

Economic, Social and Cultural Rights in Practice

Part I – Understanding ESC Rights



Amnesty International – Human Rights Capacity-Building Programme

Economic, Social and Cultural Rights in Practice: Part I – Understanding ESC Rights

Handbook for Civil Society Organizations and Human Rights Defenders

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Economic, Social and Cultural Rights in Practice: Part I – Understanding ESC Rights

Handbook for Civil Society Organizations and Human Rights Defenders

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List of abbreviations and acronyms

4As	Availability, accessibility, acceptability, and adequacy of services
African Charter	African Charter on Human and Peoples' Rights (sometimes abbreviated as ACHPR)
African Commission	African Commission on Human and Peoples' Rights
AU	African Union
Arab League	The League of Arab States
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CP rights	Civil and Political rights
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSOs	Civil society organizations
ECOSOC	Economic and Social Council
ESC rights	Economic, Social and Cultural rights
GA	General Assembly (of the UN)
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on Elimination of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
ICRMW	International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
IFIs	International financial institutions
ILO	International Labour Organization
IMF	International Monetary Fund
MDGs	Millennium Development Goals
NGOs	Non-governmental organizations
NHRIs	National human rights institutions
ODA	Official Development Assistance
OHCHR	Office of the High Commissioner for Human Rights
OP-ICESCR	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
SDGs	Sustainable Development Goals
TNCs	Transnational corporations
U3Is	Universal, inherent, inalienable, and indivisible
UDHR	Universal Declaration of Human Rights
UN	United Nations
UPR	Universal Periodic Review

General introduction

1. Realization of ESC rights

The Universal Declaration of Human Rights (UDHR) starts by stating:

“... 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”.

“... the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom”.

Human rights in general, including economic, social and cultural rights, are inherent to us as human beings: we are born with them. Every person, young and old, has the right to live in dignity, free from fear and free from want. This means living without the threat of being physically or mentally ill-treated or the fear of being deprived of necessities such as housing, food, and water.

Human rights are often categorized as civil and political rights (CP rights); and economic, social and cultural rights (ESC rights). CP rights include the rights to freedoms of expression, assembly and peaceful association, freedom from being tortured or ill-treated, freedom of movement, and the right to participate in public life. ESC rights include the rights to education, health, food, housing, work and just and favourable conditions of work. All these rights are equal, interconnected and inherent to human dignity.

• *While this handbook focuses on economic, social and cultural rights, it recognizes and builds on the basis that all human rights are of equal value, indivisible and interdependent.*

No single human right can be realized in isolation from other rights.

Human rights are recognized in several international and regional treaties as well as national constitutions and legislation. Despite that, it is an undeniable reality that rights are often not respected and guaranteed as they should be.

2. This handbook

2.1 Structure

This handbook aims to introduce its users to a range of concepts, standards, and planning tools to support and enhance their abilities to demand the realization of economic, social and cultural rights. This handbook is presented in two main parts:

- **Part I** (this volume) focuses on ESC rights, describing what these rights are (and are not), analysing state obligations under international and regional law, the role of UN and regional human rights mechanisms, and the roles of different actors such as governments and NGOs in realizing ESC rights. It includes a brief elaboration of selected ESC rights and considers the rights of various marginalized and/or vulnerable groups of people. Part I also deals with the realization of ESC rights during armed conflict and discusses the role of non-state actors. It ends with a discussion of other frameworks that are important for the realization of ESC rights, including the 2030 Agenda for Sustainable Development.
- **Part II** (the next volume) turns the theory into practice. It introduces basic concepts and planning tools for ESC rights advocacy, as well as tools for developing a plan of action, including problem analysis, mapping the internal and external environment, and a planning matrix. Part II also discusses how to monitor and document ESC rights and reflects on a number of methods used for advocating for ESC rights, including engaging officials and non-state actors, litigation, campaigning and mobilization. Part II ends with measures for ensuring impact.

2.2 Format

This handbook is written for practitioners. Therefore, it aims to achieve a balance between providing adequate background information and being practical. Readers can choose to browse chapters or sections without reading the full handbook. The handbook includes cross-references to different sections of the text, as well as to external resources that may be relevant. These all are marked with hyperlinks. The handbook also includes sections on how to find information from external sources.

In this handbook, the following symbols are used:

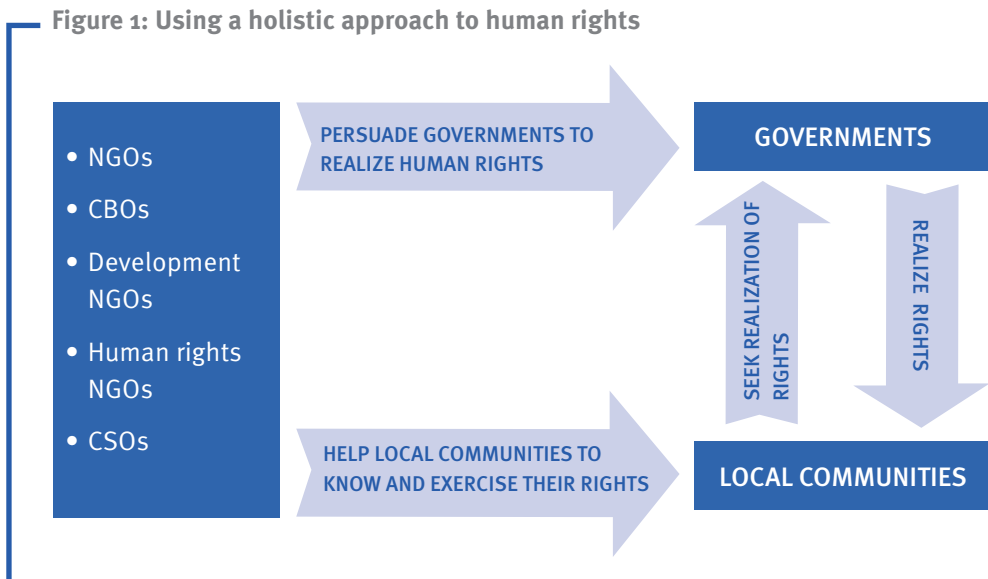
- *Key point:* indicates an important point that is highlighted to draw the reader's attention to aspects covered in the corresponding section.
- Info: provides additional supportive information or ideas.
- **Summary: is included at the beginning of each chapter or section and gives an overview of what the chapter or section is expected to cover.**
- | **General example:** indicates an example of a general nature, not relevant to a specific country.
- Country-specific example: includes an example of a country-specific situation.
- Table: includes additional factual information and explanations.
- **Figure/Table/Box: includes a synthesis, illustration, explanatory information or elaboration about concepts covered in the chapter.**

Reminder: is a reminder of important aspects related to the information provided in the previous text.

2.3 Intended readers

This handbook is written for individuals and groups who have an interest in promoting and defending economic, social and cultural rights in order to improve the lives of people in local communities. They may be development workers, members of human rights groups, women’s rights groups, faith-based groups, community-based organizations, or individual human rights defenders.

They monitor and collect information about the human rights situation, analyse it and use it to advocate for the realization of human rights. They may engage in dialogue or put pressure on governments, or intervene with institutions and bodies at local, national, and international levels. They often work directly with local communities to increase their awareness of human rights and involve them in their realization.



- ▶ *This handbook advocates a shift towards a human rights-compliant approach to addressing economic and social issues.*
- ▶ *The human rights-compliant approach is often referred to as a “human rights-based approach” (HRBA).*

Traditionally, human rights NGOs have highlighted accountability of governments focusing on certain human rights obligations under national and international laws. These have primarily been related to civil and political rights – for example, the obligations not to use arbitrary detention, torture and ill-treatment, repression of freedoms of expression and association.

Development organizations, on the other hand, have concentrated more on access to services such as health, education, water, sanitation, and housing, therefore helping to meet people's needs in practical ways. This is considered a needs-based approach.

However, increasingly, both types of organizations are working towards common goals. Development organizations recognize that sustainable development must be grounded in human rights, which increases people's capacity to participate in policy making and to demand government accountability. Human rights NGOs that traditionally focused on civil and political rights are taking a more holistic approach by expanding their focus to economic, social and cultural rights. As a result, there is better cooperation and understanding between development NGOs and human rights NGOs.

When a human rights compliant approach is applied, the community's problems or issues are approached in terms of rights, not in terms of needs.

Solutions are based on obligations and responsibilities.

2.4 Haki Zetu

This handbook partly builds on [Haki Zetu: ESC Rights in Practice – Main Book, Parts I and II](#), which was researched and written by Gillian Nevins, and produced in 2010 by the Human Rights Capacity-Building Programme of Amnesty International Netherlands. *Haki Zetu* (which means “Our rights” in Swahili language) has a particular focus on Africa.

The current handbook has a focus on Arab countries, and is more elaborate in that it updates extensively much of the information in *Haki Zetu* in light of developments in international law, includes more on areas such as discrimination and armed conflict, including the relationship with International Humanitarian Law, and [Part II](#) elaborates more on advocacy. This handbook is developed with a global audience in mind. While the specific examples included here are from Arab countries, they are chosen specifically because of their potential relevance to many other parts of the world.

2.5 Focus on Arab countries

This handbook specifically uses examples from Arab countries (that is, countries that are members of the League of Arab States – see [Section 2.3.4, Box 6](#) on members of the League of Arab States). Deprivation of economic, social and cultural rights is not unique to one country or region. However, this region is experiencing many challenges to human rights. These include undemocratic tendencies in some countries and other major challenges including terrorism, armed conflict, limited resources, and poverty. There is a lack of commitment of governments to human rights, and a decline in the enjoyment of economic and social rights. This is due partly to the insufficient allocation of resources to services such as health, education, and housing. It is also

partly because of discrimination in the allocation of these resources. The region has also inherited laws and government structures from the colonial period that facilitate and lead to violations of human rights. Post-colonial governments have often lacked the political will to change this reality. Discrimination on the basis of religion, ethnic origin, gender, political opinion, and other such grounds continue to obstruct the enjoyment of rights for millions of people across the region.

At the same time, while various Arab states are taking steps towards ensuring better enjoyment of human rights, communities continue to take a strong stand against historical and continued neglect, marginalization, and repression. People are organizing themselves to demand their various rights, including rights to food, education, work, equality, end to torture and ill-treatment, freedom to speak and to express themselves.

- *Violations of ESC rights, as well as CP rights, have been at the heart of unrest and revolutions in many Arab countries. In some cases, this has developed into a full-fledged conflict, such as recently in Syria, Libya, and Yemen. The continued unrest and instability in other countries – including Lebanon and Iraq as well as Egypt, Tunisia, and Sudan – is also largely attributed to inequalities, and violations of ESC and CP rights.*

Part I

Understanding ESC Rights

Introduction to Part I

- **Part I addresses the following general topics:**
 - **Basic concepts and principles related to human rights and human dignity**
 - **Introduction to international and regional legal frameworks, including international and regional human rights law and international law during armed conflict**
 - **ESC rights in focus: what ESC rights are, the importance of guaranteeing these rights, and misconceptions about them**
 - **State obligations in relation to ESC rights**
 - **A short introduction to the contents of specific ESC rights**
 - **ESC rights and marginalized individuals or groups facing structural discrimination**
 - **The role of non-state actors**
 - **ESC rights during armed conflict**
 - **International and regional human rights mechanisms, what they are and what they do in relation to ESC rights**
 - **Other international frameworks related to ESC rights, including the Sustainable Development Goals (SDGs)**

The following basic general concepts are included in [Part I](#). They are important to understand before delving deeper into ESC rights.

Table 1: Key concepts

What are human rights?	<p>Human rights are basic standards related to the fundamental idea that people have a right to be treated with dignity, fairness, equality, respect, and independence. They are the fundamental rights and freedoms that belong to every single one of us, anywhere in the world. Human rights apply no matter where you are from, what you believe in, or how you choose to live your life. They are the foundation of freedom, justice, and peace. Their respect allows the individual and the community to develop fully.</p> <p>Human rights are often expressed and guaranteed by law, in the form of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations on states to act in certain ways or to refrain from certain acts, so as to promote and protect the human rights of individuals or groups.</p>
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<p>Are there different categories of rights?</p>	<p>While human rights are often grouped in three different categories (ESC rights, civil and political rights, collective rights; see below), there is no hierarchy in the importance of human rights.</p> <p>The 1945 Charter of the United Nations proclaims that one of the purposes of the UN is to promote and encourage respect for human rights and fundamental freedoms for all. However, at that time, there were no specific UN human rights documents that elaborated what human rights are. Therefore, the Universal Declaration of Human Rights (UDHR) was adopted in 1948. The UDHR includes recognition of a wide range of rights: civil, cultural, economic, political, and social. A broad agreement then developed that the contents of the UDHR should be translated into a binding legal treaty or treaties. In 1966, both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) were adopted. These were then followed by a number of international and regional treaties. Some of these treaties deal with specific groups of people (for example women, children, migrant workers, persons with disabilities). Others relate to specific thematic areas (for example prohibition of torture and ill-treatment, or disappearance).</p> <p>The fact that various human rights have been elaborated in different treaties does not mean that they can be dealt with in isolation.</p>
<p>What are the sources of international human rights law?</p>	<p>Universal human rights are often expressed and guaranteed by international and regional law in the forms of treaties, customary international law, and other international or regional instruments.</p> <ul style="list-style-type: none"> • Treaties: these are formal agreements between two or more states adopted in a written form and are governed by international law. They are legally binding on the states that become party to them. The International Covenant on Economic, Social and Cultural Rights is an example. • Customary law: some fundamental human rights norms enjoy universal recognition to the extent that they become norms of customary international law. They apply to everyone across all boundaries and civilizations. The obligation to abide by them is not dependent on the state being a party to an international treaty on the subject.

	<ul style="list-style-type: none"> • Other instruments: these include declarations, guidelines and principles adopted at the international or regional levels (for example the UDHR). They are agreed between states. They often are first steps towards further elaboration into treaties. They provide important guidance on the content of a variety of rights. Although they do not have the status of binding treaties, they have strong moral and political force. • The terms “international human rights instruments” and “international human rights standards” are generic terms that include both treaties and non-binding human rights instruments.
<p>What are civil and political rights?</p>	<p>Civil and political rights include the right to life; liberty and security of person; freedom from slavery; fair trial guarantees; freedom from torture and other forms of ill-treatment or punishment; freedoms of opinion, expression, thought, conscience and religion; and freedoms of association and peaceful assembly.</p>
<p>What are economic, social and cultural rights?</p>	<p>Economic, social and cultural rights include the right to an adequate standard of living, including housing, food, water, sanitation, health care and education; the right to work and rights at work; social security; and participation in cultural life.</p>
<p>What are collective rights?</p>	<p>There are a number of collective rights, including the right to self-determination, development, cultural rights for ethnic groups and indigenous peoples. Further, all human beings depend on the environment in which we live. Without a healthy environment, we are unable to fulfil our aspirations or live with minimum standards of human dignity. Some of these rights, such as the right to a healthy environment and to practise one’s culture, have an individual as well as a collective dimension.</p>
<p>What are rights and obligations?</p>	<p>Human rights entail both rights and obligations. Under international law, states are obliged to respect, protect and to fulfil human rights (see Chapter 3 on state obligations). At the individual level, while we are entitled to our human rights, we must also respect the human rights of others.</p>

<p>What are human rights mechanisms?</p>	<p>Human rights mechanisms is a term that refers to a variety of bodies and procedures set up by the UN and other inter-governmental systems that can take action to protect human rights. At the international level, they include the UN treaty bodies, special procedures and the Universal Periodic Review. (See Chapter 7 on human rights mechanisms.)</p> <p>Regional bodies may also have human rights mechanisms that are meant to complement the international mechanisms. (See Section 7.4 on regional mechanisms.)</p>
<p>What are treaty bodies?</p>	<p>Human rights treaty bodies are committees of experts set up to review the way states implement their obligations under human rights treaties. They provide country-specific recommendations, and issue General Comments elaborating on the content and application of human rights. Most of them also hear complaints from alleged victims of human rights violations. (See Section 7.2 on treaty bodies.)</p>
<p>What are special procedures?</p>	<p>Special procedures is the name given to the collective of independent human rights experts required to report and advise on human rights from a thematic or country-specific perspective. They cover a wide variety of human rights: civil, cultural economic, political, and social rights. Special procedures include Special Rapporteurs, Working Groups. (See Section 7.3.1 on special procedures.)</p> <p>Some regional bodies also have special procedures. (See Section 7.4 on regional human rights mechanisms.)</p>
<p>What is the Universal Periodic Review (UPR)?</p>	<p>The UPR is a process which involves a review of the human rights records of all UN member states by other member states, under the auspices of the UN Human Rights Council. The UPR is designed to ensure comprehensive but also equal treatment for every country when their human rights situations are assessed. (See Section 7.3.2 on the UPR.)</p>
<p>What is the difference between the terms state, nation and government?</p>	<ul style="list-style-type: none"> • A state is a self-governing political entity. The state normally has three branches of government: the executive, legislative and judicial. There are also other public or governmental authorities at various levels (national, regional/provincial or local/municipal). • Often people use “country” instead of “state”. In a federal system, there are separate states or provinces within a country which may also have self-governing powers.

	<ul style="list-style-type: none"> • A government is the body that is responsible for making policies in a state, and for ensuring that policies are carried out. Governments often change. • A nation is a stable, historically developed community of people that has a territory, distinctive culture, and language in common. Sometimes a nation may spread over borders and across states.
<p>What is the difference between state actors and non-state actors?</p>	<ul style="list-style-type: none"> • State actors are officials or agents of state bodies or institutions. They are part of the government. • Non-state actors are private individuals; business enterprises or institutions; or armed groups, in the context of armed conflict. Non-state actors have responsibilities under international law. (See Chapter 8 on non-state actors.)
<p>What are the roles of the state and individuals regarding human rights?</p>	<p>When describing actions about human rights, there are actions by the state and actions by others. The following are terms commonly used:</p> <ul style="list-style-type: none"> • States have obligations under international law. This is why they are called duty bearers. States can “provide”, “realize”, “implement”, “respect”, “protect” or “fulfil” rights. (See Chapter 3 on state obligations.) • Individuals and communities have rights under international law. This is why they are called rights holders. Individuals and communities can “exercise”, “demand”, “call for implementation”, “call for realization”, or “claim” rights through a mechanism such as a court or treaty body.

Chapter 1

Introducing human rights

This chapter starts with a discussion about the connection between human rights and human dignity. It also introduces some basic principles of human rights, and elaborates on the human rights-compliant approach, its importance and impact.

1.1 Human rights and human dignity

The concept of “human dignity” is the basis of human rights. People are able to live in dignity if their human rights are respected, protected and fulfilled (see [Chapter 3](#) on state obligations). Every human being has worth and should be treated with respect and without discrimination. These are fundamental principles of human dignity, which can be achieved through the realization of human rights.

The idea of individuals and groups having rights is not a new notion. It dates back thousands of years. There are many examples of societies in the past which lived according to “codes” or “charters” of human rights. Human rights are deeply embedded in cultures and religions across the world.

Example: The Code of Hammurabi of Babylonia (modern day Iraq), dated to about 1754 BC, is one of the earliest known codes. It deals with issues of justice as well as commercial relations.

Why are human rights important?

Human rights are about living a decent and dignified life. They are the things that everyone should have, and the things that should not be allowed as they can harm our well-being. For example, no one should die of hunger. Everyone should have access to primary health care. Every child should have access to free primary education. Everyone should be allowed to follow their own religion or belief. No one should be tortured or ill-treated.

Every human being has rights and freedoms simply because they are human. We are not “given” rights. We simply have rights because we are human. States recognize and regulate the enjoyment and enforcement of human rights through laws, measures, policies, and plans. But they do not give us rights.

Ensuring human rights for all offers a way to address unequal power relations and access to resources. It provides individuals with opportunities to benefit from equal access to skills, knowledge, services, material goods, and facilities, supported by structural guarantees, such as through policies, laws, and government plans.

How are human rights regulated?

States adopt constitutions, laws and other legislation in order to regulate the conduct of state officials, and to regulate relations and behaviour within the state and with other states and entities. These laws, rules and regulations are important so that individuals and communities know their rights and responsibilities.

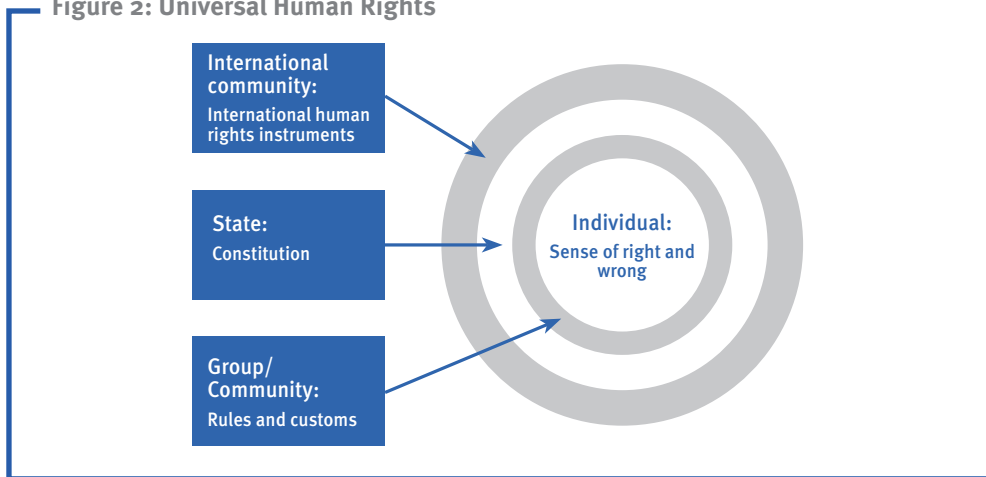
Together, states developed international laws and standards. Most international human rights treaties and standards which we use today were developed after the Second World War by states coming together to form the United Nations.

States also formed regional organizations, through which they adopted treaties and other standards. The African Union, the League of Arab States, the Organization of American States, the Council of Europe and the European Union are examples of regional inter-governmental bodies.

The reasons that people live in conditions that violate their dignity is largely not their fault. In many cases, this is because states have failed to uphold their human rights. As power relations become balanced, and human rights are recognized and realized in practice, it is easier for people live in dignity.

- ▶ *Human rights are not found in international law only. Many human rights are set out in national laws, policies, strategies, and plans.*

Figure 2: Universal Human Rights



1.2 Basic principles of human rights

1.2.1 Universal, inherent, inalienable, indivisible

All human rights are universal, inherent, inalienable, and indivisible (U3Is). They are all to be ensured without discrimination and on the grounds of equality.

Table 2: U3Is

Human rights are universal, inherent, inalienable, and indivisible (U3Is)	
Universal	Everyone, everywhere in the world, is entitled to human rights. Human rights apply to everyone regardless of who they are. Everyone is born with and possesses the same rights, regardless of where they live, their sex/gender or race, or their religious, cultural or ethnic background, or any other such grounds.
Inherent	Rights belong to individuals because they are human. They are recognized in national and international laws and practices, but human rights are not given to us; we are born with them.
Inalienable	Human rights cannot be taken away (“alienated”). However, some of them can be restricted or limited for specific reasons and periods of time. For example, lawful detention limits a person’s right to freedom of movement. During the Coronavirus (Covid-19) pandemic, freedom of movement was widely restricted in order to ensure the enjoyment of the right to health. So, in such cases the rights themselves are not taken away in principle, but practicing these rights may sometimes be restricted. These measures of restriction must be time-bound and proportionate to the risks that necessitate such measures.
Indivisible	Each human right cannot be divided from other human rights, whether they are: civil and political rights, such as the right to life, equality before the law and freedom of expression; economic, social and cultural rights, such as the rights to work, social security and education; or collective rights, such as the rights to development and self-determination. One cannot separate rights from each other. They are also of equal status – there is no hierarchy of rights.

Often the terms “interrelated” or “interdependent” or “interconnected” are used to echo the “indivisible” characteristic. This shows that the improvement of one right facilitates the advancement of others. Likewise, the deprivation of one right can negatively affect others. Each contributes to the realization of a person’s human dignity through the satisfaction of his or her developmental, physical, psychological and spiritual needs. The fulfilment of one right often depends, wholly or in part, upon the fulfilment of others.

Example: Lack of access to education because of unavailability of schools is not only a violation of the right to education, but could also narrow a person's job prospects. This might leave them with no option but to work in precarious work conditions, without fair wages and adequate health and safety protections. This risks leading to a violation of their right to work and rights at work. Precarious work conditions in the absence of social protection could also result in the person having no choice but to live in inadequate housing or even end up being homeless. This example shows how rights to education, work, health and housing can be interconnected.

- *While this handbook discusses human dignity in the context of ESC rights, it is essential to emphasise that human dignity is connected to all human rights.*

Box 1: Examples of the link between ESC rights and CP rights

Examples of the link between ESC rights and CP rights

Different rights are interlinked and interdependent. The link may be within ESC rights or within CP rights. It can also be that one or more ESC right is linked to and dependent on one or more CP right. The following are illustrative examples:

- Most ESC rights relate to the right to life (a CP right). For example, if you are denied the right to health, food, water or housing your life may be at greater risk.
- The right to the highest attainable standard of health (an ESC right) is one of the rights that is denied when people are tortured (right to physical security and prohibition of torture are CP rights).
- The rights to health and education (ESC rights) depend on each other: you need to be healthy to go to school, and you need to have enjoyed some education to know how to protect your health.
- The right to adequate housing and the right to safe water and sanitation (ESC rights) are interrelated and interdependent because people need safe water and sanitation to maintain a decent home.
- Freedom of association (a CP right) is essential for the right to form and join trade unions, which is a fundamental element of workers' rights (ESC rights).
- Monitoring ESC rights depends upon the right to receive and impart information (a CP right).
- The rights to speak freely, to hold opinions and to join with others (CP rights) enable us to campaign for ESC rights.
- Forced evictions (being evicted without due process) violate the right to privacy of the home (a CP right) and the right to adequate housing (ESC rights).

1.3 The human rights-compliant approach

National planning, service delivery, international cooperation, and all other government actions related to the realization of human rights, including ESC rights, must adopt a human rights-compliant approach.

A human rights-compliant approach (often referred to as human rights-based approach, or HRBA) embodies the idea that people have rights. What used to be seen as “needs” are recognized as “rights”. National governments have the primary responsibility for realizing the rights of their people. Other states have obligations to contribute through international cooperation and assistance, and in so doing, not to violate people’s rights in their cooperation activities.

An approach that is human rights-compliant must rely on the following main principles, summarized in the acronym “PANTHER” in English:

- **Participation:** People have the right to participate in decisions that affect them at local and national levels. This participation must be effective, real and meaningful.
- **Accountability:** Accountability (the responsibility to explain, account for and accept the consequences of one’s actions) and the right to a remedy (to obtain redress/reparation) must be assured. States and other agencies must be held accountable for realizing rights. People whose rights are violated should have access to justice and an effective remedy. (See [Section 3.5](#) on remedy.)
- **Non-discrimination:** The human rights-compliant approach requires equality and the elimination of discrimination. This may require special measures, often referred to as “affirmative actions” to help discriminated people catch up with those who have not suffered discrimination. (See [Section 3.4](#) on prohibition of discrimination.)
- **Transparency:** People must be informed of their rights. The rights to freedom of information, expression, assembly and association must be assured to enable people to claim their rights and/or to participate in public affairs.
- **Human dignity:** Human dignity and human rights are indivisible. Human dignity can be achieved only when human rights are observed. (See [Section 1.1](#) on the link between human rights and human dignity.)
- **Empowerment:** Vulnerable and disadvantaged sectors of society must be given more power and control over their own lives through and as a result of this approach. (See [Chapter 6](#) on groups at greater risk of human rights violations and marginalized groups.)
- **Rule of law:** All members of society are bound by the law, and institutions implement these laws: This principle serves to enhance accountability. Duty bearers must comply with human rights, norms and standards in order to ensure rights to the rights holder.

Table 3: Comparing the “needs-based” approach with the human rights-compliant approach

The “needs-based approach”	The human rights-compliant approach
People in need are “victims” or beneficiaries.	People are rights holders.
Aid is given to solve problems.	Merely dealing with the symptoms of a problem such as supplying more goods and services in the short term will not deal with the underlying structural problems, such as the causes of deprivation, including discrimination.
Donors provide aid to meet what they perceive to be people’s needs. However, in recent years, many development agencies have recognized the right to participate.	Communities and individuals define their own needs and are empowered to claim their rights. The human rights-compliant approach also requires the rights to information, expression, assembly and association, which help people to exercise their rights.
Aid is a matter of charity, not justice.	The state is primarily responsible for realizing the rights of individuals and they have the right to hold the state to account.
Aid is often tied up with political and economic interests.	Governments have freely agreed to respect human rights and should place them above other interests.
Development agencies cooperate with states but rarely criticize violations openly.	Human rights require that states be held accountable.

Chapter 2

ESC rights in international law

This chapter discusses sources of international law. First, it will elaborate on the relationship between national and international laws. Then, it will discuss ESC rights in focus, examining what these rights are and why are they important. It will then examine misconceptions related to ESC rights. This chapter ends with a presentation of international and regional laws that relate to ESC rights.

2.1 Sources of international law

Where do the rules of international law come from? There are several sources for international law, but the rules are mainly derived from treaties and customary international law.

2.1.1 *International treaties*

Treaties are simply contracts between states. They are legally binding on the parties to the treaty. They are called by various names including treaties, agreements, conventions, covenants, pacts, charters, or protocols. A series of international human rights treaties have been elaborated within the UN system, including the International Covenant on Economic, Social and Cultural Rights (ICESCR). Other treaties relating to ESC rights were elaborated long before the ICESCR was developed, for example, a large number of the ILO Conventions. There are also other treaties that have been adopted at the regional level, reflecting the particular human rights concerns of the region and providing for specific mechanisms of protection. Every state in the world is a party to a number of international and regional human rights treaties.

The International Labour Organization (ILO) was established in 1919, and has adopted numerous international labour standards. It can therefore be said that ESC rights relating to labour standards are among the first human rights that have been adopted at the international level.

2.1.2 *Customary international law*

Customary international law refers to international obligations arising from established international practices, as opposed to obligations arising from being a party to written treaties. It is rooted in regularity of an identified practice (when a standard is repeated in judgments of international, regional and national courts, opinions of prominent jurists and authoritative bodies, and practice of states). It is not necessary that every state accepts the practice in order for it to become a rule of customary international law. It also does not matter if the rule is (often) broken. What is important is what states ought to do, rather than what they actually do. The absolute prohibition of discrimination, torture and other forms of ill-treatment, slavery and forced labour are examples of such rights under customary law. It can also be argued that most of the UDHR is considered

part of customary law, including aspects of ESC rights that are connected with rights to life and survival, such as elements of the rights to food, health, and housing. There are many rules of customary international law applicable in armed conflict that directly relate to ESC rights (see [Chapter 4](#) on law of armed conflict).

2.1.3 Other instruments

While international treaties and customary law form the backbone of international human rights law, other instruments, such as declarations, guidelines and principles adopted at the international level contribute to the understanding and development of international law, and guide implementation and practice at the national level. They are sometimes referred to as “soft law”, as they are not legally binding but they have strong moral force. This force derives from the fact that they have been adopted by intergovernmental bodies, such as the UN General Assembly, or regional bodies like the African Union and African Commission on Human and Peoples’ Rights (African Commission), the Council of the League of Arab States and the Arab Commission on Human Rights (see [Section 7.4](#) on regional mechanisms).

These soft law instruments guide states on how to realize rights. They are also often used in cases before courts, which creates precedents which play an important role in making rights stronger. Sometimes, these instruments, or parts of them, are then developed into treaties.

- *International treaties and customary law form the backbone of international human rights law. Other instruments contribute to the understanding, implementation, and development of international law. The UDHR is now recognized as having particular importance.*

2.2 International law at the national level

2.2.1 Importance of international law

ESC rights advocates base their work on national constitutions, laws and policies and use international human rights instruments (treaties and other standards) to support their cause. They do so because when a state becomes a party to a treaty, it commits itself to take steps to ensure realizing the rights and freedoms contained in that treaty. This is often expressed by the term “obligations”. The articles or separate paragraphs (also called provisions) of treaties set out the state’s obligations. For example, Article 2(1) of the ICESCR requires that:

“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.**” (emphasis added)

- *International law prohibits states from using national laws, or absence of provisions in their national laws, to justify their failure to perform or give effect to their obligations under international law.*
- *States must take steps to ensure that their obligations under international law are realized at the national level (see [Chapter 3](#) on state obligations).*

Box 2: Terminology: Signing, ratifying, and acceding to a treaty

The following acts can be taken by states to show their acceptance of international or regional treaties:

Signing: Expresses a state's recognition of the treaty and its willingness to continue the treaty-making process. The signature does not establish the consent to be bound by the treaty but creates an obligation to refrain from acts that are contrary to the object and purpose of the treaty. Signing indicates that the state will discuss becoming party to the treaty at the national level, through involving the appropriate bodies.

Ratifying: After signing a treaty, a state uses its own national procedures (see [Section 2.2.2](#) on monist or dualist systems) to get approval for

the government's signature. Often, parliamentary approval is required. With ratification, the state indicates its consent to be bound by a treaty by depositing an official document (the ratification instrument) with the UN or the regional body.

Acceding: This is a process when a state agrees to be bound by a treaty that was already negotiated and signed by other states, usually after a treaty has already come into force and has proven its value. By acceding to a treaty, a state is immediately bound by the treaty (without the need for the two aforementioned procedures of signing and then ratifying). Obligations of states resulting from acceding to treaties are the same as those when they ratify treaties.

2.2.2 Giving national effect to international law

States must modify their laws, policies and programmes in order to give effect to their treaty obligations (see [Chapter 3](#) on state obligations). The fact that many states have not done this does not mean that this obligation does not exist.

Another important aspect of giving effect to treaties in national law is the ability to seek remedy through courts, by directly using the international treaty provisions. This requires that legally binding international human rights standards should operate directly and immediately within the domestic legal system of each state, so that individuals are able to seek enforcement of their rights before national courts and tribunals (see [Section 3.5](#) on remedies). There are different ways that this is

done. Constitutions normally specify the relation between international treaties and national law. In some cases, international treaties ratified by the state are incorporated automatically into national law and become part of national law. This is known as the monist system. This means that the rights covered must be implemented and that these rights can be adjudicated directly in national courts (such as in Algeria). In other cases, the Constitution requires that in order to make an international treaty part of national law, a separate step must follow to domesticate the ratified treaty. For example, in some countries, ratified treaties are published in the National Official Gazette. Only by doing this second step, the state makes these treaties part of the national legislation (such as in Jordan and Palestine). This is known as the dualist system.



Many constitutions and other laws actually include human rights and refer directly to international human rights instruments, including those relating to ESC rights. This gives advocates more opportunity to use international standards from a national law perspective.

Example: The Constitution of Tunisia (2014) includes several provisions relating to ESC rights: the right to form and join trade unions (Article 36); right to health (Article 38); right to education (Article 39); rights to work (Article 40); right to property (Article 41); right to culture (Article 42); and right to water (Article 44). Article 20 of the Constitution states “International agreements approved and ratified by the Assembly of the Representatives of the People have a status superior to that of laws and inferior to that of the Constitution.” This means that all international treaties that Tunisia is a party to are part of national law, and in case there is conflict between these treaties and national law, international treaties are considered superior to national law.

Example: The Preamble of the Constitution of Egypt makes direct reference to the Universal Declaration of Human Rights. Article 93 states “The state is committed to the agreements, covenants, and international conventions of human rights that were ratified by Egypt. They have the force of law after publication in accordance with the specified circumstances.”

States are obliged to effectively monitor the realization of their treaty obligations. To do this, they must establish the necessary mechanisms or institutions, and identify the factors and difficulties affecting implementation of their obligations. National strategies and plans of action benefiting the whole population should also be devised, and periodically reviewed. Those strategies and plans should contain concrete indicators that are clearly measurable, and benchmarks that define the target levels the plans aim to achieve.

2.3 ESC rights in focus

2.3.1 What are ESC rights?

ESC rights relate to the following: right to work and rights at work, including the right to form and join trade unions; social security; rights to adequate housing; adequate standard of living, including right to adequate food, water, sanitation; physical and mental health; education; and right to participate in cultural life.

- ▶ *ESC rights are primarily embodied in the ICESCR. But various other international and regional human rights treaties also include ESC rights (see Section 2.1.1 on human rights treaties and ESC rights).*

The rights contained in the ICESCR and the ICCPR are equal. There is no hierarchy of rights.

The UDHR includes both ESC rights as well as CP rights. Both the ICESCR and ICCPR were developed following the adoption of the UDHR: ICESCR to provide a specific focus on ESC rights, while civil and political rights were elaborated in the ICCPR. Both Covenants were adopted by the UN General Assembly on the same day, on 16 December 1966,

and entered into force in 1976. Today, the ICESCR and its Committee are considered the main references in relation to ESC rights at the international level.

Box 3: Summary of the ICESCR

The International Covenant on Economic, Social and Cultural Rights

The ICESCR is comprised of 31 articles:

- Article 1 is about the right to self-determination and control over natural wealth and resources.
- Article 2 is about the nature of state obligations, including progressive realization and non-discrimination.
- Article 3 is about equality between men and women.
- Articles 4 and 5 are about permissible limitations, restrictions and derogations on ESC rights.
- Articles 6 and 7 are about the right to work and rights at work.
- Article 8 is about trade union rights.
- Article 9 is about the right to social security.
- Article 10 is about protection of the family including mothers, children and young persons.
- Article 11 is about an adequate standard of living including adequate food, clothing and housing, and the continuous improvement of living conditions.
- Article 12 is about the enjoyment of the highest attainable standard of physical and mental health.
- Articles 13 and 14 are about the right to education.
- Article 15 is about the right to take part in cultural life and benefit from scientific progress.
- Articles 16-31 are about the obligation of the state to report on implementation of the treaty, and the process of becoming party to the ICESCR. The ICESCR specifies that reports are to be submitted by states to the Economic and Social Council (ECOSOC) of the UN. However, the Committee on Economic, Social and Cultural Rights (CESCR) was established in 1985 through an ECOSOC resolution to carry out the monitoring functions assigned to ECOSOC.

2.3.2 Importance of protecting and guaranteeing ESC rights

There are many reasons why ESC rights must be guaranteed, and that every individual must enjoy these rights. The following are just some examples.

Denial of ESC rights can affect many individuals and communities

Violations of ESC rights often affect more than just individuals in isolated cases. Frequently, violations of ESC rights occur because of deep rooted structural and systemic problems that relate to policies, laws, financial resources and/or long-standing cultural

and historic practices. Because of this, they often affect large numbers of people – in some cases many thousands.

Example: Forced evictions often affect large numbers of people within a community, or all those in an entire neighbourhood. Unclean water can have a devastating effect on the health and hygiene of all those who drink or use it, impacting in some cases a whole town or region.

Denial of ESC rights can have devastating immediate and long-term consequences

The enjoyment of ESC rights is not only about the satisfaction of immediate needs to food, water, housing, and health care. Enjoyment of ESC rights has immediate and long-term impact on the life of the person and his/her community and the wider society. It can determine the options that one has, and therefore can have a major impact on their quality of life.

Example: Under-investment in the educational system affects the quality of education of individuals with both immediate and longer-term effect. This in turn can undermine the progress of society as a whole. For example, poor education often leads to limited employment options, increasing an individual's vulnerability to exploitative and unsafe employment (longer term effect).

Gross violations of ESC rights have been among the root causes of unrest and conflicts

Conflicts, social unrest and even revolutions have often started against the background of failure of the state to guarantee ESC rights. Rising prices of essential commodities, poverty, unemployment, hunger, and low wages have led to situations where people are not able to access their ESC rights. This has caused people to take to the streets in revolts and unrest, which sometimes escalates to armed conflict. Unrest and conflict have also often resulted from discriminatory policies, as well as from the failure of the state to address such systematic discrimination and inequality on the basis of ethnicity, religion, political affiliation, and other such grounds. Such continued failures can undermine recovery from conflict.

Denial of ESC rights have been among the root-causes of eruption of unrests that have often escalated to armed conflicts, as seen in many Arab countries before, during, and after what is known as “the Arab Spring”.

Denial of ESC rights can lead to violations of other human rights

Many ESC rights enable the realization of CP rights, and the other way around. Similarly, violations of either one of these sets of rights can result in the violation of other rights.

Example: In situations where women cannot access affordable and adequate housing (ESC right violation), they are likely to be more vulnerable to domestic violence where they might have to choose between remaining in an abusive relationship (violation of CP right) or becoming homeless (violation of ESC right). Forced eviction (violation of ESC right) can lead to homelessness or to begging in the streets, which can result in the person being arbitrarily arrested and possibly subjected to torture and other forms of ill-treatment (violations of CP rights). On the other hand, enjoyment of education and health (enjoyment of ESC rights) enables people to be better informed, make informed choices and participate in the conduct of public life (enjoyment of CP right).

2.3.3 Misconceptions about ESC rights

There are many unfounded ideas and myths about ESC rights, which lead to these rights being treated as lesser rights, or not as rights at all. Many of the myths about ESC rights are due to misunderstanding the nature of state obligations (see [Chapter 3](#) on the nature of state obligations).

Table 4: Misconceptions and realities about ESC rights

Misconception	Reality
<p>ESC rights are “aspirations” rather than real “rights”</p>	<p>ESC rights and CP rights are recognized in binding international, regional and national treaties and laws. This means that international and regional treaties do not impose lesser obligations on states with regards to the realization of ESC rights than CP rights. Similarly, national laws about ESC rights are not less important than those laws related to CP rights. Both can and must be realized through concrete, targeted steps, immediately and through longer-term policies and programmes.</p>
<p>ESC rights cannot be upheld in courts (they are “non-justiciable”)</p>	<p>Many ESC rights are included in national constitutions and other laws. Courts at the national level regularly hear cases and make decisions on ESC rights. Employment tribunals are one example of where such rights are upheld routinely. There are many court decisions from across the world relating to ESC rights, such as in relation to health, education, housing, food, and discrimination in the provision of ESC rights. Also, regional and international courts and bodies that consider individual complaints have made decisions on ESC rights (see Section 3.5 about remedies and Section 7.2 about the role of treaty bodies).</p>

<p>Unlike CP rights, implementing ESC rights involves great expense</p>	<p>Realizing both CP rights and ESC rights involves steps that may not cost much, for example refraining from interfering with the right, non-discrimination, initiating legislation, policies and strategies. Also, realizing both CP and ESC rights involves steps that are costly, for example building infrastructure, training officials, carrying out effective and meaningful consultations, and so on.</p>
<p>States do not have to realize ESC rights if they do not have sufficient resources</p>	<p>There are many state obligations that must be realized even if resources are low. The state must take immediate steps (for example, to end discrimination in the enjoyment of ESC rights). It must allocate available resources (even if these are limited) for the realization of ESC rights. The state must then progressively increase financial and human resources as they become available. Also, other states have obligations to provide international assistance and cooperation. Many of these obligations are part of what is known as minimum core obligations (see Section 3.2 on minimum core obligations). Finally, not taking steps to progressively improve is also a violation.</p>
<p>ESC rights are only collective rights</p>	<p>ESC rights are sometimes wrongly interpreted as being only collective in nature. While these rights can affect many people and may have a collective dimension, they are also individual rights. ESC rights, like other human rights, belong to every human being. A woman paid less than her male colleague for the same work, or a person in a wheelchair unable to work because of inaccessibility of the workplace, are examples of individual aspects of ESC rights. At the same time, there are collective aspects of these rights. For example, when workers' rights to unionize and take industrial action are violated, this impacts the trade union's collective rights, and individual workers suffer from the denial of their right to freedom of assembly.</p>
<p>It is not the job of the government to provide food and housing</p>	<p>It is often said that the role of government is to ensure individual liberties and freedoms, not to give people food and houses. While people have the responsibility to arrange for their own food and houses, find work and look after their health, the state must ensure that good quality essential food products are available, and that people have access to them through</p>

	<p>affordable prices. Also, in extreme cases, if people are unable to access food or housing, states must provide these directly. For example, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, including due to natural or other disasters, states have the obligation to fulfil that right directly. In the case of famine or starvation, states may need to directly intervene and provide food. Or in case of natural and other disasters that result in loss of housing, states must intervene to arrange for alternative accommodation. So, for ensuring the enjoyment of ESC rights, states are required to take steps through legislation, the allocation of financial and human resources, and the establishment of institutions (for example adequately funded government ministries), to promote the realization of these rights, especially for those least able to help themselves.</p>
<p>ESC rights are new rights</p>	<p>This is a common perception as ESC rights are sometimes called second generation rights, while CP rights are considered first generation rights. This is not correct. National constitutions and laws, as well as international treaties, had already codified many ESC rights for years, even before the adoption of the UDHR in 1948. For example, the 1917 Constitution of Mexico refers to education, land reform, and labour rights. In 1883, Germany introduced the first in the world national social health insurance system. Internationally, for example, the ILO was established and started adopting standards related to workers' rights in 1919. Among the first Conventions adopted by the ILO in 1919 were hours of work (Convention 1); unemployment (Convention 2); maternity protection (Convention 3); and minimum age (Convention 5). In 1948 the ILO adopted its fundamental Convention 87 on Freedom of Association and Protection of the Right to Organise. These examples are part of the reason why the incorporation of ESC rights in the UDHR was possible. Both the ICCPR and the ICESCR were adopted at the same time, in December 1966.</p>

- *ESC rights are no less important than any other rights. Obligations of states in relation to ESC rights are not different from obligations related to CP rights.*

2.3.4 Branches of international and regional law relevant to ESC rights

- **This section focuses on branches of international and regional law that directly concern ESC rights. A specific focus on various ESC rights will follow in [Chapter 5](#).**
- **In this handbook, we will focus mainly on international human rights law and international humanitarian law. A reference to international criminal law and international refugee law will also be made occasionally.**

International human rights law

The International Covenant on Economic, Social and Cultural Rights and its Optional Protocol (see [Box 18](#) on the optional protocol) are dedicated to ESC rights at the international level. Other international human rights treaties also deal with aspects of ESC rights, as set out in [Box 4](#) below.

Example: The CRC focuses on a number of ESC rights, including the right to the highest attainable standard of health with a reference to child mortality, primary health care, pre-natal and post-natal health care; social security; a standard of living adequate for the child's physical, mental, spiritual, moral and social development; the right of the child to rest and leisure, to engage in play and recreational activities; access to education, including compulsory primary education; and the right of the child to be protected from economic exploitation and from performing hazardous or harmful work.

Additionally, treaties that are typically considered as dealing with CP rights may contain provisions that are also ESC rights, or that are closely interlinked with ESC rights. For example, freedom of association (a CP right) is relevant to forming trade unions (ESC right) as well as forming associations and organizations in general (a CP right).

Box 4: International human rights treaties

As of 2019, the following human rights treaties have been adopted by the international community to cover various aspects of human rights (list is presented in order of adoption, treaties in bold have specific relevance to ESC rights). The list excludes optional protocols to these treaties (see [Section 3.5.2](#) on the optional protocols).

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965)

International Covenant on Civil and Political Rights (ICCPR) (1966)

International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984)

Convention on the Rights of the Child (CRC) (1989)

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) (1990)

International Convention for the Protection of All Persons from Enforced Disappearance (ICED) (2006)

Convention on the Rights of Persons with Disabilities (CRPD) (2006)

Finding information on international human rights law

A list of international human rights treaties and other instruments is available on the [website](#) of the Office of the High Commissioner for Human Rights (OHCHR).

This full list of all international human rights instruments includes international treaties and other instruments (declarations, principles, codes, and so on), organized by subject. The list also includes some important international humanitarian law and international criminal law treaties (see [Section 4.2](#) on international humanitarian law). If you wish to change the language, you can find the different languages at the top right-hand side of the page.

There is also a list of just [the main international human rights treaties](#). To access those treaties, click on the tab “Core Instruments”.

International humanitarian law (IHL)

In this section we will provide general introductory remarks on IHL. For the elaboration on how IHL deals with ESC rights specifically, see [Section 4.2](#).

International humanitarian law (IHL) is sometimes referred to as the law of armed conflict or the law of war. It is specifically designed to apply in all circumstances of armed conflict. The primary purpose of IHL is to minimize human suffering during armed conflict through rules that regulate the conduct of parties to the conflict. These rules, which take into account military necessity, restrict the means and methods of fighting and protect those who are in the power of an adversary (be they civilians, or captured or injured combatants).

IHL applies in parallel with other legal regimes, including the Charter of the UN, international human rights law, and international criminal law. Many of the rules of international humanitarian law are codified in treaties. The Geneva Conventions of 1949 and their Additional Protocols are examples of these treaties. In addition, many of its rules can be derived from custom and general principles of law.

Core IHL treaties

The Geneva Conventions of 1949 and their additional protocols form the core of IHL. They contain the most important rules limiting the effects of war. They protect people who do not take part in the fighting (civilians, medics, aid workers) and those who can no longer fight (wounded, sick and shipwrecked troops, prisoners of war, and other detainees).

Box 5: Core IHL treaties

The 1949 Geneva Conventions

- The first Geneva Convention protects wounded and sick soldiers on land during war
- The second Geneva Convention protects wounded, sick and shipwrecked military personnel at sea during war
- The third Geneva Convention applies to prisoners of war
- The fourth Geneva Convention protects civilians, including those in occupied territory

The Additional Protocols to the Geneva Conventions

- Additional Protocol I – international conflicts, 1977
- Additional Protocol II – non-international conflicts, 1977
- Additional Protocol III – additional distinctive emblem, 2005

Customary IHL

Customary IHL is of crucial importance in today's armed conflicts because it fills gaps left by treaty law and so strengthens the protection offered to victims. The International Committee of the Red Cross (ICRC) has developed a database of rules of customary IHL with explanations and information on state practice. (See [Section 4.3](#) for discussion on rules of customary IHL that are specifically related to ESC rights.)

Example 1: Syria – Establishing layers of evidence for future accountability for crimes committed during the conflict

All parties to the conflict in Syria carried out indiscriminate or deliberate attacks targeting civilians and civilian 'objects' such as medical facilities and schools. They blocked impartial humanitarian relief for civilians in need, and attacked, removed, destroyed or rendered useless objects or areas indispensable to the survival of the civilian population, including drinking water installations, supplies, irrigation works and agricultural areas for the production of foodstuffs and crops.

The Independent International Commission of Inquiry on the Syrian Arab Republic was established in August 2011 by the Human Rights Council through resolution S-17/1, with a mandate to investigate all alleged violations of international human rights law since March 2011 in the Syrian Arab Republic.

In addition, considering the gravity of the situation, in December 2016, the United Nations General Assembly adopted resolution 71/248, establishing the International, Impartial and Independent Mechanism to assist in the investigation and prosecution of persons responsible for the most serious crimes under international law committed in the Syrian Arab Republic since March 2011. It is more commonly referred to as "the Mechanism", or "IIIM".

The Mechanism's mandate is "to collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law." In doing so, the IIIM seeks to support accountability processes aimed at bringing about justice for the victims of serious international crimes committed in Syria since March 2011.

Sources: Human Rights Council resolution S-17/1, [ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/ColSyria/ResS17_1.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/ColSyria/ResS17_1.pdf)

UN General Assembly resolution 71/248, undocs.org/Home/Mobile?FinalSymbol=A2%FRES2%F2%71F248&Language=E&DeviceType=Desktop&LangRequested=False

The IIM, iiim.un.org

Finding information about international humanitarian law

Information about IHL, the treaties and customary rules, as well as other documents can be found on the ICRC website: icrc.org/en

Here you can find the Geneva Conventions and their Protocols (icrc.org/en/war-and-law/treaties-customary-law) and the Commentaries to these (icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions).

Regional human rights systems

In this section we will examine the relevant human rights systems of the League of Arab States and the African Union.

There are two regional human rights systems that are directly relevant to Arab countries. All 22 Arab states are members of the League of Arab States, also known as the Arab League. Therefore, the human rights system of the Arab League is relevant to all Arab countries. Several Arab countries are also located in Africa. Therefore, the human rights system of the African Union is relevant to these countries. As of mid-2023, there is still no regional human rights system for all of Asia. There is what is called the ASEAN Intergovernmental Commission on Human Rights, established in 2009, which covers the 10-member ASEAN group (South-East Asian Nations).

Box 6: Arab states members in regional organizations

The Members of the League of Arab States (in alphabetical order, with those who are also members of the African Union underlined) are: Algeria, Bahrain, Comoros, Djibouti, Egypt,

Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen.

The African Union

The African Union (AU) is a regional inter-governmental body consisting of the 55 member states that make up the countries of the African continent. It was officially launched in 2002 as a successor to the Organization of African Unity (OAU, 1963-1999). Ten of these 55 states are Arab countries.

The African Charter on Human and Peoples' Rights (the African Charter), which was adopted in 1981, and entered into force in 1986, includes several provisions related to economic, social and cultural rights (for further discussion of provisions on ESC rights in the African Charter on Human and Peoples' Rights, see [Chapter 5](#) on selected ESC rights). These include rights to health, education, culture, housing, social security, food, water and sanitation, property, work and rights at work, and freedom of association.

The African Charter also includes a number of provisions related to peoples' rights (also known as collective rights), including some relevant to ESC rights, such as the rights to self-determination; the right to freely dispose of wealth and natural resources; and the right to a general satisfactory environment favourable to development. The African Charter states that all people have the right to economic, social and cultural development.

The African system has a number of other treaties that are relevant to ESC rights. By December 2022, 54 out of 55 member states of the African Union had ratified the African Charter on Human and Peoples' Rights (for a list of ratifications of the African Charter, see achpr.au.int/en/charter/african-charter-human-and-peoples-rights).

The League of Arab States

The League of Arab States (the Arab League) is the regional body that includes all Arab states. It was established in 1945, initially by seven then recently independent Arab states. As of 2020, the Arab League included 22 member states.

The main human rights treaty within the Arab League is the Arab Charter on Human Rights, adopted in 2004 and entered into force in 2008. Its implementation is overseen by the Committee of the Arab Charter on Human Rights (formerly known as the Arab Human Rights Committee), which meets in Cairo, Egypt.

The Arab Charter on Human Rights includes a number of provisions on economic, social and cultural rights. This includes the rights to physical and mental health, education, social security, standard of living and culture, property; work and rights at work; form and join trade unions (for further discussion of provisions on ESC rights in the Arab Charter on Human Rights, see [Chapter 5](#) on selected rights).

By the end of December 2020, 16 Arab states out of 22 have ratified the Arab Charter on Human Rights (for the list of ratifications of the Arab Charter, see leagueofarabstates.net/ar/humanrights/Committee/Pages/MemberCountries.aspx).

Chapter 3

State obligations with respect
to ESC rights under human
rights law

In this chapter, we will discuss the general obligations of states in relation to ESC rights. The chapter will detail the obligations to respect, protect and fulfil; minimum core obligations; progressive realization of ESC rights; prohibition of discrimination; and ensuring effective remedies at the national, regional, and international levels.

Once a state has become a party to a treaty, it has a legal obligation to ensure that the rights in that treaty are respected, protected and fulfilled. Understanding these obligations helps in monitoring their implementation.

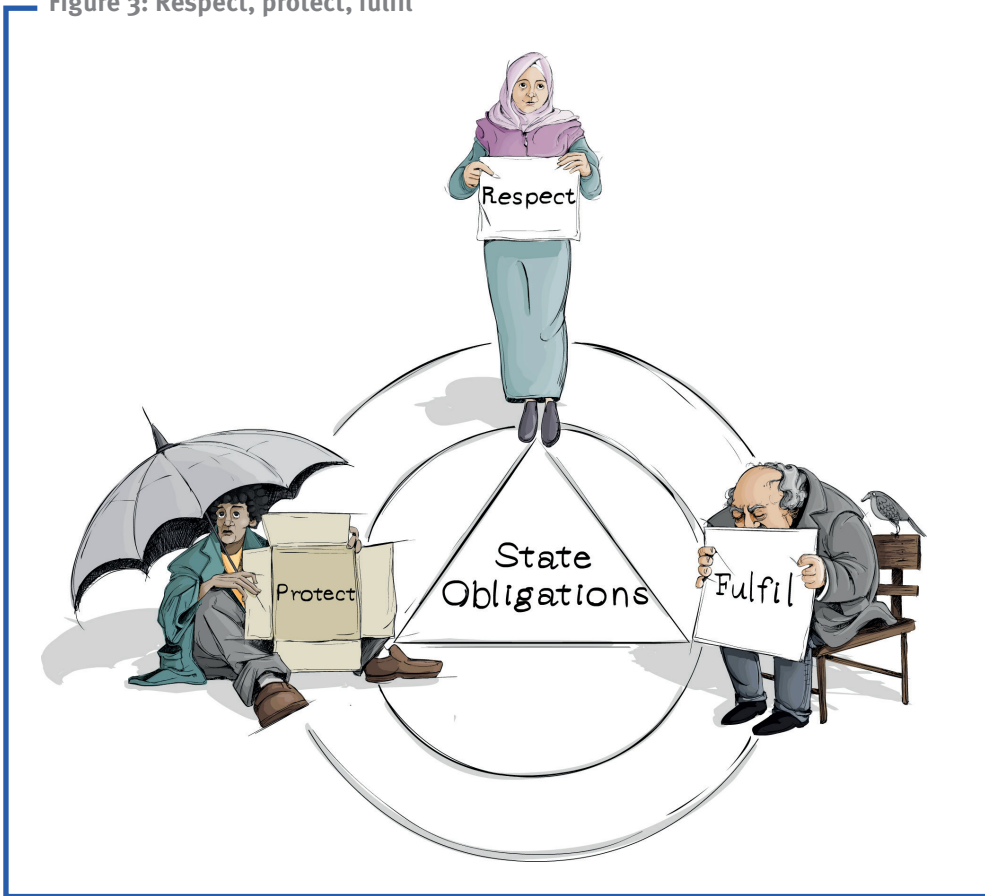
Obligations include the duty to **respect, protect, and fulfil** rights. Many obligations are immediate; states should start taking steps in implementation as soon as they have ratified a treaty. Other immediate obligations relate to prohibition of **discrimination**, ensuring equality, and/or providing effective remedy in cases of violations. Further aspects of rights can be implemented **progressively**, but there are **minimum core obligations** that must be prioritized in all situations. Progressive steps towards the full realization of rights must be deliberate and concrete, and taken within a reasonably short timeframe. This means that states do not have the choice as to whether to implement them or not.

3.1 Obligations to respect, protect, and fulfil

Human rights law imposes clear obligations on states in relation to all rights. UN experts developed a three-part classification, or “framework”, which provides the basis for working on ESC rights. These are the obligations to **respect, protect and fulfil** rights.

States must deliver on ESC rights. This is not based on charity or moral arguments. It is based on clear legal obligations.

Figure 3: Respect, protect, fulfil



3.1.1 The obligation to respect

The obligation of states to respect human rights is an **immediate** obligation. It requires states to **refrain** from interfering directly or indirectly with the enjoyment of rights. This includes:

- Refraining from engaging in any practice or activity that denies or limits equal access to the right (for example refraining from discriminating against people on the basis of their gender, religion, or political opinion);
- Arbitrarily or unreasonably interfering with self-help or customary or traditional arrangements for enjoying rights (for example arbitrarily closing a schooling arrangement for children in a Bedouin community, organized by the community itself, instead of helping this arrangement to succeed);
- Arbitrarily or unreasonably interfering with organizations that have been established by individuals or corporate bodies to assist in the provision of rights (like community charities or trade unions or other civil society organizations).

3.1.2 *The obligation to protect*

The obligation to protect requires states to **prevent third parties** from interfering with the enjoyment of rights (see [Chapter 8](#) on non-state actors). Third parties include individuals, groups, NGOs, the private sector, and armed groups. This obligation requires states to:

- Adopt necessary and effective legislative and other measures to stop third parties from:
 - interfering with access to essential resources (for example by polluting the environment);
 - denying equal access to schemes operated by them or by others and imposing unreasonable eligibility conditions (for example by discriminating against different ethnic groups);
 - failing to pay legally required contributions for employees or other beneficiaries necessary for enjoying rights (for example when employers fail to pay national insurance contributions on behalf of employees, which then restricts enjoyment by these employees of national insurance benefits);
- Monitor, regulate and take action against any breaches by third parties.

3.1.3 *The obligation to fulfil*

The obligation to fulfil requires states to **adopt** necessary measures directed towards the full realization of the right. This includes adopting appropriate legislative, administrative, budgetary, judicial, promotional, and other service provision measures. The obligation to fulfil can be subdivided into the obligations to **facilitate**, **promote** and **provide**. The services provided by the state under the obligation to fulfil must be **available, accessible, acceptable, and adequate**.

Facilitate

The obligation to facilitate requires states to take positive measures to assist individuals and communities to enjoy their rights. This includes recognizing rights through laws, policies and regulations in order to enable people to claim their rights as rights. For example, the inclusion of domestic and agricultural workers, as well as workers in the informal sector, in relevant labour law and social security schemes enables these workers to benefit from those rights and protections. In order to be able to facilitate the enjoyment of rights, states must establish needed institutions and facilities, for example schools, colleges and universities, hospitals, clinics, labour inspectorate.

Promote

The obligation to promote obliges states to ensure that there is appropriate education, training, information and public awareness concerning rights and how to enjoy them. For example, production of material in Braille (for blind people), or in large font (for

visually impaired people), or in various languages spoken in the country (for those not speaking the main language) allows people to know how to access various services regardless of their circumstances. Training service providers on how to ensure people with a disability are protected from all forms of exploitation and abuse promotes their rights to enjoy services without discrimination.

Provide

The obligation to provide includes establishing systems, goods and services, as well as providing benefits and protections, to enable people who would otherwise be unable to do so to enjoy their rights. Examples of how states can ensure that they provide adequate services include health insurance schemes, unemployment protection, provision of clinics and schools in various parts of the country, as well as social housing. When the enjoyment of rights is at risk due to famine, for example, the state is under the obligation to provide food aid, or seek and accept international assistance that enables them to do so. The state must pay particular attention to ensuring that persons who are particularly at risk of human rights violations/abuses or in marginalized situations can enjoy their rights (see [Section 6.2](#) on structural inequality or marginalized groups).

Availability, accessibility, acceptability, and adequacy of services (4As)

The state must also ensure that the services it provides meet certain standards and serve people's needs. For example, in assessing whether a state has upheld the right to health in a particular community by looking at clinics in the area, the following aspects must be considered:

Availability: Does the community actually have a clinic? How many clinics are there in the area? Are they all adequately staffed with sufficient equipment?

Accessibility: Does everyone in the community have access to a clinic and can they benefit from its services, including medical advice, without worrying about prejudice or discrimination? This refers to (1) Physical accessibility: how far away is the clinic? If it is too far, are there affordable means of transport for all people in the village? How can they reach the clinic? (2) Economic accessibility: are the services free, affordable or are they too expensive? Would somebody who is unable to pay be able to access the services?

Acceptability: Are the needs of different people, including marginalized groups (such as minority groups, persons with disabilities) respected? Do providers of services respect medical ethics? Is the provision of the service culturally appropriate? Are the services provided in a culturally acceptable way? This can include the provision of interpretation support for those who are not fully fluent in the majority language (which would also make the service accessible). If it is a clinic that services refugees, are there enough

people in the clinic that speak the language of the refugee community?

Adequacy: This refers to the quality of the services. Are the services medically appropriate and of good quality? While initially resources may mean that the clinic may not be able to provide the most up to date medical services, the state which is building this clinic must ensure that it provides at least a minimum level of adequate service, and ensure that people using the clinic are referred to other more advanced services (secondary and tertiary levels of medical services) (see [Section 3.2](#) on minimum core obligations). These services can be developed progressively with more available resources (see [Section 3.3](#) on progressive realization).

3.2 Minimum core obligations

Minimum core obligations are the very least that a state must meet to ensure that minimum essential levels of each ESC right are implemented. They are the immediate steps that a state must take when implementing its obligations. Even when resources are scarce, the state needs to prioritize those most at risk of human rights abuse/violations and marginalized groups. As a minimum, ESC rights must be guaranteed without discrimination (see [Section 3.4](#) on prohibition of discrimination).

Box 7: Minimum core obligations

Minimum core obligations in selected rights

Right to work and rights at work

- Put in place a comprehensive system to combat gender discrimination in access to work and at the workplace;
- Establish minimum wages in legislation and in consultation with workers and employers, their representative organizations;
- Adopt and implement a comprehensive national policy on occupational safety and health;
- Prohibit, define by law, and establish criminal sanctions for harassment, including sexual harassment at work, and ensure appropriate complaints procedures and mechanisms;
- Introduce and enforce minimum standards in relation to rest, leisure, reasonable limitation of working hours, paid leave and public holidays.

Right to health

As the right to health is affected by other rights, especially food, water and housing, the minimum core obligations of the right to health include elements that relate to these other rights:

- Ensure equitable distribution of all health facilities, goods and services;
- Ensure the right of access to health facilities, goods and services on a non discriminatory basis, especially for vulnerable or marginalized groups;
- Ensure access to the minimum essential food which is nutritionally adequate and safe, and ensure freedom from hunger for everyone;
- Ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water;
- Provide essential medication, as defined under the WHO Action Programme on Essential Drugs;
- Adopt and implement a national public health strategy and plan of action.

Right to social security

- Ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families, including those who do not have regular income, that will enable them to acquire at least essential health care, basic shelter and housing,

water and sanitation, food, and the most basic forms of education;

- Carry out consultation to identify groups of the population who are particularly at risk;
- Ensure the right of access to social security systems or schemes on a non-discriminatory basis, especially for disadvantaged and marginalized individuals and groups;
- Adopt and implement a national social security strategy and plan of action.

Right to education

- Ensure the most basic forms of education are accessible to all, while taking into account the cultural needs of the community;
- Provide primary education on compulsory basis and make it available free to all, including to citizens and non-citizens such as refugees;
- Ensure the right of access to all public educational institutions and programmes on a non-discriminatory basis;
- Ensure that all education, whether public or private, formal or non-formal, shall be directed towards the full development of the human personality and sense of dignity;
- Adopt and implement a national educational strategy which includes provision for secondary, higher and fundamental education.

3.3 Immediate and progressive realization

Directly upon ratifying the ICESCR or other treaties that include ESC rights provisions, states are under the obligation to immediately take deliberate, concrete and targeted steps towards the realization of rights.

Article 2.1 of the ICESCR sets out a state’s obligation to realize ESC rights. The state must “...**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 ICESCR by **all appropriate means**, including particularly the adoption of **legislative measures**.” (emphasis added) The obligations in bold above are explained in the table below.

Article 2.2 of the ICESCR requires states to “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.”

Table 5: Key obligations related to realization of ESC rights

Obligation related to ESC rights	Meaning
Take steps	<p>Taking steps is an immediate obligation. The state must:</p> <ul style="list-style-type: none"> • Assess the situation concerning each right; • Prioritize minimum essential levels of each right (minimum core obligations); • Make a plan for realizing the rights. The plan should set targets for achievement, based on up-to-date statistics or data such as birth rates and literacy rates; • Adopt laws, policies and procedures to put the plan into action, or adapt existing ones as necessary; • Prioritize the most vulnerable groups, particularly tackling discrimination; • Abolish or amend any discriminatory law or policy; • Develop mechanisms and setting up monitoring systems to make sure the obligations are being fulfilled using rights-based indicators (see Part II Section 2.4 on indicators), including through

	<p>information disaggregated according to various factors including according to sex, age, social-economic situation, geographical area and ethnic group (see Part II Section 2.3.1 on disaggregated data); and</p> <ul style="list-style-type: none"> • Ensure access to a remedy for those whose rights are violated.
<p>Work progressively towards the full realization of the rights</p>	<p>The state must work progressively by:</p> <ul style="list-style-type: none"> • Facilitating and providing more services, such as by building more primary schools, training more teachers, increasingly reducing fees for secondary schools and higher education; • Not moving backwards (retrogressive measures) without a very good reason.
<p>Seek international assistance and cooperation</p>	<p>If the state cannot meet its obligations, it has a duty to seek help.</p> <p>Other states that are in a position to do so are obliged to assist, especially towards meeting minimum core obligations. This includes sharing technology and skills as well as providing financial resources.</p>
<p>Use the maximum available resources</p>	<p>This is not only a matter of properly allocating funds. Resources include people, skills, good management and other assets. A state is not using its available resources to the best effect if, for example:</p> <ul style="list-style-type: none"> • Food is abundant in one part of the country while people in another part are hungry; • Budget allocations for policies and programmes in the social sector favour the cities rather than rural areas, or areas where the majority of the poor live; or • Discrimination keeps women out of the economy, for example by preventing their access to credit or to owning or inheriting land. <p>Even in a crisis, the state would have to show that it has used the maximum of its available resources and that it has done this effectively. Questions to ask when determining whether or not a state has used its maximum available resources include:</p>

	<ul style="list-style-type: none"> • Where has it spent its resources? Has it built grand new buildings, while neglecting basic social needs? • Has it used its resources efficiently, for example has it provided a lot of money for health posts but very little for training the staff? • Is corruption affecting the delivery of services and, if so, is the state acting to stop this? • Does the state adopt a progressive taxation policy? Has it created tax havens? • Is it monitoring the extent to which each right is, or is not, being realized? • Has it used updated disaggregated data to decide which groups or sectors of the population are in most need of specific resources? • If its available resources have all been used, has it asked other states to assist?
Use all appropriate means, including particularly the adoption of legislative measures	For example, not only making an appropriate law, but also providing appropriate systems for monitoring its implementation, including policies, action plans and strategies.
Prohibit and eliminate discrimination	<ul style="list-style-type: none"> • Discrimination must be made illegal; • Discrimination must be punished appropriately; and • Steps must be taken to end discrimination in practice (see Section 3.4 on discrimination).

States must work progressively towards the realization of rights, starting with the core obligations as a minimum. Part of this minimum core obligation is making plans and strategies on how to progress. This applies to all states regardless of the level of income or resources that they have.

Example: Everyone has the right to affordable housing that meets international standards on adequacy. But this may not be possible immediately for a low-income country. Despite that, the state has to take a number of steps, using available resources, to make sure that the right to housing is progressively realized. Therefore, a state where 30% of its population is living in inadequate housing, could take steps to ensure that everyone has access to adequate housing over the next 20 years, including by requesting and receiving international cooperation and assistance if required.

States should avoid taking any deliberate retrogressive measures (backward steps) without careful consideration and justification. In order for a state to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all the resources that are at its disposal in an effort to satisfy, as a matter of priority, these minimum obligations. When a state seeks to introduce retrogressive measures, for example in response to an economic crisis, it has to demonstrate that such measures are temporary, necessary and non-discriminatory, and that they respect at least its minimum core obligations (see [Section 3.2](#) on minimum core obligations). It is also an obligation on states, and other actors in a position to assist, to provide international assistance and cooperation, especially economic and technical, to enable countries to fulfil their core obligations.

Examples: It is acceptable for a state to halt the construction of a university in order to give the money to victims of a natural disaster if it could not obtain funds from any other sources. However, it is not acceptable for a state in any situation to stop free primary education, which is a minimum core obligation of education, by making people pay for primary education. Stopping free primary education is a violation and is a retrogressive step.

3.4 Prohibition of discrimination and ensuring equality

3.4.1 *What is discrimination*

Discrimination means treating people differently, in an unjustified way, interfering with their enjoyment of human rights. It is a human rights violation. Discrimination by the state may take place through direct action (also known as commission) or inaction (also known as omission) by its employees, institutions or agencies at the national and local levels. It is sometimes grounded in legal rules, policies, practices or predominant cultural attitudes in either the public or private sphere. Discrimination creates relative disadvantages for some groups and individuals, and privileges for other groups and individuals. The definitions of discrimination in the various human rights treaties have the following common elements, which have also been set out in CESCR's [General Comment Number 20 on the prohibition of discrimination](#).

- They all prohibit states from treating people differently (through making an unjustified distinction between different people, or excluding some people, or restricting some from enjoying their rights) on the basis of features that characterize them (for example disability, gender, race). These are called “prohibited grounds”.
- People are discriminated against when they do not enjoy or exercise their rights (“nullifying”) equally with others (“on an equal footing”) or do so to a lesser extent (“impairing”). This applies to all rights.

There is no exhaustive list of prohibited grounds of discrimination. Article 2.2 of the ICESCR lists the prohibited grounds of discrimination as “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. The inclusion of “other status” indicates that this list is not exhaustive and other grounds may be incorporated in this category. Other prohibited grounds include socio-economic status, disability, age, nationality, health status, sexual orientation and gender identity, place of residence, birth. Prohibition of discrimination is also a specific theme of some international instruments like the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

- ▶ *The obligation to eliminate discrimination is part of minimum core obligations.*
- ▶ *While the full elimination of discrimination may take time, taking steps to eliminate discrimination is an immediate obligation.*
- ▶ *It is important to remember that discrimination is often based on more than one ground (known as intersectionality). Therefore, addressing discrimination requires addressing the various grounds, and also addressing how the linkages between the multiple forms of discrimination affects the person (see [Chapter 6](#) on marginalization and vulnerability).*

3.4.2 Forms of discrimination

Discrimination may take various forms in our daily life. It can be formal discrimination in laws or other legal provisions, or it may be discrimination in practice. Also, not all discrimination is direct. There may be laws or acts that do not appear to be discriminatory, but in reality they produce indirect discrimination.

Formal discrimination and discrimination in practice

Discrimination can take various forms. It can be formal, in the form of provisions in constitutions, laws or policies. Sometimes, discrimination is not apparent in a formal manner, but it exists in practice (called substantive discrimination).

Formal discrimination: Eliminating formal discrimination requires ensuring that a state’s constitution, laws, policies, programmes, administrative procedures and institutional structures do not discriminate against individuals or groups on prohibited grounds.

Substantive discrimination (or discrimination in practice): Merely addressing formal discrimination will not ensure actual equality. Eliminating discrimination in practice requires paying sufficient attention to people suffering historical or persistent prejudice, instead of just comparing the formal treatment of individuals in similar situations. States must therefore immediately adopt the necessary measures to

prevent, diminish, eliminate or change the conditions and attitudes which cause or maintain discrimination in practice. In some cases, states must adopt special measures to change the conditions that maintain discrimination, for example through providing interpretation services for linguistic minorities and reasonable accommodations for persons with sensory impairments in accessing health-care facilities.

Direct or indirect discrimination

It is important to remember that discrimination may be direct or indirect (both when it is formal discrimination and in practice). This would mean that identical or neutral treatment might constitute indirect discrimination if such treatment results in people being denied rights because there was no recognition of the pre-existing disadvantage and inequality they face. States, therefore, must combat all forms of unequal treatment in practice and address their root-causes, including through adopting special measures.

Direct discrimination occurs when an individual is treated less favourably than another person in a similar situation.

Indirect discrimination refers to laws, policies or practices which appear to be neutral, but because of the existing structural inequality have a discriminatory impact on the exercise of rights for people belonging to certain groups.

Example: The refusal to hire a woman, on the ground that she might become pregnant, or the allocation of low-level or part time jobs to women based on the stereotypical assumption that they are unwilling to commit as much time to their work as men, constitutes direct discrimination.

Example: Requiring a birth registration certificate for school enrolment may indirectly discriminate against internally displaced people or migrants or refugees who do not possess, or have been denied, or have lost such certificates.

Example 2: The Bidoon in Kuwait

In 2017, the Committee on Elimination of Racial Discrimination issued its recommendations to Kuwait in which it addressed the issue of stateless persons living in the country for generations and belonging to what is known as the “Bidoon”, but who continue to be deemed “illegal residents” by the state. The Committee expressed serious concern at persistent reports that Bidoon do not enjoy equal access to social services, and legally valid civil documentation, including birth registration documents. The Committee called on Kuwait to guarantee access for all to adequate social services and education on an equal footing with nationals of Kuwait.

Source: Kuwait, CERD/C/KWT/CO/21-24, 19 September 2017, paras 27-28, [ohchr.org/en/documents/concluding-observations/cerdckwtco21-24-committee-elimination-racial-discrimination](https://www.ohchr.org/en/documents/concluding-observations/cerdckwtco21-24-committee-elimination-racial-discrimination)



- *Even in times of severe resource constraints, those at greatest risk of human rights abuses or violations and marginalized individuals must be protected as a priority.*

3.4.3 Identifying the causes of discrimination

It is important to identify causes of discrimination in order to be able to work on addressing it. Discrimination may be grounded in deliberate action, as a result of neglect, or due to cultural stereotypes.

Deliberate: This can be through action or omission, which can be formal or substantive (see [Section 3.4.2](#) on understanding discrimination). For example, laws that treat different groups differently, or that treat men and women differently, or that put restrictions in law, may result in discrimination.

Example: The law requiring that a child must be a national of the state in order to benefit from primary education is a discriminatory law.

As a result of neglect: This can be through policies or strategies that neglect certain groups of the population, or geographical areas or ethnic groups.

Example: Development strategies that focus on urban areas and neglect rural areas or areas of host communities where refugees and internally displaced persons live, contribute to creating more poverty and marginalization in these areas, and may therefore be discriminatory (see [Section 6.2.3](#) on refugees and internally displaced persons).

Linked to cultural or traditional practices: Cultural beliefs or prejudices that assign gender roles, or which discriminate against individuals because of their sexual orientation or ethnicity, or age or disability may result in discrimination.

Example: In times of economic hardship or security risks, families sometimes withdraw girls from schools because according to gender norms in many contexts, it is considered less important for a girl or a woman to be educated than it is for a boy or a man. As a result, these girls may not have the necessary qualifications to get better paying work as adults. This in turn can impede their financial independence. If they are subjected to domestic violence, their low income puts them at greater risk as they may hesitate to escape their homes fearing not to be able to support themselves and their children.

3.4.4 *What to do about discrimination*

On the basis of their obligations, states must:

- end discrimination on all prohibited grounds and ensure that laws, policies and other measures do not discriminate directly or indirectly;
- identify where discrimination occurs and work to prevent it from recurring;
- gather information regularly in order to identify the causes of discrimination and to address this in law and practices;
- adopt affirmative action or positive measures;
- ensure that discrimination is criminalized, monitored, and punished;
- ensure remedy for violations.

Addressing discrimination requires not only prohibiting discrimination (negative obligation), but also ensuring equality in the enjoyment of all human rights (positive obligation), for example gender equality, racial equality, equality for persons with disability, equality regardless of sexual orientation and gender identity.

The principle of equality is included in many international instruments, including in Article 3 of the ICESCR, which focuses specifically on equality between men and women, and in Article 5 of the CRPD which focuses on equality for persons with disabilities. To ensure equality, states must take steps to remove obstacles to the equal enjoyment of rights, for example through the education of the state officials in human rights, changing the school curriculum in order to remove content that reinforces inequality, and carrying out awareness-raising campaigns on equal rights of groups that are typically disadvantaged.

Monitoring and gathering information regularly is also essential to identify and take measures to redress any form of discrimination.

Example: Collecting data on education segregated by categories such as sex, rural/urban, age groups, ethnicity, nationality status, socio-economic status and all other prohibited grounds of discrimination can help the state determine where and how discrimination is occurring.

Box 8: Adopting “affirmative action” or “temporary special measures”

States can take steps to eliminate discrimination through temporary special measures. Such measures may include for example assigning a number of parliamentary seats to women or youth or ethnic or religious minorities, or offering free or subsidized university places to students from marginalized groups.

Article 4 of the CEDAW specifically provides that:

“1. Adoption by States Parties of

temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, ...; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, ... aimed at protecting maternity shall not be considered discriminatory.”

3.5 Ensuring effective remedy for ESC rights violations and abuses

Previous sections highlighted that states are required to comply with international human rights standards and principles to respect, protect and fulfil ESC rights. However, in practice, we still see that these rights are not always guaranteed. It is therefore essential that any person or group that has experienced violations of their rights, including discrimination, should have access to effective remedies at both national and international levels. These can be through judicial mechanisms (courts) or non-judicial complaint bodies, for example employment tribunals, or complaint bodies within councils or municipalities regarding their services; or independent complaint bodies through the national ombuds offices, when they exist.

In this regard, states have the duty to establish and maintain a functioning system that monitors and advises on compliance with human rights obligations. In addition, states should provide people with the possibility of bringing complaints to competent authorities (for example labour courts) about any state violations or abuses by non-state actors.

National legislation, strategies, policies and plans should provide for mechanisms and institutions that effectively address the harm caused by the violations of ESC

rights (see below for examples of institutions and mechanisms). These mechanisms and institutions should also be empowered to provide effective remedies, which take five main forms: compensation, just satisfaction, restitution, rehabilitation and guarantees of non-repetition. States should ensure that these measures are effectively implemented.

Box 9: The five main forms of reparation

- Restitution refers to measures which “restore the victim to the original situation before the gross violations of international human rights law and serious violations of international humanitarian law occurred,” for example, restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property.
- Compensation “should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law,” such as lost opportunities, loss of earnings and moral damage.
- Rehabilitation “should include medical and psychological care as well as legal and social services.”
- Satisfaction is a broad category of measures, ranging from those aiming at a cessation of violations, to truth-seeking, the search for the disappeared, the recovery and reburial of remains, public apologies, judicial and administrative sanctions, commemoration and memorialization, and human rights training.
- Guarantees of non-repetition is another broad category which includes institutional reforms tending towards civilian control of military and security forces, strengthening judicial independence, the protection of human rights workers, human rights training, the promotion of international human rights standards in public service, law enforcement, the media, industry, and psychological and social services.

Source: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (to be found on the OHCHR website).

- *Any person or group who has experienced violations of their rights should have access to effective judicial or other appropriate remedies, not just at the national level but also at the regional and international levels, after they have exhausted all available domestic remedies.*

3.5.1 National remedies

At the national level, institutions dealing with allegations of ESC rights violations and abuses can include courts and tribunals, administrative authorities, national human rights institutions and/or ombudspersons, which should be accessible to everyone. These institutions should adjudicate or investigate complaints promptly, impartially, and independently and address alleged violations and abuses providing effective remedies for the harm suffered. Legal assistance for obtaining remedies including legal aid for those who need it, should be provided.

- *States should respect, protect, facilitate and promote the work of human rights advocates and other members of civil society who assist victims of human rights violations and abuses in getting effective remedies.*

3.5.2 International remedies

Several international human rights mechanisms have been developed to consider complaints (often called communications) from individuals or groups against states.

In December 2008, the UN General Assembly adopted by consensus the Optional Protocol to the ICESCR. By the end of 2020, the following human rights treaties with direct relevance to ESC rights have established procedures to deal with [communications](#) or [complaints](#) (see further [Section 7.2](#) under role of treaty bodies):

- ICESCR (Optional Protocol to the International Covenant on Economic, Social and Cultural Rights)
- CEDAW (Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women)
- CERD (Optional Protocol to the Convention on Elimination of all forms of Racial Discrimination)
- CRC (Optional Protocol to the Convention on the Rights of the Child on a communications procedure)
- CRPD (Optional Protocol to the Convention on the Rights of Persons with Disabilities)

It is also possible to use the complaint procedures under Article 22 of the Convention against Torture (CAT) and the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), especially considering the linkage between ESC rights and CP rights. For example, a complaint about health care in detention can be dealt with by the complaint mechanisms related to freedom from torture or other inhumane treatment as CP right.

States must expressly accept these complaint procedures.

3.5.3 Regional remedies

The African Court

At the regional level, the African Court on Human and Peoples' Rights was established by Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. The Protocol came into force in January 2004. The Court is mandated to hear cases on all rights in the African Charter, including ESC rights (see african-court.org/wpafc/ for further information about the African Court). The African Court has jurisdiction over cases and disputes submitted to it by states that accept its mandate concerning the interpretation and application of the African Charter. The African Commission on Human and Peoples' Rights can refer cases to the African Court (see [Section 7.4.1](#) on the African Commission).

The Arab Court on Human Rights

The League of Arab States does not have a system that allows for individual complaints or communications related to the Arab Charter on Human Rights or any other human rights standard. An Arab Court on Human Rights with the mandate to examine violations of the Arab Charter on Human Rights was established in 2014. However, this is essentially an inter-state procedure, and is not available for individuals to launch complaints directly. By the end of 2020,

Many experts assess that Arab states are not likely to become party to a mechanism that allows for complaints against them. This is not unique to Arab countries. Many states in other parts of the world also do not like to be subject to a complaint mechanism.

it has not yet received enough ratifications to become operational. (Information on all Arab League instruments and ratifications is available from مصفوفة جهود جامعة الدول العربية في مجال حقوق الإنسان, page 15, available at leagueofarabstates.net/ar/sectors/dep/HumanRightsDep/Pages/Mechanisms.aspx#tab1.)

Chapter 4

ESC rights during armed conflict

This chapter will look at the protection of ESC rights during armed conflict through examining how international humanitarian law specifically deals with ESC rights, and also how human rights law deals with ESC rights during armed conflict. The chapter will also examine state obligations during armed conflict, including both international armed conflicts and non-international armed conflicts.

4.1 Applicable law

During both international and non-international armed conflicts, the protection of civil, political, economic, social and cultural rights is crucial. Often, denial of ESC rights lies at the root of the eruption of unrest and escalation of violence, which sometimes leads to armed conflict. This was the case in several of the countries experiencing protests and recent unrest in the aftermath of the Arab spring.

Also, unrest and conflicts have negative effects on the enjoyment of ESC rights. Such negative effects are often prolonged even beyond the end of the armed conflict.

Example: Destruction of schools, hospitals, housing and water, and other civilian infrastructure during armed conflict not only has an immediate or short-term effect; it has long-term effects. Not only are people denied access to such essential infrastructure, services and goods, but rebuilding such infrastructure and re-establishing services requires a lot of resources, which are then diverted from further fulfilment of human rights in general.



Both international human rights law and international humanitarian law apply in situations of armed conflict (see [Chapter 4](#) on international law related to armed conflict). When the four Geneva Conventions were elaborated and adopted in 1949, the International Covenant on Economic, Social and Cultural Rights had not yet been adopted. However, this does not mean that international humanitarian law does not include protection of many aspects related to ESC rights. Many of the rules of customary international law of armed conflict relate directly to ESC rights (see [Section 4.3](#) on rules of customary international law of armed conflict).

The Hague Regulations of 1907, the four Geneva Conventions of 1949 and Additional Protocols I and II to the Geneva Conventions contain many principles and rules that are directly related to ESC rights. Many of these are now part of customary international law. These include, for example, the prohibition of starvation of civilians as a method of warfare, and attacks on objects indispensable to the survival of the civilian population, including public services infrastructure, as well as the protection of specific objects and persons, including medical and religious personnel and objects, humanitarian relief personnel and objects, cultural property, and the natural environment. These all have implications for the rights to education, food, health, housing and water, as well as for cultural rights.

4.2 IHL principles

IHL is based on a number of principles that are contained in treaties and in customary rules of IHL (see [Section 4.3](#) on customary international law). The main rules of IHL have gradually been included in customary law and are now set out in the ICRC Study on Customary IHL (ihl-databases.icrc.org/customary-ihl/eng/docs/home), which has identified 161 customary rules of IHL. Principles of customary law are binding on all parties to an armed conflict, irrespective of their motivations or of the nature or origin of the conflict, or whether they are states or non-state actors. A state exercising its right to self-defence or in order to restore law and order within its territory must always aim to comply with IHL. The same applies to an aggressor state or a non-state armed group.

Parties to a conflict cannot justify failure to respect IHL due to the harsh nature of armed conflict, even if their adversary commits violations.

- ▶ *Customary rules of IHL are of crucial importance in today's armed conflicts because they fill gaps left by treaty law and so strengthen the protection offered to victims.*

4.2.1 Balancing military necessity and humanity

IHL is based on a balance between considerations of military necessity and humanity. Considerations of humanity impose certain limits on the means and methods of warfare, and require that those who have fallen into enemy hands be treated humanely

at all times. IHL recognizes that in order to overcome an adversary in wartime, it may be militarily necessary to cause death, injury and destruction, and to impose more severe security measures than would be permissible in peacetime. However, IHL makes clear that military necessity does not give a free hand to wage unrestricted war.

- ▶ *Considerations of humanity impose certain limits on the means and methods of warfare, and require that those who have fallen into enemy hands be treated humanely at all times.*

4.2.2 Distinction

The cornerstone of IHL is the principle of distinction. This principle requires that parties to an armed conflict must at all times distinguish between the civilian population and combatants, and between civilian objects and military objectives, and must never direct attacks at civilians or civilian objects. (See Rules 1-24 of the ICRC's Customary Rules of IHL.)

The only legitimate objective which states should endeavour to accomplish during war is to weaken the military forces of the enemy. Consequently, parties to a conflict must ensure that the civilian population and individual civilians enjoy general protection against dangers arising from military operations unless and for such time as they take a direct part in hostilities. Civilians are persons who are not members of the armed forces. Civilian objects are all objects that are not military.

The prohibition of indiscriminate attacks is an important consequence of the principle of distinction. Indiscriminate attacks are those which strike objects and people without distinction between whether they are military or civilian.

- ▶ *The parties to a conflict must never direct attacks against civilians or civilian objects.*

4.2.3 Precaution

The principle of distinction therefore requires the duty to take precautions in order to avoid, or in any event, minimize the infliction of incidental death or injury of civilians and damage to civilian objects (Rule 15 of the ICRC's Customary Rules of IHL). This applies to the attacking party, which must do everything feasible to avoid inflicting incidental harm as a result of its operations (precautions in attack). It also applies to the party being attacked, which, to the maximum extent feasible, must take all necessary measures to protect the civilian population under its control from the effects of attacks carried out by the enemy (precautions against the effects of attack).

- ▶ *In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects through taking all feasible precautions.*

4.2.4 Proportionality

Another key rule for upholding the principle of distinction is the prohibition of disproportionate attacks. IHL recognizes that during the conduct of hostilities some incidental harm to civilians or civilian objects may be unavoidable. However, it prohibits carrying out attacks which are expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination of these, which would be excessive in relation to the concrete and direct military advantage anticipated (Rule 14 of the ICRC's Customary Rules of IHL). It is forbidden to use weapons or methods of warfare that are likely to cause superfluous injury or unnecessary suffering.

4.2.5 Humane treatment

IHL includes certain fundamental guarantees that apply to civilians as well as persons *hors de combat* (combatants who have been captured, surrendered or wounded and are therefore no longer directly participating in hostilities). The fundamental rule is that civilians and persons *hors de combat* must be treated humanely. It is forbidden to kill or wound an adversary who surrenders, has been captured, or who can no longer take part in the fighting. The wounded and sick must be collected and cared for by the party to the conflict which has them in its power. Captured combatants and civilians who find themselves under the authority of the adverse party are entitled to respect for their lives and their dignity.

Among other important rules are those prohibiting murder, torture other ill-treatment, rape and other sexual violence, slavery, forced labour, unfair trial, corporal punishment, collective punishment, enforced disappearance, against *hors de combat*, and their use as hostages and as human shields. (Rules 87-105 of the ICRC's Customary Rules of IHL.)

4.3 Rules of customary law – principles that have impact on ESC rights

- *The main principles of IHL go beyond treaty obligations and apply to all states as rules of customary law.*

Today, a large number of provisions of the Geneva Conventions, including Common Article 3 (which relates to the obligations of all parties – including armed groups – to non-international armed conflicts) and their Additional Protocols are considered to be part of customary international law.

An examination of the customary rules of IHL shows that many of these rules have direct impact on the protection of ESC rights. Customary rules apply regardless of whether the party has ratified specific treaties or not (see [Section 2.1.2](#) on customary international law).

Some customary IHL rules that are directly related to protecting ESC rights include:

- Hospitals, medical personnel, and medical vehicles are protected, thereby contributing to ensuring protection of the right to health.

- Starvation and attacks against water and food storage are prohibited, thereby contributing to ensuring the right to food and water.
- The prohibition of attacks against civilian objects also includes the prohibition of attacks against schools and other educational institutions, as well as attacks on homes, contributing to ensuring the right to education and to housing.

Box 10: Summary of selected customary rules of International Humanitarian Law directly relevant to ESC rights

All the rules below are applicable in international and non-international armed conflicts. They therefore apply to state forces and to members of non-state armed groups.

Rules 25, 28, 29 state that medical personnel, medical units, and medical transport exclusively assigned to medical duties must be respected and protected in all circumstances. They lose their protection if they are being used outside their humanitarian function to commit acts harmful to the enemy.

Rule 30 prohibits attacks directed against medical and religious personnel and objects displaying the distinctive emblems of the Geneva conventions.

Rule 35 prohibits directing attacks against zones established to shelter the wounded, the sick and civilians from the effects of hostilities.

Rule 38 requires each party to the conflict to respect cultural property. It requires that special care must be taken in military operations avoid damage to buildings dedicated to religion, art, science, education or charitable purposes and historic monuments unless they are military objectives.

Rule 45 prohibits the use of methods or means of warfare that are intended, or

may be expected, to cause widespread, long-term and severe damage to the natural environment.

Rules 50 and 52 prohibit the destruction or seizure of the property of an adversary, unless required by imperative military necessity, and also prohibits the pillage (the forcible taking of private property by an invading army from the enemy's subjects).

Rule 53 prohibits the use of starvation of the civilian population as a method of warfare.

Rule 54 prohibits attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population.

Rule 55 requires parties to the conflict to allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need.

Rule 56 requires the parties to the conflict to ensure the freedom of movement of authorized humanitarian relief personnel essential to the exercise of their functions. Their movements may be temporarily restricted only in case of imperative military necessity.

Source: Customary IHL Database, ICRC, ihl-databases.icrc.org/customary-ihl/eng/docs/home

4.4 State obligations towards ESC rights during armed conflict

States are not absolved of their obligations to ensure the realization of ESC rights during armed conflict or emergencies. State obligations during these periods continue, though fulfilling some obligations in such situations may be challenging. Given the prolonged nature of many non-international armed conflicts (some of which have continued for decades), ensuring ESC rights is all the more important.

4.4.1 *Minimum core obligations during armed conflict*

As an overarching principle, minimum core obligations continue in all situations, including armed conflict. These are the minimum steps and levels of respect, protection, and fulfilment for each right that must be guaranteed in all situations. In situations of public emergencies during armed conflict, states must ensure at least the minimum core obligations are met, and take steps to improve the enjoyment of rights (see [Section 3.2](#) about minimum core obligations).

- *State obligations associated with the minimum core content of all ESC rights remain in effect, even during situations of emergency or armed conflict.*

It is essential that transitional justice mechanisms, which often start during or shortly after the resolution of armed conflict, incorporate ESC rights within their mandate and work. Transitional justice mechanisms are important to redress past violations, put in place measures to move forward in guaranteeing human rights, and ensuring non-repetition of violations and abuses. Experience shows that violations and abuses of ESC rights are often ignored in these mechanisms. To incorporate guarantees to ESC rights in transitional justice, both ensuring minimum core obligations, and moving progressively forward will be important.

4.4.2 *Obligations to respect, protect and fulfil during armed conflict*

During armed conflict and in the period that follows it, states continue to have the obligations to respect, protect, and fulfil. These can be delivered through the following:

- **Obligation to respect:** This means, for example, that states should not use schools or hospital facilities for conducting hostilities, or limit access to health services, or destroy water services and infrastructure as a punitive measure.
- **Obligation to protect:** This means, for example, that states are required to prevent, punish and redress attacks by armed groups against health and educational facilities. To achieve this, laws, policies and adequate resources must be in place before the armed conflict and continue to operate during the armed conflict.
- **Obligation to fulfil:** Conflict may result in destruction of food resources, educational institutions, housing, businesses, or health facilities, and may lead to forced displacement. This may result in people not having access to adequate food or medical treatment or education. In these cases, the state must make

sure that food and medical aid reaches the population, including the internally displaced, and that everyone has housing. This should be guaranteed to people regardless of their political affiliation, ethnic origin, religion, or other identities.

4.4.3 Progressive realization during armed conflict

It is true that armed conflicts pose great challenges to states' abilities to fulfil their obligations. However, any deliberate retrogressive measures would have to be strictly justified. Retrogressive measures cannot be justified solely on the basis of the existence of an armed conflict.

Example: If a state decreases its resources allocated to minimum core obligations connected with social sectors, including health and social protection, while drastically increasing its allocation of budget to defence, it is violating its obligations. In this context, international cooperation and assistance plays an important role in ensuring that the state does not decrease its allocation of essential resources to ESC rights, at least for the minimum core obligations.

4.4.4 Prohibition of discrimination during armed conflict

When resources are limited, the state has a duty to adopt measures to protect those most at risk, and to ensure that there is no discrimination in laws, policies or in practice (see [Section 3.3](#) on prohibition of discrimination). Policies or measures should not be designed or implemented in a discriminatory way to benefit already advantaged social groups at the expense of others. This obligation derives not only from human rights law: The principle of non-discrimination is elaborated in many specific rules of international humanitarian law, including the prohibition of adverse distinction, which requires parties to an armed conflict to treat persons in their power without distinction on any grounds other than the urgency of their needs.

Example: Providing humanitarian aid to a group loyal to the state but not to people in areas supporting the opposition is discriminatory and prohibited.

4.5 Responsibilities of armed groups during non-international armed conflict

In conflicts of a non-international character, parties to the conflict are generally a state, on the one hand, against one or more armed groups; or it may be between armed groups. Non-international armed conflicts often take place within the territory of one state, but they may also cross borders.

- *What all non-international armed conflicts have in common is that at least one of the parties is an organized armed group.*

Armed groups have responsibilities according to rules of customary international humanitarian law (see [Section 4.3](#) on rules of customary IHL). Additionally, and very importantly, they have responsibilities under treaty law. The main standards that

relate to armed groups under international humanitarian law are included in Article 3 common to the Four Geneva Conventions of 1949, and Protocol II Additional to the Geneva Conventions:

- [Article 3](#) common to the Four Geneva Conventions relates to armed conflicts not of an international character. It places obligations on parties to the conflict, as a minimum, to treat humanely all persons taking no active part in the hostilities, without any adverse distinction, in all circumstances. Common Article 3 remains the core provision of humanitarian treaty law for the regulation of non-international armed conflicts. The 1949 Geneva Conventions are universally ratified. Therefore, common Article 3 is the only provision that is binding worldwide and governs all non-international armed conflicts. Since then, the fundamental character of its provisions has been recognized as binding in all armed conflicts, and as a reflection of ‘elementary considerations of humanity’.
- [Protocol II](#) Additional to the Geneva Conventions was adopted as a supplement to Common Article 3. It details various aspects of humane treatment, protection of the civilian population, and protection of objects indispensable to the survival of the civilian population, among other things. It applies only to non-international armed conflicts.

It is important to note that the great majority of the provisions of the Geneva Conventions of 1949, including Common Article 3, are considered to be customary law. In addition to Common Article 3 to the Four Geneva Conventions of 1949 and Protocol II Additional to the Geneva Conventions, many rules of customary international humanitarian law elaborate on protections during armed conflict of a non-international character.

Chapter 5

The contents of selected ESC
rights

In this chapter we will expand briefly on the content of various ESC rights. Each section starts by listing references to relevant provisions in the UDHR, followed by those in international and regional human rights treaties. The order in which the rights are presented here is based on how they appear in the ICESCR, considering that no right is more important than others. (See [page 8](#) for list of acronyms used in this handbook.)

Box 11: *Haki Zetu* resources on selected ESC rights

Detailed resources on selected ESC rights

More detailed resources have been developed as part of the original *Haki Zetu: ESC Rights in Practice* series on the following selected rights:

- [The Right to Work and Livelihoods](#)
- [The Right to Education](#)

- [The Right to Adequate Water and Sanitation](#)
- [The Right to Adequate Housing](#)
- [The Right to Health](#)
- [The Right to Adequate Food](#)
- [Land and Human Rights](#)

Source: amnesty.nl/actueel/haki-zetu-esc-rights-in-practice

5.1 The right to work, rights at work, and child labour

- UDHR, Articles 23, 24; ICESCR, Articles 6-8
- CRC, Article 32 (on child labour); CEDAW, Articles 11, 14(1); ICRMW, Articles 11, 25, 26, 27(1), 40, 52 and 54; ICERD, Article 5(e)(i); CRPD, Articles 26, 27; ICCPR, Article 8(3)(a)
- Arab Charter, Articles 34, 35; African Charter, Article 15; African Convention on the Rights and Welfare of the Child, Article 15 (on child labour); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Articles 13, 22(a), and 23(a)

Work relates to more than just survival; it contributes to enabling human dignity, and it contributes at the same time to a person's development. The right to work facilitates realizing the survival of the individual and that of his/her family, and realizing other human rights.

The right to work involves a number of interconnected rights, including freedom from forced labour; the rights to decide freely to accept or choose work; to fair wages and equal pay for work of equal value; to leisure and reasonable limitation of working hours; to safe and healthy working conditions; to join and form trade unions, and the right to strike.

The right to work should not be understood as an absolute and unconditional right to obtain work or employment, but it is the right of everyone to decide freely to accept or

choose work and to be able to have decent work. This includes the right to have decent work when self-employed, when working in family establishments, such as family-owned rural or agricultural or other enterprises, or when working in the informal sector. Decent work is about work that respects the fundamental human rights of the person, as well as the rights of workers in terms of conditions of work safety and remuneration. Decent work provides an income allowing workers to support themselves and their families. Equality in work conditions must be guaranteed to all workers without discrimination based on race, ethnicity, nationality, migration or health status, disability, age, sexual orientation, gender identity or any other such grounds.

Women must be guaranteed conditions of work not inferior to those enjoyed by men, enjoy equal pay for work of equal value, and work conditions must take into account women's specific needs. Persons with disabilities must be provided with the necessary and appropriate adjustments to their work environment.

Children must be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with their education, or to be harmful to their health or physical, mental, spiritual, moral or social development.

5.2 The right to social security and social protection

- UDHR, Article 22, 25(1); ICESCR, Articles 9, and 10
- CRC, Article 26; CEDAW, Article 11(1)(e); ICERD, Article 5(e)(iv); ICRMW, Articles 27, 45(1)(c), and 61(3); CRPD, Article 28(2)
- Arab Charter, Article 36; African Convention on the Rights and Welfare of the Child, Articles 19, 21, and 27; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 13(f)

The right to social security is of central importance in guaranteeing human dignity. It enables every person to access and maintain benefits in order to secure protection from: lack of work-related income due to sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; or unaffordable access to health care; or insufficient family support, particularly for children and adult dependents. It can play an important role in realizing the right to an adequate standard of living, poverty reduction and alleviation, preventing social exclusion and promoting social inclusion.

States must take steps to ensure that the right to social security is enjoyed without discrimination and on the basis of equality. States must also take steps to the maximum of their available resources to ensure that social security systems cover those persons working in the informal economy, including non-nationals. Where states are unable to guarantee the right to social security to all, they should appeal to the international community for support and assistance.

5.3 The right to an adequate standard of living

- UDHR, Article 25; ICESCR, Article 11
- CRC, Article 27; CEDAW, Article 14(2)(h); CRPD, Article 28; ICRMW, Articles 25, 43(1)(d), 43(3), and 61(1); ICERD, Article 5(e)(iii)
- Arab Charter, Article 38; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Articles 15, 16, and 21

The **right to an adequate standard of living** for individuals and families embodies a number of rights, including the rights to food, to adequate housing, to water and to clothing. Standard of living must be adequate for the person's physical, mental, spiritual, moral and social development. These rights are indivisibly linked to the inherent dignity of the human person and are indispensable for the fulfilment of other human rights.

The right to **food** incorporates the right to adequate food and the right to freedom from hunger. States must immediately tackle hunger and progressively ensure that everyone, alone or in community with others, has physical and economic access at all times to adequate food or means for obtaining it. This includes possibilities either for feeding oneself directly from productive land or other natural resources, or from well-functioning distribution, processing and market systems. This relates to both economic accessibility (through facilitation of economic activity, appropriate subsidies or aid) and physical accessibility (in particular for people in situations of marginalization or greater risk). Food must be available in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture.

The right to **adequate housing** should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head. It should be seen as the right to live somewhere in security, peace and dignity. Housing should be accessible to all, and the costs of housing should not undermine people's ability to satisfy their other needs. Housing must be located in safe areas, near transport links and employment opportunities. People must have access to water, sanitation and other facilities that are essential for health, security, comfort and nutrition. It must respect cultural rights. States must ensure that all people have a minimum degree of security of tenure, which offers them legal protection from forced eviction, harassment and other threats. Forced eviction is the removal of people against their will from the homes or land they occupy, without due process or other legal safeguards. These safeguards include genuine consultation with affected communities to identify all feasible alternatives to eviction, prior and adequate notice, provision of legal remedies, compensation for losses, and adequate alternative housing to those who cannot provide for themselves. Forced eviction is characterized as a gross violation

of a range of human rights, reflecting its severity. The effects of forced eviction can be catastrophic, especially for people in situations of marginalization or greater risk.

The right to **water** includes availability of sufficient water for personal and domestic uses, physical access within or in the immediate vicinity of each household. It must be affordable and of adequate quality. States must prioritize, as part of their immediate obligations, access for everyone to the minimum essential amount of water that is sufficient and safe for personal and domestic uses to prevent disease. States must adopt the necessary progressive measures directed towards the full realization of the right to water, including by taking positive measures to assist individuals and communities to enjoy the right. Access to water is also an element of other rights. It can be essential in order to realize the rights to food and health. It is also essential for securing livelihoods, such as for farmers or others who rely on water for their daily work.



Access to **clothing** is regarded important in general, and in relation to its link to inherent dignity, as well in relation to its importance to particular groups of people including people with disabilities who have particular clothing needs, so as to enable them to function fully and effectively in society. Clothing is also important for children, older persons, refugees, internally displaced, and migrants.

An adequate **standard of living** must be guaranteed without discrimination. In developing programmes and allocating resources, states must prioritize the most disadvantaged individuals and groups who are marginalized or have traditionally faced difficulties in exercising this right, including women, children, minority groups, indigenous peoples, refugees, asylum seekers, internally displaced persons, migrant workers, prisoners and detainees.

5.4 The right to health

- UDHR, Article 25; ICESCR, Article 12
- CEDAW, Articles 11(1)(f) and 14(2)(b); CRC, Articles 23(3)(4), 24, 25, and 32(1); ICERD, Article 5(e)(iv); CRPD, Articles 16(4), 25, and 26; ICRMW, Articles 28, 43(e) and 45(1)(c)
- Arab Charter, Articles 34(3) (in relation to protection of the child), 39, 40(3)(5); African Charter, Article 16; African Convention on the Rights and Welfare of the Child, Articles 14, 20(2)(a), and 21(1)(a); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Articles 2(b) and 5(c) (on harmful practices and health), and Article 14 (health and reproductive rights)

The right to the highest attainable standard of physical and mental health entails the right to the enjoyment of a variety of health facilities, goods, services and conditions.

The right to health is not to be understood as a right to be healthy, as this is influenced by many factors including the individual's biological preconditions. For example, states cannot provide protection against every possible cause of human ill health. But in the case of ill health, states must ensure treatment through access to services and medicines. The right to medical treatment includes the creation of a system of urgent medical care in cases of emergencies, and medical service and medical attention in the event of sickness.

Apart from emergencies, people should also have access to affordable health protection services, such as vaccinations and preventive health care; access to essential medicines, goods and services; healthy occupational and environmental conditions; and prevention, treatment and control of diseases including epidemic diseases.

The right to health also includes freedoms like the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation.

It also extends to the underlying elements connected with health, such as access to safe and drinkable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health.

The right to the highest attainable standard of health must be guaranteed without discrimination. Attention must be given to groups or individuals that are in vulnerable situations. Mothers and children are entitled to special care and assistance.

Governments must take measures to provide a clean environment as a necessary step to ensure the highest attainable standard of health.

5.5 The right to education

- UDHR, Articles 25 and 26; ICESCR, Articles 13 and 14
- CRC, Articles 28 and 29 ; CEDAW, Articles 10, 14(2)(d), and 16(1)(e) ; ICERD, Article 5(e)(v); CRPD, Article 24, 26(1); ICRMW, Articles 30, 43(a), 45(1)(a), and 45(4)
- Arab Charter, Articles 34(3) (in relation to protection of the child) and 41; African Charter, Article 17; African Convention on the Rights and Welfare of the Child, Articles 11 and 20(2)(a); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 12

The right to receive education includes the right to free and compulsory primary education for all, regardless of gender. Primary education must also be available to all children within the state regardless of their nationality status (for example refugee or migrant children). Secondary education, higher education, and technical and professional education must be made available and progressively made free of charge. Parents should be able to freely choose schools for their children. Governments must ensure that schools meet minimum educational standards.

Education must be directed to the full development of individuals, enabling all persons to participate effectively in a free society, and it must promote understanding among people, including all ethnic, racial, and religious groups.

The right to education also includes the availability of educational institutions and programmes in sufficient quantity and of sufficient quality. Functioning education institutions require at the very least buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers, teaching materials, and so on. The form and substance of education, including curricula and teaching methods, must be relevant, culturally appropriate and of good quality.

- *Right to education is both a human right and an indispensable means of realizing other human rights.*

5.6 Right of everyone to take part in cultural life

- UDHR, Article 27; ICESCR, Article 15
- CRC, Article 31(2); CEDAW, Articles 5 and 13(c); ICERD, Article 5(e)(vi); CRPD, Article 30; ICRMW, Articles 17(1), 31(1), 43(1)(g), 43(3), 45(1)(d), 45(3), and 64(2)

- Arab Charter, Article 42; African Charter, Articles 17(2), and 29(7); African Convention on the Rights and Welfare of the Child, Articles 11 (2)(c), 12, 13(2), and 21 (protection against harmful cultural practices); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 2(2) (cultural patterns and harmful cultural practices), and Article 17

Culture must be understood as a broad and inclusive concept encompassing all manifestations of human existence. The expression “cultural life” is an explicit reference to culture as a living process, historical, dynamic and evolving, with a past, a present and a future.

Cultural rights may be exercised by a person as an individual, in association with others, or within a community or group.

Cultural rights include rights of persons belonging to minorities to enjoy their own culture, to profess and practise their own religion, to use their own language, in private and in public, and to participate effectively in cultural life; and the rights of indigenous peoples to their cultural institutions, ancestral lands, natural resources and traditional knowledge. States should also pay attention to the protection of the cultural identities of migrants and refugees.

The right of everyone to take part in cultural life is closely related to the other cultural rights: the right to enjoy the benefits of scientific progress and its applications; the right of everyone to benefit from the protection of any scientific, literary or artistic production they author; and the right to freedom indispensable for scientific research and creative activity.

The right of everyone to take part in cultural life is intrinsically linked to the right to education, through which individuals and communities pass on their values, religion, customs, language, and other cultural references, and which helps to foster an atmosphere of mutual understanding and respect for cultural values.

The way in which various rights are implemented may also have an impact on cultural life and cultural diversity. Therefore, it is important to consider cultural values attached to food and food consumption, the use of water, the way health and education services are provided, and the way housing is designed and constructed, for example.

However, while account must be taken of national and regional particularities and various historical, cultural, and religious backgrounds, it is the duty of states, regardless of their political, economic or cultural systems, to promote and protect all human rights and fundamental freedoms. No one may invoke cultural arguments to infringe upon human rights guaranteed by international law, nor to limit their scope.

5.7 The right to self-determination

- ICESCR, Article 1; ICCPR, Article 1
- Arab Charter, Article 2(1); African Charter, Article 20

Both the ICESCR and the ICCPR start with proclaiming that:

“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.”

It is clear from the first Article common to the ICESCR and the ICCPR that self-determination is not limited to indigenous people, as is commonly assumed, but belongs to all peoples. This will therefore include the political right to self-determination.

Indigenous peoples have the right to self-determination and, hence, the right to freely determine their political status and freely pursue their economic, social and cultural development. For indigenous people, the right to self-determination is closely linked to the right to culture, traditional land, resources among other issues which can include indigenous peoples' autonomy over cultural matters.

Chapter 6

ESC rights and marginalized
individuals or groups

This chapter focuses on some select groups of the population who are discriminated against, resulting in them experiencing structural inequality and being placed in situations of marginalization or greater risk. These are not the only groups or people in society who may face structural discrimination. (See also [Section 3.4](#) on prohibition of discrimination.)

6.1 Understanding marginalization and structural inequality

The concepts of vulnerability and marginalization are fluid concepts that may differ from country to country, or even within one country, and from one region to another. They also change with time and according to emerging circumstances.

Box 12: Marginalization and inequality

People experiencing structural inequality leading to denial of their human rights as a result of structural discrimination which occurs when an entire network of rules and practices disadvantages less empowered groups while serving at the same time to advantage the dominant group.

Marginalized groups do not have the same access to power and resources as the rest of the population, and/or are directly or indirectly not empowered to participate in society on an equal basis with the dominant group, which often results in their human rights being denied.

People at greater risk are those who are less able to protect themselves in certain situations. Examples include some farmers facing higher risks because of drought; an epidemic that could kill people who are hungry or weak; or conflict, where women are likely to be raped by soldiers or members of armed groups. They may also be people who have special physical or emotional needs such as children or people with disabilities.

Many people fall in all three groups at the same time.

Discrimination results in structural inequality and situations of marginalization and greater risks, which in turn exacerbate discrimination. Discrimination can be based on one or more often intersecting grounds, and can manifest through many ways.

Example: A new law discriminating against an ethnic group of refugees and prohibiting them from working in certain jobs may limit them to lower paid jobs, which may result in economic hardship to members of the group in the short time and for generations to come. This may impact access to education for the children, who are forced to work to support their families, and access to paid health services. Slowly, this will lead to members of the group facing

greater risk and structural inequality. Such discrimination, if carried out for generations, and if entrenched in laws and official practices, results in the marginalization of the group. This is often the case with refugees and migrants, as is the case of Palestinian refugees in Lebanon, or migrant workers in several Gulf countries.

Box 13: A human rights approach to understanding marginalization and structural inequality faced by individuals or groups

Universality, indivisibility, inalienability and interdependence of all human rights and fundamental freedoms require that all persons must be guaranteed full enjoyment of rights without discrimination.

Non-discrimination and equality are fundamental components of international human rights law and essential to the exercise and enjoyment of economic, social and cultural rights. Discrimination against any person is a violation of their inherent dignity and worth (see [Section 3.4](#) on discrimination).

Therefore, states must promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms for all persons.

However, social systems and norms, rules and regulations, as well as discriminatory attitudes, stereotyping and prejudice, and other barriers often stop people from enjoying their rights fully. People who suffer from such denial of rights face structural inequality and may become marginalized and put at greater risk.

Such systemic impairment is often reflected in legal rules, policies, practices or predominant cultural attitudes, in either the public or private sector which create relative disadvantages for some groups, and privileges for other groups. This creates structural discrimination.

In some cases, discrimination against some groups is persistent and deeply entrenched in social behaviour and organization, often involving unchallenged or indirect discrimination. Such discrimination sometimes runs for several generations, therefore deepening the marginalization and greater exposure to risks. Also, some individuals or groups of individuals face discrimination on more than one of the prohibited grounds, which is often referred to as intersectional discrimination, for example poor women belonging to an ethnic or religious minority.

Discrimination that leads to greater exposure to risks and marginalization, by omission or commission, must be eliminated in all its forms.

6.2 Persons or groups at risk or marginalized or facing structural inequalities

In this section we will focus on women and girls, children, migrants, refugees, asylum-seekers, internally displaced persons, and persons with disabilities.

6.2.1 Women and girls

- ▶ *Women and girls are not a marginalized group as such, but they face structural discrimination and inequality which in some situations may lead to their marginalization and to them being exposed to greater risks.*

The equal right of men and women to the enjoyment of all human rights is a fundamental principle of international law. The ICESCR provides for the equal rights of men and women to the enjoyment of ESC rights (Article 3).

The main international and regional treaties that relate specifically to rights of women and girls are:

- The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and its Optional Protocol on communications procedures (see [Section 3.5.2](#) on communications procedures);
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (known as the Maputo Protocol);
- Several provisions of the Arab Charter on Human Rights relate to rights of women and girls. (There is no separate treaty in the framework of the League of Arab States that relates to their rights.)

The objective of CEDAW is the elimination of all forms of discrimination against women and girls on the basis of their gender and achieving substantive equality. It guarantees women and girls the equal recognition, enjoyment and exercise of all economic, social, cultural, civil, and political rights in the public, private or any other field, irrespective of their marital status, and on a basis of equality with men and boys. (For details on ESC rights in CEDAW, see [Chapter 5](#) on the different ESC rights.)

- ▶ *CEDAW focuses on discrimination against women and girls, emphasizing that they have suffered, and continue to suffer from various forms of discrimination because of their gender.*
- ▶ *However, it is important to stress that in addition to CEDAW, various international and regional treaties include standards that relate to both the CP and ESC rights of women and girls.*

CEDAW sets out three types of obligations:

- The obligation to ensure that there is no direct or indirect discrimination against women and girls in laws, and that women and girls are protected against discrimination in the public as well as the private spheres, by competent tribunals as well as by ensuring sanctions and other remedies.
- The obligation to improve the position of women and girls in practice, through implementing concrete and effective policies and programmes to achieve substantive equality including through adopting temporary special measures.
- The obligation to change prevailing gender relations and the persistence of harmful gender stereotypes and practices that affect women and girls, not only through acts by private individuals but also when embedded in law, and legal and societal structures and institutions.

In Article 5, CEDAW states:

“States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.”

The position of women and girls will not be improved as long as the underlying causes of discrimination against them, and of the structural inequality they face, are not effectively addressed. According to CEDAW, states therefore may need to take all necessary measures including specific temporary special measures to advance women’s rights and position in society (see [Box 8](#) on temporary special measures).

Article 4 of CEDAW clarifies that adoption of temporary special measures by states, which are aimed at accelerating de facto equality between men and women, and addressing the underlying causes of gender discrimination, are not considered discrimination and must not replace ongoing and permanent measures. Temporary special measures aim at realizing not only formal equality, but also inequality in practice between men and women. They address prevailing gender relations and the persistence of gender-based stereotypes. Such measures may be introduced through laws, effective policies and programmes. Examples of such temporary special measures include increasing women’s university education through targeted financial assistance; designing and increasing special vocational training programs for women; introducing special credit loans for women, including loans for women in rural areas (for more information on

temporary special measures, see [CEDAW General Recommendation 25 on Temporary Special Measures](#)).

It is important to note that a gender-sensitive approach to laws, policies, and allocation of resources does not only mean that these strive for equal treatment of men and women. States must also ensure that such laws or policies do not have unintended negative effects on women and girls. The following are examples of actions that the state can take:

- establish monitoring mechanisms to assess the impact of laws, policies, strategies and budgets on women and girls (generally referred to as National Women Machineries);
- allocate budgets to ensure that there are adequate resources to deal with the long-existing heritage of discrimination against women and girls;
- allocate budgets to train all relevant officials including judges, law enforcement officers, inspectors, teachers, and other relevant professions on gender equality;
- allocate adequate budgets to promote education and training for women and girls; and
- reduce constraints faced by women in reconciling professional and family responsibilities by promoting adequate policies for childcare and care of dependent family members.

States that provide humanitarian assistance must ensure a gender-responsive approach to their planning and provision of this assistance. For example, humanitarian assistance for internally displaced, refugee or migrant people in the form of distribution of non-food items should take into account the specific sanitary needs of women and girls.

Example 3: Humanitarian assistance in Syria

A study has found that some humanitarian assistance programmes for survivors of violence against women and girls in Syria and refugee-hosting countries in the region face shortage of funding, especially for safe shelters, a lack of a gender perspective, and total absence of cultural sensitivity or specialized services to respond to the specific needs of certain groups, including girls, widows, women human rights defenders and former detainees. For instance, one humanitarian programme put tents clearly marked 'psychological support for women' in the centre of camps with the effect of discouraging women from attending because of the fear of stigma.

Source: "Syria Response Consultations on the UK National Action Plan on Women, Peace and Security", 2017, page 16, docs.euromedwomen.foundation/files/ermwf-documents/7933_4.125.womenpeaceandsecurity-syria.pdf

Further, states must monitor the private sector's compliance with national legislation on working conditions, ensuring that labour inspectors are effectively functioning and trained.

Example: A gender-sensitive approach to ensuring equality at the workplace means that states must identify and eliminate the underlying causes of pay differentials and gender-biased requirements. For example, a promotion requirement that places a condition of continuation of work at a certain number of years, but that considers maternity leave as a discontinuation of employment, limits women's promotion opportunities and is therefore discriminatory.

6.2.2 Children

The main international and regional treaties that relate specifically to rights of children are:

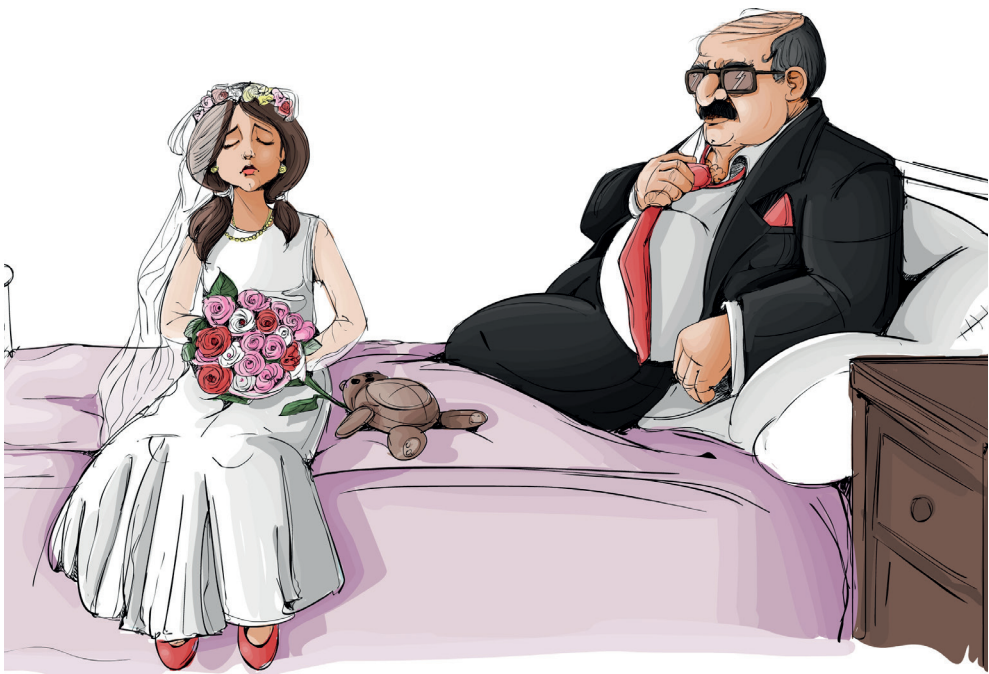
- The UN Convention on the Rights of the Child (CRC) and its three Optional Protocols, including the Optional Protocol on communications procedure (see [Section 3.5.2](#) on Optional Protocols on communications)
- The African Charter on the Rights and Welfare of the Child
- The Charter of the Rights of the Arab Child, as well as special provisions in the Arab Charter on Human Rights related to children

The UN Convention on the Rights of the Child defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier” (Article 1).

All Arab States have ratified the CRC. On 20 November of every year, countries celebrate the adoption of the CRC.

Some states define the child in their national legislation as persons below the age of 18, for example by defining a lower age in their national legislation for children to get married or to work. The Committee reminds states parties of the obligation to recognize that persons up to the age of 18 years are entitled to continuing protection from all forms of exploitation and abuse. The Committee has recognized that children below the age of 18 may engage in activities like work, under specific conditions. However, on various occasions when considering states reports and in General Comments, the Committee has specified that the minimum age limit should be 18 years for marriage, recruitment into the armed forces, involvement in hazardous or exploitative work and the purchase and consumption of alcohol and tobacco, in view of the degree of associated risk and harm (see for example [General Comment 20 of the Committee on the Rights of the Child on the implementation of the rights of the child during adolescence](#)). The Committee criticized states that specified lower age limits for these areas, or which have different age limits for boys and girls.

Work, child labour and economic exploitation: The Committee on the Rights of the Child urges states to support out-of-school adolescents in a manner appropriate to their age to facilitate the transition to decent work, including by ensuring consistency between education and labour laws, and to adopt policies to promote their future employment (see for example [General Comment 20 of the Committee on the Rights of the Child on the implementation of the rights of the child during adolescence](#)). While acknowledging that age-appropriate forms of work play an important developmental role in the lives of adolescents, equipping them with skills and enabling them to learn responsibilities and, where necessary, contribute to their families' economic well-being and support their access to education, the Committee emphasizes that all persons under the age of 18 must be protected from economic exploitation and the worst forms of child labour. Minimum working age must be aligned with international standards and with compulsory education. Private companies must refrain from engaging children in hazardous labour while ensuring they comply with the minimum age for child labour.



Marriage: The Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women stipulate that a minimum legal age of marriage for girls and boys, with or without parental consent, must be established at 18 years (see [Joint General Recommendation Number 31 of the Committee on the Elimination of Discrimination against Women and General Comment Number 18 of the Committee on the Rights of the Child on harmful practices](#)). No marriage at an earlier age is allowed under any circumstances.

Box 14: Low and different ages in various countries

The Committee on the Rights of the Child repeatedly criticizes states for establishing low ages of maturity for the child, which enables child marriage, work including hazardous labour, and school drop-out. The Committee also criticizes setting different ages for boys and girls.

In 2019, the Committee on the Rights of the Child criticized **Bahrain** for setting different minimum ages for marriage for girls and boys, and for setting the allowable age below 18 years.

In 2018, the Committee on the Rights of the Child expressed serious concern about the continued high prevalence of child marriages in **Mauritania**. The Committee urged the state to amend its legislation in order to prohibit marriage under the age of 18 years, and to take all necessary measures to eliminate child marriages.

In 2017, when considering the report of **Lebanon**, the Committee on the Rights of the Child continued to be seriously

concerned that the minimum age of marriage is 14 years for girls and 16 years for boys, and even younger in certain circumstances, according to the personal status laws of the different religious communities. At the same time, the Committee commended Lebanon for raising the age of compulsory education to 15 years.

Sources: CRC review of Bahrain, tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/BHR/CO/4-6&Lang=En

CRC review of Mauritania, tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/MRT/CO/3-5&Lang=En

CRC review of Lebanon, tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/LBN/CO/4-5&Lang=En

The CRC has three Optional Protocols:

- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
- Optional Protocol to the Convention on the Rights of the Child on a communications procedure (see [Section 3.5](#) on right to effective remedy)

Box 15: General principles of the CRC

The CRC includes four important principles. These principles have direct relevance to children's enjoyment of ESC rights:

Non-discrimination (Article 2): States must ensure that all children within their jurisdiction enjoy their rights without discrimination. This applies to every child, "irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status".

Best interests of the child (Article 3): When the authorities of a state take decisions which affect children, the best interests of children must be a primary consideration. This principle relates to decisions by courts of law, administrative authorities, legislative bodies and both public and private

social-welfare institutions.

The right to life, survival and development (Article 6): The right to life includes the right to survival and to development, which should be ensured "to the maximum extent possible". The term "development" in this context should be interpreted in a broad sense, adding a qualitative dimension: not only physical health is intended, but also mental, emotional, cognitive, social and cultural development.

The views of the child (Article 12): Children should be free to have opinions in all matters affecting them, and those views should be given due weight "in accordance with the age and maturity of the child". The underlying idea is that children have the right to be heard and to have their views taken seriously, including in any judicial or administrative proceedings affecting them.

The rights of the child are interlinked. For example, the right of the child to a nationality and identity is very important for the enjoyment of other rights including education (Article 28 of the CRC) and healthcare (Article 24 of the CRC). The CRC provides that every child must be registered immediately after birth and shall have the right from birth to a name and to acquire a nationality (Article 7). The CRC adds that states must undertake to respect the right of the child to preserve his or her identity, "including nationality, name and family relations as recognized by law without unlawful interference" (Article 8).

Example 4: The plight of Yazidi child survivors of ISIS

Children are often victims of the most extreme crimes during armed conflicts. They also face extreme challenges in post-war settings.

Yezidi children in Iraq were victims of crimes committed by ISIS, including war crimes, crimes against humanity and what the UN has characterized as genocide. Amnesty International published a report, which shows that while thousands of children were killed or abducted, hundreds have survived and returned to their families in Iraq. However, these child survivors continue to face significant challenges. Their physical health is often severely compromised, many experience mental health conditions. Because of the lapse in time between their abduction and return, they sometimes cannot speak or even understand the dialect of Kurdish spoken by their families. Many are unable to re-enrol in school after missing several years. The report shows that health needs of child survivors are not being met, particularly long-term, serious health conditions and injuries. For example, child survivors who return from captivity have endured unimaginable trauma. Yet, the psychosocial services and programmes available to Yezidi child survivors fall short of meeting these children's rights and needs. Yezidi girls suffered a wide range of abuses in ISIS captivity, including sexual violence. Yet, the report shows that the existing services and programmes for survivors of sexual violence have largely neglected girls, focusing instead on women survivors.

Source: Amnesty International: "Iraq: Legacy of Terror: The Plight of Yazidi Child Survivors of ISIS", July 2020, [amnesty.org/en/documents/mde14/2759/2020/en/](https://www.amnesty.org/en/documents/mde14/2759/2020/en/)

6.2.3 Migrants, refugees, asylum seekers, and internally displaced persons

The CESCR stresses in its General Comment 20 that ESC rights apply to everyone including non-nationals, such as refugees, asylum seekers, stateless persons, migrants, and victims of international trafficking, regardless of their legal status and documentation. Refugees and migrant workers and members of their families often end up living in another country as non-nationals. Internally displaced people are nationals who are displaced/expelled from their place of living within the borders of their own country. (More information on rights of non-citizens can be found at [ohchr.org/en/publications/special-issue-publications/rights-non-citizens](https://www.ohchr.org/en/publications/special-issue-publications/rights-non-citizens); information on ESC rights of migrants in irregular situation can be found at [ohchr.org/en/publications/special-issue-publications/economic-social-and-cultural-rights-migrants-irregular](https://www.ohchr.org/en/publications/special-issue-publications/economic-social-and-cultural-rights-migrants-irregular).)

Box 16: Asylum seeker, refugee or migrant?**Asylum seeker**

The right of persons to seek asylum from persecution in other countries is recognized in international law, including Article 14 of the UDHR: “Everyone has the right to seek and to enjoy in other countries asylum from persecution”. An asylum seeker is an individual who is seeking international protection. An asylum seeker is someone whose claim has not yet been finally decided on by the country in which they have applied for refugee status. Not every asylum seeker will ultimately be recognized as a refugee, but every refugee is initially an asylum seeker.

Refugee

Refugees are people fleeing conflict or persecution. They are defined and protected in international law, and must not be expelled or returned to situations where their life and freedom are at risk. Article 1A(2) of the 1951 Refugee Convention defines a refugee as any person who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted because of their race, religion, nationality, membership of a particular social group, or political opinion.

Migrants

Migrants are people staying outside their country of origin who are not asylum-seekers or refugees. Not all migrants are migrant workers or members of families of migrant workers.

The ICRMW details rights and guarantees for migrant workers and members of their family. Article 5 of the ICRMW clarifies that migrant workers and members of their families are considered as documented or in a regular situation, or are considered as non-documented or in an irregular situation. The ICRMW details rights of migrant workers and members of their families, and clearly clarifies that states must not refuse or limit the number of rights for migrant workers and members of their families by reason of their irregular situation. There are various forms of migrant workers, including “frontier workers” which refers to a migrant worker who retains his or her habitual residence in a neighbouring state to which he or she normally returns every day or at least once a week; and “seasonal worker” which refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year.

- *Discrimination against asylum seekers, refugees, migrants or internally displaced persons, on the basis of their race, ethnicity, or religion, or on the basis of their status (as refugees, asylum seekers, migrants, or internally displaced) is prohibited (see [Section 3.4](#) on prohibition of discrimination).*

Standards related to refugees

- The 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol
- The Convention Governing the Specific Aspects of Refugee Problems in Africa (1969 OAU Refugee Convention)

Standards related to migrant workers and members of their families

- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)

Standards related to internally displaced people

- All international and regional human rights instruments apply to internally displaced people. States continue to have full obligations in relation to internally displaced people within their territory the same way as for the rest of the population
- [Guiding Principles on Internal Displacement](#)

All the provisions in the ICESCR and other ESC rights provisions in other international treaties such as CRC state “everyone has the right to...”. This means that all the ESC rights apply to everyone who lives within the jurisdiction of the state, regardless of their nationality status or refugee or asylum status or other such status. Special attention must be given to groups in a particularly vulnerable situation within the refugee and internally displaced communities, particularly women and girls, children in general, older people, and persons with disabilities.

- ▶ *Refugees should receive protection in the country of asylum.*
- ▶ *An “irregular migration status” is an example of a prohibited ground of discrimination in ESC rights.*

6.2.4 Persons with disabilities

Article 1 of the CRPD specifies that persons with disabilities include “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

The main international and regional treaties related to rights of persons with disabilities are the following:

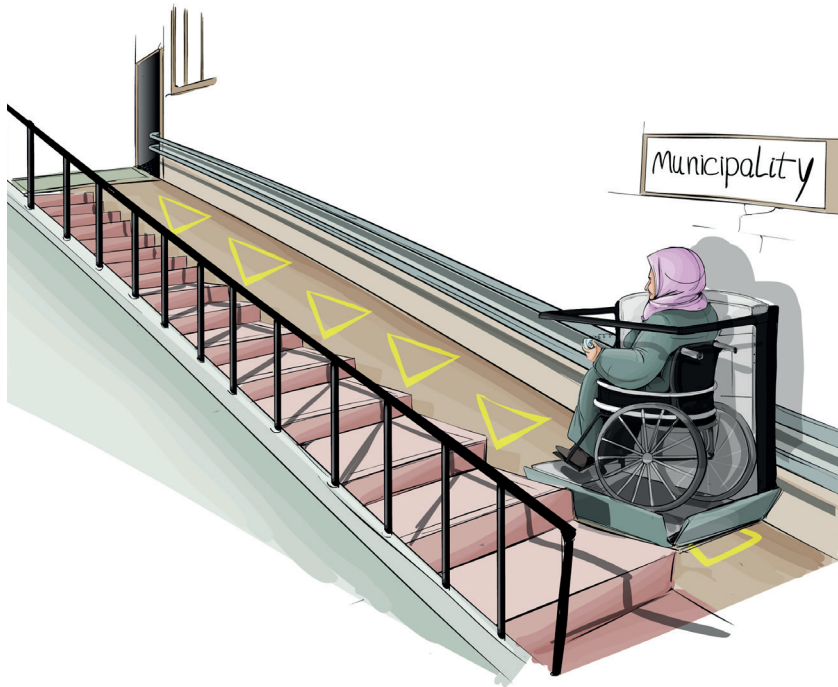
- The UN Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol on communications (see [Section 3.5](#) on effective remedy);
- In Africa, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa;
- There is no separate treaty on rights of people with disability in the framework of the League of Arab States. However, Article 40 of the Arab Charter on Human Rights is particularly relevant to the rights of persons with disabilities.

- *The CRPD includes similar obligations in relation to all ESC rights which are found in other treaties, including the ICESCR.*
- *States that are not party to specific treaties related to persons with disabilities continue to have obligations in relation to persons with disabilities according to all other the international treaties they are party to.*

In its [General Comment Number 5 on rights of persons with disabilities](#), the Committee on ESC rights clarifies that the obligation of states to promote progressive realization of relevant ESC rights to the maximum of their available resources in relation to rights of persons with disabilities “clearly requires Governments to do much more than merely abstain from taking measures which might have a negative impact on persons with disabilities.” States are required to take positive action, for example:

- Reducing structural disadvantages and giving appropriate preferential treatment to people with disabilities in order to achieve the objectives of full participation and equality within society;
- Making additional resources available for this purpose;
- elaborating, adopting, and operationalizing a wide range of specially tailored measures;
- Undertaking policy making and programme implementation in close consultation with, and based on the involvement of, representative groups of the persons concerned; and
- Ensuring that both the public and private sphere, are, within appropriate limits, subject to regulation to ensure the equitable treatment of persons with disabilities.

Article 9 of the CRPD elaborates on various aspects of accessibility and affirms that states must take appropriate measures to enable persons with disabilities to live independently and participate fully in all aspects of life. These measures must ensure to persons with disabilities “access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.” Measures must identify and eliminate obstacles and barriers to accessibility. This applies to buildings, roads, transportation, indoor and outdoor facilities including schools, medical facilities, and workplaces. It also applies to information and means of communicating.



- ▶ *States must address discrimination, such as in access to education, and denial of reasonable accommodations in public places, such as public health facilities and the workplace.*

The principle of reasonable accommodation is an important principle of the CRPD. Article 2 clarifies that “reasonable accommodation” means “necessary and appropriate modification and adjustments [...] to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”. “Reasonable accommodation” includes, for example, adjustment of a rule, practice, condition or requirement to take into account the specific needs of an individual with disabilities.

The use of the word accommodation in “reasonable accommodation” in English does not refer to its usual meaning of a place of living or sleeping. It refers to measures that must be put in place to ensure that persons with disabilities can exercise their human rights.

Example: In the workplace, reasonable accommodation can include acquiring or adapting software and keyboards for an employee with a visual impairment, training or allocating extra time to complete a task. In education, reasonable accommodation might require the provision of text in Braille, alternative ways to fill course requirements, tutorial assistance or use of specialized technology.

- *States must change the typical approach to disability which relies on charity and/or medical models and approaches. Measures to be adopted by states include addressing and changing humiliating stereotypes, and stigma of and prejudices against persons with disabilities as being a burden on society.*

Evidence shows that women and girls with disabilities face barriers which create situations of multiple and intersecting forms of discrimination against them, including in equal access to education, economic opportunities, and social interactions. This can limit their control over their own lives across a range of contexts, for example with regard to health care, including sexual and reproductive health services, and to where and with whom they wish to live. Also, children with disabilities often experience multiple and intersecting discriminations. Internally displaced persons with disabilities and/or refugees with disabilities often lack equal access to basic necessities.

- *Women and girls with disabilities in situations of humanitarian emergencies and conflict face increased risk of violence, including sexual violence, exploitation or abuse. They are less likely to be able to have access to recovery and rehabilitation services or access to justice.*

Example: A state school that refuses to admit a child with disabilities in order not to change the scholastic programme – this is an example of direct discrimination on the basis of disability.

Example: A school which does not provide books in a format accessible for children with visual disabilities, like Braille or large font, would be indirectly discriminating against these children.

Example: Workplaces that are designed and built in ways that make them inaccessible to wheelchairs discriminate against persons using wheelchairs.

Chapter 7

Human rights mechanisms

This chapter includes information about the main UN human rights mechanisms, including treaty bodies, special procedures and the UPR. The chapter will discuss the main roles of these bodies and how to find useful information about them. The chapter also discusses the mechanisms of the African Union and the League of Arab States.

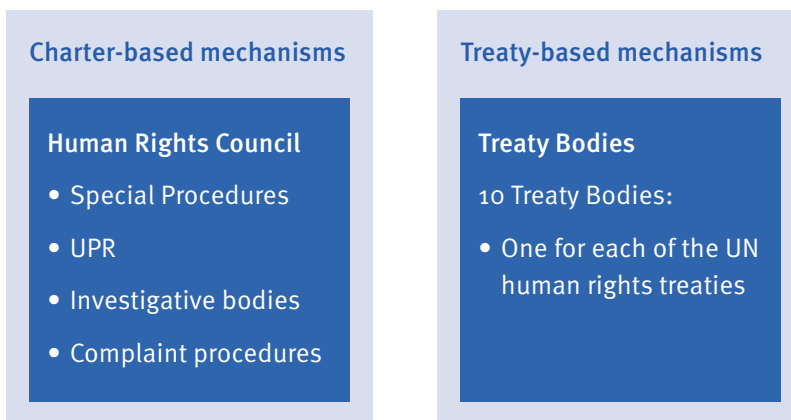
7.1 What are human rights mechanisms?

Over decades, through collective efforts and building on learning from past experience, the UN and regional bodies have developed a system of various mechanisms for reviewing states' implementation of their human rights obligations. Today, the system of human rights mechanisms contributes towards advancing human rights at the national level through monitoring implementation, interpreting

It is important and useful that CSOs and individual human rights defenders engage with human rights mechanisms, as they can bring information on issues experienced by rights holders that are not highlighted by governments themselves.

provisions of human rights law, reviewing complaints by individuals, and providing conclusions and recommendations for improved compliance.

Figure 4: UN human rights mechanisms



Recommendations made by human rights mechanisms can be used to provide technical assistance to states to enhance their capacity to deal effectively with human rights challenges and to share best practices in the field of human rights. For example, OHCHR and human rights organizations use the recommendations of human rights mechanisms to frame projects for helping states implement these recommendations.

Recommendations by human rights mechanisms can also be used as a framework for monitoring implementation of obligations by states. CSOs can integrate the implementation of these recommendations into their monitoring efforts (see [Part II Chapter 2](#) on monitoring).

7.2 UN treaty bodies

7.2.1 *What are the treaty bodies?*

Treaty bodies are committees of independent human rights experts. There are ten human rights treaty bodies covering each of the core UN human rights treaties. Treaty bodies meet in Geneva, Switzerland. Their work is supported by the Office of the High Commissioner for Human Rights (OHCHR) in Geneva.

Box 17: UN treaty bodies

The UN treaty bodies

(in order of the year of their establishment)

- The **Committee on the Elimination of Racial Discrimination** (CERD) monitors the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (4 January 1969);
- The **Committee on Economic, Social and Cultural Rights** (CESCR) monitors the implementation of the International Covenant on Economic, Social and Cultural Rights (3 January 1976);
- The **Human Rights Committee** (CCPR) monitors the implementation of the International Covenant on Civil and Political Rights (23 March 1976) and its optional protocols;
- The **Committee on the Elimination of Discrimination against Women** (CEDAW) monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women (1979) and its optional protocol (3 September 1981);
- The **Committee against Torture** (CAT) monitors the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (26 June 1987);
- The **Committee on the Rights of the Child** (CRC) monitors the implementation of the Convention on the Rights of the Child (2 September 1990) and its optional protocols (12 February 2002);
- The **Committee on Migrant Workers** (CMW) monitors the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1 July 2003);
- The **Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment** (SPT) established pursuant to the Optional Protocol of the Convention against Torture (OPCAT) (22 June 2006) visits places of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment;

- The **Committee on the Rights of Persons with Disabilities** (CRPD) monitors the implementation of the International Convention on the Rights of Persons with Disabilities (3 May 2008);
- The **Committee on Enforced Disappearances** (CED) monitors the implementation of the International Convention for the Protection of All Persons from Enforced Disappearance (23 December 2010).

- *Some of these treaty bodies deal directly with ESC rights as illustrated in previous chapters, such as CESCR, CEDAW, CRC, CRPD, and CMW.*
- *Others, for example CAT, also indirectly deal with ESC rights, because they oversee issues related to conditions in detention – including access to food, water, medical treatment as well as hygiene. Therefore, all treaty bodies are relevant to ESC rights, in one way or another.*

7.2.2 Role of treaty bodies

Treaty bodies fulfil important roles that help strengthen the implementation of treaty obligations by states. Their main roles include:

- Monitoring treaty implementation, by issuing concluding observations and recommendations after consideration of state reports;
- Interpretation of treaty texts, by issuing General Comments or Recommendations in which treaty bodies explain aspects of the human rights obligations of the treaty they oversee; and
- Considering complaints by individuals or groups of individuals concerning violations of the treaties.

Consideration of state reports

When they become parties to treaties, states accept obligations to submit periodic reports to the relevant treaty bodies on how the rights in the treaties are being implemented in practice. In addition to the state report, treaty bodies may receive information from various other sources:

- National Human Rights Institutions (NHRIs);
- Civil society organizations (CSOs), both international and national, who can submit parallel reports (also commonly known as shadow reports);
- United Nations entities; and
- Other intergovernmental organizations, and professional groups and academic institutions.

It is preferred to use the term “parallel reports”, not “shadow reports” in order not to downgrade but reflect their importance. UN mechanisms rely on them and integrate them officially in the process because of their importance.

- *Most committees allocate time for discussion with CSOs. This helps members of treaty bodies understand the situation in more depth which can lead them to ask specific questions during the dialogue with the state representatives.*
- *State reports, reports by CSOs and other entities such as NHRIs, and the Committee's concluding observations and recommendations, are all public information, which is published on the OHCHR website.*

Submission of information by CSOs to treaty bodies is very important because it draws attention to issues that members of the Committees may not know about, and also fills gaps in state reports, therefore helping members of treaty bodies to ask the state representatives specific questions about these issues.

On the basis of the information received and constructive dialogue, treaty bodies issue their concerns and recommendations, known as “concluding observations”.

Example 5: CSO joint report on ESC rights in Egypt

A joint report was submitted by 57 organizations for consideration by the Committee on Economic, Social and Cultural Rights in its consideration of the report by Egypt in 2013. The joint submission highlighted the following:

In Part I, the organizations analysed the economic crisis that the country has been facing. They argued that the catalyst for the 2011 revolution in Egypt was growing economic and social deprivations and inequality, manifested in rising corruption, failing public services, and severely restricted options for participation and representation in policymaking.

In Part II, the organizations analysed spending cuts imposed by reducing food and fuel subsidies and the increase in regressive taxes (largely on goods and services). In line with this, they showed how the state continued to allocate inadequate funds to key sectors like health, education and housing.

The information and analyses of the submission were directly linked to specific articles of the ICESCR. The submission included a number of recommendations.

This submission was extremely influential and informative for the CESCR. Both the report and further information provided in the separate discussion with representatives of CSOs who attended the session were very helpful for the Committee in formulating its concluding observations and recommendations.

The CSOs' joint submission is available at cesr.org/sites/default/files/Egypt_CESCR_Joint_report_English.pdf

The Concluding Observations of the CESCR Committee is available at tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/EGY/CO/2-4&Lang=En

Reporting cycle

The consideration by treaty bodies of reports submitted by states involves various steps. Initially, the states party submits its report. On the basis of that, the treaty body sends to the state a list of questions for clarification and additional information, known as a “List of Issues”. The state then responds to the List of Issues, which is then followed by what is known as the “Constructive Dialogue” between the treaty body and the state delegation.

CSO engagement helps treaty bodies issue recommendations that relate to the actual situation of rights holders. CSOs can then use these recommendations to encourage the government to take action for follow-up and implementation.

On the basis of the dialogue and the available information, including from CSOs, the treaty body issues its Concluding Observations. States are then expected to use these observations and recommendations as a framework to strengthen their implementation of the treaty, and report back to the Committee on the progress made towards implementing the recommendations.

Figure 5: Reporting cycle to treaty bodies



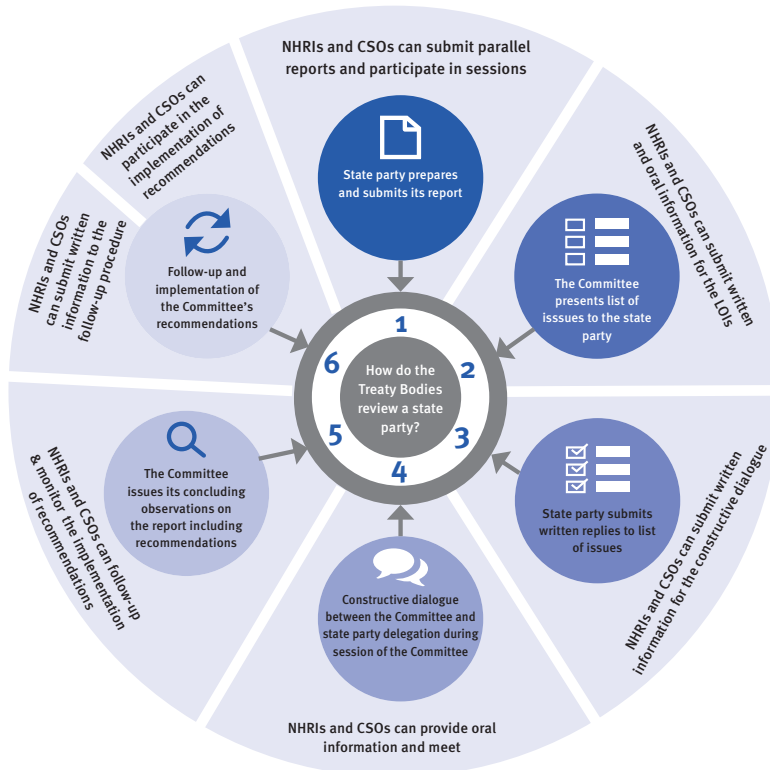
Source: OHCHR Training Package on Reporting to the United Nations Human Rights Treaty Bodies, Session 4.2: The reporting cycle, slide 1, [ohchr.org/en/publications/ohchr-training-package-reporting-united-nations-human-rights-treaty-bodies](https://www.ohchr.org/en/publications/ohchr-training-package-reporting-united-nations-human-rights-treaty-bodies)

- ▶ *“Constructive Dialogue” is the dialogue that takes place between representatives of the state party and the treaty body concerned. It helps treaty bodies understand and review the human rights situation in the state party.*
- ▶ *Questions in the List of Issues and the Constructive Dialogue are often based on information that treaty bodies receive from CSOs.*

Role of CSOs in the reporting cycle

CSOs and NHRIs are able to engage in the various steps of the reporting cycles, providing the treaty bodies with essential information. Information from CSOs is often useful to correct information and claims included in the state report, provide additional information which can also be specific (for example analysing impact of some legislation or policy), and by providing information on the general context of the country.

Figure 6: Role of CSOs in the reporting cycle to treaty bodies



Source: OHCHR Training Package on Reporting to the United Nations Human Rights Treaty Bodies, Session 4.2: The reporting cycle, slide 2, ohchr.org/en/publications/ohchr-training-package-reporting-united-nations-human-rights-treaty-bodies

- Practical information about how to prepare a CSO parallel report to treaty bodies is on pages 68-70 (English) of the OHCHR NGO Handbook, available at ohchr.org/sites/default/files/Documents/Publications/NGOHandbooken.pdf

Finding information about Concluding Observations

The concluding observations and recommendations of all treaty bodies can be found via either:

- the OHCHR Treaty Body pages: ohchr.org/en/treaty-bodies
- the UN Treaty Body Database: tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en
- the Universal Rights Index: uhri.ohchr.org
- submissions by NGOs and other documents, such as the List of Issues, the country's replies to the List of Issues, and a summary record of the sessions, can also be found via these websites.

Example 6: Concluding Observations by the CESCR – Lebanon

In 2016, the Committee on ESC rights reviewed the second periodic report of Lebanon, and issued its Concluding Observations. The following are some examples of concerns and recommendations:

The Committee expressed concern over the lack of financial resources and employment opportunities available to Syrian refugees, as well as the deplorable living conditions of some of them; poor living standards in camps and informal settlements for Palestinian refugees, as well as the obstacles they face in seeking to improve those conditions; legal and other restrictions on employment, social security and housing that discriminate against Palestinian refugees.

The Committee recommended that, in view of the limited resources available to support refugees, the state party needs to accelerate the provision of documentation to refugees so that they can seek work and access basic services without fear of being arrested; and to pursue a rights-based approach in the provision of support to refugees, including by eliminating legal and regulatory provisions that discriminate against them in the enjoyment of economic, social and cultural rights.

The Committee also raised concern that several categories of workers do not enjoy the protection of the Labour Code, including those working in unregulated sectors and in the informal economy, and that some provisions of the Labour Code allow for the kafala system and the possibility of oral contracts, which puts workers in a vulnerable situation.

The Committee recommended that the state should expand the coverage of the Labour Code to all categories of workers, including domestic workers, agricultural workers, day workers and temporary workers in the public service, and to those working in unregulated sectors and the informal economy, to ensure the enjoyment of the right to just and favourable conditions of work without discrimination; and to review the relevant laws with a view to abolishing arrangements such as kafala and oral contracts, which render workers vulnerable to exploitation.

The Committee issued a number of other observations and recommendations on a number of areas related to obligations under the ICESCR.

Source: Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of Lebanon, E/C.12/LBN/CO/2, 24 October 2016, tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FLBN%2FCO%2F2&Lang=en

Note: The Kafala system is a system used primarily in Gulf Cooperation Council (GCC) countries, Jordan and Lebanon that ties migrant worker's immigration and legal residency status to an individual sponsor (kafeel) throughout his or her contract period in such a way that the migrant worker cannot typically enter the country, resign from a job, transfer employment, nor leave the country without first obtaining explicit permission from his or her employer.

- ▶ *Often, observations and recommendations by treaty bodies echo concerns by CSOs which they raise in their parallel reports.*
- ▶ *Including these conclusions and recommendations in a report by a treaty body shows that these concerns are not raised by CSOs only, but are shared by experts who are members of an international or regional body. This will give the recommendations additional weight.*
- ▶ *CSOs can then use these recommendations in their advocacy follow-up efforts to ensure implementation. (See Part II on advocacy and engagement with treaty bodies.)*

Issuing General Comments

Another important role for treaty bodies is to issue what is known as General Comments (CEDAW calls them General Recommendations). General Comments are interpretations by the Committees of human rights issues related to the treaty that they oversee. These General Comments assist states to better comply with their obligations.

In most General Comments, treaty bodies comment on a specific provision of the treaty and link it with the application of various other rights. In other types of General Comments, treaty bodies elaborate on how a specific theme relates to various rights. This is the case for example in the General Comment of the CESCR on business activities and state obligations. There are also specific General Comments by the various treaty bodies explaining the nature of state obligations. In some instances two or more treaty bodies may issue a General Comment together. These are mainly on a theme of common concern to the two or more treaties. (See [Annex 1](#) for full list of General Comments of CESCR as of December 2020.)

General Comments of the CESCR discuss state obligations relating to ESC rights, including: the minimum core obligations; the obligations to respect, protect and fulfil; the non-discrimination obligation; obligation to allocate resources; obligation to ensure remedy, and other such matters, and the link between the right being addressed and other rights. The Committee also explains specific aspects of the obligation to ensure the right for vulnerable or marginalized groups.

- *In addition to the CESCR, other treaty bodies have issued a number of General Comments relating to ESC rights.*

Finding General Comments

The General Comments of each of the treaty bodies can be found on their respective pages on the OHCHR website: [ohchr.org/en/treaty-bodies/general-comments](https://www.ohchr.org/en/treaty-bodies/general-comments)

Considering individual or collective complaints

Several UN human rights treaties have procedures that allow them to consider complaints by individuals or groups (or in some cases by organizations on their behalf) about violations of their rights. In addition to the individual or collective complaint procedure, there are procedures that allow for state-to-state complaints. Some treaty bodies can also initiate inquiries.

By the end of 2020, no Arab state has accepted the complaint procedure according to the Optional Protocol to the ICESCR. It is important that CSOs campaign states to become a party to this procedure in order to create further opportunities for enjoyment of these rights through remedies at the international level.

- Nine human rights treaty bodies may receive and consider individual complaints or communications including the CESCR, CRC, CEDAW, CERD, CRPD, and CMW.
- In the cases of the CESCR, CRC, CEDAW, and CRPD, the complaint procedure is contained in a separate optional protocol to each of these treaties, which has to be ratified separately by the state. In other treaties, the complaints procedures are included within the treaty, in a provision that the state has to agree to specifically.
- The CAT, CEDAW, CRPD, CED, CESCR, and CRC can also initiate inquiries on their own initiative if they have received reliable information containing well-founded indications of serious or systematic violations of the conventions in a state party.
- A complaint may be brought to treaty bodies against any state as long as:
 - The state is a party to the treaty in question; and
 - The state against which the complaint is made has also accepted the complaint mechanism.

Box 18: Complaint procedure under the ICESCR**The Optional Protocol to the ICESCR**

In December 2008, The UN General Assembly adopted by consensus the **Optional Protocol to the ICESCR (OP-ICESCR)**. Under the OP-ICESCR, the CESCR considers complaints (called communications) from individuals or groups of individuals claiming that their rights under the Covenant have been violated. The Optional Protocol is an important procedure to ensure that rights included in the ICESCR are respected, protected and fulfilled. It includes three procedures:

- A complaints procedure (known in the Optional Protocol as communications)
- An inquiry procedure
- An inter-state complaints procedure (not elaborated here)

The complaints procedure

Complaints under the OP-ICESCR are considered by the same committee of experts that oversees the implementation of the ICESCR. For the CESCR to consider the complaint, all available domestic remedies must be exhausted first, unless the Committee decides that these remedies are unreasonably prolonged or ineffective.

In addition of being a powerful tool for remedy, the OP-ICESCR is also an advocacy tool. The results of the complaints can be used for advocacy for changing laws, policies and practices. The results can also be used to help bodies like the judiciary, national and local governments and other state institutions to develop a better understanding of ESC rights. Decisions to date have covered issues such as housing rights and forced evictions and gender discrimination in accessing social security.

The inquiry procedure

When a state party to the ICESCR agrees to the inquiry procedure, the CESCR will also be able to initiate and conduct investigations into grave or systematic violations of the ICESCR. This procedure allows the Committee to respond to serious violations taking place in a state without having to wait until the state's next periodic report is submitted. The procedure can be used to address systematic or widespread violations of ESC rights, especially when individual complaints will not be enough to establish the extent of such violations.

7.3 The UN Human Rights Council

- *In this section, we will primarily focus on the UPR and the Special Procedures, especially their connection with ESC rights. Brief information about the HRC Complaint Procedure and investigative bodies will also be included at the end.*

The UN Human Rights Council (HRC) and its human rights mechanisms are often referred to as Charter-based mechanisms. This is because they are not linked to specific human rights treaties, but are linked to the Charter of the UN. The Human Rights Council was established by the UN General Assembly in March 2006 (GA Resolution 60/251) to replace the Commission on Human Rights. The Council is made up of 47 UN member states which are elected by the UN General Assembly.

The UN Commission on Human Rights was established in 1946. It was composed of 53 states members. In the first 20 years after its establishment, the Commission was tasked with human rights standard setting, including the drafting of the Universal Declaration of Human Rights, the ICCPR and the ICESCR (together commonly referred to as the International Bill of Human Rights). Other human rights standards were also negotiated through the Commission. In 1967, the Commission was specifically authorized to deal with complaints concerning human rights violations. Over the years, its role expanded allowing it to respond to the whole range of human rights problems, including by adopting resolutions on country situations, and establishing mandated “special procedures” to look into thematic issues or country situations. (See [Section 7.3.1](#) on Special Procedures.)

Today the main mechanisms of the HRC are the Universal Periodic Review (UPR), the UN Special Procedures, the Complaint Procedure, and investigative bodies.

7.3.1 Special Procedures

The Human Rights Council continues to develop special procedures to assist it in its work. The “Special Procedures” consist of special rapporteurs, independent experts and working groups composed of experts who are appointed by the Council and who serve in their personal capacity.

The Special Procedures are mandated to address country-specific situations or thematic issues. While it will be important to check if there is a rapporteur or expert on your country (whom you could call on when you have issues to share), we will focus in this Section on thematic Special Procedures. (A list of country-specific special procedures can be found at spinternet.ohchr.org/ViewAllCountryMandates.aspx?lang=en.)

- *The thematic Special Procedures cover an extensive range of human rights and related issues: civil, cultural, economic, political, and social (see Box 19 for a list of key Special Procedures on ESC rights).*

- *Mandates of all the current country-specific or thematic Special Procedures can be found at [ohchr.org/en/special-procedures-human-rights-council](https://www.ohchr.org/en/special-procedures-human-rights-council) (click on thematic or country-specific mandates).*

Role of Special Procedures

Thematic Special Procedures **undertake country missions, consider complaints, and issue thematic reports**. By doing this, they assist states to better implement their obligations. They also contribute to developing international law.

Undertaking country visits

Special Procedures carry out country visits (also referred to as missions) to review the situation of human rights in the country. During the visits, the experts meet with representatives of the state, CSOs, as well as with victims of violations. Findings, conclusions and recommendations by the Special Procedures are published in mission reports presented to the Human Rights Council.

The request for a country mission initially comes from the Special Procedure, based on available information. The Government then sends an invitation for a fact-finding mission. Some countries have issued what is known as standing invitations, which means that they are, in principle, prepared to receive a visit from any thematic Special Procedure.

- *CSOs can play a very important role in providing Special Procedures with information before visits, which can be used as grounds for the experts to request a country mission.*
- *During the country visits, CSOs can meet with the experts, provide them with information and analysis, and also arrange for them to meet with victims and visit affected communities.*

Example 7: Mission of Special Rapporteur on extreme poverty to Saudi Arabia

Report of the Special Rapporteur on extreme poverty and human rights on his mission to Saudi Arabia

The Special Rapporteur on extreme poverty and human rights conducted a mission to Saudi Arabia in January 2017. In his mission report submitted to the Human Rights Council, the Special Rapporteur expressed concern that the various social assistance programmes managed by different ministries, public authorities and charities result in an inefficient, unsustainable, poorly coordinated social protection system that is unable to provide comprehensive assistance for those who are most in need. The report

addresses the challenges that persist for women in fully realizing their human rights, including the rights to work and social security, and the situation of female migrant domestic workers and non-Saudis, who are among the poorer segments of Saudi society. The Special Rapporteur recommended, inter alia, that the Government recognize the right to social protection as a human right and reflect its human rights obligations in its socioeconomic reform agenda: “Meaningful consultations with and participation by the public on the reform agenda are critical, not only as a matter of human rights but also as a matter of good planning and ensuring essential public support.”

Source: “Report of the Special Rapporteur on extreme poverty and human rights on his mission to Saudi Arabia”, Note by the Secretariat, A/HRC/35/26/Add.3, 28 April 2017, available at [ohchr.org/en/documents/country-reports/ahrc3526add3-report-special-rapporteur-extreme-poverty-and-human-rights](https://www.ohchr.org/en/documents/country-reports/ahrc3526add3-report-special-rapporteur-extreme-poverty-and-human-rights)

- *Sometimes, country visits are conducted not for fact-finding purposes, but to provide technical assistance, the development of best practices, and to raise public awareness on issues related to the mandate of the Special Procedure. CSOs can use these visits also to establish contact with the mandate-holders.*

Sending communications

Thematic Special Procedures send communications to states about violations affecting particular people or communities, or general patterns and trends they are concerned about. Sometimes, they communicate with the authorities about concerns of a broader nature, for example about new laws. Communications can relate to a human rights violation that has already taken place, or ongoing violations, or actions about to happen that have a high risk of resulting in violations of human rights.

- *Information about individual cases often comes from CSOs. Individuals who are victims of violations can also submit information directly to Special Procedures.*

Sending information or reports by CSOs to Special Procedures does not require that domestic remedies have been exhausted. This means that one can send a communication to Special Procedures while the national authorities are reviewing the case, or even without bringing the case before national authorities (courts, administrative bodies, tribunals).

The Special Rapporteur on the protection of human rights defenders has the special mandate to raise concerns related to human rights defenders. The Special Rapporteur can send communications alone, or with other Special Procedures, about individual cases, or about laws, policies and practices that affect human rights defenders and their work.

It is also essential to note that information sent to Special Procedures by CSOs does not require that the state has ratified international or regional human rights instruments relating to the issue, nor that states have agreed to complaint mechanisms under specific treaties.

Example: Information can be sent to the Special Rapporteur on Adequate Housing regardless of whether the state concerned is a party to the ICESCR or any other treaty relating to right to housing, or to the Optional Protocol to the ICESCR.

After submission of such information, the Special Procedure can send a letter to the state identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions, and a request for follow-up action (such letters are called “communications”).

There are several aspects that must be included in the information sent by individuals or CSOs to the Special Procedures to enable them to follow up on the case with the authorities in the most effective way. For guidance on how to submit information to Special Procedures, see [ohchr.org/en/special-procedures-human-rights-council/what-are-communications](https://www.ohchr.org/en/special-procedures-human-rights-council/what-are-communications).

- *Information sent to the Special Procedures must be thorough, include facts, as detailed as possible, and must be reliable.*
- *It is essential that the person or organization sending the information indicates clearly if the names of the victims can be revealed in the Special Procedure’s communications to the authorities; and also if the names of the victims can appear in a public report or statement of the Special Procedure.*

Special Procedures submit Communications Reports to the Human Rights Council containing summaries of the communications sent and summaries of replies received from the authorities.

Conducting thematic studies

Either at the request of the Human Rights Council or at the initiative of the experts themselves, Special Procedures prepare thematic studies that they submit annually. The thematic studies of the Special Procedures are important for advancing in-depth understanding of various aspects of the rights that the Special Procedure focuses on, including how the thematic issue relates to various groups of marginalized or at risk people or to other rights.

Box 19: UN Thematic Special Procedures related to ESC rights

Thematic Special Procedures related to ESC rights

The following list shows three categories of Special Procedures: first, Special Procedures that are mandated to work directly on ESC rights; second, Special Procedures whose mandates discuss issues that relate to ESC rights; and third, Special Procedures who are mandated to examine the human rights of particular groups and identities, who highlight concerns related to the enjoyment of ESC rights by these groups.

Special Procedures mandated to work directly on ESC rights

- Special Rapporteur on the right to **education**
- Special Rapporteur on the right to **food**
- Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of **physical and mental health**
- Special Rapporteur on adequate **housing** as a component of the right to an adequate standard of living
- Special Rapporteur on the human rights to safe drinking **water** and sanitation
- Special Rapporteur in the field of **cultural rights**

Other relevant Special Procedures

- Special Rapporteur on the rights to **freedom of peaceful assembly and of association**

- Special Rapporteur on **extreme poverty** and human rights
- Working Group on the issue of human rights and **transnational corporations and other business enterprises**
- Special Rapporteur on the **right to development**
- Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable **environment**
- Independent Expert on the effects of **foreign debt** and other related international financial obligations of states on the full enjoyment of all human rights, particularly economic, social and cultural rights
- Independent Expert on human rights and **international solidarity**

Special Procedures on groups at particular risk of discrimination and human rights violations

- Special Rapporteur on the situation of **human rights defenders**
- Special Rapporteur on the rights of **persons with disabilities**
- Special Rapporteur on the rights of **indigenous peoples**
- Special Rapporteur on the human rights of **internally displaced persons**
- Special Rapporteur on the human rights of **migrants**
- Special Rapporteur on **minority issues**
- Independent Expert on the

enjoyment of all human rights by **older persons**

- Special Rapporteur on contemporary forms of racism, **racial discrimination, xenophobia and related intolerance**
- Independent Expert on protection against violence and discrimination based on **sexual orientation and gender identity**
- Special Rapporteur on **violence**

against women, its causes and consequences

- Working Group on **discrimination against women and girls**

Source: Extracted from list of Special Procedures, Thematic Mandates, OHCHR, [spinternet.ohchr.org/ViewAllCountryMandates.aspx?Type=TM&lang=en](https://www.ohchr.org/ViewAllCountryMandates.aspx?Type=TM&lang=en)

7.3.2 The Universal Periodic Review

What is the UPR?

The Universal Periodic Review (UPR) is a process within the Human Rights Council, established by the UN General Assembly. It involves a periodic review of the human rights records of all the UN member states by their peers, other UN member states, approximately every four years. Each UPR session follows a similar process designed to ensure equal treatment for all countries. During the UPR, states are able to show what actions they have taken to improve the human rights situation in their countries and how they overcome challenges.

- *The UPR allows states to assess the human rights records of their peers, and equally address human rights violations in all states.*

The UPR process

To ensure that the process is based on objective and reliable information, and that it treats all countries in the same way, a similar process is followed for all countries regardless of their level of development, geography or human rights record.

- *The UPR is not dependent on whether states are party to specific treaties.*

The UPR is a very good tool that can be used for highlighting States' responsibilities in advancing ESC rights, particularly when they have not ratified ESC rights-related treaties or are not cooperating with other UN mechanisms.

The UPR is conducted by what is known as the UPR Working Group of the Human Rights Council. This consists of all the 47 members of the Council. However, any other UN member states can take part in the dialogue with the state under review. Each country review is assisted by groups of three states, known as the "troika", who act as rapporteurs for each reviewed state.

The Review can address states' responsibilities under both international human rights law and IHL. It can also refer to international frameworks like the 2030 Agenda for Sustainable Development. During the discussion, any UN member state can pose questions, and make comments or recommendations.

Information submitted by NGOs does not need to deal with all rights. It can focus on specific rights, or focus on specific groups of people.

The Review is based on three main sources of information:

1. The national report provided by the state under review;
2. A compilation of relevant information contained in reports of Special Procedures (for example after mission reports or complaints), Concluding Observations by treaty bodies, as well as other information from UN entities. This information is collected and summarized by the OHCHR;
3. A compilation of information from what is known as "other stakeholders", such as NGOs and NHRIs. Credible and reliable information provided by other stakeholders is compiled by the OHCHR in a summary document, which does not exceed 10 pages, organized according to the various areas of human rights. This document is very important to provide a balanced picture of the claims made by the state in its national report, and demonstrates the critical role that civil society can play in the process.

CSOs can play a very important role in ensuring that recommendations in the UPR relating to ESC rights are followed up and implemented through their monitoring and advocacy work (see Part II).

- ▶ *One of the main areas that stakeholders' submissions to the UPR can cover is ESC rights.*
- ▶ *It is very important that parallel reports submitted by NGOs are brief and clear. In order to ensure that their information is not lost in the 10 pages limit, NGOs may choose to present joint submissions.*

Following the Review, a document known as the "Outcome Report" is produced by the troika. This provides a summary of the actual discussion including the questions, comments and recommendations made by states to the country under review, as well as the responses by the reviewed state.

States declare their position on the draft recommendations presented before the Outcome Report is finalized. In their positions, states can declare acceptance or rejection of recommendations, and explain the reasons for that.

The state going through the UPR has the primary responsibility to implement the recommendations that it has accepted contained in the final outcome report.

- ▶ *The statement of the state under review, in which it declares its acceptance of recommendations, can form an important ground for CSO follow-up and advocacy (see Part II of this Handbook on advocacy using the UPR).*
- ▶ *CSOs should also take note of the recommendations that the state has not accepted. These can be revisited in the next cycle of the UPR, and the reasons that the state gives for its rejection can be questioned by others on the basis of information from CSOs.*

NGOs with special UN accreditation (known as ECOSOC consultative status) can attend the UPR sessions and make statements at the regular session of the Human Rights Council when the outcome of the state reviews is considered.

- ▶ *While attending the review session, CSOs can also lobby governments to make particular recommendations during the UPR process (see Part II of this Handbook on lobbying and advocacy during the UPR).*

NGOs that do not have ECOSOC status can cooperate with national, regional or international NGOs who have such status. They can ask these NGOs to make statements jointly or on their behalf, or ask to be included in the delegations of these NGOs so that they can make the statements.

Example 8: The Universal Periodic Review of Morocco

There were 41 stakeholders' submissions for the UPR review of Morocco in May 2017, including 14 joint submissions by national, regional and international NGOs. Among the issues that were raised in the NGO submissions were concerns that the health sector showed signs of continued deterioration with medical staff in short supply, facilities in a poor state of repair. There were also concerns over the high dropout and illiteracy rates in the context of privatizing education, especially among women and girls, as well as high school dropout rates in general, including among persons with disabilities, and by overcrowding in public schools. There were also a number of concerns related to the status of women, persons with disabilities, migrants and refugees.

As a result, a number of recommendations were given by states in relation to some of these issues.

In its response, the State of Morocco accepted several recommendations related to fostering equality, availability and accessibility of education and health services. It also agreed on recommendations to strengthen policies on

the promotion and protection of human rights, particularly the rights of children, migrants and asylum seekers and persons with disabilities.

All the documents related to the UPR of Morocco in 2017 are available at [ohchr.org/en/hr-bodies/upr/ma-index](https://www.ohchr.org/en/hr-bodies/upr/ma-index)

Finding information about the UPR

Information on the UPR can be found on the OHCHR website: [ohchr.org/en/hr-bodies/upr/upr-main](https://www.ohchr.org/en/hr-bodies/upr/upr-main)

You can find information by sessions and by country, as well as civil society engagements.

7.3.3 The complaint procedure of the HRC

In June 2007, the Human Rights Council established a new complaint procedure to investigate human rights violations that are of a particular nature.

The procedure allows complaints to be submitted about **consistent patterns of gross and reliably attested violations of all human rights** and all fundamental freedoms occurring in any part of the world and under any circumstances.

Communications can be submitted by individuals, groups, or non-governmental organizations that claim to be victims of human rights violations or that have direct, reliable knowledge of such violations. The procedure is confidential. Ill-founded and anonymous communications are not accepted.

7.3.4 Investigative bodies

The Human Rights Council also appoints commissions of inquiry, fact-finding missions and other such bodies to investigate situations of serious violations of international humanitarian law and international human rights law. These bodies are mandated to look into situations of prolonged violations or violations resulting from sudden events. The UN Security Council and the General Assembly also appoint such bodies.

- ▶ *In the majority of cases, investigative bodies are appointed to examine violations in the context of armed conflicts. Protection of ESC rights during armed conflict, therefore, is part of their mandate. (See [Chapter 4](#) on ESC rights in armed conflict.)*
- ▶ *Accordingly, these investigative bodies examine and report on consequences of such atrocities that affect ESC rights, for example attacks on houses, educational institutions, health facilities and staff, food resources, farms, and so on.*

In addition to documentation, these investigative bodies promote accountability for such violations and counter impunity.

Examples of Commission of Inquiries on Arab countries include the following:

- UN Commission of Inquiry on Syria
- Group of Eminent Experts on Yemen
- Commission of Inquiry on the 2018 protests in the Occupied Palestinian Territory

Finding information on Human Rights Council's investigative bodies

Information on the Human Rights Council's current and past investigative bodies, including their mandates and reports, can be found on the OHCHR website: [ohchr.org/en/hr-bodies/hrc/co-is](https://www.ohchr.org/en/hr-bodies/hrc/co-is)

7.4 Regional mechanisms

- *In this section, we will discuss the human rights expert mechanisms that relate to the African Union and the League of Arab States. We will focus here only on the mechanisms that are composed of independent experts. Therefore, we will not discuss the inter-state human rights bodies of the League of Arab States and the African Union (these are the bodies that are composed of state representatives, similar to the UN Human Rights Council).*

7.4.1 The African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights (the African Commission) is composed of eleven members serving in their personal and independent capacity and not as official representatives of their countries. Their role is to monitor the implementation of the African Charter on Human and Peoples' Rights (see [Section 2.3.4](#) on the African Charter). In that sense, the African Commission has a very similar role to that of the UN Treaty Bodies. The Commission also has Special Procedures.

Information on the website of the African Commission ([achpr.au.int](https://www.achpr.org)) is available in Arabic, English, French and Portuguese.

The African Commission has three main responsibilities: promotion, protection, and interpretation. It can also be given other additional tasks.

Promotion: To carry out its promotional work, the Commission organizes seminars and conferences. It also produces and distributes information about its role and about human rights. It engages with national and local institutions concerned with human and peoples' rights and makes recommendations to governments.

Protection: The Commission takes measures to ensure the enjoyment of the rights contained in the Charter, through ensuring that the states do not violate these rights and if they do, that the victims are remedied for such violations. The protection role is carried out through two ways:

- consideration of state reports; and
- communication/complaint procedures.

State reports: As part of its protective mandate, the Commission receives and considers periodic reports submitted by states. State parties are required to submit reports to the Commission every two years, on the legislative or other measures they have taken to give effect to the rights and freedoms recognized in the Charter. The Commission studies these reports, then engages in dialogue with representatives of the states, and makes its recommendations.

- *Like UN treaty bodies, the African Commission also receives information from CSOs, which help it in the consideration of states' reports.*

Communications (complaint) procedure: The African Charter on Human and Peoples' Rights provides for a "communications procedure". The communications procedure is a complaint system similar to the UN procedures. Individuals, NGOs, or groups of individuals who feel that human rights are being violated can complain to the Commission about these violations. Like the complaint mechanisms of the UN, domestic remedies must be exhausted first.

- *At the end of the process, the Commission makes recommendations to the state on what to do including how to remedy the victim. This can then be used in follow-up by CSOs.*

The procedure is also an inter-state complaint procedure, where communications can also be made by a state party to the Charter if it believes that another state party has violated any of the provisions in the Charter. The Commission can also initiate friendly settlements, where the complainant and the accused state enter into negotiations to settle the dispute in a friendly way.

The African Commission also sends missions to countries to investigate allegations of massive and serious human rights violations by state parties to the African Charter on Human and Peoples' Rights. At the end of such a mission, the Commission makes recommendations to the states concerned on how to improve the human rights situation.

In emergency situations – that is, where the life of the victim is in imminent danger – the Commission might invoke provisional measures requesting the state to delay any action until its final decision on the matter, or refer the case to the African Court which grants provisional measures.

Example: The African Commission has intervened in cases of forced evictions, and asked states to stop eviction measures until it considers complaints made about these cases. In a case concerning Ogiek community in Kenya brought before the African Court by the African Commission, the Court found that the situation was of extreme gravity, urgency and risk of harm. As a result, the Court ordered urgent provisional measures in order to preserve the situation, until the Court makes its decision on the case.

Example: The African Court on Human and Peoples' Rights granted an order for provisional measures regarding the situation in Libya, in response to an application filed before it by the African Commission on a number of issues related to the government's response to the protests in Libya in 2011, including restricting access of protesters to medical treatment.

Interpretation: The African Commission is mandated to interpret the provisions of the African Charter upon a request of a state party to the Charter or organs of the African Union (AU) or individuals. By the end of December 2019, no state or organ of the AU has referred any case of interpretation of the Charter to the Commission.

- *The African Commission does not produce General Comments. However, the rulings on individual complaints and Advisory Opinions on specific topics produced by the Commission serve as standards for states to follow.*

Special procedures: The Commission has also appointed a number of Special Procedures (in the context of the African Commission, they are known as Special Mechanisms). These play a very significant role by carrying out country missions, researching, gathering and documenting information on these areas of human rights. This information could be used by the Commission to formulate advice to African states. The Commission has a Working Group on ESC Rights (see Box 20 below). There are also mechanisms for specific groups of the population, like the Special Rapporteur on Rights of Women, and the Working Group on Indigenous Populations/Communities in Africa.

Box 20: The African Commission's Working Group on ESC rights

In 2004, the African Commission on Human and Peoples' Rights established a Working Group on Economic, Social and Cultural Rights. The responsibility of the Working Group was to develop Principles and Guidelines on Economic, Social and Cultural Rights, elaborate revised guidelines for state reporting, and undertake studies and research on specific economic, social and cultural rights.

The Principles and Guidelines on Economic, Social and Cultural Rights were adopted in November 2010 and can be accessed at escr-net.org/resources/principles-and-guidelines-implementation-economic-social-cultural-rights-african-charter

The working group is not mandated to deal with violations of economic, social and cultural rights through reports or individual complaints.

The African Commission has been adopting a number of resolutions throughout the years on various issues related to ESC rights, including:

- [Resolution 431/2019: “The Right to Food and Nutrition in Africa”](#)
- [Resolution 420/2019: “States’ Obligation to Regulate Private Actors Involved in the Provision of Health and Education Services”](#)
- [Resolution 141/2008: “Access to Health and Needed Medicines in Africa”](#)

7.4.2 The Arab Human Rights Committee

The Committee of the Arab Charter on Human Rights is the treaty body established according to the Arab Charter on Human Rights to monitor the implementation of the Charter. It started its work in 2008 after ratification of the Charter by 7 Arab states. The Committee consists of seven members sitting as independent experts, nominated by state parties and elected through secret ballot by state parties from the list of nominations. They serve in their individual capacity, and not as official representatives of their country.

- *As of December 2021, the Arab Human Rights Committee has considered 21 initial and periodic reports by states parties.*

The main role of the Arab Human Rights Committee is to review reports by states on their implementation of the Charter. The Committee receives and reviews state reports, and issues its concluding observations and recommendations, highlighting progress and shortcomings in respecting human rights in the states under review.

- *The Arab Human Rights Committee receives parallel reports from CSOs and from NHRIs.*
- *All state reports, as well as parallel reports by CSOs and NHRIs, are publicly available in Arabic from the webpage of the Committee (leagueofarabstates.net/ar/humanrights/Committee/Pages/CommitteeSessions.aspx), normally published under the corresponding session documents (unless the CSO asks that its report is not published).*

Initial state reports are submitted to the Committee within one year of the Charter entering into force for the state party, then periodic reports must be submitted every three years. After receiving state reports, the Committee carries out a dialogue with the representatives of the state.

- *During the dialogue session, the Committee holds a closed session with the CSOs that submitted information.*

The Arab Human Rights Committee also carries out promotional work through visits to various Arab countries, holding information

Information from the webpage of the Arab Human Rights Committee is available in Arabic only.

and promotional meetings with government officials, as well as with civil society organizations.

Unlike the UN and the African Commission, the Arab Human Rights Committee does not yet receive and consider individual or collective complaints (as of mid-2023). The Arab Human Rights Committee also does not have thematic special mechanisms or procedures (as of mid-2023). It also has not issued General Comments or adopted thematic resolutions interpreting state obligations according to the Arab Charter on Human Rights (as of mid-2023).

- *Engagement of civil society with the Arab Human Rights Committee by submitting parallel reports and attending sessions helps the Committee formulate observations and recommendations that reflect human rights priorities.*

Chapter 8

Roles and responsibilities of non-state actors

This chapter will discuss different types of non-state actors and their human rights responsibilities. It will specifically review the obligations of states regarding the conduct of non-state actors specifically. The chapter will also discuss responsibilities of states within International Financial Institutions (IFIs).

8.1 Do non-state actors have human rights responsibilities?

In our daily life, we interact with many types of non-state actors who impact our human rights. Most economic, social and cultural actions take place at home, in the community or the workplace. Human rights abuses that take place

Non-state actors are any groups or individuals that are not part of the State.

in these contexts are often the result of unequal power relations where non-state actors exert their power over others. Non-state actors include:

- companies, including transnational corporations and privatized services;
- private individuals;
- armed groups, such as rebel groups in a conflict.

A human rights violation occurs when agents of the state fail to act in accordance with a human rights obligation under national or international law. Other actors, such as an individual, a company or other group, may carry out similar acts, which we refer to as “human rights abuses”.

Non-state actors that do not respect international standards are said to be “abusing” human rights, whereas states commit human rights “violations”.

These acts by non-state actors may fall under the following legal categories:

- A crime under national law (although note that not every criminal act is a human rights violation or human rights abuse, for example driving without a car license); or
- A crime under international law, such as a war crime or a crime against humanity. An example of this would be members of an armed group depriving civilians of access to food during armed conflict with the intention of letting them starve; or deliberately attacking health professionals or hospitals.

► *Acts by non-state actors which do not respect international standards are called abuses and not violations, unless these non-state actors became at certain point part of the government structure and are de facto performing government functions (for example mercenaries, or prison private guards).*

Non-state actors are not free to do what they want. They have responsibilities not to infringe national and international law in their actions. They therefore must ensure that such infringement does not happen; and must also put in place corrective measures and provide remedy in the cases of harm, as required by international standards.

The state also has the responsibilities to ensure that such infringements are prevented, that people are protected from them, and that remedy is available when they happen. There are usually a number of domestic laws in each state that are put in place to guarantee economic, social and cultural rights and detail the role of the state in protecting people from abuses by non-state actors. This includes laws that relate to non-discrimination, health-care provision, education, the environment, employment relations and consumer safety.

The principle that non-state actors also have the responsibility to respect human rights is grounded in international law.

Example: Some examples of human rights abuses by non-state actors include:

- A factory pays men more than women for doing the same work;
- A factory employing workers under unsafe and unhealthy work conditions;
- A farmer forcing fruit pickers to work without protective clothing after pesticides being sprayed, or even forcing workers to spray pesticides without protective clothing;
- A construction company forcibly evicts people from their houses and land;
- An industrial enterprise allows chemical waste to pollute the water supply of local residents; or
- Armed groups destroy food, health or education resources.

The UDHR calls on “every individual and every organ of society” to play their part in securing respect for human rights. This includes “non-state actors” whether they are individuals, groups, associations, or commercial or industrial corporations. Article 28 of the UDHR states “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

8.2 Types of non-state actors and their responsibilities

8.2.1 Privatized providers of services

The increased role and impact of private actors in traditionally public sectors, such as in the provision of water, electricity, education or health, pose new challenges for states in complying with their obligations under international law. Privatization as such is not prohibited. Private providers should, however, be subject to strict regulations including the imposition of the so-called “public service obligations”.

Example: In the provision of water or electricity, “public service obligations” may include requirements concerning universality of coverage and continuity of service, pricing policies, quality requirements, and user participation. Similarly, private health-care providers should be prohibited from denying access to affordable and adequate services, treatments or information.

States at all times continue to have the obligation to regulate private actors and to protect rights holders by ensuring that the services provided are accessible to all, adequate, non-discriminatory, regularly assessed in order to meet the changing needs of the public and adapted to those needs.

In some situations, goods and services that are necessary for the enjoyment of economic, social and cultural rights may become less affordable as a result of such goods and services being provided by the private sector, or that quality may be sacrificed for the sake of increasing profits. The provision by private actors of goods and services essential for the enjoyment of ESC rights should not lead to the enjoyment of these rights being made conditional on the ability to pay. This could lead to unaffordable essential services and create new forms of socio-economic segregation.

- *Measures should be adopted to continuously mitigate against abuses by private providers, through assessing the adequacy, affordability and quality of the provision of such goods and services, with guarantees for right holders (individuals and communities) to participate in this assessment.*

Box 21: Privatization of education

Privatization of education is becoming increasingly common across the world. In some cases, this is leading to situations where private educational institutions, mostly affordable only to the elite and wealthy sections of society, are appearing to provide higher quality education than the state-provided education, because of inadequate allocation of resources by the state for public provision. This can risk leading to situations where quality education becomes a privilege affordable only to the wealthiest segments of society. In other cases, the opposite happens. Private schools may be insufficiently regulated, so that they do not meet minimum educational standards, while giving a convenient excuse for states to abdicate their own duties towards the fulfilment of the right to education.

In February 2019, the Abidjan Principles on the human rights obligations of states to provide public education and to regulate private involvement in education were adopted, following a three-year participatory consultation and drafting process. The Abidjan Principles unpack and compile existing provisions in international human rights law and provide guidance on how to put them into practice in the context of the rapid expansion of private sector involvement in education. In July 2019, the UN Human Rights Council officially recognized the Abidjan Principles.

Source: “Human Rights Guiding Principles on the Obligations of States Regarding Private Schools”, The Global Initiative for Economic, Social and Cultural Rights.

8.2.2 Private actors

Human rights abuses are frequently encountered within families or private workplaces. This includes abuses within the house, the agricultural sector (which is often run as a family business), small family enterprises, corporations, privately run health care and educational institutions, and so on. Discrimination on the basis of sex, gender, race, ethnicity, marital status, disability, age, and other such grounds are often at the heart of these abuses. While these abuses take place within the private sphere, the state continues to have an obligation to protect individuals from such abuses.

Example: According to international law, primary education must be made compulsory and free to all, and must be prescribed clearly in law. However, in many cases, the state does not enforce this in practice, particularly in some parts of the country, such as rural areas. Therefore, one finds that some families may not be sending children, particularly girls, to schools in poorer communities in rural areas. In many cases, this will be for socio-economic or cultural reasons. In these cases, the state needs to take multiple steps, including guaranteeing free primary education, ensuring that this is accessible, and engaging in public awareness campaigns to end discrimination against women and girls in all spheres.

- *It is important to remember that acts of private individuals may not only constitute infractions of national law. Some of these acts may also constitute crimes under international law. For example, private military personnel such as mercenaries are accountable for crimes under international criminal law.*

8.2.3 The business sector

It has long been recognized that businesses can have a profound impact on human rights. This impact can be positive, for example by providing employment opportunities and delivering innovation and services that can improve living standards for people. However, it can also be negative, for example where business activities destroy people's livelihoods, exploit workers, or displace communities. Companies can also contribute to human rights violations and abuses committed by others, including states.

Box 22: A handbook on business and human rights

Biashara na Haki is a handbook that examines the impacts of businesses on human rights. It seeks to respond to concerns raised by partners of Amnesty International Netherlands, that there are insufficient human rights education materials aimed at local non-governmental organizations and community-based organizations in relation to corporate human rights abuses. The handbook has two parts:

Part 1: Knowing your Rights. This is aimed at community-based organizations and human rights NGOs that potentially deal with business and human rights issues. It aims to explain human rights standards and their

application to various actors, including states and businesses.

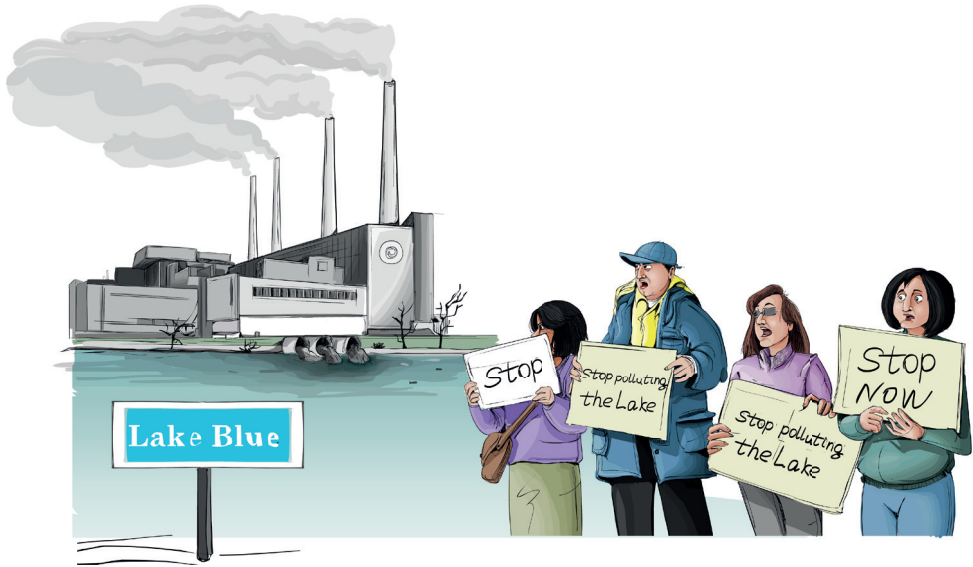
Part 2: Taking Action. This provides information, practical methods, and tools that civil society organizations and community rights advocates can use to accompany and empower people to prevent or mitigate harm, or to obtain adequate remedy for the harm resulting from business activities.

Source: Biashara na Haki – Impacts of Businesses on Human Rights, Amnesty International Netherlands – HURICAP, amnesty.nl/actueel/biashara-na-haki-impacts-of-businesses-on-human-rights

Under international law, business enterprises have the responsibility to respect human rights. Yet, due to the nature of international law, this responsibility cannot be enforced directly. Instead, states have the obligation to translate this responsibility into national law in order to ensure enforceability.

- ▶ *Business enterprises have responsibilities with regard to human rights as their actions can impact all rights.*
- ▶ *There is an existing complementary duty on states to protect rights holders against adverse impacts on their rights caused by business enterprises.*

The international community has been working for several years to agree on a framework that details the responsibilities of states and businesses relating to businesses' potential and actual adverse impacts on human rights, as well as standards of conduct for businesses in order to discharge their responsibilities. The "Respect, Protect and Remedy Framework" is now recognized as an acceptable framework. Ongoing discussions concerning a new international treaty for regulating the role of business and human rights is based on this framework.



The Respect, Protect and Remedy Framework

This human rights framework rests on different but complementary duties and responsibilities of both the state and business enterprises respectively. It comprises three core principles: the state duty to **protect** against human rights abuses by third parties, including business (see [Section 3.1.2](#) on obligation to protect); the responsibility of businesses to **respect** human rights; and the need for more effective **remedies** for victims of business-related human rights abuse.

When discussing protection of human rights in relation to business enterprises, we talk about the **obligations of states and responsibilities of business**.

Box 23: The respect, protect and remedy framework

The state obligation to **protect** individuals and communities from human rights abuses committed by companies requires the state to take appropriate steps to prevent, investigate, punish and redress such abuses through effective policies, legislation, regulations and remedy. Prevention includes fostering corporate cultures in which respecting rights is an integral part of doing business, and

through promoting corporate criminal accountability.

Business enterprises have the responsibility to **respect** human rights. This means that businesses must know their impact on rights, avoid human rights infringements and address any potential or actual impact. To ensure that companies carry out their responsibilities to respect human rights, they must carry

out due diligence steps in order to become aware of, prevent and address negative human rights impacts of their operations, services or products (see [Section 8.3.1](#) on due diligence). This includes adopting a human rights policy; taking proactive steps to consider the potential implications of their activities before they begin to carry them out; integrating human rights policies and assessments throughout the work of the company; and monitoring and auditing performance continuously in order to assess any potential or actual infringement.

As part of their duty to protect against business-related human rights abuses, the state must ensure that victims have

access to an effective **remedy**. This relates to both the obligation of the state to protect and the responsibilities of companies to respect. The corporate responsibility to respect requires a means for those who believe they have been harmed to bring this to the attention of the company and seek remedy. It is essential that the remedial channels available by companies do not exclude right to access legal channels available by the state.

See further: “Frequently Asked Questions about the Guiding Principles on Business and Human Rights”, OHCHR, [ohchr.org/sites/default/files/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf)

- *All business enterprises have the responsibility to respect human rights, regardless of their size or nature.*

The United Nations Guiding Principles on Business and Human Rights

The UN Guiding Principles on Business and Human Rights ([UN Guiding Principles](#)) are a set of 31 principles directed at states and business enterprises. They clarify their respective duties and responsibilities to protect and respect human rights in the context of business activities and to ensure access to an effective remedy for individuals and groups affected by such activities. They implement the “Protect, Respect and Remedy” Framework. They were unanimously endorsed by the Human Rights Council in June 2011.

Following the adoption of the UN Guiding Principles, many states or regional organizations have adopted action plans on business and human rights. Some countries have also adopted legislation or are discussing legislation to implement the UN Guiding Principles. Action plans on business and human rights should be

CSOs and NHRIs can and should play a meaningful role in the design of action plans on business and human rights, and monitoring their implementation.

based on human rights principles, including effective and meaningful participation, non-discrimination and gender equality, and accountability and transparency. Progress

in implementing such action plans should be monitored, and such plans should place equal emphasis on all categories of human rights, including economic, social and cultural rights.

Corporate social responsibility

Corporate social responsibility traditionally focuses on companies' voluntary contributions to community development, charity and other social and environmental efforts. Corporate social responsibility efforts therefore may support the implementation of the UN Guiding Principles. But the main difference is that the implementation of the UN Guiding Principles contain globally accepted norms for all companies rather than voluntary efforts by companies themselves. The UN Guiding Principles explicitly recognize that companies may undertake commitments or activities to support and promote human rights, which may contribute to the enjoyment of these rights. This includes the provision of or support to services like schools, hospitals, clinics, and so on. But doing so does not compensate for a company's failure to respect human rights through their operations.

Responsibilities of transnational corporations

Similar to national or local business enterprises, transnational corporations (TNCs), also known as multi-national corporations, are expected to act according to the UN Guiding Principles on Business and Human Rights, in particular in relation to improving corporate accountability and access to remedy for victims of business-related human rights abuses.

Corporations have responsibilities to not infringe human rights through their operations, services and products. It follows, therefore, that they must be accountable for their failure to do so and for the adverse impact that their actions cause to individuals and groups on human rights. This accountability can be pursued through judicial (for example, courts) and/or administrative means, for example, in the form of fines or compensation. Accountability involves investigating and establishing the facts, which can be done through bodies at the national, regional or international levels.

Example 9: The database on corporate enterprises operating in illegal Israeli settlements

In March 2016, the UN Human Rights Council adopted resolution 31/36 which asked the High Commissioner for Human Rights to produce a database of all business enterprises engaged in activities that have directly and indirectly, enabled, facilitated and profited from the construction and growth of illegal Israeli settlements, or operating in illegal Israeli settlements and contributed to the construction of the wall in the occupied Palestinian territory. This

followed the report of the Independent International Fact-Finding Mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territories, including East Jerusalem. The report of the Mission recommended developing such a database.

The database was finally released in February 2020 through a report by OHCHR, which concluded that 112 companies, whether based in Israel, the Occupied Palestinian Territories or abroad, are carrying out activities that raise particular human rights concerns relating to facilitating the construction and the expansion of illegal Israeli settlements and the wall, and the associated infrastructure. The database is updated annually. The database includes national and multinational corporations.

The release of the names of corporations involved in facilitating violations of international human rights and humanitarian law will facilitate pursuing their accountability for their role in these violations.

The database came about through the persistent lobbying and support of a number of Palestinian, regional and international organizations.

Source: Report of the United Nations High Commissioner for Human Rights, A/HRC/43/71, 28 February 2020, undocs.org/en/A/HRC/43/71. See also “Al-Haq and partners hold briefing for diplomatic community in Palestine”, alhaq.org/news/16523.html

It can be much more difficult to bring transnational corporations to justice than a smaller company. Their complex structures often make it hard to track responsibility, especially where there are multiple product supply chains. Many transnational corporations operate through national subsidiary companies, who may be involved in actions that abuse human rights. Consequently, the parent company may argue that these abuses have nothing to do with them, despite the fact that they retain responsibility for the actions of those subsidiaries as part of their duty to exercise due diligence (see [Section 8.3.1](#)).

- *The Guiding Principles on Business and Human Rights apply to all states and to all business enterprises, including transnational enterprises, regardless of their size, sector, location, ownership and structure.*
- *Where transnational corporations are involved, both their “home” states and “host” states have very important roles to play to ensure that transnational businesses are not involved in human rights abuses.*

Box 24: The UN Global Compact

The Global Compact is a voluntary initiative based on commitments to implement universal sustainability principles and to take steps to support UN goals. It aims to align business strategies and operations with universal principles on human rights, labour, environment and anti-corruption standards. The Global Compact supports achieving the Sustainable Development Goals by 2030 (see [Section 9.2](#) on the SDGs).

Companies that join the Compact agree to 10 principles covering human

rights, the rights of workers, the environment and anti-corruption. Civil society groups can also participate in the Compact. They agree to work with companies helping them to implement the 10 principles.

Membership of the Global Compact is comprised of governments, companies, trade unions, NGOs, academic institutions, and others.

Source: United Nations Global Compact, unglobalcompact.org

8.2.4 Armed groups

In conflicts of a non-international character, parties to the conflict are generally a state, on the one hand, against one or more armed groups; or it may be between armed groups. Non-international armed conflicts often take place within the territory of one state, but they may also cross borders.

As discussed above (see [Section 4.5](#) on armed groups), armed groups have responsibilities under both the rules of customary international humanitarian law and under treaty law, particularly Common Article 3 of the Geneva Conventions, and Protocol II Additional to the Geneva Conventions.

While there continues to be debate over the extent to which non-state actors have obligations under international human rights law, the view has evolved that where they have control over territory and population, particularly where they exercise state-like functions, they have responsibilities (as opposed to obligations) to uphold human rights. In all circumstances, individuals, including members of non-state armed groups, can be individually liable for crimes under international law.

- *Among the responsibilities that armed groups have which relate to protecting ESC rights are responsibilities that they should not destroy food crops, hospitals, schools or houses. They must allow for the safe delivery of medicine and impartial delivery of humanitarian relief for civilians in need.*

8.3 Obligations of states in relation to non-state actors

In this part we will focus specifically on the obligation of the state to protect, and describe how other state obligations link to that obligation, in relation to non-state actors.

States have obligations in relation to acts by non-state actors. These obligations stem from the obligation of states to protect (see [Chapter 3](#) on obligations of states).

8.3.1 *The obligation to protect*

In order to implement their obligations to **protect**, states must effectively prevent and redress any infringements of ESC rights in the context of activities by non-state actors. This requires states to take appropriate measures to ensure effective protection against abuses of ESC rights by national or international companies, private actors, members of armed groups, among others.

In order to ensure their duty to protect, states must take necessary steps in order to prevent and mitigate abuses from happening, identify abuses when they take place, and provide redress in cases when abuses by non-state actors happen. This is known as **due diligence**.

- ▶ *The responsibility of due diligence requires states to ensure that non-state actors do not undermine human rights.*

Measures by states in line with their due diligence obligations include the following:

- Adopting and reviewing the necessary legal framework to regulate areas that relate to the role and conduct of non-state actors (for example in employment, education, health, investment, banking), as well as prohibiting and criminalizing abuses in the penal law;
- Ensuring that laws, policies, strategies, and plans that involve non-state actors are analysed in terms of human rights compliance;
- Reviewing the human rights compliance of any specific agreements between the state and non-state actors, for example for the provision of health and education services;
- Monitoring activities including in the social service delivery sector;
- Adopting a robust system of accountability for human rights abuse and remedy including judicial and non-judicial avenues for redress and remedy (for example by ensuring that companies have internal complaint mechanisms, and that individual employees can complain to national labour courts or to labour inspectorates in relation to their work conditions. This also includes ensuring that private schools and hospitals are effectively regulated by national laws on education and health).

- *The concept of due diligence does not appear in any of the texts of the international human rights treaties. It has slowly been developed and used by human rights mechanisms in their work, as well as by international and regional courts.*

States must also ensure that their officials, including law enforcement and judiciary, exercise due diligence, including in relation to actions in the private sphere, in order to ensure that they do not commit abuses, especially against individuals in vulnerable situations. This would also entail that acts are investigated, prosecuted, and punished, and that victims have access to remedy.

Example: States can incorporate the responsibility of due diligence by business enterprises in National Action Plans on Business and Human Rights (see [Section 8.2.3](#) on the UN Guiding Principles on Business and Human Rights).

Example: States can exercise due diligence in relation to armed groups through enacting legislation that criminalizes and punishes acts by non-state armed groups that violate international humanitarian law or interfere with the enjoyment of human rights. Specifying in national penal law acts that are war crimes or crimes against humanity will reflect the gravity of these crimes.

Example: States can exercise due diligence in the private sphere by ensuring that women, children, older persons, LGBTI members of the family, persons with disabilities or others who may be in a vulnerable situation have access to measures for preventing abuse, and for protection and remedy when needed. The public must know about the availability of these measures and must be able to access them easily.

8.3.2 *Obligations to respect and fulfil*

States continue to have obligations to respect and fulfil human rights in the context of acts that they themselves carry out and which involve non-state actors. The obligation to respect ESC rights is violated, for example, when states prioritize the interests of business entities over ESC rights with consequent negative impacts for rights holders. The obligation to fulfil requires that states ensure that their cooperation with businesses and private providers complies with human rights standards and principles so that rights enjoyment is advanced rather than diminished. Further, fulfilling ESC rights may require from the state to mobilize and increase resources available, including through enforcing progressive taxation schemes that ensure that companies contribute their fair share of revenue given that they also benefit from the provision of social and economic goods and services.

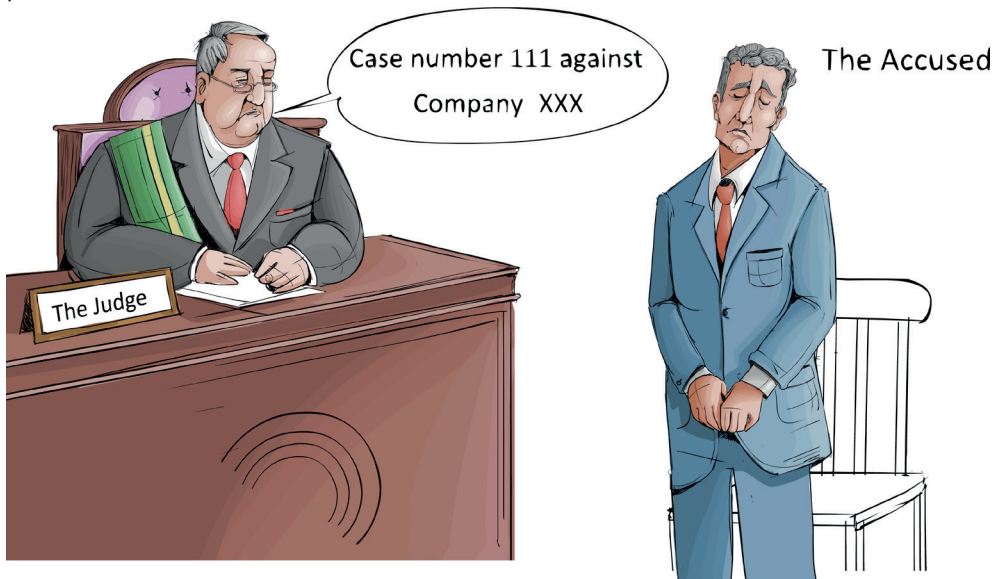
8.3.3 *Prohibition of discrimination*

The requirement to eliminate formal as well as substantive forms of discrimination includes a duty to prohibit discrimination by non-state entities in the exercise of

ESC rights. Particular attention must be paid to vulnerable or disadvantaged groups (see [Section 3.4](#) on prohibition of discrimination, and [Chapter 6](#) on vulnerable or disadvantaged groups).

8.3.4 Ensuring remedy

Non-state actors committing abuses can be liable under national laws. For example, if a national company deprives people of their rights, it should be possible under a relevant national law to seek judicial intervention against the company and seek compensation and other remedies and/or press for a criminal prosecution if the abuse amounts to a crime committed under law. It should also be possible to sue a government for not protecting people from abuses by non-state actors if the proper frameworks are not in place.



In discharging their duty to protect, states must ensure effective monitoring, investigation and the establishment and functioning of complaint mechanisms to ensure accountability and access to remedies, preferably judicial remedies. States must take all measures necessary to prevent abuses; where such preventative measures fail, thoroughly investigate abuses and take appropriate actions against alleged offenders; provide victims with effective access to justice, irrespective of who may ultimately be the bearer of responsibility for the abuse; and provide effective remedies to victims, including through reparation. Remedies must be available, effective and expeditious. This requires that victims seeking redress must have prompt access to an independent public authority, which must have the power to determine whether an abuse has taken place by non-state actors and to ensure reparation to redress the harm done.

- *Remedy can be sought from the executive, judicial or legislative bodies of government or from other state bodies. They can include administrative bodies set up at local or municipal levels mandated to receive and investigate complaints, national commissions of inquiry set up to investigate specific events, human rights or legal committees of the Parliaments, NHRIs, state anti-corruption institutions, courts, and so on.*

It must be acknowledged that it can be very difficult to hold non-state actors, such as international companies and privatized services, accountable for their actions due often to the power imbalance between perpetrators and victims. States therefore have the duty to proactively address these challenges to ensure justice for the victims. This will require several measures. For example, states must do the following:

- Remove any obstacles in procedures that need to be followed or practical arrangements. This could include making fees for cases affordable, providing legal aid and funding, facilitating access to relevant information, facilitating collection of evidence from abroad.
- Ensure that laws are in place to allow for bringing cases against the different types of non-state actors, including international companies, and that judges have the specialization and training to consider these kinds of cases.

8.4 Obligations of states within international financial institutions

International financial institutions (IFIs), such as the World Bank and the International Monetary Fund (IMF), are inter-state bodies set up to promote economic growth and stability. They are not non-state actors, but the way they operate can have a major impact on the role of non-state actors, and in turn on rights holders, given that they exert significant influence over defining many states' economic and social policies.

In the 1990s, structural adjustment programmes promoted by international financial institutions, such as the World Bank and IMF, encouraged countries receiving loans to reduce social spending in sectors such as health and education and to devote a significant portion of their budget to managing their international debt. In many cases this resulted in severe impacts on people's enjoyment of economic and social rights, particularly those facing structural discrimination and in disadvantaged situations. This phenomenon has been rebranded as austerity measures, and such policies have impacted many.

More recently, the World Bank has increased its commitment to human rights. However, despite this, in practice many of its projects have been found to disregard human rights standards. At the same time many developing states continue to have to spend large proportions of their

During the Covid-19 virus pandemic, increasing demands for debt relief, including debt cancellation, have been voiced in order to enable states to cope with the situation.

budgets on repaying loans, meaning that less money is left to spend on social goods and services such as health, education, social security and housing.

- ▶ *IFIs lend money to governments but impose conditions on these countries, such as “good governance” and “privatization” which can both positively and negatively impact human rights.*
- ▶ *In order to pay back debt, including to IFIs, states often adopt austerity measures and reduce their funding to public services related to ESC rights, such as health and education.*

As a result of these conditionalities, services are often privatized by the state and sold to private companies which then charge “user fees” that many families cannot afford.

Example: Unregulated privatization of water delivery can lead to increased costs, leaving many families with less than the minimum essential levels of water necessary for personal and domestic use.

Box 25: State obligations related to ESC rights within IFIs

In several of its General Comments on ESC rights, the Committee on Economic, Social and Cultural Rights has consistently held that the obligations of states under the ICESCR extend to the actions of these states as members of inter-governmental organizations, including international

financial institutions, such as the World Bank and the IMF. The Committee has indicated that states have an obligation to ensure that the policies and decisions of those organizations are in conformity with states’ obligations under international law.

The World Bank and IMF, as specialized agencies of the UN, must act consistently with the provisions of the UN Charter, including provisions requiring the UN to promote universal respect and observance of human rights. Furthermore, all international organizations are bound by customary international law relating to human rights and by human rights principles, that constitute general principles of international law, such as non-discrimination.

Chapter 9

Sustainable development and ESC rights

This chapter will explore how cooperation and development assistance can contribute to the realization of ESC rights. We will then move specifically to the 2030 Agenda for Sustainable Development and its associated SDGs. International cooperation and implementation of the 2030 Agenda are interlinked and are important for the realization of ESC rights.

9.1 International cooperation and assistance for the realization of ESC rights

As discussed earlier, under Article 2(1) of the ICESCR, states have the duty to use the maximum resources available to them to ensure the realization of ESC rights. In addition to national resources, these resources include those made available through international assistance and cooperation (see [Table 5](#) on maximum available resources).

International cooperation and assistance are key elements for the realization of ESC rights. States that are not able to comply with their obligations and cannot realize ESC rights due to limited resources must seek international cooperation and assistance. States that are in a position to do so must respond to such requests.

For most low-income countries, international cooperation and assistance from other states, often known as Official Development Assistance (ODA), or bilateral aid, has become an important resource for the realization of ESC rights. While this is very important, aid is often given to suit the economic and political interests of the donors, rather than to be solely aimed at reducing poverty and/or advancing human rights in the receiving state. Problems include:

- A requirement to privatize services, for example water or electricity without thinking through the implications of affordability for everybody;
- A requirement to spend some of the aid money on goods or services from the donor country which may not be the priority for poverty alleviation or enhancing access to human rights;
- Donors delivering less aid than they have promised due to short term domestic considerations;
- Donors providing finance in an unpredictable way and on a short-term basis, making it difficult for the receiving government to plan its public spending; and
- On the part of states receiving aid, there may be many problems including corruption, wastage in using resources, bad planning and coordination that lead to misuse of aid and assistance.

- ▶ *National and international resources must be understood to refer to both human and financial resources.*
- ▶ *As part of their international cooperation obligations, states must prevent their own citizens and national non-state actors (for example companies) from*

causing or contributing to human rights violations in the other countries where they operate when they are delivering such cooperation and assistance.

Cooperation within the framework of the 2030 Agenda for Sustainable Development is an important framework through which international aid and cooperation is provided.

9.2 The 2030 Agenda for Sustainable Development

9.2.1 The 2030 Agenda

The 2030 Agenda for Sustainable Development (referred to below as the 2030 Agenda, available at sdgs.un.org/2030agenda) was adopted in October 2015 by General Assembly Resolution 70/1: “Transforming our world: the 2030 Agenda for Sustainable Development”. It replaced the Millennium Development Goals (MDGs) when they expired in 2015, following consultations with several stakeholders including CSOs.

- ▶ *“This Agenda is a plan of action for people, planet and prosperity. It also seeks to strengthen universal peace in larger freedom. We recognize that eradicating poverty in all its forms and dimensions, including extreme poverty, is the greatest global challenge and an indispensable requirement for sustainable development.”*

(General Assembly Resolution 70/1)

Resolution 70/1 includes a declaration, 17 goals (the SDGs), and 169 targets. Specific indicators for each of the targets were also developed.

The 2030 Agenda and its associated SDGs provide a way to respond in a comprehensive manner to major global challenges such as conflict, poverty, inequality, and climate change.

The 2030 Agenda focuses on five essential elements which frame and reinforce its universal, integrated and transformative nature: people, planet, prosperity, peace, and partnership.

The 2030 Agenda builds on accumulation of experience related to sustainable development at the national and international level, including achievements, challenges and lessons learnt from the implementation of the MDGs including the need to integrate human rights more into the process and outcome.

- ▶ *The Declaration includes many important aspects, including references to human rights, that are not always found in the goals, targets and indicators.*
- ▶ *It is therefore essential that the implementation of the 2030 Agenda takes into account relevant concepts in the Declaration, including the link between human rights and sustainable development (see [Annex 3](#) on the link between human rights and the SDGs).*

9.2.2 The SDGs

The first 16 of the 17 SDGs focus on the following human rights-related areas many of which have strong alignment with economic, social and cultural rights: ending poverty; ending hunger; ensuring good health and well-being; ensuring quality education; achieving gender equality; ensuring clean water and sanitation; ensuring access to affordable and clean energy; promoting decent work and economic growth; building industry, innovation and infrastructure; reducing inequality within and among countries; making cities and communities sustainable; ensuring responsible consumption and production; taking urgent action to combat climate change and its impacts; conserving life below water; protecting life on land; and promoting peace, justice and strong institutions.

The Declaration of the 2030 Agenda is important for understanding the SDGs and targets. It can help guide CSOs in their efforts towards the realization of the Agenda.

Figure 7: The Sustainable Development Goals



Source: UN Sustainable Development Goals Knowledge Platform, sustainabledevelopment.un.org/sdgs

- ▶ *A close look at many of the SDGs and their targets shows that they are closely linked to and echo important human rights (see Annex 3 for the link between SDGs and human rights).*

The SDGs require that action must be carried out by all countries, regardless whether they are low, middle or high income, to promote prosperity, stressing that ending poverty must go hand-in-hand with strategies that build economic growth; and that it is essential to address a range of social needs including education, health, social

protection, and job opportunities, while tackling climate change and environmental protection.

Each of the SDGs has a number of associated targets that define what exactly is hoped to be achieved. There are 169 targets in total. Some of these are qualitative, while others are quantitative. In addition, some are known as ‘outcome’ targets and others are ‘process’ targets. Outcome targets are normally referred to in numbers, for example 4.1, 4.2, and so on. Process targets are normally referred to in letters, for example 4.a, 4.b, and so on.

- ▶ *Process targets indicate the means needed for achieving the outcome targets. But it is important to note that these are not the only processes that will be needed. Other processes may also be needed, depending on the national context.*

Some targets are expressed in clear progressive terms, to be reached by 2030, while others are less clear. However, there is concern that immediate state obligations under international human rights law are not reflected in the SDGs and the targets.

Example: SDG 4: Ensure inclusive and equitable quality education and promote life-long learning opportunities for all.

Target 4.1 By 2030, ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes.

Target 4.a Build and upgrade education facilities that are child, disability, and gender sensitive and provide safe, non-violent, inclusive and effective learning environments for all.

Target 4.1 is an example of an outcome target. Target 4.a is an example of a process target. Target 4.1 is not fully consistent with state obligations under international human rights law. Firstly, the CESCR clarifies in its General Comment Number 13 on the right to education that states have the immediate obligation to make primary education available, “free to all”. In contrast, SDG 4 does not include a target related to making primary education available immediately. It only focuses on the progressive dimension ensuring that all girls and boys complete their primary and secondary education by 2030.

The SDGs present a global framework. However, each state needs to identify its own priorities, and localize targets and indicators to guide national implementation. National Development Plans are therefore expected to be developed or updated to reflect the 2030 Agenda for Sustainable Development.

- ▶ *As the SDGs and their targets reflect many ESC rights, national development plans for implementing the SDGs must be compliant with human rights obligations and integrate state obligations in relation to ESC rights.*

Box 26: The 17 Sustainable Development Goals

Goal 1 (No poverty): End poverty in all its forms everywhere

Goal 2 (Zero hunger): End hunger, achieve food security and improved nutrition and promote sustainable agriculture

Goal 3 (Good health and well-being): Ensure healthy lives and promote well-being for all at all ages

Goal 4 (Quality education): Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all

Goal 5 (Gender equality): Achieve gender equality and empower all women and girls

Goal 6 (Clean water and sanitation): Ensure availability and sustainable management of water and sanitation for all

Goal 7 (Affordable and clean energy): Ensure access to affordable, reliable, sustainable and modern energy for all

Goal 8 (Decent work and economic growth): Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all

Goal 9 (Industry, innovation and infrastructure): Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation

Goal 10 (Reduced inequality): Reduce inequality within and among countries

Goal 11 (Sustainable cities and communities): Make cities and human settlements inclusive, safe, resilient and sustainable

Goal 12 (Responsible consumption and production): Ensure sustainable consumption and production patterns

Goal 13 (Climate action): Take urgent action to combat climate change and its impacts

Goal 14 (Life below water): Conserve and sustainably use the oceans, seas and marine resources for sustainable development

Goal 15 (Life on land): Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss

Goal 16 (Peace, justice and strong institutions): Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

Goal 17 (Partnerships for the Goals): Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development

Source: The text of the Sustainable Development Goals and their targets, as included in General Assembly Resolution 70/1 “Transforming our world: the 2030 Agenda for Sustainable Development”, 21 October 2015.

The short summaries are based on the official UN Sustainable Development Goals webpage, un.org/sustainabledevelopment/sustainable-development-goals/

9.3 Human rights at the centre of the 2030 Agenda

Increasingly, the human rights-compliant approach is recognized as the best approach for development. This is recognized in several parts of the 2030 Agenda for Sustainable Development.

The 17 Sustainable Development Goals and 169 targets contained in the 2030 Agenda for Sustainable Development seek to realize human rights for all. Particularly:

- The 2030 Agenda is grounded in the Universal Declaration of Human Rights and international human rights treaties.
- The 2030 Agenda has a particular focus on those living in extreme poverty and the most marginalized, and stressing that all countries and all people are in need of attention to address development challenges.
- The 2030 Agenda focuses on gender equality and the empowerment of women and girls.
- The 2030 Agenda emphasizes respect for race, ethnicity and cultural diversity, and of equal opportunity permitting the full realization of human potential and contributing to shared prosperity.
- The 2030 Agenda recognizes the need to build peaceful, just and inclusive societies that provide equal access to justice and that are based on respect for human rights, effective rule of law and good governance at all levels and on transparent, effective and accountable institutions.

Many of the SDGs and their targets directly echo ESC rights provided in various international human rights treaties. Other SDGs and targets include references to actions that have great impact on and relevance to ESC rights. The following are specific examples, with a direct reference to the relevant provisions in the ICESCR (see [Annex 3](#) for link between the SDGs and human rights).

- ▶ *Several SDGs and targets will have direct and indirect impact on the same ESC right.*
- ▶ *At the same time, one SDG or target will have direct or indirect impact on several ESC rights.*

9.3.1 SDG 16

SDG 16 identifies the importance of governance and institution-building as essential elements underpinning overall development and peace-building efforts. Goal 16 also incorporates elements of a human rights-compliant approach including accountability, rule of law, access to justice and remedy, anti-discrimination and anti-corruption, access to information and participation.

Further, SDG 16 is relevant to all countries, not only those that suffer a democratic deficit, challenges to accountability or justice or those facing conflict. The needs for widespread participation and accountability, as well as the development of strategies and monitoring of implementation and scrutiny, is relevant to all countries.

- *Progress in achieving SDG 16 could drive a stronger human rights-compliant approach for making progress on all the other goals.*

Box 27: SDG 16 and ESC rights

Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

The targets associated with this Goal (as included in the text of 2030 Agenda), which are directly related to ESC rights, are the following:

- 16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all;
- 16.5 Substantially reduce corruption and bribery in all their forms;

16.6 Develop effective, accountable and transparent institutions at all levels;

16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels;

16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements;

16.b Promote and enforce non-discriminatory law.

These targets have relevance for ensuring that the 2030 Agenda is human rights-compliant in practice.

- They ensure that states put in place laws, policies and institutions to facilitate the realization of ESC rights in accordance with states obligations under human rights law.
- Non-discrimination and participation are important elements of a human rights-compliant approach.
- Access to information is essential to ensure participation.

- Ensuring rule of law and justice is essential for ensuring access to remedy for violations or abuses.

Box 28: The rights to information and participation

People have a right to participate in the decisions that affect them, yet international agencies, governments, companies, and CSOs often fail to respect this. The only way to break the chains of exclusion, powerlessness, lack of knowledge and physical insecurity is to allow people to participate in making decisions that affect them. These are important concerns that the 2030 Agenda deals with and incorporates through various goals and targets, especially Goal 16.

Participation is a human right. The ICCPR's Article 25 concerns the right to participate in public affairs, directly or through freely chosen representatives. The Human Rights Committee's General Comment No. 25 on Article 25 states that the term "public affairs" "covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels." This includes participating directly in the design of policies in areas such as development, health or education as well as budget allocation for associated goods and services. It also includes the right to monitor how the state puts these into practice.

The right to participate is closely linked to the right to seek and obtain information. The ICCPR Article 19 guarantees the right to information as part of the right to free expression. Without access to information, meaningful participation is impossible.

The UN Declaration commonly known as the Declaration on Human Rights Defenders states that the right to participate includes the right to obtain information, to make submissions to the government about any aspect of human rights and make proposals for improvement.

The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms was adopted through General Assembly resolution 53/144 of 9 December 1998, available at [ohchr.org/en/instruments-mechanisms/instruments/declaration-right-and-responsibility-individuals-groups-and](https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-and-responsibility-individuals-groups-and)

When defining participation, it is important to distinguish between “instrumental” and “transformative” participation. They do not equally empower people:

- **Instrumental participation** is where people are used as tools or “instruments”. They may be involved in discussions but have no decision-making power, or they may merely contribute their labour to a project. This is usually because power structures are unwilling to give up their control.
- **Transformative participation** is where people have real power to change or transform a situation. This may be because a real effort has been made to empower them to identify issues, define priorities, and participate in developing strategies, policies or plans. In these cases, power structures are willing to respect the role of people.

9.3.2 SDG 17

Goal 17 is an overarching goal focusing specifically on means of implementation. The Agenda emphasizes partnerships in support of implementation of all the SDGs and targets, bringing together governments, civil society, the private sector, the United Nations system and other actors and mobilizing all available resources: This is reflected largely in Goal 17.

Goal 17 includes several elements related to financing, technology, and capacity-building. The 2030 Agenda relies heavily on the role of the private business activity, investment and innovation. In this respect, the 2030 Agenda promotes Public-Private Partnerships as a model that could play an important role (see Target 17.17). The Agenda envisages that public investment in infrastructure and urban development projects

A research paper commissioned by the World Bank in 2018 found that public-private partnerships are not always successful. The study is available at elibrary.worldbank.org/doi/abs/10.1093/wbro/lkx008?src=recsys

may be carried out with private capital so as to accelerate SDG delivery. However, this risks potential negative impacts on rights holders without the proper regulation by states (see [Chapter 8](#) on non-state actors). While public-private partnerships may be useful, they have also proved to be problematic in a number of countries as they may not actually lead to an improvement in the quality nor affordability of services.

It also identifies international trade, based on World Trade Organization rules, as the main source for funding the Agenda. Additionally, the Agenda recognizes a need for debt financing, debt relief, debt restructuring and sound debt management. Restructuring taxation and improving domestic capacity for tax and other revenue collection are also identified as important financial means of implementation.

However, the 2030 Agenda also recognizes that official development assistance will continue to be important for the delivery of the post-2015 international development agenda, and asks high-income or donor countries to implement fully their official

development assistance commitments, including the commitment to achieve the target of 0.7 per cent of gross national income for official development assistance to low-income countries.

Finance (Targets 17.1 – 17.5): As explained above, this is through a number of means including strengthening domestic resource mobilization; and the implementation of official development assistance commitments by donor countries.

Technology (Targets 17.6 – 17.8): This includes enhancing regional and international cooperation in access to science, technology, innovation and knowledge sharing; and to develop, transfer, disseminate and diffuse environmentally sound technologies to aid-receiving countries.

Capacity-building (Target 17.9): The target encourages enhancing international support for implementing effective and targeted capacity-building in aid receiving countries to support national plans to implement all the SDGs.

Trade (Targets 17.10 – 17.12): To promote universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the WTO, and to increase the exports of aid-receiving countries.

9.3.3 Human rights mechanisms and the 2030 Agenda

The 2030 Agenda for Sustainable Development does not have a mandatory reporting mechanism similar to treaty bodies or the UPR (see [Chapter 7](#) on Human Rights Mechanisms). Instead, states submit what is known as Voluntary National Reviews (VNRs) to the High-Level Political Forum (HLPF) on Sustainable Development.

Several UN human rights mechanisms have engaged with the 2030 Agenda from the beginning. Treaty bodies and some special procedures have issued statements illustrating how the SDGs and state obligations under human rights law are interlinked.

UN treaty bodies now ask states to report on their implementation of the 2030 Agenda in their periodic reports. They issue recommendations specific to the SDGs in their conclusions and recommendations to states.

Several special procedures related to ESC rights also have issued reports about the 2030 Agenda and the SDGs, from the perspective of their particular mandates.

Specifically, the Committee on Economic, Social and Cultural Rights increasingly integrates the SDGs in its work, including under the periodic reporting process, to enhance the synergies between measures adopted in the context of the 2030 Agenda and the realization of ESC rights. The Committee recommends that:

- National action plans for the implementation of the SDGs take into account the recommendations contained in the concluding observations that the Committee issues in the context of the periodic reporting process under the ICESCR.

- The ICESCR should also inform the identification and adoption of appropriate national and international indicators in the context of the 2030 Agenda and the monitoring and evaluation of the SDGs by the international community, including the HLPF.

In its conclusions and recommendations, the CESCR repeatedly recommends states to:

- Take fully into account their obligations under the Covenant and ensure the full enjoyment of the rights enshrined in the ICESCR in the implementation of the 2030 Agenda for Sustainable Development at the national level;
- Use international assistance and cooperation for the implementation of the 2030 Agenda when needed;
- Establish independent mechanisms to monitor progress in the achievement of the Goals (for example when states develop a national plan for the sustainable development agenda, they must also establish an independent body that monitors the implementation of the plan);
- Treat beneficiaries of public programmes as rights holders who can claim entitlements;
- Implement the Goals on the basis of the principles of participation, accountability and non-discrimination, which would ensure that no one is left behind.

Box 29: The ICESCR and the 2030 Agenda

The Committee on Economic, Social and Cultural Rights emphasizes that the ICESCR establishes “a normative framework of rights and obligations that should constitute the bedrock of all measures adopted by states parties to advance the 2030 Agenda. This framework can be applied to the development of national institutional policies for the implementation of all Sustainable Development Goals. It can help in identifying those most in need, in the design of policies that address the root causes of violations of Covenant rights, and in creating spaces

for affected persons to be heard when decisions that will affect them are taken. It requires legal and other forms of recourse for victims of violations of Covenant obligations.”

Source: “The pledge to leave no one behind: the International Covenant on Economic, Social and Cultural Rights and the 2030 Agenda for Sustainable Development, Statement by the Committee on Economic, Social and Cultural Rights”, E/C.12/2019/1, April 2019, paragraph 14, undocs.org/E/C.12/2019/1

Annex 1: List of General Comments by the UN Committee on Economic, Social and Cultural Rights

As of January 2023 (from most recent to least recent)

Number	Subject	Year of publication
26	Land and economic, social and cultural rights	2022
25	Science and economic, social and cultural rights (art. 15)	2020
24	State obligations in the context of business activities	2017
23	The right to just and favourable conditions of work (art. 7)	2016
22	The right to sexual and reproductive health (art. 12)	2016
21	The right of everyone to take part in cultural life (art. 15 (1.a))	2009
20	Non-discrimination in economic, social and cultural rights (art. 2(2))	2009
19	The right to social security (art. 9)	2007
18	The right to work (art. 6)	2006
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 or she is the author (art. 15(1c))	2006
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 (art. 11 (1)): Forced evictions	1997
6	The economic, social and cultural rights of older persons	1995
5	Persons with disabilities	1994
4	The right to adequate housing (art. 11 (1))	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

Annex 2: Examples of thematic reports by selected UN Special Procedures

The following reports were submitted by the Special Rapporteurs on the Right to Food, the Special Rapporteur on the Right to Education and the Special Rapporteur on the Right to Housing in 2019 and 2018. These are illustrative examples.

2020

- Report of the Special Rapporteur on the right to food on critical perspective on food systems, food crises and the future of the right to food
- Report of the Special Rapporteur on the right to food on the right to food in the context of international trade law and policy
- Report of the Special Rapporteur on the right to education on interrelations between the right to education and the rights to water and sanitation
- Report of the Special Rapporteur on the right to education on the impact of the COVID-19 crisis on the right to education; concerns, challenges and opportunities
- Report of the Special Rapporteur on the right to housing on COVID-19 and the right to adequate housing
- Report of the Special Rapporteur on the right to housing: Guidelines for the implementation of the right to adequate housing

2019

- Report of the Special Rapporteur on the right to food on the Sustainable Development Goals
- Report of the Special Rapporteur on the right to food on fishery workers
- Report of the Special Rapporteur on the right to education on the contribution of the right to education to the prevention of atrocity crimes and mass or grave violations of human rights
- Report of the Special Rapporteur on the right to education on the implementation of the right to education and Sustainable Development Goal 4 in the context of the growth of private actors in education
- Report of the Special Rapporteur on the right to housing on the right to housing for indigenous peoples
- Report of the Special Rapporteur on the right to housing on access to justice for the right to housing

2018

- Report of the Special Rapporteur on the right to food on agricultural workers and the right to food
- Report of the Special Rapporteur on the right to education on the right to education for refugees

- Report of the Special Rapporteur on the right to education on governance and the right to education
- Report of the Special Rapporteur on the right to housing on the right to housing for residents of informal settlements
- Report of the Special Rapporteur on the right to housing on human rights-based national housing strategies

Annex 3: SDGs and their corresponding provisions in international human rights treaties

SDG and targets	Related international human rights treaty
<p>SDG1: End poverty in all its forms everywhere</p> <p>Targets include eradicating extreme poverty; implementing social protection measures; and ensuring equal access of men and women to economic resources.</p>	<p>Right to an adequate standard of living ICESCR, Article 11; CRC, Article 27</p> <p>Right to social security ICESCR, Article 9; CRPD, Article 28; CRC, Article 26</p> <p>Equal rights of women in economic life ICESCR, Articles 3 and 7; CEDAW, Articles 11, 13, 14(2)(g), 15(2), and 16(1)</p>
<p>SDG2: End hunger, achieve food security and improved nutrition, and promote sustainable agriculture</p> <p>Targets include ending hunger and malnutrition; improving agricultural production, sustainable and resilient food production; correcting trade distortions, and ensuring functioning food commodity markets.</p>	<p>Right to adequate food ICESCR, Article 11; CRC Article 24(2)(c)</p> <p>International cooperation, including ensuring equitable distribution of world food supplies ICESCR Articles 2(1) and 11(2)</p>
<p>SDG 3: Ensure healthy lives and promote well-being for all at all ages</p> <p>Targets include reducing maternal mortality; ending preventable child deaths; ending or reducing AIDS other diseases; universal health coverage, affordable essential medicines, sexual and reproductive health care; vaccine research, and access to medicines.</p>	<p>Right to life ICCPR, Article 6; CEDAW, Article 12 (women); CRC, Article 6 (children)</p> <p>Right to health ICESCR, Article 12; CEDAW, Article 12 (women); CRC, Article 24 (children)</p> <p>Special protection for mothers and children ICESCR, Article 10</p> <p>Right to enjoy the benefits of scientific progress and its application ICESCR, Article 15(1)(b)</p>

SDG 4: Ensure inclusive and equitable quality education and promote life-long learning opportunities for all

Targets include universal access to free, quality pre-primary, primary and secondary education; improving vocational skills; equal access to education; expanding education facilities, scholarships, and training of teachers.

Right to education

ICESCR, Article 13; CRC, Articles 28 and 29 (children); CRC, Article 23(3) (children with disabilities); CRPD, Article 24 (persons with disabilities)

Equal rights of women and girls in the field of education

CEDAW, Article 10

Right to work, including technical and vocational training

ICESCR, Article 6

SDG 5: Achieve gender equality and empower all women and girls

Targets include eliminating discrimination and violence against women and girls; valuing unpaid care and domestic work; ensuring the full participation of women; access to reproductive health care; and equal access of women to economic resources.

Elimination of all forms of discrimination against women and girls

ICESCR, Articles 2 and 3; CEDAW, Articles 15-; CRC, Article 2, Article 7 (in legislation, political and public life), Articles 11, 13 (economic and social life), and Article 16 (family relations)

Reproductive health

ICESCR Article 12

Right to decide the number and spacing of children

CEDAW, Articles 12 and 16(1)(e); CRC, Article 24(2)(f)

Special protection for mothers and children

ICESCR, Article 10

Elimination of violence against women and girls

CEDAW, Articles 1- 6; CRC, Articles 24(3) and Article 35

Right to just and favourable conditions of work

ICESCR, Article 7; CEDAW, Article 11

<p>SDG 6: Ensure availability and sustainable management of water and sanitation for all</p> <p>Targets include ensuring universal and equitable access to safe, affordable drinking water, sanitation and hygiene for all; reducing pollution; increasing water-use efficiency; and promoting participatory management of water and sanitation services.</p>	<p>Right to safe drinking water and sanitation ICESCR, Article 11</p> <p>Right to health ICESCR, Article 12</p> <p>Equal access to water and sanitation for rural women CEDAW, Article 14(2)(h)</p>
<p>SDG 7: Ensure access to affordable, reliable, sustainable and modern energy for all</p> <p>Targets include ensuring universal access to affordable, reliable and modern energy services.</p>	<p>Right to an adequate standard of living ICESCR, Article 11</p> <p>Right to enjoy the benefits of scientific progress and its application ICESCR, Article 15(1)(b)</p>
<p>SDG 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all</p> <p>Targets include promoting sustained economic growth; improving resource efficiency in production and consumption; full and productive employment and decent work for all; eradicating forced and child labour and trafficking; protecting labour rights including those of migrant workers; and increasing access to financial services.</p>	<p>Right to work and to just and favourable conditions of work ICESCR, Articles 6, 7, and 10; CRPD, Article 27</p> <p>Prohibition of slavery, forced labour, and trafficking of persons ICCPR, Article 8; CEDAW, Article 6; CRC, Articles 34-36</p> <p>Equal rights of women in relation to employment ICESCR, Articles 3 and 7; CEDAW, Article 11</p> <p>Prohibition of child labour CRC, Article 32</p> <p>Equal labour rights of migrant workers CMW, Article 25</p>

<p>SDG 9: Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation</p> <p>Targets include affordable and equitable access to quality infrastructure; employment generating industrialization; access to financial services and markets; innovation and technology transfer, and increasing access to information and communications technology.</p>	<p>Right to enjoy the benefits of scientific progress and its application ICESCR, Article 15(1)(b)</p> <p>Right to access to information ICCPR, Article 19(2)</p> <p>Right to adequate housing, including land and resources ICESCR, Article 11</p> <p>Equal rights of women to financial credit and rural infrastructure CEDAW, Article 13(b), and Article 14(2)</p>
<p>SDG 10: Reduce inequality within and among countries</p> <p>Targets include promoting higher growth rates for the bottom 40 per cent; promoting social, economic and political inclusion; reducing inequalities in opportunities and outcomes; ensuring social protection for all; securing participation in economic decision making; facilitating migration, and reducing transaction costs for migrant remittances.</p>	<p>Right to equality and non-discrimination ICESCR, Article 2(2); ICCPR, Articles 2(1), and 26; CERD, Article 2(2); CEDAW, Article 2; CRC, Article 2; CRPD, Article 5; CMW, Article 7</p> <p>Right to participate in public affairs ICCPR, Article 25; CEDAW, Article 7; ICERD, Article 5; CRPD, Article 29</p> <p>Right to social security ICESCR, Articles 9-10; CRPD, Article 28</p> <p>Promotion of conditions for international migration CMW, Article 64</p> <p>Right of migrants to transfer their earnings and savings CMW, Article 47(1)</p>
<p>SDG 11: Make cities and human settlements inclusive, safe, resilient and sustainable</p> <p>Targets include ensuring access to housing, basic services and public transport for all; participatory planning of human settlements; safeguarding cultural and natural heritage; and strengthening resilience to disasters.</p>	<p>Right to adequate housing, including land and resources ICESCR, Article 11</p> <p>Right to participate in cultural life ICESCR, Article 15; ICERD, Articles 5 and 7; CRPD, Article 30; CRC, Article 31</p> <p>Accessibility of transportation, facilities and services particularly of persons with disabilities</p>

	<p>CRPD, Article 9(1); CRC Article 23 (children); CEDAW, Article 14(2) (rural women)</p> <p>Protection from natural disasters</p> <p>CRPD Article 11</p>
<p>SDG 12: Ensure sustainable consumption and production patterns</p> <p>Targets include achieving sustainable management and efficient use of natural resources; improving waste management; promoting sustainable public procurement; ensuring access to information; and building capacity for sustainable development.</p>	<p>Right to health including the right to safe, clean, healthy and sustainable environment</p> <p>ICESCR, Article 12</p> <p>Right to adequate food and the right to safe drinking water</p> <p>ICESCR, Article 11</p> <p>Right of all peoples to freely dispose of their natural resources</p> <p>ICCPR, Article 1(2); ICESCR, Article 1(2)</p>
<p>SDG 13: Take urgent action to combat climate change and its impacts</p> <p>Targets include strengthening resilience and adaptation to climate change and natural disasters, including in marginalized communities; implementation of the Green Climate fund.</p>	<p>Right to health including the right to safe, clean, healthy and sustainable environment</p> <p>ICESCR, Article 12; CRC, Article 24; CEDAW, Article 12; CMW, Article 28</p> <p>Right to adequate food & right to safe drinking water</p> <p>ICESCR, Article 11</p> <p>Right of all peoples to freely dispose of their natural wealth and resources</p> <p>ICCPR, Article 1(2); ICESCR, Article 1(2)</p>
<p>SDG 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development</p> <p>Targets include reducing marine pollution; conserving coastal ecosystems, coastal marine areas and fish stock; securing market access for small scale fishers; protection of marine biodiversity.</p>	<p>Right to health including the right to safe, clean, healthy and sustainable environment</p> <p>ICESCR, Article 12; CRC, Article 24; CEDAW, Article 12; CMW, Article 28</p> <p>Right to adequate food & right to safe drinking water</p> <p>ICESCR, Article 11</p> <p>Right of all peoples to freely dispose of their natural wealth and resources</p> <p>ICCPR, Article 1(2); ICESCR, Article 1(2)</p>

<p>SDG 15: Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss</p> <p>Targets include the sustainable management of freshwater, mountain ecosystems and forests; combatting desertification; halting biodiversity loss; combatting poaching and trafficking of protected species.</p>	<p>Right to health including the right to safe, clean, healthy and sustainable environment ICESCR, Article 12; CRC, Article 24; CEDAW, Article 12; CMW, Article 28</p> <p>Right to adequate food & right to safe drinking water ICESCR, Article 11</p> <p>Right of all peoples to freely dispose of their natural wealth and resources ICCPR, Article 1(2); ICESCR, Article 1(2)</p>
<p>SDG 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels</p> <p>Targets include reducing all forms of violence; ending violence against and trafficking of children; promoting rule of law and justice for all; reducing illicit financial and arms flows, corruption and bribery; developing effective institutions; participation in decision making at all levels; legal identity for all.</p>	<p>Right to life, liberty and security of the person ICCPR, Articles 6(1), and 9(1); ICPED, Article 1; ICCPR, Article 7 (including freedom from torture); CAT, Article 2; CRC, Article 37(a)</p> <p>Protection of children from all forms of violence, abuse or exploitation CRC, Articles 19, and 37(a); CRC, Articles 34-36 (including trafficking); CRC-OP1)</p> <p>Right to of access to justice and due process ICCPR, Articles 2(3), and 14-15; CEDAW, Article 2(c)</p> <p>Right to legal personality ICCPR, Article 16; CRPD, Article 12</p> <p>Right to participate in public affairs ICCPR, Article 25</p> <p>Right to of access to information ICCPR, Article 19(1)</p>

<p>SDG 17: Strengthen the means of implementation and revitalize the global partnership for sustainable development</p> <p>Targets include strengthening domestic and international resources; debt sustainability; technology transfer and capacity building; promoting trade; enhancing policy and institutional coherence; respecting countries' policy space; promoting multi-stakeholder partnerships; measurements for progress, disaggregated data.</p>	<p>Right of all peoples to self-determination ICCPR, Article 1(1); ICESCR, Article 1(1)</p> <p>Right of all peoples to development, & international cooperation UDHR, Article 28; ICESCR, Article 2(1); CRC, Article 4; CRPD, Article 32(1)</p> <p>Right of everyone to enjoy the benefits of scientific progress and its application, including international cooperation in the scientific field ICESCR, Article 15(1)</p> <p>Right to privacy ICCPR, Article 17; CRPD, Article 31(1) (including respect for human rights and ethical principles in the collection and use of statistics)</p>
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Source: Compiled from a table published by OHCHR showing how the various SDGs relate to international human rights standards. In the table here, declarations and other such standards found in the original table are not included. [ohchr.org/Documents/Issues/MDGs/Post2015/SDG_HR_Table.pdf](https://www.ohchr.org/Documents/Issues/MDGs/Post2015/SDG_HR_Table.pdf)

Economic, Social and Cultural Rights in Practice:

Part I – Understanding ESC Rights

Around the world, millions of people are still deprived of economic and social necessities, such as shelter, food, water, health care and education, while their governments agreed to protect their people from deprivation and discrimination. Such situations continue to lead to protests and conflicts, with causes and effects grounded in authoritarian tendencies and repression.

Human rights include what are often called civil and political rights (such as freedom of expression, freedom from being tortured or ill-treated, and the right to vote), and economic, social and cultural rights (such as the rights to education, health, food and housing). All these rights are equal, interconnected and inherent to human dignity. Increasingly, human rights organizations and defenders are moving beyond their traditional focus on civil and political rights, and civil society organizations are gradually strengthening their rights-based approach to dealing with economic, social and cultural issues.

This Handbook is written for such organizations and activists, to enable them to use ESC rights standards to stand up for the rights of deprived and marginalized people. Part I explains what economic, social and cultural (ESC) rights entail, what states are obliged to do to uphold those rights, which legal frameworks and mechanisms can be used to claim these rights, as well as giving some specifics about most ESC rights and about ESC rights of marginalized groups and during armed conflict. Part II of the Handbook (a separate volume) provides practical information about taking action on ESC rights, including through monitoring and fact-finding, and various advocacy actions, such as lobbying, engaging with international and non-state actors, campaigning and litigation.

The two volumes of this Handbook include specific information and examples from the Middle East and North Africa. Nevertheless, the Handbook is equally valuable for organizations and activists in other parts of the world, who want to explore and work on ESC rights.