The Nature of the General Legal Obligation Imposed on States Parties to the Covenant Adopted on 29 March 2004 (2187th meeting)

1. This General Comment replaces General Comment No 3, reflecting and developing its principles. The general non-discrimination provisions of article 2, paragraph 1, have been addressed in General Comment 18 and General Comment 28, and this General Comment should be read together with them.

2. While article 2 is couched in terms of the obligations of State Parties towards individuals as the right-holders under the Covenant, every State Party has a legal interest in the performance by every other State Party of its obligations. This follows from the fact that the ‘rules concerning the basic rights of the human person’ are *erga omnes* obligations and that, as indicated in the fourth preambular paragraph of the Covenant, there is a United Nations Charter obligation to promote universal respect for, and observance of, human rights and fundamental freedoms. Furthermore, the contractual dimension of the treaty involves any State Party to a treaty being obligated to every other State Party to comply with its undertakings under the treaty. In this connection, the Committee reminds States Parties of the desirability of making the declaration contemplated in article 41. It further reminds those States Parties already having made the declaration of the potential value of availing themselves of the procedure under that article. However, the mere fact that a formal interstate mechanism for complaints to the Human Rights Committee exists in respect of States Parties that have made the declaration under article 41 does not mean that this procedure is the only method by which States Parties can assert their interest in the performance of other States Parties. On the contrary, the article 41 procedure should be seen as supplementary to, not diminishing of, States Parties’ interest in each others’ discharge of their obligations. Accordingly, the Committee commends to States Parties the view that violations of Covenant rights by any State Party deserve their attention. To draw attention to possible breaches of Covenant obligations
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by other States Parties and to call on them to comply with their Covenant obligations should, far from being regarded as an unfriendly act, be considered as a reflection of legitimate community interest.

3. Article 2 defines the scope of the legal obligations undertaken by States Parties to the Covenant. A general obligation is imposed on States Parties to respect the Covenant rights and to ensure them to all individuals in their territory and subject to their jurisdiction (see paragraph 10 below). Pursuant to the principle articulated in article 26 of the Vienna Convention on the Law of Treaties, States Parties are required to give effect to the obligations under the Covenant in good faith.

4. The obligations of the Covenant in general and article 2 in particular are binding on every State Party as a whole. All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level – national, regional or local – are in a position to engage the responsibility of the State Party. The executive branch that usually represents the State Party internationally, including before the Committee, may not point to the fact that an action incompatible with the provisions of the Covenant was carried out by another branch of government as a means of seeking to relieve the State Party from responsibility for the action and consequent incompatibility. This understanding flows directly from the principle contained in article 27 of the Vienna Convention on the Law of Treaties, according to which a State Party ‘may not invoke the provisions of its internal law as justification for its failure to perform a treaty’. Although article 2, paragraph 2, allows States Parties to give effect to Covenant rights in accordance with domestic constitutional processes, the same principle operates so as to prevent States parties from invoking provisions of the constitutional law or other aspects of domestic law to justify a failure to perform or give effect to obligations under the treaty. In this respect, the Committee reminds States Parties with a federal structure of the terms of article 50, according to which the Covenant’s provisions ‘shall extend to all parts of federal states without any limitations or exceptions’.

5. The article 2, paragraph 1, obligation to respect and ensure the rights recognized by in the Covenant has immediate effect for all States parties. Article 2, paragraph 2, provides the overarching framework within which the rights specified in the Covenant are to be promoted and protected. The Committee has as a consequence previously indicated in its General