

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIACASE NO: 39724/19

In the matter between :-

THE TRUSTEES FOR THE TIME BEING OF
GROUNDWORK TRUST

First Applicant

VUKANI ENVIRONMENTAL JUSTICE ALLIANCE
MOVEMENT IN ACTION

Second Applicant

and

THE MINISTER OF ENVIRONMENTAL AFFAIRS

First Respondent

NATIONAL AIR QUALITY OFFICER

Second Respondent

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Third Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
AGRICULTURE, RURAL DEVELOPMENT, LAND AND
ENVIRONMENTAL AFFAIRS, GAUTENG PROVINCE

Fourth Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR
AGRICULTURE, RURAL DEVELOPMENT, LAND AND
ENVIRONMENTAL AFFAIRS, MPUMALANGA PROVINCE

Fifth Respondent

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DOCUMENT:

FIRST AND SECOND RESPONDENTS' HEADS
OF ARGUMENT IN RESPONSE TO *AMICUS*
CURIAE

ON THE ROLL:

FILED BY:

**FIRST AND SECOND RESPONDENTS'
ATTORNEY****THE STATE ATTORNEY
SALU BUILDING
316 THABO SEHUME STREET
cnr FRANCIS BAARD AND
THABO SEHUME STREET
PRIVATE BAG X91
PRETORIA, 0001****Ref: 3273/19/Z46
Tel: 012 309 1628
Fax: 086 507 0293
Enq: CE SNYMAN
E-mail: eb snyman@justice.gov.za**

TO:

**THE REGISTRAR OF THE
ABOVE HONOURABLE COURT
PRETORIA**AND
TO:**APPLICANTS' ATTORNEYS
CENTRE FOR ENVIRONMENTAL RIGHTS
1 SCOTT ROAD
OBSERVATORY
CAPE TOWN****Ref: CER 34.27
Tel: 021 447 1647
Email: tlloyd@cer.org.za
rhugo@cer.org.za****c/o DU PLESSIS & KRUYSHAAR
OFFICE NO 2
SOVEREIGN DRIVE 118
ROUTE 21
CORPORATE PARK IRENE
PRETORIA****Ref: Rentia Kruyshaar/CER
Tel: 086 100 0779
Fax: 086 548 0837
Email: kruyshaar@dupkrys.co.za***RECEIVED COPY:**TIME:**DATE:*

AND
TO:

**THIRD RESPONDENT
THE PRESIDENT OF THE REPUBLIC OF
SOUTH AFRICA
THE PRESIDENCY OFFICE
UNION BUILDING
GOVERNMENT AVE
PRETORIA**

Email: Mieke@presidency.gov.za
Njiele@law.co.za

*RECEIVED COPY:
TIME:
DATE:*

AND
TO:

**FOURTH RESPONDENT
MEMBER OF THE EXECUTIVE COUNCIL FOR
AGRICULTURE, RURAL DEVELOPMENT,
GAUTENG PROVINCE
UMNOTHO HOUSE
56 ELOFF STREET
JOHANNESBURG**

Email: Jolidee.matongo@gauteng.gov.za
Thandeka.mbassa@gauteng.gov.za

BY EMAIL

AND
TO:

**FIFTH RESPONDENT
MEMBER OF THE EXECUTIVE COUNCIL FOR
AGRICULTURE, RURAL DEVELOPMENT,
MPUMALANGA PROVINCE
BUILDING 6
7 GOVERNMENT BOULEVARD
RIVERSIDE PARK
MBOMBELA**

Email: pradebe@mpg.gov.za

BY EMAIL

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case: 39724/2019

In the matter between:

**TRUSTEES FOR THE TIME BEING OF GROUNDWORK TRUST
and another**

Applicants

and

MINISTER OF ENVIRONMENTAL AFFAIRS and others

Respondents

**HEADS OF ARGUMENT FOR FIRST AND SECOND RESPONDENT
IN RESPONSE TO AMICUS CURIAE**

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INTRODUCTION

1. The *Amicus Curiae* makes common cause with the Applicants by advancing the argument that, on an interpretation of section 24(a) of the Constitution as informed by International Law and Comparative Foreign Law, the Court should declare the unsafe levels of ambient air pollution in the Highveld Priority Area as an ongoing breach of the residents' constitutional right to an environment that is not harmful to health or well-being.¹
2. Section 24(a) of the Constitution provides that everyone has the right to an

¹ See para 58 of the *Amicus Curiae* Heads of Argument.

environment that is not harmful to their health or well-being. The Applicants rely directly on this constitutional provision as a cause of action for their main relief, namely for an order declaring the poor air quality in the Highveld Priority Area as an ongoing breach of the residents' constitutional right to an environment that is not harmful to health or well-being.² Insofar as the interpretation and application of section 24(a) of the Constitution is concerned, the main issues before the Court are as follows:

- 2.1 **firstly**, whether in view of the Constitutional Principle of Subsidiarity, a litigant can directly rely on section 24(a) of the Constitution as a cause of action, an issue which the *Amicus Curiae* completely ignores and provides no assistance;
- 2.2 **secondly**, whether in law a mere state of affairs, absent any positive or negative conduct relied upon by a litigant, can constitute the breach of the environmental right in section 24(a) of the Constitution, an issue which the *Amicus Curiae* completely ignores and provides no assistance; and
- 2.3 **thirdly**, whether the environmental right as provided for in section 24(a) of the Constitution is, on the one hand, progressively realisable and, on the other hand, is absolute and unqualified or is relative and limited, which is the only issue on which the *Amicus Curiae* purports to make a contribution.

² See Record p. 559 (prayer 1 of the Amended Notice of Motion).

3. If the Court should find that the Constitutional Principle of Subsidiarity applies in this instance, none of the arguments and submissions by the *Amicus Curiae* are of any relevance or assistance.

4. With regard to the issue whether a mere state of affairs, absent any positive or negative conduct, can constitute the breach of any right (including a fundamental right), the *Amicus Curiae* never considered or addressed this issue but merely assumed in general that this was legally possible. However, the *Amicus Curiae* appears to be aware that for every right there is a correlative obligation, either positive or negative³ and, in that regard, the *Amicus Curiae* indirectly provide support for the position taken by the Minister.⁴ There appears in any event to be no international instrument in terms of which a mere state of affairs, absent any conduct, can constitute the breach of a human right.

5. With regard to the issues pertaining to the interpretation of section 24(a) of the Constitution, we deal with the progressively realisable nature thereof and the qualified or limited nature thereof more fully herein below to show that the arguments and submissions by the *Amicus Curiae* are of very little (if any) relevance or assistance. These are the main issues to be addressed but, as a precaution, we will also briefly comment on some of the propositions advanced by the *Amicus Curiae* in his Heads of Argument.

³ See para 22.5 and 26.2 of the *Amicus Curiae* Heads of Argument.

⁴ See Record p. 799 (para 12 of the affidavit).

PROGRESSIVELY REALISABLE NATURE OF ENVIRONMENTAL RIGHT

6. In his own report to the Fortieth Session of the Human Rights Council (2019), the *Amicus Curiae* reported as follows (underlining for emphasis):⁵

"73. Pursuant to principles of international human rights law, the right to breathe clean air is subject to progressive realization, recognizing that in some low- and middle-income States it cannot be immediately fulfilled. States have discretion to determine which air quality policies and programmes are best suited to their particular circumstances."

7. In the context of a general description of his own report,⁶ the *Amicus Curiae* explains that his report builds on the framework principles on human rights and the environment as well as a previous report from the former Special Rapporteur. He then continues to explain that these framework principles set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable development. He then states the following (underlining for emphasis):

"The report also operationalise as the framework principles in the context of air pollution in order to clarify the extent to which States are obligated to respect, protect and fulfil the right to a healthy environment."

8. The *Amicus Curiae* refers in his founding affidavit to a General Comment No 14 (2000) by the Office of the Commissioner for Human Rights on the International

⁵ See Record p. 835-854 (annex 'DRB 4' to the affidavit, especially on p. 846).

⁶ See Record p. 799 (para 12 of the affidavit).

Covenant On Economic, Social And Cultural Rights⁷ but did not attach a copy of either document.⁸

8.1 The title of this General Comment is "*The Right to the Highest Attainable Standard of Health*".⁹

8.2 Article 2.1 of the Covenant provides as follows (underlining for emphasis):

"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."

8.3 Article 22 of the Covenant provides as follows (underlining for emphasis):

"Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant."

⁷ See Record p. 802-803 (para 20-21 of the affidavit).

⁸ A copy of the Covenant is attached to these Heads of Argument for the convenience of the Court.

⁹ See Record p. 802 (fn 11 on the affidavit).

8.4 For some other unknown reason, the *Amicus Curiae* deemed it fit not to disclose this information to the Court.

9. In addition the *Amicus Curiae* had no regard for section 36(1) of the Constitution, which allows for a limitation by way of a law of general application, read with the express provision in section 3(b) of the National Environmental Management: Air Quality Act 39 of 2004 which confirms (or limits) the nature of the environmental right in section 24(a) of the Constitution as progressively realisable.
10. Yet, in argument the *Amicus Curiae* seeks to advance the argument that the right in section 24(a) of the Constitution is "*immediately realisable*", on an alleged interpretation that is "*consistent with international and regional human rights instruments like the African Charter on Human and People's Rights.*"¹⁰
11. Contrary to this argument, the *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights* (2011), as published by the African Commission on Human and Peoples' Rights,¹¹ states the following under the heading "*Resources and Progressive Realisation*" (which is also applicable to the environmental right in section 24 of that Charter, to a generally satisfactory environment favourable for development):

"13. The obligation to progressively and constantly move towards

¹⁰ See para 4.1 of the *Amicus Curiae* Heads of Argument.

¹¹ See <https://www.achpr.org/legalinstruments/detail?id=30>, accessed on 13 April 2021.

the full realisation of economic, social and cultural rights, within the resources available to a State, including regional and international aid, is referred to as progressive realisation. While the African Charter does not expressly refer to the principle of progressive realisation this concept is widely accepted in the interpretation of economic, social and cultural rights and has been implied into the Charter in accordance with articles 61 and 62 of the African Charter. States parties are therefore under a continuing duty to move as expeditiously and effectively as possible towards the full realisation of economic, social and cultural rights.

14. The concept of progressive realisation means that States must implement a reasonable and measurable plan, including set achievable benchmarks and timeframes, for the enjoyment over time of economic, social and cultural rights within the resources available to the state party. Some obligations in relation to progressive realisation are immediate. For example, States have an obligation to take concrete and targeted steps to realise economic, social and cultural rights. The essential needs of members of vulnerable and disadvantaged groups should be prioritised in all resource allocation processes.

15. States need sufficient resources to progressively realise economic, social and cultural rights. There are a variety of means through which states may raise these resources, including taxation. The duty of the individual to pay taxes imposed by the African Charter implies that there is an obligation on the State to institute an effective and fair taxation system and a budgeting process that ensures that economic, social and cultural rights are prioritised in the distribution of resources."

The progressively realisable nature of this environmental right in section 24 of the African Charter was also confirmed by the African Commission in *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria (Case 155/96)*.¹²

¹²

See para 24.2 of the *Amicus Curiae* Heads of Argument.

12. Linking this issue with the Convention on the Rights of the Child and section 28 of the Constitution is also an exercise in futility. In *Nandutu v Minister of Home Affairs* the Constitutional Court held that the word “paramount” in section 28 of the Constitution is not immune to the limitation of rights that applies to other rights contained in the Bill of Rights and, therefore, the constraints and difficulties associated with the fulfilment of socio-economic rights is also applicable to the attainment of the best interests of the child.
13. If anything, the specific principles in International Law with regard to a right to clean air, support a right which is progressively realisable; furthermore the general principles in International Law of a common but differentiated responsibility¹³ also supports an interpretation of section 24(a) of the Constitution to the effect that the environmental right therein is progressively realisable.
14. The attempt by the *Amicus Curiae* to convince the Court otherwise on the basis of International Law, is without foundation and of no assistance.
15. To the extent that the *Amicus Curiae* makes capital of the lack of an express “internal qualifier” of the right in section 24(a) of the Constitution,¹⁴ the “gateway

¹³ See Sands & Peel *Principles of International Environmental Law* (2012) p. 233-236. Principle 7 of the Rio Declaration reads as follows:

Principle 7

States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

¹⁴ See para 4.1 of the *Amicus Curiae* Heads of Argument.

nature” of this right¹⁵ and the “*pro poor*” approach that should be followed,¹⁶ we point out that these submissions do not provide a new and relevant perspective or submissions that differ from those of the Applicants.¹⁷ These aspects are addressed in the Main Heads of Argument for the Minister.

16. Briefly, however, we draw attention to the following:

16.1 **Firstly**, the right in section 24(a) of the Constitution does not have an express internal qualifier but that does not mean that the right is inherently unqualified. Section 36 of the Constitution contemplates that any right in the Bill of Rights may be limited either by a law of general application or by any other provision of the Constitution, and in the jurisprudence of the Constitutional Court it is trite law that there is no hierarchy of fundamental rights but that they are relative and thereby each right limits or qualifies the scope and ambit of all the other fundamental rights. This contextual qualification is also borne out by the arguments advanced by the *Amicus Curiae* himself: he argues that section 24(b) gives effect to the right in section 24(a) and that the mechanism for exercising the guarantee contained in in section 24(a) is to be found in section 24(b).¹⁸ If the mechanism is to be found in section 24(b), which is expressly subject to an internal qualifier, it must follow that

¹⁵ See para 4.2-4-3 and 34-52 of the *Amicus Curiae* Heads of Argument.

¹⁶ See para 4.4 and 53-57 of the *Amicus Curiae* Heads of Argument.

¹⁷ See *Koyabe v Minister for Home Affairs* 2010 (4) SA 327 (CC) par [80].

¹⁸ See para 22.4-22.5 and 29 of the *Amicus Curiae* Heads of Argument.

the direct contextual link between section 24(b) and section 24(a) results in that the environmental right in section 24(a) is contextually qualified as progressively realisable.

16.2 **Secondly**, the contention that section 24(a) of the Constitution is a so-called “*gateway right*” is not new and ever since the Stockholm Conference (1972) the interrelationship between a safe environment and the enjoyment of all basic human rights (instead of the few selected by the *Amicus Curiae*) has been recognised in International Law.¹⁹ Moreover, section 24(a) is not the only “*gateway right*”. Section 24(b) of the Constitution also provides a “*gateway right*” through the constitutional right to sustainable development.²⁰ Sustainable development provide the resources for respecting, protecting, promoting and fulfilling all of the rights in the Bill of Rights.

16.3 **Thirdly**, a pro-poor approach to the interpretation of the Constitution is consistent with the transformative purpose of the Constitution, which seeks to address the injustices of the past and therefore calls for an

¹⁹

See the First Preamble of the Stockholm Declaration (underlining for emphasis):
“1. *Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights - even the right to life itself.*”

²⁰

See *Fuel Retailers Association of South Africa v Director-General: Environmental Management, Department of Agriculture, Conservation & Environment, Mpumalanga Province* 2007 (6) SA 4 (CC) par [44]-[62].

interpretation promoting sustainable development so that the ravages of poverty can be addressed. This purpose by itself is also progressively realisable and we respectfully disagree with the proposition that, on the basis of a pro-poor approach, section 24(a) of the Constitution must be interpreted as a fundamental right which is immediately realisable.

17. In the result we persist with our submission that the right to an environment that is not harmful for health or well-being, as contained in section 24(a) of the Constitution within the context of the South African Bill of Rights read with the suite of Environmental Legislation to give effect thereto, is a right which is by nature and in context progressively realisable.

QUALIFICATION AND LIMITATION OF ENVIRONMENTAL RIGHT

18. Despite this aspect being squarely raised as an issue before the Court, there is no attempt by the *Amicus Curiae* to provide any assistance in this regard. In a nutshell the exercise by the *Amicus Curiae* was to advance a proposition in support of the Applicant, in the face of International Law, that the environmental right in section 24(a) of the Constitution is immediately realisable.
19. This aspect is fully addressed in the Main Heads of Argument for the Minister.
20. Consequently we submit that the submissions and arguments of the *Amicus Curiae*, peering at section 24(a) of the Constitution in isolation and out of

context, without any regard for the relevant and applicable principles and rules of the International Environmental Law and without any regard for the suite of Environmental Legislation qualifying and limiting that environmental right, is of no assistance whatsoever.

CONCLUDING REMARKS

21. The Director-General does not need "*authority to depose*" to an affidavit but only has to qualify as a competent witness to do so.²¹
22. An *Amicus Curiae* is also bound by the Civil Law of Evidence and in this regard we point out that the factual and/or opinion "*evidence*", relied upon by the *Amicus Curiae*, is inadmissible.²²
23. Portraying a report as establishing international best practice is one thing, but it is a totally different thing where that report only recommends what the author regards as international best practice.²³
24. In the premise, the support by the *Amicus Curiae* for the relief claimed by the Applicants, namely to have a particular state of affairs declared as an ongoing breach of the constitutional right of the residents in the Highveld Priority, to an environment that is not harmful to their health or well-being, is without any merit

²¹ See para 6 of the *Amicus Curiae* Heads of Argument.

²² See para 10 of the *Amicus Curiae* Heads of Argument.

²³ See para 15.3 of the *Amicus Curiae* Heads of Argument.

and the Court should with respect decline to grant such relief.

Signed and dated at Pretoria this 14th day of April 2021.



Adv J Rust
Counsel for Minister
Parc Nouveau Chambers



Adv I Mwanawina
Counsel for Minister
Parc Nouveau Chambers



Adv MM Oosthuizen SC
Counsel for Minister
Parc Nouveau Chambers



Adv TC Chiloane
Counsel for Minister
Parc Nouveau Chambers

International Covenant on Economic, Social and Cultural Rights

**Adopted and opened for signature, ratification and accession by General Assembly
resolution 2200A (XXI)
of 16 December 1966**

entry into force 3 January 1976, in accordance with article 27

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

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.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

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 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

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;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State. 3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

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:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

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:

(a) Primary education shall be compulsory and available free to all;

(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;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, 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;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

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;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

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 the conservation, the development and the diffusion of science and culture. 3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2.

(a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V**Article 26**

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 26;

(b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.