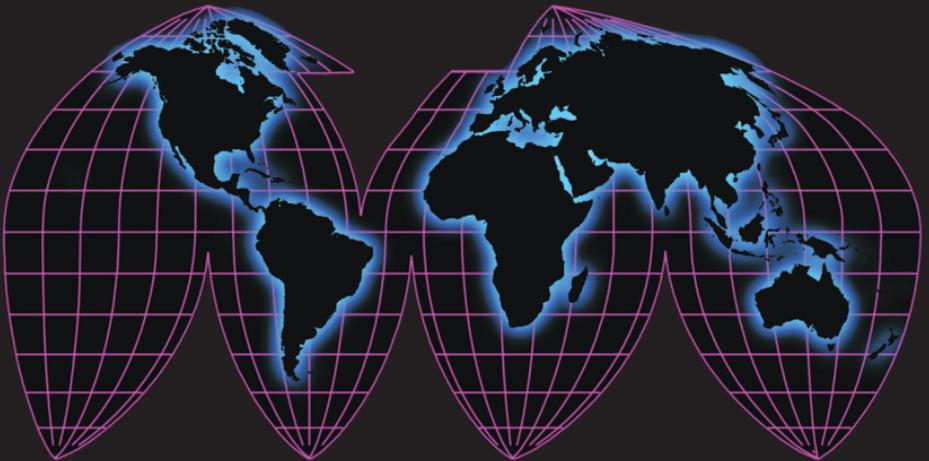


HUMAN RIGHTS FOR ALL

International Covenant on Economic, Social and Cultural Rights

A Handbook



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on Economic, Social and
Cultural Rights
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Glossary

Accession

Accession is the act whereby a state that has not signed a treaty expresses its consent to be a party to that treaty. It has the same legal effects as ratification, acceptance or approval. However, it requires one step further, “the deposit of an instrument of accession”.

Committee on Economic, Social and Cultural Rights (CESCR)

CESCR is the treaty body that monitors implementation of the International Covenant on Economic, Social and Cultural Rights by the States parties to the Covenant. It is the supervisory body of the ICESCR which was created by the Economic and Social Council (ECOSOC). They provide normative interpretation and clarification of the Covenant’s provisions (general comments).

Concluding Observations/Treaty Body Recommendations

The observations and recommendations issued by the treaty body after consideration of the State party’s report. They refer to both positive aspects, as well as areas that need to be strengthened by the State. These concluding observations are concrete, focused and should be implemented at the domestic level by the State Party through follow up measures.

General Comments

The treaty body’s general comments are its interpretation and elaboration of the content of the covenant, which often clarifies reporting duties of State parties and suggests implementation approaches.

Maximum Available Resources

State parties must take appropriate measures towards the full realization of economic, social and cultural rights to the maximum of their available resources. The reference to “resource availability” reflects a recognition that the realization of these rights can be hampered by a lack of resources and can be achieved only over a period of time. Yet, States must make constant efforts, including through international assistance and co-operation, to improve the enjoyment of economic, social and cultural rights, so their full realization may be achieved step by step.

Minimum Core Obligations

Minimum core obligations are State party obligations considered to be of immediate effect to meet the minimum essential standards of each of the rights.

Non-retrogressive Measures

States should not allow the existing protection of economic, social and cultural rights to deteriorate unless there are strong justifications for a retrogressive measure.

Obligation to Respect, Protect and Fulfill Rights

Under the ICESCR, State parties must refrain from interfering with an individual’s enjoyment of rights (respect), stop others/ third parties from interfering with an individual’s enjoyment of rights (protect), and adopt appropriate measures towards the full realization of rights (fulfill).

Obligation to Facilitate, Provide and Promote Rights

A State’s obligations to facilitate (positive measures), provide (for those unable to do so) and promote (education & information

campaigns for public awareness) ESCR are three subdivisions of the obligation to fulfil. It requires the state to ensure ESCR through proactive measures, such as enacting legislation or allocating and providing resources.

Progressive Realization

States have to make constant efforts to improve the enjoyment of economic, social and cultural rights. This means that, while their full realization may be achieved progressively, steps towards that goal must be taken within a reasonably short time. Such steps should be deliberate, concrete and targeted as clearly as possible, using all appropriate means, including particularly, but not only the adoption of legislative measures.

Ratification, Acceptance or Approval

Ratification, acceptance and approval all refer to the act by which a State establishes its consent to be bound by a treaty. Once a State has ratified a treaty at the international level, it must give effect to the treaty domestically. Upon ratification, the State becomes legally bound by the treaty.

Reservation

A reservation is a statement made by a State by which it purports to exclude or alter the legal effect of certain provisions of a treaty in their application to that State. States can make reservations to a treaty when they sign, ratify, accept, approve or accede to it. Reservations cannot be contrary to the object and purpose of the treaty and may be withdrawn by the State party at any time.

Signature

A signature indicates the State's intention to take steps to express its consent to be bound by the treaty at a later date and creates

an obligation in the meantime to refrain from acts which would violate the treaty.

Special Rapporteur

A special rapporteur is an independent human rights expert with a mandate from the Human Rights Council to report and provide advice on human rights from a thematic or country-specific perspective.

State Party

A State party is a State that has expressed their consent to be bound by the treaty under international law by an act of ratification, acceptance, approval or accession.

Treaty Body

A committee of independent experts appointed to monitor a State party's implementation of core international human rights treaties. The treaty bodies are international committees of independent experts who monitor State parties' implementation of each of the nine core human rights treaties and their optional protocols. The implementation of each of the international treaties is monitored by its own committee based on reports from State parties and information from non-governmental organisations (NGOs) and other relevant sources.

[Source: PWESCR's Leadership Institute Resources, OHCHR Glossary & Frequently Asked Questions on Economic, Social and Cultural Rights: Fact Sheet No. 33]

Introduction

Human rights are the rights that humans have and are entitled to simply by virtue of being humans. They are inherent and inalienable rights that human beings require to live a dignified life. Collectively they are a comprehensive, holistic statement elaborated and codified in the 1948 Universal Declaration of Human Rights (UDHR). All human rights—civil, political, economic, social and cultural—are recognized as a universal, inherent, inalienable, indivisible and interdependent body of rights.

History of Economic, Social and Cultural Rights

The World War II saw massive violations of human rights across the world. The period between the First and Second World Wars saw the rise of fascist forces that were responsible for large-scale genocide. The Second World War itself saw unprecedented number of casualties and destruction. In the period following the Second World War, many nations who were colonies of different European countries got their independence. The prevailing world scenario and as a result of the experiences of war, the world felt that there was a need for an international body to monitor the states to ensure violence of this magnitude is not repeated.

Consequently, the United Nations Organisation (UNO) was created on 24 October 1945 to curb violence, prevent the outbreak of a third world war and to restore peace and justice in the world. The UNO was a successor of the League of Nations that was formulated at the end of First World War, with the objective of ensuring the world does not enter a large-scale war again. The failure of the

League of Nations and the changed world scenario gave impetus to start a global body to protect, and promote human rights for all.

The institution of UNO needed human rights understanding to be codified. The Universal Declaration of Human Rights (UDHR) was adopted on 10 December 1948. The UDHR is a comprehensive document detailing and articulating human rights. Being a declaration, it is not legally binding; however, it implores states to aspire towards moral obligations. The Declaration details all rights that are basic minimum and necessary to enjoy a dignified human life.

- Article 1 and 2: Covers equality and non discrimination
- Article 3 to 21: Details civil and political rights
- Article 22-27: Details economic, social and cultural rights

UDHR has been translated in 379 languages and dialects and is one of the most translated documents in world translations.

International human rights law comprises the International Bill of Human Rights, which consists of the UDHR, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The separation in civil and political rights and economic, social cultural rights took place as a result of the Cold War politics and dynamics between the two blocs.

ICESCR is a multilateral treaty focusing on economic, social and cultural rights (ESCR), which was adopted by the General Assembly on 16 December 1966, but came into force only a decade later on 3 January 1976.

Protection of Human Rights during the Cold War

In 1952, a decision was made to separate human rights into two categories: Civil and Political rights and ESC rights on the grounds that they were different in nature, with different state obligations

and monitoring mechanisms. As a result two Covenants (ICCPR and ICESCR) were adopted in 1966 as there were ideological rifts over the two set of rights.

At this time, the world was engulfed in cold war politics. The world was divided into two power blocs- the Western bloc espousing civil and political rights while the Eastern bloc advocating for economic, social and cultural rights. The Western bloc worked hard insisting on a reading of ESC rights as fundamentally different from civil and political rights. During the cold war, the Eastern bloc countries were mostly colonies and fighting for their independence. All of these factors resulted in conceiving the notion of freedom from fear as one of the primary and important objectives in the realisation of human rights.

Another contributing factor which led to the stymied growth of ESC Rights was the lack of a monitoring body for the Covenant. It was only in 1987 that a Committee on ESC rights was established by the ECOSOC Resolution (1978/10).

Protection of Human Rights since the End of the Cold War

Historically, these rights have received less attention than civil and political rights, but this is changing rapidly. ESC rights are fully recognized in international human rights law. The number of ratifications of the ICESCR grew significantly after the Vienna World Conference on Human Rights (1993) which reemphasized that all human rights are universal, indivisible, interdependent and interrelated. As of date of this publication, the Covenant has 163 parties, out of which 6 countries have not ratified it including the United States.

ESCR at Present

ESC rights include the right to self-determination, equality, non-discrimination, work, conditions at work, social security, health, education, food, water and sanitation, housing and cultural rights--all essential for one to live a life both with dignity and freedom.

ICESCR is monitored by the treaty body called the Committee on Economic, Social and Cultural Rights (CESCR). This treaty body was created in 1987 in order to monitor and encourage States to uphold and implement their international obligations under the international human rights treaty ICESCR.

On 10 December 2008, the General Assembly adopted the Optional Protocol to the ICESCR (OP-ICESCR) which allows for the CESCR to receive and consider individual communications/complaints under violation of their rights. OP-ICESCR is an international treaty establishing complaint and inquiry mechanisms for the ICESCR. It can only be exercised under two conditions: a) If the complainant' country is a party to OP-ICESCR; and b) the individual complainant has exhausted all domestic and regional remedies they can directly take their case to the committee under OP-ICESCR. It entered into force on 5 May 2013, after being ratified by 10 states and has 45 signatories and 18 State parties currently.

Women's ESCR

Human rights are inherent, universal, interdependent, inalienable and indivisible. Yet, in the twenty-first century, women across the globe continue to suffer from imposed gender-based discrimination that denies them access to economic and social resources. Specifically, women constitute 70 per cent of the world's poor, two-thirds of the world's illiterate and are continually denied access to basic healthcare, housing, education, work and social security. These burdens restrict women from enjoying their human rights.

The devastating impact on women's lives and livelihoods is a result of:

- Changing global economic situation
- Globalisation, privatisation, commercialisation, militarisation, fundamentalism, and religious extremism
- Conflicts and disasters, both human made and natural
- Long-standing patriarchal norms, values and practices
- Climatic unpredictability and other environmental destruction.

Dispossession of and change of use in resources have negative impacts on women's livelihoods. Women, due to prescribed stereotypical gender roles, bear an unfair and unequal burden in providing food, water, fuel and care for themselves and their families. Lack of infrastructure and poor energy, and technology options add to this burden. All women work whether paid or unpaid. Women do a lot of unpaid work within the household and in family farms and enterprises. Despite its obvious economic and social worth, much of the work that women do remains invisible, undervalued, and under-appreciated.

Hence, there is a need to develop a much stronger and better-integrated approach to gender equality in the field of ESC rights. Using a human rights framework, women's rights must be looked at in conjunction with diverse issues of food, livelihoods, social security, water, sanitation, housing, work, health, safety and security to address poverty and to promote a life with dignity. Women must be included at the local, national, regional, and international decision-making levels to close the gap between the rhetoric of policy and the daily realities of women around the world.

Purpose of this Handbook

The ICESCR Handbook is mainly for human rights practitioners who want to familiarise themselves with the Covenant and use the human rights framework in their on-going work. There is a critical need to build capacity, develop leadership, promote a gender analysis for ESCR advocates and create tools to raise awareness of women's ESCR. The handbook consists of information connected to ESCR including breakdown of ICESCR, detailed covenant, enforcement mechanisms, state obligations and useful ESCR resources.

International Covenant on Economic, Social and Cultural Rights

Adopted and opened for signature, ratification and accession by the General Assembly resolution 2200A (XXI) of 16 December 1966; entry into force 3 January 1976.

Preamble

Part I (Articles 1-15): The right to self determination and the general obligations of State parties

Part II (Articles 16-23): Outlines state obligations and international implementation mechanisms

Part III (Articles 24-31): Contains the reporting process and outlines the interpretation of the treaty

*ICESCR establishes an obligation for the State party to **respect, protect and fulfil** the rights and standards contained within.*

Article 1 Right to self determination to pursue their economic, social and cultural development.

Article 2.1 Commitment of State parties to achieve progressively the full realisation of rights enshrined in the Covenant

Article 2.2 Non-discrimination

Article 3 Right of men and women to the equal enjoyment of ESCR rights

- Article 4** Limitations in enjoyment of rights only for promoting the general welfare of a democratic society
- Article 5** Non-derogation from the rights enshrined in the Covenant; no person, group or government has the right to destroy any of these rights
- Article 6** Right to work
- Article 7** Right to just and favourable conditions at work
- Article 8** Right to form and join trade unions without restriction
- Article 9** Right to social security
- Article 10** Rights of the family and its members, including special protection for mothers, children and young persons
- Article 11** Right to an adequate standard of living including basic income, food, housing, water, sanitation and clothing and the continuous improvement of living conditions
- Article 12** Right to health
- Articles 13-14** Right to education
- Article 15** Right to take part in cultural life and enjoy the benefits of scientific progress
- Articles 16-31** Refer to state obligations and implementation of the rights enshrined in the Covenant

ICESCR: Full Text (Articles 1-15)

Adopted and opened for signature, ratification and accession by the General Assembly resolution 2200A (XXI) of 16 December 1966; entry into force 3 January 1976.

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 dis-

crimination 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 I 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.

Enforcement Mechanisms

Committee on Economic, Social and Cultural Rights (CESCR)

CESCR is the body of independent experts that monitors implementation of ICESCR by States parties. All States parties are expected to submit regular reports to the Committee on the implementation of ESC rights domestically. States must report initially within two years of ratifying the Covenant and thereafter every five years. The Committee examines the reports and addresses its concerns and recommendations to the State party in the form of “concluding observations”.

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR)

The OP-ICESCR entered into force on 5 May 2013. It allows the CESCR to receive and consider communications from individuals or groups who are victims of violations of any ESC rights of the ICESCR under the jurisdiction of a State party to the Covenant. The Committee will only consider a communication after all available domestic remedies have been exhausted, unless domestic remedies are unreasonably prolonged.

Special Procedures

The Human Rights Council appoints Special Rapporteurs, or independent experts, to address specific country situations or thematic

issues. There are several thematic mandates which focus on ESC rights, such as the right to education, food, adequate standard of living, non-discrimination, physical and mental health and access to safe drinking water and sanitation. As of 23 February 2015, there are 39 thematic and 14 country mandates.

Civil Society Monitors

Non-Governmental Organizations (NGOs) and other civil society groups are often effective actors in holding states accountable for human rights obligations. They put political pressure on States by making them aware that their actions are being watched. Civil society organizations can engage in this process by lobbying their government to ratify treaties, monitoring States' compliance to concluding observations and treaty obligations, submitting written information to CESCR and participating in country review sessions as observers and through oral submissions.

[Source: PWESCR's Leadership Institute Resources, OHCHR & Frequently Asked Questions on Economic, Social and Cultural Rights: Fact Sheet No. 33]

General Comments

The CESCR adopts General Comments to provide guidance on the interpretation and application of the provisions of the Covenant. Its comments give further substance to the norms and provisions found in the Covenant. These General Comments and those adopted by other human rights bodies are valuable statements outlining the content, intent and legal meaning of the subjects they address. ICESCR was adopted in the year 1966 and did not address modern day realities which are addressed in the General Comments by the Committee. In simple words, General Comments are the further elaboration of ICESCR.

Human rights activists ought to refer to ICESCR and General Comments together. This will help to strengthen the case for advocacy. For example, activists can refer to article 12 of ICESCR and the corresponding General Comment no. 14 on the right to health. The Committee has issued the following General Comments:

Equality

The UN Human Rights Declaration, Article 1 states, 'All human beings are born free and equal in dignity and rights'.¹ In sum it is the state of being equal in opportunities, rights, status and respect. In its simplest terms, equality is the absence of discrimination. The Article 3 of ICESCR states, '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.'²

No.	General Comment Subject	Year
21	Right of everyone to take part in cultural life	2009
20	Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2)	2009
19	The right to social security	2007
18	The Right to work (art. 6) - Final edited version	2005
17	The right of everyone 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 (art. 15 (1) (c)) - Final edited version	2005
16	The equal right of men and women to the enjoyment of all economic, social and cultural rights (art.3)	2005
15	The right to water (arts. 11 and 12)	2002
14	The right to the highest attainable standard of health (art. 12)	2000
13	The right to education (art. 13)	1999
12	The right to adequate food (art. 11)	1999
11	Plans of action for primary education (art. 14)	1999
10	The role of national human rights institutions in the protection of economic, social and cultural rights	1998
9	The domestic application of the Covenant	1998
8	The relationship between economic sanctions and respect for economic, social and cultural rights	1997
7	The right to adequate housing: forced evictions (art.11 (1))	1997
6	The economic, social and cultural rights of older persons	1995
5	Persons with disabilities	1994
4	The right to adequate housing	1991
3	The nature of States parties' obligations (art. 2 (1))	1990
2	International technical assistance measures (art. 22)	1990
1	Reporting by States parties	1989

Equality may be understood as an environment in which women are on the same platform as men, can access the same opportunities and are entitled to the same given rights. Despite the definition of equality being simple and easy to interpret, its implementation is problematic. The notion on paper does not translate into reality. Reaching equality for men and women is by no means a linear process; rather it requires a holistic approach.

Substantive Equality

For true equality, there is a need to address issues at the grassroots. Rather than a reactionary or assumptive model, women would benefit from a corrective one. Substantive equality sees the root issue and attempts to resolve this by creating a more harmonious environment. The model recognizes the difference between men and women but commits to correcting the environment in which the problem occurs. In the case of discrimination against women, substantive equality attempts to address the current situation and simultaneously the root causes of why certain groups are marginalized or disadvantaged. The key aspect of substantive or corrective equality is that it is adaptive; it recognizes that the needs of groups vary, rather than assuming that all individuals are automatically equal simply because the law says so. This form of equality allows women to move to unconventional sectors and ensures that women have equal access, opportunities and resources to get equal outcome as men.

General Comment on Equality

The General Comment 16 further elaborates Article 3 of ICESCR stating the equal right of men and women to the enjoyment of all economic, social and cultural rights. It also mutually states a guarantee of non-discrimination on the basis of sex among other

grounds in Article 2(2) of the ICESCR. Substantive equality for men and women will not be achieved simply through the enactment of laws or the adoption of policies that are gender-neutral.³ States parties must respect the principle of equality in and before the law.

Temporary Special Measures

The principles of equality and non-discrimination, by themselves, are not always sufficient to guarantee true equality. Temporary special measures may sometimes be needed as a positive measure to bring disadvantaged or marginalized persons or groups of persons to the same substantive level as others. Temporary special measures aim at realizing not only de jure or formal equality, but also de facto or substantive equality for men and women.⁴

[Source: PWESCR's Leadership Institute in Women's Economic, Social and Cultural Rights, and OHCHR]

¹UN Human Rights Declaration (1948), Article 1

²International Covenant on Economic, Social and Cultural Rights (1976), Article 3

³General Comment No. 16 on equal right of men and women to the enjoyment of all economic, social and cultural rights (2005), para 8

⁴General Comment No. 16 on equal right of men and women to the enjoyment of all economic, social and cultural rights (2005), para 15

Statements

CESCR's responsibilities include monitoring States parties' compliance with their obligations under the Covenant, through the consideration of initial and periodic reports, normative interpretation and clarification of ESC rights and other issues arising from the Covenant: General Comments, Days of General Discussion and statements and Cooperation with UN organs, their subsidiary organs and specialized agencies. The Committee members have continuously adopted statements which can be used as a referral points to include in the human rights work. These statements carry the relevance from the present day context and can be followed to reinforce positions on different issues on ESCR.

The statements adopted by the CESCR to date appear in its annual reports to the Economic and Social Council:

Statement	Date/Session
Statement on Social Protection Floors: An essential element of the Right to Social Security and of the Sustainable Development Goals	6 March 2015, 54th Session
Statement read by the Chair during the Third Committee at the 68th Session of the General Assembly	22 Oct 2013
Letter by the Chairperson of the Committee on the Post-2015 Development Agenda	30 Nov 2012
Statement in the Context of the Rio + 20 Conference (June 2012) on "The Green Economy in the Context of Sustainable Development and Poverty Eradication"	4 June 2012 48th Session

Statement	Date / Session
Statement on the Importance and Relevance of the Right to Development, adopted on the occasion of the 25th anniversary of the Declaration on the Right to Development	12 July 2011 48th Session
Letter by the Chairperson of the Committee on Austerity Measures	16 May 2012
Statement on the Obligations of States Parties Regarding the Corporate Sector and Economic, Social and Cultural Rights	12 July 2011 48th Session
Statement of the Committee on the Right to Sanitation	19 Nov 2010 48th Session
Statement of the Committee on the World Food crisis	20 May 2008 40th Session
Statement by the Committee: An Evaluation of the Obligation to Take Steps to the “Maximum of Available Resources” under an Optional Protocol to the Covenant	10 May 2007 40th Session
Statement of the Committee to the Commission on Sustainable Development Acting as the Preparatory Committee for the World Summit for Sustainable Development	17 May 2002 28th Session
Statement of the Committee on Human Rights and Intellectual Property	14 Dec 2001 27th Session
Statement of the Committee to the International Consultative Conference on School Education in Relation to Freedom of Religion and Belief, Tolerance and Non-Discrimination	13 Nov 2001 27th Session
Poverty and the International Covenant on Economic, Social and Cultural Rights: Statement of the Committee to the Third United Nations Conference on the Least Developed Countries	10 May 2001 25th Session

Statement	Date / Session
Statement of the Committee to the Special Session of the General Assembly for an Overall Review and Appraisal of the Implementation of the Decisions Taken at the United Nations Conference on Human Settlements (Habitat II)	25th Session
Statement of the Committee to the Convention to Draft a Charter of Fundamental Rights of the European Union	22nd Session
Statement of the Committee to the Third Ministerial Conference of the World Trade Organization	26 Nov 1999 21st Session
Globalization and its Impact on the Enjoyment of Economic, Social and Cultural Rights	11 May 1998 18th Session
United Nations Conference on Human Settlements (Habitat II): Statement of the Committee	6 Dec 1995 13th Session
Fourth World Conference on Women: Action for Equality, Development and Peace - Statement by the Committee	17 May 1995 12th Session
The World Summit for Social Development and the International Covenant on Economic, Social and Cultural Rights: Statement of the Committee	10th Session
Economic, Social and Cultural Rights in the Context of the World Summit for Social Development: Statement of the Committee	11th Session
Statement to the World Conference on Human Rights on Behalf of the Committee	7th Session
Preparatory Activities Relating to the World Conference on Human Rights: Recommendations to the Preparatory Committee for the World Conference	6th Session

Appendix

Differences and Myths: Civil and Political Rights and ESCR

Civil and Political Rights and ESC rights were artificially divided and given hierarchies in the international human rights during cold war. This is not true for regional human rights mechanisms always. In African Human Rights Mechanism, the charter puts in the same footing for CPR rights and ESC rights. The preamble clearly states the same unlike the UN System which adopted two separate covenants for the two categories of rights.

The two blocs claimed that these rights were primarily different in nature and state obligations. It was only after the advent of globalisation that ESC rights gained concerns over rights being threatened. However, states claim both of these set of rights are different. It is important to understand the differences and myths so that ESC rights are given equal importance as CP rights. States in the pretext of various reasons mentioned below are raised to dodge their obligation to respect, protect and fulfil ESC rights.

Civil and Political Rights	Economic, Social and Cultural Rights
Immediate realisation- The obligation of the State Party to implement these rights is to be with immediate effect.	Progressive realisation- ESC rights are said to be progressive in nature. The core obligations of each of these rights

Civil and Political Rights	Economic, Social and Cultural Rights
	<p>They are to be implemented with immediate effect by state parties. However, states must work towards constantly improving the realisation of the content of these rights and maximum utilisation of resources in a non-discriminatory manner.</p>
<p>Negative obligation- These rights largely impose obligations of non-interference on state parties by checking the use and abuse of power by the state. It talks about what the state ought not to do and any action of state should not lead to losing rights. It follows violations approach. State parties have obligations to respect and protect rights. However, there are also positive obligations under civil and political rights which States have to work towards guaranteeing.</p>	<p>Positive obligation- These rights impose obligations on State Parties to take positive steps and to fulfil rights. It follows pro-policy approach and addresses the gap in the policy framework. Even though the focus is more on the affirmative action to be taken by state parties for realisation of rights, the covenant also imposes obligations of non-retrogressive steps.</p>
<p>Considered that no resources are required by the state to ensure the full realisation of these rights. The investment is minimum at best. However, several of the rights under this head are also require resources for example access to justice require setting up of courts, judiciary etc.</p>	<p>Considered to be resource heavy and require high levels of investments by the state to ensure full enjoyment of these set of rights.</p>

Civil and Political Rights	Economic, Social and Cultural Rights
<p>Considered as true “human rights” because these are rights to ensure freedom from fear. Mostly, CP rights are mentioned in the fundamental rights of the constitution.</p>	<p>Considered as Aspiration- ESC Rights are predominantly rights that states aspire to achieve and ensure to their citizens. They provide policy framework for governments to work with to ensure full enjoyment of all human rights by all. Mostly, ESC rights come under Directive Principle of the constitution. States consider ESC rights as aspirations which affects in its fulfilment of state obligations. It is just a myth and equally important as CP rights.</p>
<p>Freedom from fear State should refrain from interfering with individual freedoms. Eg: Freedom of peaceful assembly, Freedom of expression, Freedom of movement, etc.</p>	<p>Freedom from wants/needs Enjoyment of ESC rights enhances the freedom of individuals by increasing their capabilities & their quality of life. Eg: Freedom from hunger, Freedom from illiteracy, etc.</p>

ESCR Framework

Realisation of ESC rights is enhancement of capabilities and ensures freedom from wants/needs. The CESCR through its series of General Comments has articulated the contents of several ESC rights and the features of each right can be understood in the following way:

- Freedom from want
- Enhancement of capabilities
- Minimum Core Obligations

- Immediate Obligations
- 3AQ
 - Availability
 - Accessibility
 - ◆ Economic (Affordability)
 - ◆ Information
 - ◆ Physical
 - Adequacy
 - Quality.

The concept can be understood as:

■ **Freedom from want**

ESC rights focus on freedom from want of basic services. They address some of the basic needs of people. For example: freedom from hunger, freedom from disease, freedom from illiteracy etc. These are also considered the core obligations of the ESC rights.

■ **Enhancement of capabilities**

Ensuring these ESC rights enhance the capabilities of individuals allowing them to live a life with dignity and enjoy the whole gamut of their human rights. Eg: enhancing social (network, family), physical (mobility, health), economic (credit, income), human (skills, education) capabilities, etc.

■ **Minimum core obligations**

Under the International Covenant of Economic, Social, Cultural Rights, these are obligation considered to be core that set the minimum essential levels of each rights that states must ensure on priority basis. Even if states have inadequate resources at its disposal, the Government must still introduce low-cost and targeted programmes to assist those most in need. Eg: primary education, primary healthcare.

■ Immediate obligations

Even if states under the Covenant may progressively realise the enjoyment of these rights, the states must take immediate action irrespective of resource availability ensuring equality and non-discrimination. Eg: non-discrimination and equality.

■ 3AQ

Another way to analyse fulfilment of State obligations is by using the AAAQ framework –availability, accessibility, adequacy and quality. Elaborating Right to Education using 3AQ framework:

- **Availability:** Services, material, infrastructure available are working and functional. Eg. functioning educational institutions and programmes.
- **Accessibility:** Educational institutions and programmes have to be accessible to everyone, especially the most vulnerable groups, in law and fact, without discrimination
- **Economic (Affordability):** Education has to be affordable to all: whereas primary education shall be available “free to all”, States parties are required to progressively introduce free secondary and higher education;
- **Physical (non-discrimination):** Education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g., a neighbourhood school) or via modern technology (e.g., access to a “distance learning” programme);
- **Information:** Awareness must be ensured and information should be accessible to all.
- **Adequacy:** Refers to the adequate quantity in terms of services. eg. education facilities available in sufficient quantity, right proportion of students and teachers.

- **Quality:** This is culture and circumstances specific. An ongoing process which is crucial from the perception of the rights holders. The form and substance of education, including curricula and teaching methods, have to be acceptable (e.g., relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.

Examples of the Obligations to Respect, Protect and Fulfil ESCR

Article 6: The right to work

Respect: The State must not deny women from work opportunities in informal sectors like entertainment industry.

Protect: The State must ensure that employers, in the private sectors, do not use exploit workers rights.

Fulfil: The State must promote the enjoyment of the right to work by developing informational programmes to raise awareness.

Article 7: The right to just and favourable conditions at work

Respect: The State must not pay women working in public hospitals less than men for equal work or work of equal value.

Protect: The State must ensure that employers, in the private sectors, pay the minimum wage.

Fulfil: The State must introduce laws ensuring equal working conditions for men and women.

Article 8: The right to form or join trade unions

Respect: The State must not prevent women from establishing or joining a trade union.

Protect: The State must ensure that employers in the private sectors allow women to establish or join trade unions.

Fulfil: The state must take positive steps to introduce domestic legal order to protect freedom of trade unions.

Article 9: The right to social security

Respect: The State must not deny social security to any individual based on gender, class, race or any other status.

Protect: The State must ensure that single women's social security is not claimed by another person or entity without consent.

Fulfil: The State must provide social security to all women working in formal and informal sectors.

Article 10: The rights of the family

Respect: The State must not interfere with different forms of family organisation and living patterns, ensuring adequate support to all of them.

Protect: The State must ensure that women are not subject to unfair dismissals by private enterprises on grounds of pregnancy.

Fulfil: The State must ensure adequate childcare facilities and social services for dependent adults.

Article 11: The right to food

Respect: The State must not destroy crops or withhold food from any individual.

Protect: The State must ensure that private entities do not destroy or contaminate food and its source, such as arable land and water.

Fulfil: The State must improve methods of food production, conservation and distribution by disseminating technical knowledge.

Article 11: The right to housing

Respect: The State must not forcibly evict indigenous women from their home.

Protect: The State must ensure that private entities do not evict indigenous women from their home or land.

Fulfil: The State must ensure that all indigenous women have equal access to adequate housing.

Article 11: The right to water and sanitation

Respect: The State must not disconnect services of safe water for human consumption and production that is used for the livelihoods of rural women.

Protect: Where water services are contaminated by private sector, the State must ensure actions against them.

Fulfil: The State must take steps to ensure that all rural women are progressively connected to a safe drinking water supply.

Article 12: The right to health

Respect: The State must not deny health care facilities for women suffering from uterine prolapsed or obstetric fistula.

Protect: The State must regulate and monitor the services provided by private hospitals, and ensure that no pregnant women are denied services.

Fulfil: The State must ensure trained medical professionals and sexual and reproductive health services are accessible to women.

Article 13 & 14: The right to education

Respect: The State must not close down public educational institutions in pretext of unavailability of budget.

Protect: The State must ensure that the private education providers do not discriminate Dalit girls from going to school.

Fulfil: The State must take positive measures to ensure that education is designed to suit interest of indigenous and tribal groups.

Article 15: The right to take part in cultural life

Respect: The State must not ban the use of minority or indigenous languages.

Protect: The State must ensure that the freedom of individuals to engage in scientific research and creative activities is not infringed by private entities.

Fulfil: The State should create laws protecting the intellectual property of any individual's scientific, literary or artistic production.

Examples of Violations of ESCR

- Forcibly evicting people from their homes (the right to adequate housing)
- Contaminating water, for example, with waste from State-owned facilities (the right to health)
- Failure to ensure a minimum wage sufficient for a decent living (rights at work)
- Failure to prevent starvation in all areas and communities in the country (the right to food)
- Denying access to information and services related to sexual and reproductive health (the right to health)
- Systematically segregating children with disabilities from mainstream schools (the rights to non-discrimination and education)
- Failure to prevent employers from discriminating in recruitment based on sex, disability, race, political opinion, social origin, HIV status, etc. (the rights to non-discrimination and work)
- Failure to prohibit public and private entities from destroying or contaminating food and its source, such as arable land and water (the right to food)
- Failure to provide for a reasonable limitation of working hours in the public and private sector (rights at work)
- Banning the use of minority or indigenous languages (the right to participate in cultural life)

- Denying social assistance to people because of their status (e.g., people without a fixed domicile, asylum-seekers) (the right to social security)
- Failure to ensure maternity leave for working mothers (the right to protection of and assistance to the family)
- Arbitrary and illegal disconnection of water for personal and domestic use (the right to water)

[Source: OHCHR Frequently Asked Questions on Economic, Social and Cultural Rights Fact Sheet No. 33]

Resources on ESCR

To find out more about related Special Rapporteur mandates:

<http://www2.ohchr.org/english/issues/index.htm>

To find out more about the status of ratification, reservations and declarations:

<http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>

More information on the OP-ICESCR:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCESCR.aspx>

More information on CESCR, its mandate and procedures:

<http://www2.ohchr.org/english/bodies/cescr/>

To access all CESCR General Comments:

<http://www2.ohchr.org/english/issues/index.htm>

To access all CESCR Statements:

<http://www2.ohchr.org/english/issues/index.htm>

Visit OHCHR website: www.ohchr.org to view these documents.

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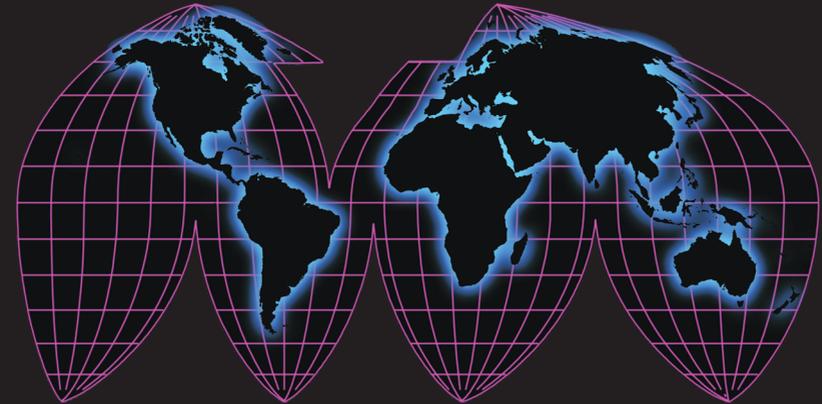
PWESCR

PWESCR (Programme on Women's Economic, Social and Cultural Rights) is a feminist human rights organisation. It endeavours to promote women's human rights, especially in the context of economic, social and cultural rights, by bringing a feminist perspective to policy, law and practice at local, national, regional and international levels. PWESCR focuses on building women's leadership to strengthen their participation in democratic processes and governance. It has successfully strengthened civil society voices, especially of women from poor, excluded and marginalised communities. With ever-evolving strategies and activities in both conceptual and practical realms, PWESCR has worked in partnership with various stakeholders including the UN agencies, policy makers and institutions to strengthen democratic governance by ensuring women's inclusion and participation.

HUMAN RIGHTS FOR ALL

International Covenant on Economic, Social and Cultural Rights

A Handbook



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Glossary

Accession

Accession is the act whereby a state that has not signed a treaty expresses its consent to be a party to that treaty. It has the same legal effects as ratification, acceptance or approval. However, it requires one step further, “the deposit of an instrument of accession”.

Committee on Economic, Social and Cultural Rights (CESCR)

CESCR is the treaty body that monitors implementation of the International Covenant on Economic, Social and Cultural Rights by the States parties to the Covenant. It is the supervisory body of the ICESCR which was created by the Economic and Social Council (ECOSOC). They provide normative interpretation and clarification of the Covenant’s provisions (general comments).

Concluding Observations/Treaty Body Recommendations

The observations and recommendations issued by the treaty body after consideration of the State party’s report. They refer to both positive aspects, as well as areas that need to be strengthened by the State. These concluding observations are concrete, focused and should be implemented at the domestic level by the State Party through follow up measures.

General Comments

The treaty body’s general comments are its interpretation and elaboration of the content of the covenant, which often clarifies reporting duties of State parties and suggests implementation approaches.

Maximum Available Resources

State parties must take appropriate measures towards the full realization of economic, social and cultural rights to the maximum of their available resources. The reference to “resource availability” reflects a recognition that the realization of these rights can be hampered by a lack of resources and can be achieved only over a period of time. Yet, States must make constant efforts, including through international assistance and co-operation, to improve the enjoyment of economic, social and cultural rights, so their full realization may be achieved step by step.

Minimum Core Obligations

Minimum core obligations are State party obligations considered to be of immediate effect to meet the minimum essential standards of each of the rights.

Non-retrogressive Measures

States should not allow the existing protection of economic, social and cultural rights to deteriorate unless there are strong justifications for a retrogressive measure.

Obligation to Respect, Protect and Fulfill Rights

Under the ICESCR, State parties must refrain from interfering with an individual’s enjoyment of rights (respect), stop others/ third parties from interfering with an individual’s enjoyment of rights (protect), and adopt appropriate measures towards the full realization of rights (fulfill).

Obligation to Facilitate, Provide and Promote Rights

A State’s obligations to facilitate (positive measures), provide (for those unable to do so) and promote (education & information

campaigns for public awareness) ESCR are three subdivisions of the obligation to fulfil. It requires the state to ensure ESCR through proactive measures, such as enacting legislation or allocating and providing resources.

Progressive Realization

States have to make constant efforts to improve the enjoyment of economic, social and cultural rights. This means that, while their full realization may be achieved progressively, steps towards that goal must be taken within a reasonably short time. Such steps should be deliberate, concrete and targeted as clearly as possible, using all appropriate means, including particularly, but not only the adoption of legislative measures.

Ratification, Acceptance or Approval

Ratification, acceptance and approval all refer to the act by which a State establishes its consent to be bound by a treaty. Once a State has ratified a treaty at the international level, it must give effect to the treaty domestically. Upon ratification, the State becomes legally bound by the treaty.

Reservation

A reservation is a statement made by a State by which it purports to exclude or alter the legal effect of certain provisions of a treaty in their application to that State. States can make reservations to a treaty when they sign, ratify, accept, approve or accede to it. Reservations cannot be contrary to the object and purpose of the treaty and may be withdrawn by the State party at any time.

Signature

A signature indicates the State's intention to take steps to express its consent to be bound by the treaty at a later date and creates

an obligation in the meantime to refrain from acts which would violate the treaty.

Special Rapporteur

A special rapporteur is an independent human rights expert with a mandate from the Human Rights Council to report and provide advice on human rights from a thematic or country-specific perspective.

State Party

A State party is a State that has expressed their consent to be bound by the treaty under international law by an act of ratification, acceptance, approval or accession.

Treaty Body

A committee of independent experts appointed to monitor a State party's implementation of core international human rights treaties. The treaty bodies are international committees of independent experts who monitor State parties' implementation of each of the nine core human rights treaties and their optional protocols. The implementation of each of the international treaties is monitored by its own committee based on reports from State parties and information from non-governmental organisations (NGOs) and other relevant sources.

[Source: PWESCR's Leadership Institute Resources, OHCHR Glossary & Frequently Asked Questions on Economic, Social and Cultural Rights: Fact Sheet No. 33]

Introduction

Human rights are the rights that humans have and are entitled to simply by virtue of being humans. They are inherent and inalienable rights that human beings require to live a dignified life. Collectively they are a comprehensive, holistic statement elaborated and codified in the 1948 Universal Declaration of Human Rights (UDHR). All human rights—civil, political, economic, social and cultural—are recognized as a universal, inherent, inalienable, indivisible and interdependent body of rights.

History of Economic, Social and Cultural Rights

The World War II saw massive violations of human rights across the world. The period between the First and Second World Wars saw the rise of fascist forces that were responsible for large-scale genocide. The Second World War itself saw unprecedented number of casualties and destruction. In the period following the Second World War, many nations who were colonies of different European countries got their independence. The prevailing world scenario and as a result of the experiences of war, the world felt that there was a need for an international body to monitor the states to ensure violence of this magnitude is not repeated.

Consequently, the United Nations Organisation (UNO) was created on 24 October 1945 to curb violence, prevent the outbreak of a third world war and to restore peace and justice in the world. The UNO was a successor of the League of Nations that was formulated at the end of First World War, with the objective of ensuring the world does not enter a large-scale war again. The failure of the

League of Nations and the changed world scenario gave impetus to start a global body to protect, and promote human rights for all.

The institution of UNO needed human rights understanding to be codified. The Universal Declaration of Human Rights (UDHR) was adopted on 10 December 1948. The UDHR is a comprehensive document detailing and articulating human rights. Being a declaration, it is not legally binding; however, it implores states to aspire towards moral obligations. The Declaration details all rights that are basic minimum and necessary to enjoy a dignified human life.

- Article 1 and 2: Covers equality and non discrimination
- Article 3 to 21: Details civil and political rights
- Article 22-27: Details economic, social and cultural rights

UDHR has been translated in 379 languages and dialects and is one of the most translated documents in world translations.

International human rights law comprises the International Bill of Human Rights, which consists of the UDHR, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The separation in civil and political rights and economic, social cultural rights took place as a result of the Cold War politics and dynamics between the two blocs.

ICESCR is a multilateral treaty focusing on economic, social and cultural rights (ESCR), which was adopted by the General Assembly on 16 December 1966, but came into force only a decade later on 3 January 1976.

Protection of Human Rights during the Cold War

In 1952, a decision was made to separate human rights into two categories: Civil and Political rights and ESC rights on the grounds that they were different in nature, with different state obligations

and monitoring mechanisms. As a result two Covenants (ICCPR and ICESCR) were adopted in 1966 as there were ideological rifts over the two set of rights.

At this time, the world was engulfed in cold war politics. The world was divided into two power blocs- the Western bloc espousing civil and political rights while the Eastern bloc advocating for economic, social and cultural rights. The Western bloc worked hard insisting on a reading of ESC rights as fundamentally different from civil and political rights. During the cold war, the Eastern bloc countries were mostly colonies and fighting for their independence. All of these factors resulted in conceiving the notion of freedom from fear as one of the primary and important objectives in the realisation of human rights.

Another contributing factor which led to the stymied growth of ESC Rights was the lack of a monitoring body for the Covenant. It was only in 1987 that a Committee on ESC rights was established by the ECOSOC Resolution (1978/10).

Protection of Human Rights since the End of the Cold War

Historically, these rights have received less attention than civil and political rights, but this is changing rapidly. ESC rights are fully recognized in international human rights law. The number of ratifications of the ICESCR grew significantly after the Vienna World Conference on Human Rights (1993) which reemphasized that all human rights are universal, indivisible, interdependent and interrelated. As of date of this publication, the Covenant has 163 parties, out of which 6 countries have not ratified it including the United States.

ESCR at Present

ESC rights include the right to self-determination, equality, non-discrimination, work, conditions at work, social security, health, education, food, water and sanitation, housing and cultural rights--all essential for one to live a life both with dignity and freedom.

ICESCR is monitored by the treaty body called the Committee on Economic, Social and Cultural Rights (CESCR). This treaty body was created in 1987 in order to monitor and encourage States to uphold and implement their international obligations under the international human rights treaty ICESCR.

On 10 December 2008, the General Assembly adopted the Optional Protocol to the ICESCR (OP-ICESCR) which allows for the CESCR to receive and consider individual communications/complaints under violation of their rights. OP-ICESCR is an international treaty establishing complaint and inquiry mechanisms for the ICESCR. It can only be exercised under two conditions: a) If the complainant's country is a party to OP-ICESCR; and b) the individual complainant has exhausted all domestic and regional remedies they can directly take their case to the committee under OP-ICESCR. It entered into force on 5 May 2013, after being ratified by 10 states and has 45 signatories and 18 State parties currently.

Women's ESCR

Human rights are inherent, universal, interdependent, inalienable and indivisible. Yet, in the twenty-first century, women across the globe continue to suffer from imposed gender-based discrimination that denies them access to economic and social resources. Specifically, women constitute 70 per cent of the world's poor, two-thirds of the world's illiterate and are continually denied access to basic healthcare, housing, education, work and social security. These burdens restrict women from enjoying their human rights.

The devastating impact on women's lives and livelihoods is a result of:

- Changing global economic situation
- Globalisation, privatisation, commercialisation, militarisation, fundamentalism, and religious extremism
- Conflicts and disasters, both human made and natural
- Long-standing patriarchal norms, values and practices
- Climatic unpredictability and other environmental destruction.

Dispossession of and change of use in resources have negative impacts on women's livelihoods. Women, due to prescribed stereotypical gender roles, bear an unfair and unequal burden in providing food, water, fuel and care for themselves and their families. Lack of infrastructure and poor energy, and technology options add to this burden. All women work whether paid or unpaid. Women do a lot of unpaid work within the household and in family farms and enterprises. Despite its obvious economic and social worth, much of the work that women do remains invisible, undervalued, and under-appreciated.

Hence, there is a need to develop a much stronger and better-integrated approach to gender equality in the field of ESC rights. Using a human rights framework, women's rights must be looked at in conjunction with diverse issues of food, livelihoods, social security, water, sanitation, housing, work, health, safety and security to address poverty and to promote a life with dignity. Women must be included at the local, national, regional, and international decision-making levels to close the gap between the rhetoric of policy and the daily realities of women around the world.

Purpose of this Handbook

The ICESCR Handbook is mainly for human rights practitioners who want to familiarise themselves with the Covenant and use the human rights framework in their on-going work. There is a critical need to build capacity, develop leadership, promote a gender analysis for ESCR advocates and create tools to raise awareness of women's ESCR. The handbook consists of information connected to ESCR including breakdown of ICESCR, detailed covenant, enforcement mechanisms, state obligations and useful ESCR resources.

International Covenant on Economic, Social and Cultural Rights

Adopted and opened for signature, ratification and accession by the General Assembly resolution 2200A (XXI) of 16 December 1966; entry into force 3 January 1976.

Preamble

Part I (Articles 1-15): The right to self determination and the general obligations of State parties

Part II (Articles 16-23): Outlines state obligations and international implementation mechanisms

Part III (Articles 24-31): Contains the reporting process and outlines the interpretation of the treaty

*ICESCR establishes an obligation for the State party to **respect, protect and fulfil** the rights and standards contained within.*

- Article 1** Right to self determination to pursue their economic, social and cultural development.
- Article 2.1** Commitment of State parties to achieve progressively the full realisation of rights enshrined in the Covenant
- Article 2.2** Non-discrimination
- Article 3** Right of men and women to the equal enjoyment of ESCR rights

Article 4	Limitations in enjoyment of rights only for promoting the general welfare of a democratic society
Article 5	Non-derogation from the rights enshrined in the Covenant; no person, group or government has the right to destroy any of these rights
Article 6	Right to work
Article 7	Right to just and favourable conditions at work
Article 8	Right to form and join trade unions without restriction
Article 9	Right to social security
Article 10	Rights of the family and its members, including special protection for mothers, children and young persons
Article 11	Right to an adequate standard of living including basic income, food, housing, water, sanitation and clothing and the continuous improvement of living conditions
Article 12	Right to health
Articles 13-14	Right to education
Article 15	Right to take part in cultural life and enjoy the benefits of scientific progress
Articles 16-31	Refer to state obligations and implementation of the rights enshrined in the Covenant

ICESCR: Full Text (Articles 1-15)

Adopted and opened for signature, ratification and accession by the General Assembly resolution 2200A (XXI) of 16 December 1966; entry into force 3 January 1976.

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 dis-

crimination 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 I 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.

Enforcement Mechanisms

Committee on Economic, Social and Cultural Rights (CESCR)

CESCR is the body of independent experts that monitors implementation of ICESCR by States parties. All States parties are expected to submit regular reports to the Committee on the implementation of ESC rights domestically. States must report initially within two years of ratifying the Covenant and thereafter every five years. The Committee examines the reports and addresses its concerns and recommendations to the State party in the form of “concluding observations”.

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR)

The OP-ICESCR entered into force on 5 May 2013. It allows the CESCR to receive and consider communications from individuals or groups who are victims of violations of any ESC rights of the ICESCR under the jurisdiction of a State party to the Covenant. The Committee will only consider a communication after all available domestic remedies have been exhausted, unless domestic remedies are unreasonably prolonged.

Special Procedures

The Human Rights Council appoints Special Rapporteurs, or independent experts, to address specific country situations or thematic

issues. There are several thematic mandates which focus on ESC rights, such as the right to education, food, adequate standard of living, non-discrimination, physical and mental health and access to safe drinking water and sanitation. As of 23 February 2015, there are 39 thematic and 14 country mandates.

Civil Society Monitors

Non-Governmental Organizations (NGOs) and other civil society groups are often effective actors in holding states accountable for human rights obligations. They put political pressure on States by making them aware that their actions are being watched. Civil society organizations can engage in this process by lobbying their government to ratify treaties, monitoring States' compliance to concluding observations and treaty obligations, submitting written information to CESCR and participating in country review sessions as observers and through oral submissions.

[Source: PWESCR's Leadership Institute Resources, OHCHR & Frequently Asked Questions on Economic, Social and Cultural Rights: Fact Sheet No. 33]

General Comments

The CESCR adopts General Comments to provide guidance on the interpretation and application of the provisions of the Covenant. Its comments give further substance to the norms and provisions found in the Covenant. These General Comments and those adopted by other human rights bodies are valuable statements outlining the content, intent and legal meaning of the subjects they address. ICESCR was adopted in the year 1966 and did not address modern day realities which are addressed in the General Comments by the Committee. In simple words, General Comments are the further elaboration of ICESCR.

Human rights activists ought to refer to ICESCR and General Comments together. This will help to strengthen the case for advocacy. For example, activists can refer to article 12 of ICESCR and the corresponding General Comment no. 14 on the right to health.

The Committee has issued the following General Comments:

Equality

The UN Human Rights Declaration, Article 1 states, 'All human beings are born free and equal in dignity and rights'.¹ In sum it is the state of being equal in opportunities, rights, status and respect. In its simplest terms, equality is the absence of discrimination. The Article 3 of ICESCR states, '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.'²

No.	General Comment Subject	Year
21	Right of everyone to take part in cultural life	2009
20	Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2)	2009
19	The right to social security	2007
18	The Right to work (art. 6) - Final edited version	2005
17	The right of everyone 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 (art. 15 (1) (c)) - Final edited version	2005
16	The equal right of men and women to the enjoyment of all economic, social and cultural rights (art.3)	2005
15	The right to water (arts. 11 and 12)	2002
14	The right to the highest attainable standard of health (art. 12)	2000
13	The right to education (art. 13)	1999
12	The right to adequate food (art. 11)	1999
11	Plans of action for primary education (art. 14)	1999
10	The role of national human rights institutions in the protection of economic, social and cultural rights	1998
9	The domestic application of the Covenant	1998
8	The relationship between economic sanctions and respect for economic, social and cultural rights	1997
7	The right to adequate housing: forced evictions (art.11 (1))	1997
6	The economic, social and cultural rights of older persons	1995
5	Persons with disabilities	1994
4	The right to adequate housing	1991
3	The nature of States parties' obligations (art. 2 (1))	1990
2	International technical assistance measures (art. 22)	1990
1	Reporting by States parties	1989

Equality may be understood as an environment in which women are on the same platform as men, can access the same opportunities and are entitled to the same given rights. Despite the definition of equality being simple and easy to interpret, its implementation is problematic. The notion on paper does not translate into reality. Reaching equality for men and women is by no means a linear process; rather it requires a holistic approach.

Substantive Equality

For true equality, there is a need to address issues at the grassroots. Rather than a reactionary or assumptive model, women would benefit from a corrective one. Substantive equality sees the root issue and attempts to resolve this by creating a more harmonious environment. The model recognizes the difference between men and women but commits to correcting the environment in which the problem occurs. In the case of discrimination against women, substantive equality attempts to address the current situation and simultaneously the root causes of why certain groups are marginalized or disadvantaged. The key aspect of substantive or corrective equality is that it is adaptive; it recognizes that the needs of groups vary, rather than assuming that all individuals are automatically equal simply because the law says so. This form of equality allows women to move to unconventional sectors and ensures that women have equal access, opportunities and resources to get equal outcome as men.

General Comment on Equality

The General Comment 16 further elaborates Article 3 of ICESCR stating the equal right of men and women to the enjoyment of all economic, social and cultural rights. It also mutually states a guarantee of non-discrimination on the basis of sex among other

grounds in Article 2(2) of the ICESCR. Substantive equality for men and women will not be achieved simply through the enactment of laws or the adoption of policies that are gender-neutral.³ States parties must respect the principle of equality in and before the law.

Temporary Special Measures

The principles of equality and non-discrimination, by themselves, are not always sufficient to guarantee true equality. Temporary special measures may sometimes be needed as a positive measure to bring disadvantaged or marginalized persons or groups of persons to the same substantive level as others. Temporary special measures aim at realizing not only de jure or formal equality, but also de facto or substantive equality for men and women.⁴

[Source: PWESCR's Leadership Institute in Women's Economic, Social and Cultural Rights, and OHCHR]

¹UN Human Rights Declaration (1948), Article 1

²International Covenant on Economic, Social and Cultural Rights (1976), Article 3

³General Comment No. 16 on equal right of men and women to the enjoyment of all economic, social and cultural rights (2005), para 8

⁴General Comment No. 16 on equal right of men and women to the enjoyment of all economic, social and cultural rights (2005), para 15

Statements

CESCR's responsibilities include monitoring States parties' compliance with their obligations under the Covenant, through the consideration of initial and periodic reports, normative interpretation and clarification of ESC rights and other issues arising from the Covenant: General Comments, Days of General Discussion and statements and Cooperation with UN organs, their subsidiary organs and specialized agencies. The Committee members have continuously adopted statements which can be used as a referral points to include in the human rights work. These statements carry the relevance from the present day context and can be followed to reinforce positions on different issues on ESCR.

The statements adopted by the CESCR to date appear in its annual reports to the Economic and Social Council:

Statement	Date / Session
Statement on Social Protection Floors: An essential element of the Right to Social Security and of the Sustainable Development Goals	6 March 2015, 54th Session
Statement read by the Chair during the Third Committee at the 68th Session of the General Assembly	22 Oct 2013
Letter by the Chairperson of the Committee on the Post-2015 Development Agenda	30 Nov 2012
Statement in the Context of the Rio + 20 Conference (June 2012) on "The Green Economy in the Context of Sustainable Development and Poverty Eradication"	4 June 2012 48th Session

Statement	Date / Session
Statement on the Importance and Relevance of the Right to Development, adopted on the occasion of the 25th anniversary of the Declaration on the Right to Development	12 July 2011 48th Session
Letter by the Chairperson of the Committee on Austerity Measures	16 May 2012
Statement on the Obligations of States Parties Regarding the Corporate Sector and Economic, Social and Cultural Rights	12 July 2011 48th Session
Statement of the Committee on the Right to Sanitation	19 Nov 2010 48th Session
Statement of the Committee on the World Food crisis	20 May 2008 40th Session
Statement by the Committee: An Evaluation of the Obligation to Take Steps to the “Maximum of Available Resources” under an Optional Protocol to the Covenant	10 May 2007 40th Session
Statement of the Committee to the Commission on Sustainable Development Acting as the Preparatory Committee for the World Summit for Sustainable Development	17 May 2002 28th Session
Statement of the Committee on Human Rights and Intellectual Property	14 Dec 2001 27th Session
Statement of the Committee to the International Consultative Conference on School Education in Relation to Freedom of Religion and Belief, Tolerance and Non-Discrimination	13 Nov 2001 27th Session
Poverty and the International Covenant on Economic, Social and Cultural Rights: Statement of the Committee to the Third United Nations Conference on the Least Developed Countries	10 May 2001 25th Session

Statement	Date/ Session
Statement of the Committee to the Special Session of the General Assembly for an Overall Review and Appraisal of the Implementation of the Decisions Taken at the United Nations Conference on Human Settlements (Habitat II)	25th Session
Statement of the Committee to the Convention to Draft a Charter of Fundamental Rights of the European Union	22nd Session
Statement of the Committee to the Third Ministerial Conference of the World Trade Organization	26 Nov 1999 21st Session
Globalization and its Impact on the Enjoyment of Economic, Social and Cultural Rights	11 May 1998 18th Session
United Nations Conference on Human Settlements (Habitat II): Statement of the Committee	6 Dec 1995 13th Session
Fourth World Conference on Women: Action for Equality, Development and Peace - Statement by the Committee	17 May 1995 12th Session
The World Summit for Social Development and the International Covenant on Economic, Social and Cultural Rights: Statement of the Committee	10th Session
Economic, Social and Cultural Rights in the Context of the World Summit for Social Development: Statement of the Committee	11th Session
Statement to the World Conference on Human Rights on Behalf of the Committee	7th Session
Preparatory Activities Relating to the World Conference on Human Rights: Recommendations to the Preparatory Committee for the World Conference	6th Session

Appendix

Differences and Myths: Civil and Political Rights and ESCR

Civil and Political Rights and ESC rights were artificially divided and given hierarchies in the international human rights during cold war. This is not true for regional human rights mechanisms always. In African Human Rights Mechanism, the charter puts in the same footing for CPR rights and ESC rights. The preamble clearly states the same unlike the UN System which adopted two separate covenants for the two categories of rights.

The two blocs claimed that these rights were primarily different in nature and state obligations. It was only after the advent of globalisation that ESC rights gained concerns over rights being threatened. However, states claim both of these set of rights are different. It is important to understand the differences and myths so that ESC rights are given equal importance as CP rights. States in the pretext of various reasons mentioned below are raised to dodge their obligation to respect, protect and fulfil ESC rights.

Civil and Political Rights	Economic, Social and Cultural Rights
Immediate realisation- The obligation of the State Party to implement these rights is to be with immediate effect.	Progressive realisation- ESC rights are said to be progressive in nature. The core obligations of each of these rights

Civil and Political Rights	Economic, Social and Cultural Rights
	<p>They are to be implemented with immediate effect by state parties. However, states must work towards constantly improving the realisation of the content of these rights and maximum utilisation of resources in a non-discriminatory manner.</p>
<p>Negative obligation- These rights largely impose obligations of non-interference on state parties by checking the use and abuse of power by the state. It talks about what the state ought not to do and any action of state should not lead to losing rights. It follows violations approach. State parties have obligations to respect and protect rights. However, there are also positive obligations under civil and political rights which States have to work towards guaranteeing.</p> <p>Considered that no resources are required by the state to ensure the full realisation of these rights. The investment is minimum at best. However, several of the rights under this head are also require resources for example access to justice require setting up of courts, judiciary etc.</p>	<p>Positive obligation- These rights impose obligations on State Parties to take positive steps and to fulfil rights. It follows pro-policy approach and addresses the gap in the policy framework. Even though the focus is more on the affirmative action to be taken by state parties for realisation of rights, the covenant also imposes obligations of non-retrogressive steps.</p> <p>Considered to be resource heavy and require high levels of investments by the state to ensure full enjoyment of these set of rights.</p>

Civil and Political Rights	Economic, Social and Cultural Rights
<p>Considered as true “human rights” because these are rights to ensure freedom from fear. Mostly, CP rights are mentioned in the fundamental rights of the constitution.</p>	<p>Considered as Aspiration- ESC Rights are predominantly rights that states aspire to achieve and ensure to their citizens. They provide policy framework for governments to work with to ensure full enjoyment of all human rights by all. Mostly, ESC rights come under Directive Principle of the constitution. States consider ESC rights as aspirations which affects in its fulfilment of state obligations. It is just a myth and equally important as CP rights.</p>
<p>Freedom from fear State should refrain from interfering with individual freedoms. Eg: Freedom of peaceful assembly, Freedom of expression, Freedom of movement, etc.</p>	<p>Freedom from wants/needs Enjoyment of ESC rights enhances the freedom of individuals by increasing their capabilities & their quality of life. Eg: Freedom from hunger, Freedom from illiteracy, etc.</p>

ESCR Framework

Realisation of ESC rights is enhancement of capabilities and ensures freedom from wants/needs. The CESCR through its series of General Comments has articulated the contents of several ESC rights and the features of each right can be understood in the following way:

- Freedom from want
- Enhancement of capabilities
- Minimum Core Obligations

- Immediate Obligations
- 3AQ
 - Availability
 - Accessibility
 - ♦ Economic (Affordability)
 - ♦ Information
 - ♦ Physical
 - Adequacy
 - Quality.

The concept can be understood as:

■ **Freedom from want**

ESC rights focus on freedom from want of basic services. They address some of the basic needs of people. For example: freedom from hunger, freedom from disease, freedom from illiteracy etc. These are also considered the core obligations of the ESC rights.

■ **Enhancement of capabilities**

Ensuring these ESC rights enhance the capabilities of individuals allowing them to live a life with dignity and enjoy the whole gamut of their human rights. Eg: enhancing social (network, family), physical (mobility, health), economic (credit, income), human (skills, education) capabilities, etc.

■ **Minimum core obligations**

Under the International Covenant of Economic, Social, Cultural Rights, these are obligation considered to be core that set the minimum essential levels of each rights that states must ensure on priority basis. Even if states have inadequate resources at its disposal, the Government must still introduce low-cost and targeted programmes to assist those most in need. Eg: primary education, primary healthcare.

■ Immediate obligations

Even if states under the Covenant may progressively realise the enjoyment of these rights, the states must take immediate action irrespective of resource availability ensuring equality and non-discrimination. Eg: non-discrimination and equality.

■ 3AQ

Another way to analyse fulfilment of State obligations is by using the AAAQ framework –availability, accessibility, adequacy and quality. Elaborating Right to Education using 3AQ framework:

- **Availability:** Services, material, infrastructure available are working and functional. Eg. functioning educational institutions and programmes.
- **Accessibility:** Educational institutions and programmes have to be accessible to everyone, especially the most vulnerable groups, in law and fact, without discrimination
- **Economic (Affordability):** Education has to be affordable to all: whereas primary education shall be available “free to all”, States parties are required to progressively introduce free secondary and higher education;
- **Physical (non-discrimination):** Education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g., a neighbourhood school) or via modern technology (e.g., access to a “distance learning” programme);
- **Information:** Awareness must be ensured and information should be accessible to all.
- **Adequacy:** Refers to the adequate quantity in terms of services. eg. education facilities available in sufficient quantity, right proportion of students and teachers.

- **Quality:** This is culture and circumstances specific. An ongoing process which is crucial from the perception of the rights holders. The form and substance of education, including curricula and teaching methods, have to be acceptable (e.g., relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.

Examples of the Obligations to Respect, Protect and Fulfil ESCR

Article 6: The right to work

Respect: The State must not deny women from work opportunities in informal sectors like entertainment industry.

Protect: The State must ensure that employers, in the private sectors, do not use exploit workers rights.

Fulfil: The State must promote the enjoyment of the right to work by developing informational programmes to raise awareness.

Article 7: The right to just and favourable conditions at work

Respect: The State must not pay women working in public hospitals less than men for equal work or work of equal value.

Protect: The State must ensure that employers, in the private sectors, pay the minimum wage.

Fulfil: The State must introduce laws ensuring equal working conditions for men and women.

Article 8: The right to form or join trade unions

Respect: The State must not prevent women from establishing or joining a trade union.

Protect: The State must ensure that employers in the private sectors allow women to establish or join trade unions.

Fulfil: The state must take positive steps to introduce domestic legal order to protect freedom of trade unions.

Article 9: The right to social security

Respect: The State must not deny social security to any individual based on gender, class, race or any other status.

Protect: The State must ensure that single women's social security is not claimed by another person or entity without consent.

Fulfil: The State must provide social security to all women working in formal and informal sectors.

Article 10: The rights of the family

Respect: The State must not interfere with different forms of family organisation and living patterns, ensuring adequate support to all of them.

Protect: The State must ensure that women are not subject to unfair dismissals by private enterprises on grounds of pregnancy.

Fulfil: The State must ensure adequate childcare facilities and social services for dependent adults.

Article 11: The right to food

Respect: The State must not destroy crops or withhold food from any individual.

Protect: The State must ensure that private entities do not destroy or contaminate food and its source, such as arable land and water.

Fulfil: The State must improve methods of food production, conservation and distribution by disseminating technical knowledge.

Article 11: The right to housing

Respect: The State must not forcibly evict indigenous women from their home.

Protect: The State must ensure that private entities do not evict indigenous women from their home or land.

Fulfil: The State must ensure that all indigenous women have equal access to adequate housing.

Article 11: The right to water and sanitation

Respect: The State must not disconnect services of safe water for human consumption and production that is used for the livelihoods of rural women.

Protect: Where water services are contaminated by private sector, the State must ensure actions against them.

Fulfil: The State must take steps to ensure that all rural women are progressively connected to a safe drinking water supply.

Article 12: The right to health

Respect: The State must not deny health care facilities for women suffering from uterine prolapsed or obstetric fistula.

Protect: The State must regulate and monitor the services provided by private hospitals, and ensure that no pregnant women are denied services.

Fulfil: The State must ensure trained medical professionals and sexual and reproductive health services are accessible to women.

Article 13 & 14: The right to education

Respect: The State must not close down public educational institutions in pretext of unavailability of budget.

Protect: The State must ensure that the private education providers do not discriminate Dalit girls from going to school.

Fulfil: The State must take positive measures to ensure that education is designed to suit interest of indigenous and tribal groups.

Article 15: The right to take part in cultural life

Respect: The State must not ban the use of minority or indigenous languages.

Protect: The State must ensure that the freedom of individuals to engage in scientific research and creative activities is not infringed by private entities.

Fulfil: The State should create laws protecting the intellectual property of any individual's scientific, literary or artistic production.

Examples of Violations of ESCR

- Forcibly evicting people from their homes (the right to adequate housing)
- Contaminating water, for example, with waste from State-owned facilities (the right to health)
- Failure to ensure a minimum wage sufficient for a decent living (rights at work)
- Failure to prevent starvation in all areas and communities in the country (the right to food)
- Denying access to information and services related to sexual and reproductive health (the right to health)
- Systematically segregating children with disabilities from mainstream schools (the rights to non-discrimination and education)
- Failure to prevent employers from discriminating in recruitment based on sex, disability, race, political opinion, social origin, HIV status, etc. (the rights to non-discrimination and work)
- Failure to prohibit public and private entities from destroying or contaminating food and its source, such as arable land and water (the right to food)
- Failure to provide for a reasonable limitation of working hours in the public and private sector (rights at work)
- Banning the use of minority or indigenous languages (the right to participate in cultural life)

- Denying social assistance to people because of their status (e.g., people without a fixed domicile, asylum-seekers) (the right to social security)
- Failure to ensure maternity leave for working mothers (the right to protection of and assistance to the family)
- Arbitrary and illegal disconnection of water for personal and domestic use (the right to water)

[Source: OHCHR Frequently Asked Questions on Economic, Social and Cultural Rights Fact Sheet No. 33]

Resources on ESCR

To find out more about related Special Rapporteur mandates:

<http://www2.ohchr.org/english/issues/index.htm>

To find out more about the status of ratification, reservations and declarations:

<http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>

More information on the OP-ICESCR:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCESCR.aspx>

More information on CESCR, its mandate and procedures:

<http://www2.ohchr.org/english/bodies/cescr/>

To access all CESCR General Comments:

<http://www2.ohchr.org/english/issues/index.htm>

To access all CESCR Statements:

<http://www2.ohchr.org/english/issues/index.htm>

Visit OHCHR website: www.ohchr.org to view these documents.

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PWESCR

PWESCR (Programme on Women's Economic, Social and Cultural Rights) is a feminist human rights organisation. It endeavours to promote women's human rights, especially in the context of economic, social and cultural rights, by bringing a feminist perspective to policy, law and practice at local, national, regional and international levels. PWESCR focuses on building women's leadership to strengthen their participation in democratic processes and governance. It has successfully strengthened civil society voices, especially of women from poor, excluded and marginalised communities. With ever-evolving strategies and activities in both conceptual and practical realms, PWESCR has worked in partnership with various stakeholders including the UN agencies, policy makers and institutions to strengthen democratic governance by ensuring women's inclusion and participation.



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