

## ABSTRACTS

### **The Role of the UN Committee on Economic, Social and Cultural Rights in Strengthening Implementation and Supervision of the International Covenant on Economic, Social and Cultural Rights**

By *Fons Coomans*, Maastricht

This contribution discusses and evaluates the supervisory work of the UN Committee on Economic, Social and Cultural Rights regarding the implementation of the Covenant on Economic, Social and Cultural Rights by States Parties. It deals with the examination of state reports by the Committee, the participation of NGO's in the work of the Committee, the clarification of the normative content of Covenant rights through General Comments, the definition of state obligations and the identification of violations. The article then argues that a further strengthening of the supervisory role of the Committee should be realised by the adoption of a complaints procedure. Such a procedure would give the Committee the power to examine complaints lodged by individuals and groups about alleged violations of economic, social or cultural rights by a State Party. The contribution discusses the arguments in favour of such a procedure and concludes that the opinions of the Committee about complaints would have an important value in addition to the rather weak reporting procedure, because it allows the Committee to test and apply its General Comments in concrete "real cases" dealing with the situation people face in day-to-day life about alleged violations of their economic, social and cultural rights. In such a way, an international case law on the protection of economic, social and cultural rights could be developed.

### **Oil and the Niger Delta People: The Injustice of the Land Use Act**

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It is now common knowledge that Nigerian economy runs on oil, and this valuable natural resource is only found and exploited in the Niger Delta region of the country. This region, populated by ethnic minorities, is located in the southern part of the country. As is the case with some oil-producing countries, various Nigerian statutory (and constitutional) provi-

sions vest all the natural resources of the country in the State. The implication of this is that the State has the sole right to receive oil revenue (rents, taxes, and royalties). Prior to 1978, the land tenure system of the southern part of Nigeria (as distinct from the system in the northern part) was based on various systems of customary laws; essentially, families and communities mostly owned land. The result was that while oil is vested in the State, the land from which it was exploited was vested in various families/communities. As a result of this, oil multinational companies, which had obtained appropriate mining license were obliged to approach the owners of the lands involved, in order to gain access into the land. In this way, the customary landowners participated somehow in the exploitation of oil resource as they are usually paid compensation (annual rent) for granting access. Additionally, they received compensation for any damage occasioned to the land as a result of the activities of the oil companies, and this included damage to any crops or other property and also to the land itself.

However, in 1978 a Military Government promulgated a real property law, called the Land Use Act (the law was made, and is still part of the Nigerian constitution). This law (extending the existing position in the northern part of the country) vests 'all land' in the country in the State, thereby divesting the customary owners of their original title. In consequence of this, oil companies no longer approach the families/communities for a right of access to land (which they now get through the State). Moreover, the LUA has been interpreted to deny the families/communities the right to compensation (as indicated above), notwithstanding the amount of damage, which the activities of the oil MNLs cause to them. This article analyses the relevant provisions of the LUA and concludes that its overall impact on the Niger Delta people borders on gross injustice.

## **The role of the National Council of Provinces within the framework of co-operative government in South Africa**

A legal analysis with special regard to the role of the *Bundesrat* in Germany

By *Mirko Wittneben*, Hamburg

Chapter 3 of the 1996 South African Final Constitution deals with the principle of co-operative government. Section 40 (1) of the South African Constitution (FC) states governments at the national, provincial and local spheres of government are distinctive, interdependent and interrelated. The principle of co-operative government enjoins the different spheres, be they national, provincial or local, to co-operate with each other as well as across spheres. In addition to co-operation, the relationship among the spheres is characterised by consultation, co-ordination and mutual support.

On a national level, the role of the National Council of Provinces (NCOP), like second

chambers of parliament in other constitutional systems, is to review national legislation with a view to bringing to bear upon it regional interests and concerns. This is achieved by 'participating in the national legislative process and by providing a national forum for public consideration of issues affecting the provinces'.

As a constitutional body, the NCOP has no direct precedent in the world though it is closely modelled on the *Bundesrat*, that is the German 'Federal Council of provinces'. This article provides an outline of the multi-level system in South Africa. It examines some of the provisions relating to federal governance articulated in the 1996 Constitution and compares them with similar features found in the German Constitution. The main focus is on the role of the NCOP within the framework of co-operative government. The article evaluates the composition and voting procedures of the NCOP, its special functions and its role in the legislative process. It attempts to ascertain whether the NCOP fulfils its functions in a manner consistent with the principle of co-operative government provided in Chapter 3 of the constitution and question whether a change in the provisions relating the NCOP would enhance the principle of co-operative government.

As a basis for comparison, attention will be paid to the model provided for in German federalism and the *Bundesrat*. The German federal experience is valuable not only because of its uniqueness, but also because of the immense influence that it had on the drafting of the South African Constitution. The article further explores why the drafters of the South African Constitution relied so heavily on the German federal experience and illuminates the reasons for the NCOP's deviation from the model provided for by the *Bundesrat*.