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**Monitoring Economic, Social and Cultural Rights towards the Prevention
of Genocide**

by

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In an address in April 2004 to the UN Commission on Human Rights in Geneva during the 10th anniversary commemoration of the 1994 genocide in Rwanda, then UN Secretary General Kofi Annan launched an Action Plan to Prevent Genocide, as recommended in 1999 by the Independent Inquiry into the actions of the United Nations during the genocide in Rwanda. This action plan was designed to involve the entire United Nations system, included 1) preventing armed conflict, 2) protection of civilians in armed conflict, 3) ending impunity through judicial action, 4) early and clear warning, and 5) swift and decisive action. In that same address, Kofi Annan did not mince words when he recalled the inaction of the UN amidst what he referred to as “the gathering signs of disaster” to which no one paid attention. He made a strong case for addressing the “roots of violence and genocide—hatred, intolerance, racism, tyranny, and the dehumanizing public discourse that denies whole groups of people their dignity and their rights.”ⁱ

It is not the intention of this paper to discuss the Action Plan to Prevent Genocide in great detail but perhaps at another forum, we indeed should focus on it with the attention it deserves. On this occasion, allow me to limit myself only to point four of the action plan—early and clear warning.

The International Covenant on Economic, Social and Cultural Rights (ICESCR or the Covenant) consists of five main sections. Part I contains only the first article which is identical to that of the International Covenant on Civil and Political Rights (ICCPR), providing for the right of peoples to freely

determine their political status, to pursue their own economic, social and cultural development, to have at their disposal their natural wealth and resources, and the right not to be deprived of their means of livelihood. Part II (articles 2 to 5) consists of principles that apply to the implementation of all specific rights in the third part of the Covenant. In this part are provisions referring to the principles of non-discrimination in article 2, paragraph 2, and equality of men and women in the enjoyment of economic, social and cultural rights in article 3. Part III (articles 6 to 15) contains the specific provisions on to the right to work, the right to just and favorable working conditions, the right to form and join labour unions, the right to social security, the right protecting the recognition of family, maternal and children's rights, the right to an adequate standard living including the right to food, clothing and housing, the right to health, the right to education and the right to participate in cultural life and the right to enjoy the benefits of scientific progress including the protection of intellectual property. Part IV of the Covenant establishes a monitoring and implementation system and Part V consists of procedural provisions customarily found in international treaties.ⁱⁱ

Compliance by States parties to the International Covenant on Economic, Social and Cultural Rights is monitored by a treaty body called Committee on Economic, Social and Cultural Rights (CESCR or the Committee). The process of "monitoring" consists of several steps: the State party submits its initial report to the United Nations two years after it ratifies the Covenant; the State party formally presents its report to the Committee during a public dialogue with the Committee regarding the situation of economic, social and cultural rights in the territory of the State party; the Committee adopts its Concluding Observations addressed to the State party which is then required to report back after five years to the Committee, on what it has done regarding the suggestions and recommendations contained in the Committee's Concluding Observations, on how the implementation and enforcement of the Covenant could be improved so that everyone who is entitled to Covenant rights can actually enjoy them in full. This process is

repeated in a five-year periodic cycle for all States parties to the Covenant, numbering 158 to date.

When the Committee examines the situation of economic, social and cultural rights, it considers information gleaned from the State party's report itself and from other sources including reports from UN specialized agencies and from non-governmental organizations. The Committee then puts together all information and conducts an analysis so that it can draw up its Concluding Observations of the State party's achievements and gaps in its implementation of treaty obligations.

A recent development in the Committee's methods of work is its adoption of treaty-specific guidelines on reporting by State parties, in response to an initiative among all human rights treaty bodies to harmonize their methods of work. The reporting guidelines provide advice to States parties regarding the form and content of their reports so as to facilitate their preparation and to ensure that the reports are comprehensive and presented in a uniform manner by States parties.ⁱⁱⁱ In addition, guidelines also provide other actors including UN specialized agencies and civil society, a basis for writing their own respective parallel reports to the Committee on the compliance by States parties of their treaty obligations. Parallel reports submitted by international and national non-governmental organizations and independent experts working on the domestic front are valuable sources that provide the Committee, access to on-the-ground information that it would not have otherwise. Mr. Annan, in his address on the prevention of genocide mentioned earlier, refers to the vital role of civil society whose reports draw attention to human rights violations most especially to atrocities that signal impending human rights catastrophes.

An important part of the monitoring process that is the flip-side of the reporting guidelines is the dialogue between representatives of the State party and members of the Committee. This dialogue is a question and answer session conducted in public where Committee members can seek further clarification of issues that arise from the State party's report itself or from the other sources

previously mentioned. High level officials and technical experts from a broad spectrum of government agencies are present in the so called “constructive dialogue” to reply to questions asked by Committee members on the various economic, social and cultural rights issues obtaining on the national level. It is often during these dialogues where critical situations come to the fore.

The Committee as previously mentioned, adopts Concluding Observations at the end of its consideration of a State party’s report, and requests the State party in its next periodic report, to provide information about what it has done to implement the Committee’s suggestions and recommendations specified in the Concluding Observations. In this manner, the Committee is able to track the progress or regression of the situation of economic, social and cultural rights in the territories of the States parties.

This monitoring process thus brings to light the events that transpire over time regarding either the enjoyment or deprivations and violations of economic, social and cultural rights. The monitoring process can thus be a practical tool by which to discern the early signs that warn of impending human rights catastrophes. However, the definition of the term “genocide” according to the Convention itself carries with it the “limitation” as it were, that genocide is a crime that is committed deliberately.

The primacy of the right to life is universally considered to be pre-eminent and essential as all human rights depend on their existence and validity on the preservation of human life. Article II of the Convention on the Prevention and Punishment of the Crime of Genocide states that, ...*genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:*

- (a) killing members of the group;*
- (b) causing serious bodily or mental harm to members of the group;*
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
- (d) imposing measures intended to prevent births within the group;*

(e) forcibly transferring children of the group to another group.^{iv}

Genocide therefore is the ultimate crime and the gravest violation of human rights. In all existing literature before and since the Convention's adoption on 9 December 1948, the term genocide applies only to phenomena where the concept is present, of the intention or of the will to destroy or kill or deliberately inflict conditions that cause the physical destruction of persons identified as a group by race, or nationality or ethnicity or religion. The Convention also states that persons committing such acts shall be punished. Let us go back to Mr. Annan's memorial address where he declared: "If we are serious about preventing or stopping genocide in future, we must not be held back by arguments about whether a particular atrocity meets the definition of genocide or not. By the time we are certain, it may often be too late to act. We must recognize the signs of approaching or possible genocide, so that we can act in time to avert it."^v

In today's contemporary experience, the effect of "genocide"—the destruction of groups of people—is alarmingly the same when groups of people are neglected or exploited economically, socially or culturally. This phenomenon can be observed in many countries especially in developing countries, where disadvantaged and marginalized groups suffer disproportionately the effects of human rights violations and deprivations, whether economic, social and cultural, or civil and political. What is the effect on indigenous peoples when they are dispossessed of their ancestral lands because of mining and forest concessions, or driven away from their traditional habitat because of armed conflict, or when they lose their young to ideological indoctrination, or when they lose their language because of the requirements of mainstream education that do not recognize, or give value to mother tongues? What is the effect on groups of people who live in poverty who have limited access or no access at all to food and safe and clean water? What is the effect on groups of people who are so neglected by governments that they are not even registered at birth and therefore do not have the documents necessary to access free education and primary health care? We could go on and on. The

question is if it is the failure of governments to protect and promote human rights that leads to effects similar or the same as genocide, is it less of a crime just because the intent is not there? The disintegration of people and cultures is a slow process and not as dramatic as wiping out people through mass murder, but it is the same in effect nonetheless. What term do we use for such a crime? More importantly do we even consider this a crime?

In human rights work, it is essential to go beyond denouncing violations. The causes of human rights violations should be established and analyzed so that these can be addressed. This is what human rights treaty bodies do in their monitoring work. In addition, the human rights treaty bodies in their Concluding Observations can contribute immensely to the prevention of “genocide” or whatever term we wish to use to mean the destruction of a group of people, intentionally or otherwise, whose very survival is threatened by human rights violations and/or deprivations.

The questions we face regarding whether or not certain acts constitute “genocide” would be best addressed by a treaty body similar to the human rights treaty bodies. It is perhaps high time that a treaty body be created to monitor compliance by States parties to the Convention on the Prevention and Punishment of the Crime of Genocide. In addition, such a treaty body would be able over time, like all treaty human rights treaty bodies do, to deal with the question of clarifying the meaning of genocide and to elaborate on the complex requirements that constitute the obligations of States parties. This would be the most significant step that might be taken in order to guard against any recurrence of genocide and other crimes against humanity and human rights.

ⁱ [mhtml:file://E:UN Action Plan to Prevent Genocide \(Kofi Annan, April 7, 2004\)...Prevent Genocide International](mhtml:file://E:UN Action Plan to Prevent Genocide (Kofi Annan, April 7, 2004)...Prevent Genocide International)

ⁱⁱ United Nations Fact Sheet No. 16 (Rev.1). *The Committee on Economic, Social and Cultural Rights*. Reprinted 2006.

ⁱⁱⁱCommittee on Economic, Social and Cultural Rights. *Guidelines on Treaty Specific Documents to be Submitted by States Parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, E/C.12/2008/2. 18 November 2008 (adopted by the CESCR at its 41st session).

^{iv} [mhtml:file://E: Genocide, Convention on the Prevention and Punishment of the Crime of...Prevent Genocide International](#)

^v Idem