and economic rights violations through domestic human rights legislation.<sup>16</sup> In its *General Comment No. 9*, on the domestic application of the *ICESCR*, the Committee rejects the notion that social and economic rights are inherently unsuitable for judicial enforcement and adopts a rigorous standard which states are required to meet to justify the denial of legal remedies in the social and economic rights area. The Committee asserts that state parties to the *ICESCR* are required to provide for legal remedies in two ways: through consistent interpretation of domestic law, particularly in the area of equality and non-discrimination, and through the adoption of legislative measures to provide legal remedies for violations of social and economic rights.<sup>17</sup>

The Committee is careful to leave room for variation from state to state as to how social and economic rights should be protected within domestic legal systems, noting that “the precise method by which Covenant rights are given effect in national law is a matter for each State party to decide.”<sup>18</sup> Nevertheless, the Committee lays out three basic principles of compliance, based on the overriding duty to provide effective domestic remedies for social and economic rights violations. First, the means chosen by the state must be adequate to give effect to the rights in the *ICESCR*. To satisfy the non-discrimination provisions of the *ICESCR*, judicial enforcement is, the Committee asserts, indispensable.<sup>19</sup> Second, protection for social and economic rights should be comparable to, and integrated with, the protection provided for civil and political rights. Where the means used to give effect to the *ICESCR* “differ significantly” from those used in relation to other human rights treaties, “there should be a compelling justification for this, taking account of the fact that the formulations used in the Covenant are, to a considerable extent, comparable to those used in treaties dealing with civil and political rights.”<sup>20</sup> Third, the Committee suggests that direct incorporation

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<sup>15</sup>*Ibid.* at paragraph 51.

<sup>16</sup>United Nations Committee on Economic, Social and Cultural Rights, *Nineteenth Session General Comment No. 9 The Domestic Application of the Covenant*, Committee on Economic, Social and Cultural Rights, Geneva, 16 November - 4 December 1998, E/C.12/1998/24 [hereinafter *General Comment No. 9*]; United Nations Committee on Economic, Social and Cultural Rights, *Nineteenth Session General Comment No. 10 The Role of National Human Rights Institutions in the Protection of Economic, Social and Cultural Rights*, Geneva, 16 November - 4 December 1998 E/C.12/1998/25 [hereinafter *General Comment No. 10*].

<sup>17</sup>*General Comment No. 9, ibid.* at paragraph 3.

<sup>18</sup>*General Comment No. 9 supra* note 16 at paragraph 5.

<sup>19</sup>*Ibid.* at paragraph 9.

<sup>20</sup>*Ibid.* at paragraph 7.