**International human rights law and ESCR**

**Human rights instruments:**

The most common human rights instruments are declarations and conventions (also called treaties or covenants).

**Declarations** are documents that establish or recognize certain standards agreed upon by states, but they are **not legally binding**. They tend to be aspirational statements.

**Conventions, treaties and covenants** are more effective than declarations because once the state has signed them and once they are ratified domestically, they become **legally binding.** (To simplify the text, the term “treaty” will be used henceforth to refer to a legally binding instrument.) Treaties can be negotiated and signed at the regional level (e.g. between African or Latin American countries) or at the international level (e.g. under the auspices of the United Nations). International human rights treaties are adopted by the United Nations General Assembly and later signed and ratified by its member states. It is the state that is responsible for signing the treaty as it is the one with the obligation to implement its provisions.

At international level, there are a number of UN human rights treaties for different sets of rights and/or groups of people. The implementation of each treaty is overseen by a UN Committee of independent experts who review states’ progress in meeting the obligations of the treaty. Each treaty has its own dedicated Committee. Reviews take place periodically (every 4-5 years) and are open for civil society inputs and participation through the submission of evidence or reports. All Committees are coordinated by the Office of the High Commissioner of Human Rights.

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

## What are Economic, Social and Cultural Rights?

ESCR are human rights concerning the basic social and economic conditions needed to live a life of dignity and freedom, relating to [**work and workers' rights**](https://www.escr-net.org/rights/work)**,**[**social security**](https://www.escr-net.org/rights/social-security)**,**[**health**](https://www.escr-net.org/rights/health)**,**[**education**](https://www.escr-net.org/rights/education)**,**[**food**](https://www.escr-net.org/rights/food)**,**[**water**](https://www.escr-net.org/rights/water)**,**[**housing**](https://www.escr-net.org/rights/housing)**,**[**healthy environment**](https://www.escr-net.org/rights/adequate-healthy-environment)**,**and[**culture**](https://www.escr-net.org/rights/cultural).

Human rights provide a common framework of universally-recognized values and norms, and set out state obligations to act in certain ways or to refrain from certain acts. They are an important tool to hold states, and increasingly non-state actors, accountable for violations and also to mobilize collective efforts to develop communities and global frameworks conducive to economic justice, social wellbeing, participation, and equality. Human rights are universal, inalienable, interdependent and indivisible.

**Where are ESCR set out?**

In 1948, the [**United Nations General Assembly(link is external)**](http://www.un.org/ga) adopted the [**Universal Declaration of Human Rights(link is external)**](http://www.ohchr.org/EN/UDHR/Pages/Introduction.aspx) (UDHR), outlining the basic civil, cultural, economic, political and social rights that all human beings should enjoy. In 1966, ESCR were expressed as legal rights in the [**International Covenant on Economic, Social and Cultural Rights(link is external)**](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx) (ICESCR) (which together with the UDHR and the International Covenant on Civil and Political Rights form the so-called International Bill of Rights), as well as through other [**key human rights treaties(link is external)**](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx) and regional mechanisms. To date, more than [**160 states(link is external)**](http://indicators.ohchr.org/) have ratified the ICESCR. In addition, many states have articulated their commitment to ESCR through national constitutions and domestic law.

**What are the key principles associated with ESCR?**

The ICESCR outlines a number of important principles in the realization of ESCR, which are often included in other ESCR sources as well. Under the ICESCR, a state must take steps “to the maximum of its available resources” to progressively realize ESCR. In particular, a state (including its subnational levels) has the obligations:

* to respect ESCR (itself refrain from any violation of ESCR);
* to protect ESCR (prevent third parties from violating ESCR);
* to fulfil ESCR (take necessary measures to realize ESCR, including through legislative, administrative, budgetary and other processes); and
* to seek and provide international assistance and cooperation in the realization of ESCR.

States must guarantee ESCR without discrimination on the basis of grounds specified in the ICESCR, including race, colour, sex, language, religion, political or other opinion, national or social origin, property, and birth. In its work, the [**UN Committee on Economic, Social and Cultural Rights**(link is external) (link is external)](http://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx)(CESCR) has identified additional prohibited grounds for discrimination, including disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, and economic and social situation. The elimination of discrimination, and certain minimum core obligations identified by CESCR in some of its [**general comments(link is external)**](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11), are not subject to progressive realization but are immediate obligations.

The preamble of the UDHR confirms that “every individual and every organ of society” shall strive to promote respect for human rights and to “secure their universal and effective recognition and observance”; this extends to businesses, international and multilateral organizations, and other non-state actors.

## The Economic, Social and Cultural Rights

[The Right to Work and Workers' Rights](https://www.escr-net.org/rights/work)

[The Right to Health](https://www.escr-net.org/rights/health)

[The Right to Water](https://www.escr-net.org/rights/water)

[The Right to Social Security](https://www.escr-net.org/rights/social-security)

[The Right to Housing](https://www.escr-net.org/rights/housing)

[The Right to Food](https://www.escr-net.org/rights/food)

[The Right to Education](https://www.escr-net.org/rights/education)

[The Right to an Adequate/Healthy Environment](https://www.escr-net.org/rights/adequate-healthy-environment)

[Cultural Rights](https://www.escr-net.org/rights/cultural) include:

* The right to the benefits of culture
* The right of indigenous peoples to their land, rituals, and shared cultural practices
* The right to freedom of association
* The right to speak one’s own language and to have education provided in your mother tongue

## States obligations regarding economic, social and cultural rights:

States have a number of **general obligations in relation to all economic, social and cultural rights mentioned above.** These are:

- Progressive realization and non-retrogression:human rights treaties recognize that not all States are able to immediately guarantee full enjoyment of all ESCR to their citizens (however, they do have obligations to provide a core minimum standard, see below). For this reason, States are mandated to ‘progressively realize’ ESCR by taking positive steps to fulfil a right. In practice, this means that people should have improved enjoyment of their rights over time, better access to services etc. It also means that States should not introduce regressive measures such as budgetary cuts or legislative limitations, which restrict access to a certain right for everybody or specific categories of people.

- Use of maximum available resources: in progressive realizing a right, States should use the maximum of their available resource, both domestic and international (e.g. seeking resources from the international community). For instance, comparing countries’ expenditure towards specific sectors (health, food, education) in relation to their Gross Domestic Product (GDP) may be useful to gain a sense of how much the country is investing in ESCR. See [here](https://www.escr-net.org/news/2017/webinar-escr-monitoring-and-budget-analysis) for more information on undertaking budget analysis around ESCR.

- Minimum core obligations: Governments, no matter what level of resources are at their disposal, are obligated to make sure that people living under their jurisdiction enjoy at least essential levels of protection of each of their economic, social, and cultural rights. Minimum obligations are usually laid out in human rights treaties and in General Comments.

- Non-discriminationand substantive equality**:** States have the immediate duty to ensure that women are not directly or indirectly discriminated against in access to, or fulfillment of, a substantive right. States must eliminate both formal or de jure discrimination, (discrimination that exists in States’ legal and policy frameworks), and substantive or de facto discrimination (discrimination suffered in practice, when an apparently neutral law, policy or practice disproportionately and adversely affects certain groups because of biological difference and/or socially and culturally constructed gender, ethnic, class, and other intersecting identities or circumstances). Both CEDAW and CESCR have interpreted this obligation as not only requiring states to prevent discrimination but also to take positive steps to remedy past and structural discrimination that goes beyond legal or formal equality to encompass substantive or de facto equality.

Ensuring a comprehensive implementation of the non-discrimination principle requires an understanding of the subordination, stereotyping, and structural disadvantage that women experience. To fully realize women’s economic, social and cultural rights it is necessary to apply a substantive equality approach, which encompasses: **redressing disadvantage** (based on historical and current social structures and power relations that define and influence women’s abilities to enjoy their human rights); **addressing stereotypes, stigma, prejudice, and violence** (with underlying change in the ways in which women are regarded and regard themselves, and are treated by others); **transforming institutional structures and practices** (which are often male-oriented and ignorant or dismissive of women’s experiences); and **facilitating social inclusion and political participation** (in all formal and informal decision-making processes).

The substantive equality approach requires states to acknowledge the actual impact of policies and practices on women, considering specific circumstances, and taking positive measures to ensure equal access and opportunities for women. Therefore, states must play an active role in developing and facilitating the implementation of comprehensive economic and social policies and programs that take into account different needs and circumstances of women.

Under this approach, it is also critical to integrate an **intersectional analysis into the principle of non-discrimination.**Discrimination against women is often multidimensional, compounding other forms of discrimination based on sex, gender, ethnic origin, disability, poverty, sexual orientation and gender identity, migrant status, marital and family status, literacy and other grounds, that position them and their experiences differently. Intersectionality is an approach that helps understand the ways in which the denial of the economic, social and cultural rights is experienced by different women and exacerbated by interconnected forms of oppression and exploitation. As a result, intersectional analysis and a substantive equality approach should also be applied in the context of parallel reporting. The templates and case studies available on our website can help strengthen this approach during the parallel reporting process and its related advocacy.

More information: <http://hria.equalit.ie/pdf/en/10/FAct%20sheet%202%20EN.pdf>

[https://unesdoc.unesco.org/ark:/48223/pf0000366556?posInSet=2&queryId=N-EXPLORE-1d489ce4-6b89-4ce7-bc52-050515d5ef0c](https://unesdoc.unesco.org/ark%3A/48223/pf0000366556?posInSet=2&queryId=N-EXPLORE-1d489ce4-6b89-4ce7-bc52-050515d5ef0c)

**UN Treaties ratified by Sri Lanka [see below for summaries of key treaties]**

<https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=164&Lang=EN>)

| Treaty | Signature Date | Ratification Date, Accession(a), Succession(d) Date |
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| CAT - Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment |   | 03 Jan 1994 (a) |
| CAT-OP - Optional Protocol of the Convention against Torture |   | 05 Dec 2017 (a) |
| CCPR - International Covenant on Civil and Political Rights |   | 11 Jun 1980 (a) |
| CCPR-OP2-DP - Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty |   |  |
| CED - Convention for the Protection of All Persons from Enforced Disappearance | 10 Dec 2015 | 25 May 2016 |
| CED, Art.32 - Interstate communication procedure under the International Convention for the Protection of All Persons from Enforced Disappearance |   |  |
| CEDAW - Convention on the Elimination of All Forms of Discrimination against Women | 17 Jul 1980 | 05 Oct 1981 |
| CERD - International Convention on the Elimination of All Forms of Racial Discrimination |   | 18 Feb 1982 (a) |
| CESCR - International Covenant on Economic, Social and Cultural Rights |   | 11 Jun 1980 (a) |
| CMW - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families |   | 11 Mar 1996 (a) |
| CRC - Convention on the Rights of the Child | 26 Jan 1990 | 12 Jul 1991 |
| CRC-OP-AC - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict | 21 Aug 2000 | 08 Sep 2000 |
| CRC-OP-SC - Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography | 08 May 2002 | 22 Sep 2006 |
| CRPD - Convention on the Rights of Persons with Disabilities |  |  |

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**Summaries of key treaties ratified by Sri Lanka:**

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

This convention specifies what states will do to eliminate racial discrimination.
In the context of the Convention, states commit to:

* Not engage in any act or practice of racial discrimination against individuals, groups of persons or institutions, and to ensure that public authorities and institutions do likewise;
* Not sponsor, defend or support racial discrimination by persons or organizations;
* Review government, national and local policies and to amend or repeal laws and regulations which create or perpetuate racial discrimination;
* Prohibit and end racial discrimination by persons, groups and organizations;
* Encourage, where appropriate, multiracial organizations and other means of eliminating barriers between races, as well as to discourage anything which tends to strengthen racial division.

See more: <http://hria.equalit.ie/pdf/en/10/FAct%20sheet%2012%20ENG.pdf>

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

Civil and political rights are referred to in broad terms in the Universal Declaration of Human Rights. This covenant defines them more specifically and also sets out their limitations.
Civil rights include:

* The right to life
* The right to liberty and security of the person
* The right to freedom from torture
* The right to equality before the law
* The right to protection from arbitrary arrest
* The right to freedom of thought, conscience and religion
* The right to a fair trial

Political rights include:

* The right to participate in public affairs – grounded on the right to information
* The right to freedom of opinion and freedom of expression
* The right to freedom of association
* The right to vote and participate in the political process

For more information about this covenant, please refer to <http://hria.equalit.ie/pdf/en/10/FAct%20sheet%202%20EN.pdf> of the Office of the United Nations High Commissioner of Human Rights.

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

This convention is often described as an international bill of rights for women. It defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination in both private and public life. The convention is the only human rights treaty that affirms the reproductive rights of women and addresses culture and tradition as influential forces shaping gender roles and family relations. States are committed to submit national reports, at least every four years, describing measures they have taken to comply with their treaty obligations.

By accepting the convention, states commit themselves to undertake a series of measures to end discrimination against women in all forms, namely to:

* Incorporate the principle of equality between men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
* Establish tribunals and other public institutions to ensure the effective protection of women against discrimination;
* Eliminate all acts of discrimination against women by persons, organizations or **companies.**

For more information about this convention: <http://hria.equalit.ie/pdf/en/10/Fact%20sheet%2022%20EN.pdf>

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

The Convention on the Rights of Persons with Disabilities and its Optional Protocol was adopted on 13 December 2006 at the United Nations Headquarters in New York, and was opened for signature on 30 March 2007. There were 82 signatories to the Convention, 44 signatories to the Optional Protocol, and 1ratification of the Convention. This is the highest number of signatories in history to a UN Convention on its opening day. It is the first comprehensive human rights treaty of the 21st century and is the first human rights convention to be open for signature by regional integration organizations. This marks a change in attitudes and policies towards people with disabilities.

The Convention is intended as a human rights instrument with an explicit, social development dimension. It adopts a broad categorization of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas that must be adapted for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced. The guiding principles of the Convention are:

* Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and the independence of persons;
* Non-discrimination;
* Full and effective participation and inclusion in society;
* Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
* Equality of opportunity;
* Accessibility;
* Equality between men and women;
* Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

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

This convention ensures that persons who qualify as migrant workers under its provisions are entitled to enjoy their human rights regardless of their legal status. It expresses the rights in question in ways that relate directly to the situation of migration for employment. It reflects an up-to-date understanding of migratory trends as seen from the point of view of both states of origin and host states of migrant workers and their families. The convention imposes a series of obligations on states in the interest of promoting 'sound, equitable, humane and lawful conditions' for the international migration of workers and members of their families. It establishes rules for the recruitment of migrant workers, and for their return to their states of origin. It also details the steps to be taken to combat illegal or clandestine migration.

The convention breaks new ground in defining those rights that apply to certain categories of migrant workers and their families, including:

* border workers, who reside in a neighbouring state to which they return daily or at least once a week
* seasonal workers
* seafarers employed on vessels registered in a state other than their own
* workers on offshore installations which are under the jurisdiction of a state other than their own
* itinerant workers
* migrants employed for a specific project
* self-employed workers

**Right to self-determination**

The right of self-determination for all peoples was first enshrined in the Charter of the United Nations. It has however been the subject of extensive debate and controversy. Both the content of the right as well as who can assert it continue to evolve in international law.

According to the International Covenant on Civil and Political Rights (the ICCPR), ‘[a]ll 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.'[i] The right to self-determination also has its economic content which gives the peoples the right to freely ‘dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law.'[ii] The phrase ‘all peoples’ – instead of ‘everyone’- attached to the right to self-determination indicates that the right to self-determination is a collective right; that is, only a ‘people’, not an individual, can exercise the right.

Initially conceived, the right to self-determination belonged to the population, or people, of a fixed territorial entity, specifically peoples oppressed by a colonial power. The Declaration on the Granting of Independence to Colonial Countries and Peoples and the jurisprudence of the International Court of Justice emphasise the connection between the right to self-determination and peoples of colonised territories. In this context, the right to self-determination is “externally” exercised by secession from a colonial power to form a new state. The right of colonial peoples to external self-determination is well established in international law.

More recently, it has been postulated that the right to self-determination can be exercised ‘internally’ as well.[iii] Internal self-determination allows a people broader control over their political, economic, social and cultural development, while stopping short of secession. The development of a new conception of ‘peoples’ has evolved with the development of the idea of internal self-determination. In this context, the definition of ‘peoples’ is not only limited to the population of a fixed territorial entity but also encompasses indigenous groups and potentially some minorities. Although there is no fully accepted definition of peoples, references are often made to a definition proposed by UN Special Rapporteur Martínez Cobo in his study on discrimination against indigenous populations:

‘Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.'[iv]

### ****Instruments protecting the right to self-determination:****

Article 1(2), [Charter of the United Nations](http://www.un.org/en/charter-united-nations/)

* Articles 1 and 12, [International Covenant on Civil and Political Rights](https://web.archive.org/web/20130212043919/http%3A//www2.ohchr.org%3A80/english/law/ccpr.htm)
* Article 1(1), [International Covenant on Economic Social and Cultural Rights](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx)
* [Convention on the Elimination of All Forms of Racial Discrimination](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx)
* [General Recommendation No.21 on Right to Self-Determination](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7493&Lang=en), Committee on the Elimination of Racial Discrimination
* Article 29, [Convention on the Rights of the Child](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx)
* [Convention on the Prevention and Punishment of the Crime of Genocide](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CrimeOfGenocide.aspx) [General Comment No.12 on Self-Determination](http://www.refworld.org/docid/453883f822.html), Human Rights Committee
* Article II, [Resolution 260A(III) on the Convention on the Prevention and Punishment of the Crime of Genocide](http://www.un-documents.net/a3r260.htm), General Assembly
* [ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries, No. 169](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312314,en)
* [Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States](http://www.un-documents.net/a25r2625.htm)
* [Declaration on the Granting of Independence to Colonial Countries and Peoples](https://web.archive.org/web/20190913232124/https%3A//www.un.org/en/decolonization/declaration.shtml)
* [Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities](https://web.archive.org/web/20190808143723/https%3A//www.un.org/documents/ga/res/47/a47r135.htm)
* [Resolution 1803 (XVII) of 14 December 1962, ‘Permanent Sovereignty over Natural Resources’](http://www.ohchr.org/EN/ProfessionalInterest/Pages/NaturalResources.aspx), UN General Assembly