



The International Covenant on Economic, Social and Cultural Rights

The *International Covenant on Economic, Social and Cultural Rights* (ICESCR) is the primary international document enumerating economic, social and cultural rights. This primer provides a description of the Covenant and some suggestions of its potential to promote gender equality, particularly in an era of globalization.

ICESCR background

The founding document of international human rights law is the *Universal Declaration of Human Rights*, (UDHR) which was unanimously ratified by the United Nations General Assembly in 1948. It establishes the fundamental vision and principles of the international human rights regime and guarantees civil, political, economic and social rights. In subsequent years, additional human rights treaties were drafted recognizing different categories of rights and various vulnerable populations. In the context of Cold War politics an ideological split emerged classifying civil and

political rights separately from economic, social and cultural rights.

Two separate covenants were drafted to elaborate the *Universal Declaration* into an "International Bill of Rights": the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *International Covenant on Civil and Political Rights* (ICCPR). The ICESCR came into force January 3, 1976¹ and as of May 2002, 152 countries have signed onto it.

The ICESCR is an instrument with particular importance for gender advocates, not least because women have different needs and experiences than men in

Economic, social and cultural rights can make a difference in development and the pursuit of justice because:

- They confront the most pressing problems of the day.
- They provide legal accountability.
- They challenge global inequality.
- They transform needs into rights.
- They help build coalitions across borders.
- They are inseparable from other human rights.

Source: Center for Economic and Social Rights



economic, social and cultural spheres and often have the most at stake when these rights are not protected. It has the potential to address inequalities in social relations around the world, discriminatory practices that women are confronted with everyday, and the widespread violation of women's rights as contained in this Covenant. Furthermore, the ICESCR has particular relevance for various social groups whose livelihoods and ways of life are being threatened, such as indigenous peoples and those living in poverty.

What does the ICESCR include?

Article 1 protects **the rights of self-determination** of all peoples.

Article 2 states that **each country undertakes to take steps to progressively achieve the rights** recognized in this Covenant to the maximum of available resources, noting that this can be done both on an individual country basis and through international assistance and co-operation. This article also states that **rights in the Covenant must be guaranteed without any kind of discrimination.**

Article 3 states that **women and men have equal rights to the enjoyment of the rights** in this Covenant.

Articles 4 and 5 **explain the legal limitations that countries can put on the rights in this Covenant.** (For example, a country could limit an individual's

enjoyment of one of these rights in order to promote general welfare in the society.)

Article 6 guarantees **the right to work, including the opportunity to gain one's living by the work which one freely chooses.** Steps to guarantee this right include technical and vocational guidance and training, policies to achieve steady economic, social and cultural development, and employment with conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7 guarantees **just and favourable conditions of work, including fair and equal remuneration;** safe and healthy working conditions; equal opportunity for promotion, rest, and leisure; reasonable limitations to working hours; and periodic holidays with pay.

Article 8 provides **for the right to form and join trade unions,** for unions to function freely, and the right to strike.

Article 9 guarantees the **right to social security,** including social insurance.

Article 10 states that the widest possible **protection and assistance should be accorded to the family.** This article includes guarantees that **marriage shall be entered into with the free consent** of the intending spouses, that special protection should be accorded to mothers before and after childbirth, that **children shall be**

protected from exploitation and from dangerous employment, and that there shall be a minimum age below which child labour is not permitted.

Article 11 **guarantees the right to an adequate standard of living, including adequate food, clothing, housing, and continuous improvement of living conditions**. It recognizes the essential importance of international co-operation in realizing this right, and also guarantees the right to be free from hunger.

Article 12 **guarantees the right to the highest attainable standard of physical and mental health**. It recognizes that steps for realizing this right include measures for the reduction of infant mortality and for the healthy development of children, improvement in environmental and industrial hygiene, prevention and treatment of diseases, and the creation of conditions which would ensure medical attention for those who are sick.

Article 13 and 14 **guarantee the right to education**. Primary education should be free and compulsory for everyone and higher education should be generally available. Each country that does not already have free primary education

must undertake to provide it within two years of signing the Covenant.

Article 15 **recognizes the right to take part in cultural life, to enjoy benefits of scientific progress, and the right to protection of intellectual property rights**. It recognizes the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

What about your country?

The names of countries that have ratified the Covenant can be downloaded from the website of the United Nations High Commission for Human Rights at <http://www.unhchr.ch/pdf/report.pdf>.

You can find out if your country has made any reservations to the ICESCR at: http://www.unhchr.ch/html/menu3/b/treaty4_esp.htm.

What do these rights mean?

The **content and meaning of these rights remains in the process of development** because civil and political rights have generally received much more attention. In recent years, however, attention is turning to economic, social and cultural rights and gradually they are becoming better understood and more frequently used.

Grassroots organizations are using these rights in their advocacy; legal scholars, domestic courts, and international bodies are articulating the necessary principles for their legal enforcement.

In understanding economic, social and cultural rights obligations it is important to remember



that all human rights can be divided into different categories based on the types of duties they entail. Most common are:

- the duty to **respect** – a negative duty requiring that responsible parties refrain from acting in a way that deprives people of the guaranteed right, for example, respecting the right to housing means that authorities will not destroy existing houses;
- the duty to **protect** – an obligation requiring responsible parties to ensure that third parties do not deprive people of the guaranteed rights so, for example, to protect the right to housing, authorities could enact regulations that prevent landlords from arbitrarily evicting tenants; and
- the duty to **fulfill** – a positive obligation requiring responsible parties to put appropriate

systems in place so that all members of society have access to the guaranteed right, which would include for example, the duty of governments to initiate programs that provide subsidized housing to the poor.

While articulating what constitutes a violation of the rights enumerated in the ICESCR has been problematic, **this is more so because of a lack of political will on the part of policy-makers and the international community rather than such violations being vague or uncertain.** Two broad categories of violations can be readily understood as applying to each of the rights in the Covenant: a duty of progressive realization and a duty of non-discrimination (see below).

The **duty of progressive realization has been a much-debated component** of the Covenant, recognizing that poorer countries are not immediately

The facts:

- *Women possess roughly 1% of land in the world.*
- *Two-thirds of the 300 million children who have no access to education are girls.*
- *Women produce 80% of the food in the poorest areas of the world; in some places, this figure is as high as 95%.*
- *Officially, 110 million girls worldwide between the ages of 5 and 14 work, and this does not include domestic tasks.*
- *Out of almost a billion people who are unable to read and write, two-thirds of them are women.*

capable of guaranteeing the same level of education and health care, etc. as richer countries. This does not imply, however, that the perpetuation of economic injustice and disparity are permissible. The duty of progressive realization means that **state parties are required to continuously take steps to improve people's enjoyment of their economic, social and cultural rights**. States must ensure that people are not deprived of a basic level of subsistence necessary to live in dignity (known as the "core minimum content") and they must not do anything to take away from the access to economic, social and cultural rights that people already have (known as the "principle of non-retrogression"). In other words, under the ICESCR **no state is too poor to meet the basic needs** of its population, nor is it permitted to cut back basic services if such cuts diminish people's access to those services.

The duty of **non-discrimination dictates that each right must be guaranteed to all people equally, with no discrimination evident among different segments of the population**. Services that the government provides (e.g. medical services, schooling, subsidized housing, etc.) must be made equally available to men and women, people with disabilities and different ethnic groups, for example. This duty is absolute and discrimination can never be justified.

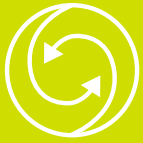
If a state fails to satisfy the requirements of progressive realization or discriminates in fulfilling its obligations with respect to any of the human rights included in the ICESCR, the state is in violation of its duties.

How is the ICESCR enforced?

As with all human rights treaties, the primary responsibility to ensure that all members of society enjoy their ICESCR rights rests with the individual countries. **By signing onto the treaty, countries accept obligations to apply the provisions of the treaty and to accept international supervision of their compliance**. The Committee on Economic, Social and Cultural Rights is the principal United Nations body concerned with monitoring state compliance under the Covenant. Within two years of signing the Covenant, each country is required to submit an initial report to the Committee, and subsequent reports are due at five-year intervals. The Committee consists of 18 independent experts. The Committee reviews the reports and questions state representatives prior to issuing "concluding observations" about the country's compliance with their obligations. The Committee also drafts "general comments" to further the understanding of the rights and obligations in the ICESCR. These activities of the Committee are intended to contribute to the development of the normative content of the rights recognized in the Covenant, act as a catalyst to state action in implementing the rights and devising appropriate national mechanisms for accountability, and to hold states accountable on the international stage.

The ICESCR and international institutions and corporations

Traditionally, international human rights law has



been thought to apply only to governments' conduct towards their own citizens. It is now recognized, however, that human rights obligations are further reaching, although specific legal principles for holding non-state actors accountable remain imperfect.

The accountability of non-state actors for violations of economic, social and cultural rights is one of the most pressing issues of contemporary human rights protection. In this era of economic globalization and declining state power, the actions of non-state actors such as the World Bank, the IMF (International Monetary Fund), the WTO (World Trade Organization), and private corporations can have broad impacts on social and economic conditions and policies. **Demanding human rights accountability from non-state actors will undoubtedly be an uphill legal battle**, but successes in this

regard could have a significant impact with respect to actualizing the rights of the ICESCR for women and men throughout the world.

Using the ICESCR as a tool for social and economic justice

The rights articulated in the ICESCR and other human rights treaties could potentially provide a unifying vocabulary and framework for social and economic justice advocates. **Rights strategies have been strong mobilizing forces, particularly as they allow people to make demands for accountability, justice and equality, rather than being perceived as passive victims requesting charity.** The ICESCR can be a valuable tool for demanding minimum core content and progressive realization of economic and social rights, international cooperation, and

A reality check: challenges of the ICESCR

Consider Article 13 which states that primary education should be free and compulsory for everyone. What is required of a state for it to be in compliance with this obligation? When faced with massive foreign debt, structural adjustments requirements, competing budgetary priorities and large populations in need, how can a government provide education for all? Furthermore, does free and compulsory education necessarily mean high-quality, accessible education?

equitable distribution of resources and wealth globally. Advocates could use the ICESCR and the rights it contains in many creative ways. The following are some examples:

- Women’s groups can prepare alternative reports to submit alongside their country’s official report to the Committee on Economic, Social and Cultural Rights. With an alternative report, information which the government has chosen to exclude from its report can be brought to the attention of the Committee. When accompanied by effective advocacy and media coverage, preparing reports can be an effective way to bring international attention to the situation of women within a country, embarrass a government into changing its policies, and mobilize women to understand systemic issues and demand government accountability.
- Gender analysis of globalization processes demonstrates how women’s unpaid labour is assumed to be freely available to make up for the shortfall in social services and other investments in the “care economy”. Women’s work is therefore exploited as a subsidy to the World Bank or IMF-prescribed “development” programs. An economic and social rights approach can highlight this exploitation explicitly and target these assumptions head-on – using the principle of non-retrogression, and the duty of eradicating discrimination.
- The ICESCR can be used as a framework to demand more transparent allocation of resources and concrete remedies for budgetary decisions that violate the economic and social rights of people. Gender analysis of national budgets, backed up by effective human rights lobbying, can lead to concrete changes in national spending patterns.
- The rights articulated in the ICESCR can be used as targets as well as indicators for development projects. Since poverty eradication and sustainable development are dependent on principles laid out in the ICESCR, these can become powerful outcome statements of a

The Association for Women’s Rights in Development (AWID) is an international membership organization connecting, informing and mobilizing people and organizations committed to achieving gender equality, sustainable development and women’s human rights. A dynamic network of thousands of women and men, AWID members are researchers, academics, students, activists, business people, policy-makers, development practitioners, funders, and more, half of whom are situated in the Global South and Eastern Europe.

AWID’s goal is to cause policy, institutional and individual change that will improve the lives of women and girls everywhere. Since 1982, AWID has been doing this by facilitating ongoing debates on fundamental and provocative issues as well as by building the individual and organizational capacities of those working for women’s empowerment and social justice through its International Forums and strategic communications.

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development or economic empowerment strategy. In other words, if the project goals or indicators are intended to achieve economic and social rights, as opposed to increased incomes (which doesn't necessarily guarantee empowerment), a much more holistic vision of human security will be achieved.

- Grassroots environmental, social justice, development, women and human rights groups can come together using the language and framework of human rights to articulate harms, and demand accountability from a powerful actor whose actions threaten their livelihoods, be it an oil company, a World Bank- mandated structural adjustment policy, or a government infrastructure project. Activists can demand that these powerful actors take responsibility for their policies. The economic and social rights framework is particularly useful as it provides a unifying strategy and a powerful vocabulary of legal and moral accountability, which is backed up by international recognition.

Some sources of information on the ICESCR

Center for Economic and Social Rights
<http://www.cesr.org/>
62 Montague St., 2nd Floor
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M. Schuler (ed.), *From Basic Needs to Basic Rights* (Washington: Women, Law and Development International, 1995).

K. Tomasevski, "Women", in *Economic, Social and Cultural Rights: A Textbook*, Edie, Krouse and Rosas (eds.), (Dordrecht, Netherlands: Martinus Nijhoff Publishers, 1995) pages 273-288.

United Nations High Commission on Human Rights Fact Sheet No.16 (Rev.1), "The Committee on Economic, Social and Cultural Rights"
<http://www.unhchr.ch/html/menu6/2/fs16.htm>

Footnotes

¹ The official citation for the Covenant is: G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3. The full text can be found on-line at <http://www1.umn.edu/humanrts/instree/b2esc.htm> or in print publications such as Center for the Study of Human Rights, *Women and Human Rights: The Basic Documents* (Columbia University, 1996).



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Plan to attend AWID's 9th International Forum
from October 3-6, 2002 in Guadalajara, Mexico

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