

## International Covenant on Economic, Social and Cultural Rights

### Introduction

Even before the adoption of the Universal Declaration on Human Rights (a non-legally binding document) in 1948, broad agreement existed that the rights which were to be enshrined in the Declaration were to be transformed into legally binding obligations through the negotiation of one or more treaties. In 1966, two separate treaties, covering almost entirely all the rights enshrined in the Universal Declaration of Human Rights were adopted after approximately 20 years of negotiations: one for civil and political rights, the International Covenant on Civil and Political Rights (ICCPR), and one for economic, social and cultural rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR was adopted by the United Nations General Assembly on 16 December 1966 and entered into force on 3 January 1976.<sup>1</sup>



<sup>1</sup> If otherwise not referenced the information included in this fact sheet can be found in the International Covenant on Economic, Social and Cultural Rights or on the website of the Office of the United Nations High Commissioner for Human Rights ([www.ohchr.org](http://www.ohchr.org)).

### The International Covenant on Economic, Social and Cultural Rights

#### The Covenant in general

The ICESCR aims to ensure the protection of economic, social and cultural rights including: the right to self-determination of all peoples (article 1); the right to non-discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (article 2); the equal right of men and women to enjoy the rights in the ICESCR (article 3); the right to work (articles 6–7); the right to form and join trade unions (article 8); the right to social security (article 9); protection and assistance to the family (article 10); the right to an adequate standard of living (article 11); the right to health (article 12); the right to education (articles 13–14); and the right to cultural freedoms (article 15).

Following article 4, States parties may, in certain circumstances, limit some rights enshrined in the Covenant; however, such limitations must be determined by law, compatible with the nature of the rights included in the Convention and imposed to promote the general welfare in a democratic society.<sup>2</sup> Moreover, in keeping with article 2(1), States parties are obliged to undertake steps, in accordance with the maximum of their available resources, to progressively achieve the full realization of the rights contained in the ICESCR. However, the Committee on Economic, Social and

<sup>2</sup> The Committee has inter alia in General Comment 14, para. 28, reiterated the restrictive situations in which such limitations may be employed.



Cultural Rights has asserted in its General Comment 3 that there exists minimum requirements, ‘core obligations’, for all the rights enshrined in the Covenant, that all States parties have to comply with independently of their available resources.<sup>3</sup>

The following two sections consider those obligations in the Covenant which are directly and indirectly linked to the right to health. While reading this section, keep in mind the introduction to this folder discussing the linkages between the implementation of various human rights and the specific right to health.

#### Direct linkages to health

The ICESCR in article 12 establishes ‘the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’. The article lists some of the steps to be taken by States parties such as: the reduction of stillbirths and infant mortality; ensuring the healthy development of children; improving environmental and industrial hygiene; the prevention, treatment and control of diseases; and access to medical care for all.

The Committee on Economic, Social and Cultural Rights has in its General Comment 14<sup>4</sup> extensively elaborated on what the right to health encompasses and States parties’ obligations under article 12. What follows is a brief overview of what the Committee has established in relation to the right to health. In considering the normative content of article 12, the Committee highlights that

the right to health does not mean the right to be healthy,<sup>5</sup> but rather that it takes into account the individual’s biological and socioeconomic preconditions, and a State’s available resources. The Committee emphasizes that the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions in order to achieve the highest attainable standard of health.<sup>6</sup> The Committee also underscores that the right to health is an inclusive right which not only obliges States parties to provide timely and appropriate health care, but also to address the underlying determinants of health, such as access to safe and potable 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.<sup>7</sup>

The Committee, in General Comment 14, furthermore, outlines essential and interrelated elements which States parties are to apply while fulfilling their obligations under article 12. These elements are: availability; accessibility; acceptability; and quality. “Availability” signifies that functioning public health and health-care facilities, goods, services and programmes have to be available in sufficient quantity within the State. “Accessibility” means that health facilities, goods and services must be accessible to everyone without discrimination. Accessibility also encompasses: physical accessibility whereby all health services must be within safe physical reach for all sections of the population (it also includes the physical accessibility of underlying determinants of health such as safe and potable water and sanitation facilities); economic accessibility, i.e. that all health services are affordable to all; and information accessibility which refers to the right to seek, receive and impart information and ideas concerning health issues.

<sup>3</sup> General Comment 3, *The nature of States parties obligations*, UN Doc. E/1991/23, 14 December 1990, para. 10, see also e.g. General Comment 14, *supra*, paras. 43 and 47.

<sup>4</sup> General Comment 14, *The right to the highest attainable standard of health*, UN Doc. E/C.12/2000/4, 11 August 2000. It is available in English on: [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)40d009901358b0e2c1256915005090be?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)40d009901358b0e2c1256915005090be?Opendocument) and in Arabic on: <http://daccessdds.un.org/doc/UNDOC/GEN/G00/439/32/PDF/G0043932.pdf?OpenElement>

<sup>5</sup> *Ibid.* para. 8.

<sup>6</sup> *Ibid.* para. 9.

<sup>7</sup> *Ibid.* para. 11.



“Acceptability” refers to States parties’ obligation to ensure that all health facilities, goods and services are respectful of medical ethics and are culturally appropriate. Lastly, referring to “quality”, the Committee specifies that States have to guarantee that all services are scientifically and medically appropriate and of good quality.<sup>8</sup> Furthermore, in considering States parties’ obligations, the Committee states that the right to health imposes three forms of obligations on States parties: the obligations to respect, protect and fulfil. The obligation to “respect” requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health. The obligation to “protect” requires States to take measures that prevent third parties from interfering with article 12 guarantees. Finally, the obligation to “fulfil” requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health.<sup>9</sup>

In considering and accepting that different States parties have different possibilities to fulfil their obligations under the Covenant (progressive realization of the Covenant rights to the maximum of States parties’ resources, article 2), the Committee specifies that there exist some core obligations that must be fulfilled independently of a State party’s resources. These core obligations are to: ensure the right of access to health facilities, goods and services on a non-discriminatory basis; ensure access to the minimum essential food that is nutritionally adequate and safe; ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water; provide essential drugs, as defined under the WHO Action Programme on Essential Drugs; ensure equitable distribution of all health facilities, goods and services; and adopt and implement a national public health strategy and plan of action addressing the health concerns of the whole population.<sup>10</sup>

In addition to article 12, the ICESCR addresses health concerns in other provisions, such as: the right to work under safe and health working conditions and within reasonable working hours (articles 6 and 7); the special protection to be accorded to mothers before and after childbirth (article 10); and the special protection and assistance to be given to children, in particular to avoid economic and social exploitation, including such labour which is harmful to their morals or health (article 10).

#### Indirect linkages to health

The Committee, in its General Comment 14, underscores that the right to health is closely related to, and dependent upon, the realization of other human rights contained both in the ICESCR and other human rights instruments such as the rights to food, housing, work, education, human dignity, life, non-



discrimination, equality, privacy, access to information, as well as to the prohibition against torture and the freedoms of association, assembly and movement.<sup>11</sup>

The ICESCR enshrines rights which are indirectly linked to the right to health and affect the enjoyment of this right, as noted in the previous paragraph referring to General Comment 14. These rights include: non-discrimination (article 2[2]); equality between men and women (article 3); the right to food, clothing and housing (article 11); the right to water, which although not specifically mentioned in the ICESCR, is deemed to be included under articles 11 and 12;<sup>12</sup> the right to education (article 13); and the right of everyone to enjoy the benefits of scientific progress and its application and the freedom to perform scientific research (article 15).

## The Committee on Economic, Social and Cultural Rights

### The Committee in general

The ICESCR is the only United Nations human rights treaty which did not establish a Committee to oversee and monitor the implementation of the Covenant. The Committee on Economic, Social and Cultural Rights was instead established by United Nations Economic and Social Council (ECOSOC)<sup>13</sup> to carry

<sup>8</sup> Ibid. para. 12.

<sup>9</sup> Ibid. para. 33.

<sup>10</sup> Ibid. para. 43.

<sup>11</sup> Ibid. para. 3.

<sup>12</sup> General Comment 15, *The right to water* (articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2002/11, 20 January 2003.

<sup>13</sup> ECOSOC Resolution 1985/17 of 28 May 1985.

out the monitoring functions that had initially been assigned to ECOSOC (Part 4 of the ICESCR). The Committee examines reports transmitted by each State party (article 16) and issues responses to these in the form of concluding observations where the Committee outlines its concerns and makes suggestions and recommendations.<sup>14</sup> The Committee may furthermore issue general comments which are intended to assist and promote States parties' implementation of the Covenant, suggest improvements in the reporting procedures and stimulate the activities of States parties, international organizations and United Nations specialized agencies concerned with achieving progressively and effectively the full realization of the rights recognized in the Covenant. A draft Optional Protocol is under consideration which could give the Committee competence to entertain individual communications/complaints similar to those of other international human rights instruments.

How can the Committee help in ensuring the right to health?

Having considered a State party's report, the Committee may highlight in its concluding observations the State party's shortcomings in relation to implementing the right to health and also for other directly or indirectly related rights. The Committee may also indicate how the State party should go about correcting these shortcomings. The Committee has so far issued 18 general comments, of which at least twelve (including the previously discussed General Comment 14) are relevant for States parties in ensuring the right to health for everyone.<sup>15</sup> These general comments deal with such varied areas as: the right to adequate housing; persons with disabilities; the economic, social and cultural rights of older persons; the relationship between economic sanctions and respect for economic, social and cultural rights; the

right to adequate food; the right to water; and the equal right of men and women to the enjoyment of all economic, social and cultural rights.

### Additional instruments dealing with the right to health

The other main instrument defining and protecting the right to health, besides the ICESCR, is the World Health Organization's Constitution which defines health as 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity'. The right to health is also specifically enshrined in other international human rights instruments, such as in the International Convention on the Elimination of All Forms of Racial Discrimination (article 5 [e][iv]), the Convention on the Elimination of All Forms of Discrimination against Women (articles 11[1][f] and 12), the Convention on the Rights of the Child (article 24), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (articles 28, 43[1][e], 45[1][c], and 70). See the introduction to these fact sheets for further details on this.

### Eastern Mediterranean Region ratifications

The countries of the Eastern Mediterranean Region that have ratified the Covenant are Afghanistan, Djibouti, Egypt, Islamic Republic of Iran, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Morocco, Somalia, Sudan, Syrian Arab Republic, Tunisia and Yemen. The total number of States parties to the Covenant is 152 (as of January 2006).<sup>16</sup>

<sup>16</sup> Ratifications, signatures and reservations to international human rights instruments can be found at: [www.ohchr.org/english/countries/ratification/index.htm](http://www.ohchr.org/english/countries/ratification/index.htm)

<sup>14</sup> The concluding observations are publicly available on the United Nations human rights treaty bodies' database of the Office of the United Nations High Commissioner for Human Rights ([www.unhchr.ch/tbs/doc.nsf](http://www.unhchr.ch/tbs/doc.nsf)).

<sup>15</sup> These general comments are the following: General Comment 1, *Reporting by States parties*, UN Doc. E/1989/22, 24 February 1989; General Comment 3, *The nature of States parties' obligations*, UN Doc. E/1991/23, 14 December 1990; General Comment 4, *The right to adequate housing*, UN Doc. E/1992/23, 13 December, 1991; General Comment 5, *Persons with disabilities*, E/1995/22, 9 December 1994; General Comment 6, *The economic, social and cultural rights of older persons*, UN Doc. E/1996/22, 8 December 1995; General Comment 8, *The relationship between economic sanctions and respect for economic, social and cultural rights*, UN Doc. E/C.12/1997/8, 12 December 1997; General Comment 12, *Right to adequate food*, UN Doc. E/C.12/1999/5, 12 May 1999; General Comment 15, *The right to water*, UN Doc. E/C.12/2002/11, 20 January 2003; General Comment 16, *Article 3: the equal right of men and women to the enjoyment of all economic, social and cultural rights*, UN Doc. E/C.12/2005/3, 11 August 2005; General Comment 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 (article 15, paragraph 1 (c), of the Covenant)*, UN Doc. E/C.12/GC/17, 12 January 2006; and General Comment 18, *Right to work*, UN Doc. E/C.12/GC/18, 6 February 2006.

