

# Introduction to the International Covenant on Economic, Social and Cultural Rights (ICESCR)

This Series comprises 3 lessons:

Lesson 1: A Brief Introduction

Lesson 2: Right to an Adequate Standard of living

Lesson 3: Right to Work and Right to fair conditions of work

## Lesson 1: A Brief Introduction

### A. What Are the Basic Rights Covered by ICESCR

<b>Right</b>	<b>Relevant Articles of the ICESCR</b>
To work	6
To fair and favourable conditions of work	7

<b>Right</b>	<b>Relevant Articles of the ICESCR</b>
To form and join trade unions	8
To social security	9
To protection of the family	10
To adequate standard of living	11
To health and medical care	12
To education	13
To participate in cultural life	15

**B. What is the link between the ICESCR and the Universal Declaration of Human Rights (UDHR)**

Evolution of these rights in the UN documents

<b>Right</b>	<b>ICESCR</b>	<b>UDHR</b>
To work	6	23 (1)
To fair and favourable conditions of work	7	23 (1)
To form and join trade unions	8	23 (4)
To social security	9	22
To protection of the family	10	25 (1),(2)
To adequate standard of living	11	25 (1)
To health and medical care	12	25 (1)

## INTRODUCTION TO INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

To education	13	26
To participate in cultural life	15	27

### Relevant Documents

- Universal Declaration of Human Rights
- The Covenant on Economic, Social, and Cultural Rights
- The Conventions and documents dealing with specific issues, E.g.: Convention on the Rights of the Child
- International Convention on the Elimination of all forms of Racial Discrimination
- Convention for the Elimination of all forms of Discrimination Against Women
- ILO Documents

### Explanatory Documents

- The Limburg Principles on the Implementation of International Covenant on Economic, Social and Cultural Rights, 1986

*(A group of distinguished experts in international law, convened by the International Commission of Jurists, the Faculty of Law of the University of Limburg (Maastricht, the Netherlands) and the Urban Morgan Institute for Human Rights, University of Cincinnati (Ohio, United States of America), met in Maastricht on 2-6 June 1986 to consider the nature and scope of the obligations of States parties to the International Covenant on Economic, Social and Cultural Rights, the consideration of States parties Reports by the newly constituted ECOSOC Committee on Economic, Social and Cultural Rights, and international co-operation under Part IV of the Covenant.)*

- Maastricht Guidelines on Violation of Economic, Social and Cultural Rights, 1997

*(This document elaborates on the Limburg Principles as regards the nature and scope of violations of economic, social and cultural rights and appropriate responses and remedies.)*

### C. Whose Responsibility is it to realize these Rights?

- \* The individual is the active subject of all economic and social development
- \* The state must *respect* the right of the individual to take the appropriate action to achieve his ends. Here individual includes the collective as in the case of indigenous people. State must *protect* its subjects from more aggressive actors ( trade – powerful economic interests etc). State must *assist* realization of rights, for example, the production, conservation and distribution of food.

### D. State Responsibility

**“It is now undisputed that all human rights are indivisible, interdependent, interrelated and of equal importance for human dignity. Therefore, states are as responsible for violations of economic, social and cultural rights as they are for violations of civil and political rights.” (Maastricht Guidelines)**

#### **\* State Obligation to Respect, Protect and Fulfill**

Failure to perform any one of these three obligations constitutes a violation of such rights.

The obligation to *respect* requires States to refrain from interfering with the enjoyment of economic, social and cultural rights. Thus, the right to housing is violated if the State engages in arbitrary forced evictions.

The obligation to *protect* requires States to prevent violations of such rights by third parties. Thus, the failure to ensure that private employers comply with basic labour standards may amount to a violation of the right to work or the right to just and favourable conditions of work.

The obligation to *fulfill* requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights. Thus, the failure of States to provide essential primary health care to those in need may amount to a violation of the rights to health and medical care.( Maastricht Guidelines)

**\* State Obligations of conduct and of result**

The obligations to respect, protect and fulfil each contain elements of obligation of conduct and obligation of result. The obligation of conduct requires action reasonably calculated to realize the enjoyment of a particular right. In the case of the right to health, for example, the obligation of conduct could involve the adoption and implementation of a plan of action to reduce maternal mortality. The obligation of result requires States to achieve specific targets to satisfy a detailed substantive standard. With respect to the right to health, for example, the obligation of result requires the reduction of maternal mortality to levels agreed at the 1994 Cairo International Conference on Population and Development and the 1995 Beijing Fourth World Conference on Women. (Maastricht Guidelines)

**E. The philosophy behind the ICESCR : *A man in need is not a free man.***

Earlier documents and events signalling western recognition:

- French and British thinking of 17<sup>th</sup> Century emphasises the necessity to restrain the power of authoritarian sovereigns- development of the idea of sovereignty of the people;
- Protective function of the state - John Locke and Jean- Jacques Rousseau;
- The British Bill of Rights(1690);
- The American Declaration of Independence in 1776
- French Declaration of Rights of Man and the Citizen-1779

“Rights of Man” meaning the white man- later inclusion of other races - later women - later children - American declaration did not include slaves.

Expansion of political rights together with social rights in some countries: UK, Nordic countries, Germany under Bismark.

Economic, Social and Cultural rights achieved recognition before the UDHR :

1890: an international conference held in Germany

1900: International Association for legal protection of workers-Basel

1905-1906: Swiss Government conference adopted first convention.

### **F. UN bodies dealing with Economic, Social and Cultural Rights**

At the global level, there are many different types of institutions and bodies concerned with this category of human rights. First, there are several UN organs generally responsible for human rights, including civil and political as well as economic, social, cultural rights:

- a) the General Assembly
- b) the Economic and Social Council (ECOSOC)
- c) the Commission on Human Rights
- d) the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

The Commission on the Status of Women, a subsidiary organ of ECOSOC, also deals with economic, social, and cultural rights related to women.

Other organs of the U.N. such as the Security Council, the United Nations Development Programme (UNDP) and the United Nations Children's Fund (UNICEF) also are involved in various aspects of economic, social, and

cultural rights in relation to their proper mandates which are not limited to human rights.

## **Lesson No. 2 : Right to an Adequate Standard of living**

### **A. Implications of this Right**

Article 25(1), UDHR :

*Every one has a right to a standard of living adequate for health and well-being of himself and his family.*

Article 7, ICESCR : same

### ***Adequate for health and well-being means adequate food, clothing and housing.***

- For children , this means *physical, mental, spiritual and social well-being*
- The possibility of obtaining these through “Work with Dignity”, not degrading forms of earning, like begging

Adequate standard of living means living conditions above the poverty line; therefore the *duty* to eradicate poverty.

Poverty line -> two elements

- The expenditure necessary for to buy things necessary for minimum nutrition and basic necessities
- Costs of participating in society.

### **Adequate food**

- to cover nutritional needs commonly available in market
- stability of supply

### **Adequate care**

- for all- particularly vulnerable groups – children, mothers
- adequate prevention and control of disease
- addressing malnutrition
- immunization

## **B. Special care for vulnerable groups**

### **For Children**

**See: Convention on Rights of the Child-24(2)**

- (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drink-water, taking into consideration the dangers and risks of environmental pollution;
- (d) To ensure appropriate pre-natal and post-natal health care for mothers;
- (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;

- (f) To develop preventive health care, guidance for parents, and family planning education and services.

#### **Definition of *care***

Care is the provision in the household and the community of time, attention and support to meet the physical, mental and social needs of the growing child and other family members. It leads to the optimal use of human, economic and organizational resources. Particularly in the context of child nutrition, care allows for the best use of household food resources for the feeding of children. It implies the effective use of resources to protect children from infection, to attend to a child during illness and to assist others who may be unable to care for themselves because of disability or old age. More generally, care includes nurturing full psychological and emotional wellbeing. These are goals in themselves, and in turn they can benefit nutrition and health.

(the United Nations Administrative Committee of Co-ordination, Sub-Committee on Nutrition-1990) [link?]

### **C. State Responsibility**

ICESCR-11(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.

## **Lesson 3: Right to Work and Right to fair conditions of work**

### **A. Study the relevant articles in the ICESCR**

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

### **B. Right to work from a social justice perspective**

The Preamble to the Constitution of the International Labour Organization (1919),

Paragraph 1, states:

“ Universal and lasting peace can be established only if it is based upon social justice.”

### **C. Right work from a human rights perspective**

The Declaration of Philadelphia, 10<sup>th</sup> May 1944, an ILO Declaration:

Labour is not a commodity and that all human beings... Have a right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity of economic security and equal opportunity.

### **D. Historical development of labour rights**

Labour rights preceded the development of human rights

Both ILO and human rights instruments must be studied together, to understand the development of labour rights.

The battle against *slavery* is basically a fight against forced labour and the recognition of the freedom of the worker to choose his work and determine his way of life.

In Asian countries too there had been various forms of forced labour, where the people were coerced to “donate”, their labour.

The *caste system* can be seen as a form of “forced labour”, in that a person cannot exercise choice of nature of work ; She or he has to follow the ‘ancestral calling’; there is hardly any remuneration.

Often forced labour is made to appear as voluntary labour, and various pretexts, such as religious doctrines and political doctrines are used to justify the system and the lack of choice.

This particular right, more than other rights, has quite a long history of development, in each country as well as internationally.

### **E. Whose duty is it to realize the right to work?**

The individual is the subject. It is the duty of each one to find the type of work of one’s choice, with proper conditions of work.

### **F. State responsibility**

Like civil and political rights, economic, social and cultural rights impose three different types of obligations on States: the obligations to respect, protect and fulfil. Failure to perform any one of these three obligations constitutes a violation of such rights.

The obligation to *respect* requires States to refrain from interfering with the enjoyment of economic, social and cultural rights. Thus, the right to housing is violated if the State engages in arbitrary forced evictions.

The obligation to *protect* requires States to prevent violations of such rights by third parties. Thus, the failure to ensure that private employers comply with basic labour standards may amount to a violation of the right to work or the right to just and favourable conditions of work.

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The obligation to *fulfil* requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights. Thus, the failure of ‘States to provide essential primary health care to those in need may amount to A violation.’ (THE MAASTRICHT GUIDELINES)

The obligation to respect requires States to refrain from interfering with the enjoyment of right to work.

The state must refrain from imposing any condition preventing a person from enjoying right to work; It must not impose any form of discrimination which obstructs individuals from enjoying the right to work. The state must refrain from pursuing policies that are detrimental to the right to work.

The obligation to protect requires States to prevent violations of such rights by third parties.

Thus, the failure to ensure that private employers comply with basic labour standards may amount to a violation of the right to work or the right to just and favourable conditions of work.

Under the duty to protect is also the duty of the state to ensure that employers do not violate the right of employees, by failure to provide safety conditions for work.

Under the duty to protect the state is also under obligation provide legal protection when such violations occur.

The obligation to fulfil requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights.

While many agencies may offer people work and people find work in many places, it is the duty of the state to, through its administrative and other machinery, create an ethos which promotes full employment. Under this, the state has a duty to maintain a proper regulatory framework for monetary and other policies and take all steps to prevent economic crises.

### **Obligations of Conduct and Result**

The obligations to respect, protect and fulfil each contain elements of obligation of conduct and obligation of result.

The obligation of *conduct* requires action reasonably calculated to realize the enjoyment of a particular right- in this case right to work.

The obligation of *result* requires States to achieve specific targets to satisfy a detailed substantive standard

regarding the right to work..

This standard relates to both the duty to create opportunities for employment as well as the quality of employment.

### **G. Suggested exercises**

1. Review the way right to work is realized in your country.
2. Review the way right to fair conditions of work is realized in your country.
3. What are the violations of these rights in your country?
4. Who are the violators?
5. What has the state done in terms of duty to respect, protect and fulfill these rights?
6. What are things civil society organizations do to safe-guard these rights in your country?