

Introduction to Economic, Social and Cultural Rights

Understanding older people's issues as economic, social and cultural rights

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Plan of the session

1. Presentation of economic, social and cultural rights
2. States obligations

- 1. Presentation of economic, social and cultural rights**

Economic, social and cultural rights (ESCR) are the fundamental rights that you use everyday. They concern the place of work, social security, family life, access to housing, food, health care, education ...

Their realisation improves the lives of everyone and contributes to the reduction of poverty.

ESCR are enshrined in the Universal Declaration of Human Rights (1948) and in various legally binding regional and international treaties.

At the international level, they are notably guaranteed by the International Covenant on Economic, Social and Cultural Rights (ICESCR) a treaty adopted by the UNGA in December 1966. The treaty entered into force (became legally binding for States that ratified/acceded to it) in 1976.

170 States are parties to the treaties as of 1 September 2019 – all your countries are.
This instrument apply to older persons in the same way as to all other people.

ESCR enshrined in the Covenant

- ✓ Rights to work and favourable conditions of work, Articles 6 and 7;
- ✓ Right to form and join trade unions, Article 8;
- ✓ Right to social Security, Article 9;
- ✓ Right to the protection of the family, mothers and children, article 10;
- ✓ Right to an adequate standard of living, including rights to adequate food and housing, Article 11;
- ✓ Rights to water and sanitation, Article 11;
- ✓ Right to physical and mental health, Article 12;
- ✓ Right to education, Article 13;
- ✓ Right to primary education, free and compulsory, article 14;
- ✓ Cultural Rights, Article 15.

The Covenant requires States to guarantee the enjoyment of all economic, social and cultural rights **without discrimination*** and to ensure the **equal right of women and men*** to the enjoyment of these rights (articles 2 and 3).

NB: some other international treaties guaranteeing ESCR

- ✓ *ILO Convention No. 102 concerning Social Security (Minimum Standards) - (1952)*
- ✓ the International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- ✓ *ILO Convention No. 128 concerning Invalidity, Old-Age and Survivors' Benefits (1967)*
- ✓ the Convention on the Elimination of All Forms of Discrimination against Women (1979) - includes a reference to old age in relation to the elimination of discrimination against women in the enjoyment of the right to social security in its article 11.1 (e)
- ✓ the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) - includes “age” in the list of grounds for discrimination (article 7)
- ✓ the Convention on the Rights of Persons with Disabilities (2006) - includes references to older persons in its article 25 (b) on health, its article 28 (2) (b) on an adequate standard of living and social protection. Its Article 16 (2) requires “age-sensitive” assistance and support for persons with disabilities and their families to prevent exploitation, violence and abuse, thereby recognizing the particular situations where older persons are vulnerable.

You must take ownership of these rights, understand them so that you can interpret them according to your specific needs and contexts - this is essential in order to better claim them.

The rights of of older persons are no different from mine, independent workers, students, teachers. Human rights are universal and apply to everyone. The elements that constitute these rights are the same everywhere but must be adapted according to the specificities of particular groups, women, rural women, children, young people, older persons, disabled people, peasants. LGBTIQA ...

In other words, you don't have specific rights but specific needs so measures put in place by State to realise your rights should take these needs into account.

The right to work – Article 6

- It is the right to earn a living through chosen and freely accepted decent job, not to be unjustly deprived of work and to benefit from technical and vocational training.

Older workers who have not reached retirement age often encounter problems in finding and keeping jobs, so States should take measures to prevent discrimination on grounds of age in employment and occupation.

*The adoption of temporary special measures to foster the equal participation of women in the labour market, in particular of older women = **one of the recommendation made by the CEDAW Committee to Italy in 2017***

In addition, they should have access to vocational training facilities, in particular further training and retraining; paid educational leave for the purpose of training for instance (ILO Recommendation No. 162 (1980) concerning Older Workers*) – to provide them with the skills and knowledge to keep up with the changing demands of the labor market or to transition to new occupations that enable them to maintain an adequate standard of living.

- This is an individual right that belongs to everyone and at the same time a collective right. It applies to all forms of work, should you be an independent worker or an employee. It cannot be understood as an absolute and unconditional right to get a job since it is obvious that a State can not provide a job for everyone.

The right to work has 2 corollaries:

- **The right to just and favourable working conditions = individual dimension – article 7**
 - ✓ This means the right to fair wages, with equal pay for equal work that can enable everyone to have a decent living for themselves and their families
 - ✓ Safe and healthy working conditions - Specific health and safety measures can be necessary as they might be for other groups depending on the occupation
 - ✓ Equal opportunity for promotion
 - ✓ Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays
- **The right to form and join trade unions of one's choice as well as the right of trade unions to exercise their activity freely = collective dimension – article 8 – *even after retirement***

The right to social security- article 9

Social security covers the provision of benefits, whether in cash or in kind, to provide for the risks involved in the loss of means of subsistence for reasons beyond a person's control.

This right includes the right to equal enjoyment of adequate protection in the event of unemployment, sickness, **old age** or other lack of livelihood in circumstances beyond one's control and the right not to be denied social security coverage arbitrarily or unreasonably.

This means that States must guarantee protection to everyone, in the event of unemployment, maternity, accident, illness, disability, old age and for survivors and orphans. Measures should be taken to offer such protection to enable individuals and families to enjoy at least essential health care, basic shelter and housing, water and sanitation, food, and the most basic forms of education.

Ex: adequate pension benefits should be put in place. The reduction of pension benefits in the UK was a concern for the Committee on ESCR in 2016.

The right to family protection and assistance – article 10

- Social services should be provided to support the whole family when there are elderly people at home and to implement measures especially for low-income families who wish to keep elderly people at home - This assistance should also be provided for persons living alone or elderly couples wishing to remain at home.
- Right to voluntary marriage
- Right to protection of maternity and paternity
- Right to protection of children against economic and social exploitation

The right to an adequate standard of living - article 11

- The right to adequate housing, including legal security of tenure and protection against forced evictions; housing must be affordable, habitable, properly located and acceptable – **adequate also means age friendly housing**
- The right to adequate food, which means in particular to no longer suffer from hunger and to have access to adequate food from a quantitative and qualitative point of view.
- The right to water: covers, among other things, the possibility of access (physically and economically) to safe water in sufficient quantity for personal and domestic use.
- The right to sanitation: was previously linked to the right to water but not recognized separately as a right per se. Since 2015 (resolution 70/169 adopted by the UN General Assembly) the right to sanitation is recognized as a right in its own. This right implies that everyone, without discrimination, has access physically and at affordable cost, to sanitary facilities, in all areas of life, which are safe, hygienic, safe, socially and culturally acceptable and guarantees of privacy and dignity – age friendly sanitary facilities.

Ex: National policies should but put in place to so older persons can live in their own homes as long as possible. This implies the improvement/adaptation of homes so to ensure their functionality. Similarly housing development planning should pay particular attention to the problems faced by older persons in terms of access for instance.

The right to health - article 12

This is the right to the highest attainable standard of physical and mental health, which implies that the individual has healthy living conditions and access to adequate health care.

- Right to access to equipment, health products and services
- Right to work and live in a healthy environment
- Right to prophylaxis of epidemic diseases
- Rights related to sexual and reproductive health

2 examples:

- The right to health includes that States should take measures to prevent diseases

For instance **in France**, breast cancer screening programs have been set up. Women between the ages of 50 and 74 can be screened every two years (without advance payment). This is an extremely useful measure that has helped reduce the number of deaths related to breast cancer. However, figures from the Ministry of Health indicate that the national participation rate for the year 2018 is 50.3%, that is to say that about 2,595,000 women were screened during the year. This is quite important but why 49.7% of women are still not benefiting from it? Is the screening measure really accessible, available, adapted and of high quality (AAAQ*)?

- This also includes to take measures to ensure older persons have indeed (de facto) access to health care (so not only to adopt laws and policies)

In Germany, a decision to create 13 000 new caregiver positions in hospitals was adopted in 2018. This a great measure but can Germany has such a number of qualified caregivers for older persons? Do the nurses currently employed enjoy just and favourable conditions of work?

To improve the situation of older persons in nursing homes, it is necessary to allocate the necessary resources to training nursing care personnel and conduct more frequent and thorough inspections of nursing homes.

The right to education

Articles 13 and 14

- Right to compulsory and free primary education – article 14
- Right to secondary and higher education accessible to all, with the gradual introduction of free education
- Freedom for parents to choose schools for their children
- Right of older persons to benefit from educational programmes and making the knowledge and experience of elderly persons available to younger generations

Older persons should have access to appropriate education and training programs, to the different stages of the education cycle, through special literacy, continuing and life – long education, access to university education for instance.

Cultural rights

Article 15

- Right to participate in cultural life
- Right to participate in and benefit from scientific progress
- Right of authors to benefit from the protection of the interests arising from their scientific, literary or artistic production
- Rights of minorities and indigenous peoples

Older persons should have access to the educational, cultural, spiritual and recreational resources of society.

Interdependence and indivisibility of human rights

All human rights are indivisible, interrelated and interdependent, whether civil or political (the right to life, freedom of expression, etc.), economic, social and cultural (rights to work, social security, to education ...)

Improving one right facilitates the progress of others. In the same way, deprivation of one right has a negative effect on others.

Examples of interdependence and indivisibility of human rights

Civil and political rights	Related ESCR
Right to life	Rights to health, food, water, sanitation, education
Rights to privacy, family life and a home	Rights to health, housing
Child protection	Rights to health, nutrition, education
Prohibition of forced or compulsory labor, prohibition of slavery	Rights to work, to just working conditions
Freedom of association	Rights to form or join a trade union, right to collective bargaining

Could you share a few examples of rights relevant to the challenges you face?

- ✓ Rights to work and favourable conditions of work, Articles 6 and 7;
- ✓ Right to form and join trade unions, Article 8;
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- ✓ Cultural Rights, Article 15.

2 . Obligations of States parties to the ICESCR

When a State becomes party to the ICESCR, it commits to certain obligations.

Under Article 2 of the ICESCR, a State ratifying the Covenant undertakes to **respect, protect and fulfil the rights** enshrined in the Covenant in a progressive manner and to the maximum of its available resources.

Human rights obligations

The Government has to:

Respect

Refrain from interfering with the enjoyment of the right

Protect

Prevent others from interfering with the enjoyment of the right

Fulfil

Adopt appropriate measures towards the full realization of the right

State must respect ESCR

To RESPECT means that the State must not infringe on ESCR. It must refrain from any act contrary to the exercise of ESCR.

Example:

- Equal rights between men and women: The state must refrain from taking discriminatory measures that directly or indirectly cause the deprivation or violation of a right for instance
- Not to prevent people's access to resources necessary for their livelihood.

State must protect ESCR

TO PROTECT means that the State must ensure that no one impedes the exercise of ESCR.

It must therefore ensure that third parties, such as individuals, companies and transnational corporations, do not infringe the rights of the people. This is made possible by the promulgation of laws and the establishment of effective appeal procedures.

Examples:

- Right to health: taking appropriate measures to control the care given to older people in nursing homes – organising regular controls and sanctioning abuses may the nursing homes be managed by private or public entities.
- Right to food: Adopt standards for food safety control.

State must fulfil ESCR

The State must take all necessary measures to **ensure, facilitate and promote** the exercise of ESCR, i.e. to adopt appropriate measures to guarantee the full exercise of the right in question. This is to ensure that everyone enjoy at least a minimum essential level of all their ESC rights (*progressive realisation).

- **Ensure** by facilitating access or providing direct and indirect services to those who are unable to realize their rights, for reasons beyond their control, are unable to get them. Free medical care for instance.
- **Facilitate** rights by taking steps to enable people to realize their rights.
Ex: adopt or revise legislation, better procedures or more budget. For instance by allocating sufficient budget to ensure adequate care and services for older persons. This is one of the recommendation to Bulgaria by the Committee on ESCR in March 2019. Such measure should be taken within the framework of the National Strategy for Long-term Care.
- **Promote** rights
Ex: organize awareness campaigns on domestic hygiene/ to promote the right to health. But also ensuring such information is accessible. To promote a positive attitude to ageing and older persons ESCR through awareness-raising campaigns targeting the media, service providers and the general public.

Examples of measures to fulfil the right to social security – article 9

States should :

- put in place regimes of compulsory old-age insurance to be prescribed by national law - workers and employers are both required to contribute to a fund for the benefit of the employees, in the event of ill health or reaching retirement age, for example –
- guarantee the provision of survivors' and orphans' benefits on the death of the breadwinner who was covered by social security or receiving a pension.
- provide non-contributory old-age benefits and other assistance for all older persons who, when reaching the age prescribed in national legislation, have not completed a qualifying period of contribution and are not entitled to an old-age pension or other social security benefits or assistance and have no other source of income.

Taking and implementing measures to progressively realize ESCR is not enough if they are not **AAAQ**

Indeed, the measures (legislative, administrative...) put in place by States must meet certain characteristics.

They should be **A**vailable **A**ccessible, **A**dequate and of **Q**uality : This is the AAAQ framework – will assist you when monitoring or evaluating the progressive realisation of ESCR by your State. If your country indeed is taking all measures using all its available resources to fulfil its obligations and your ESCR.

Availability

The question here is to determine whether the service, the property, the institution is really available.

Infrastructures, goods and services must be available in sufficient quantity and equipped to operate. They must also be distributed equitably among the beneficiaries.

Example: the right to health

For individuals to enjoy the fullest of the right to health, facilities, goods and services must be available in sufficient quantity throughout the country. In addition, basic health determinants such as safer and potent water, appropriate sanitation facilities, essential drugs, competent medical personnel, and so on should be provided (human rights are interdependent and indivisible)

Accessibility

This is the possibility to reach or access the services or structures proposed.

It has four dimensions that overlap with each other:

- Non discrimination;
- Physical accessibility;
- Economic or financial accessibility;
- Accessibility of information.

Can everyone in a particular area access a clinic without discrimination? Do you know where it is, what services are provided? Is it near or far away? Are the services free? If not, are they affordable?

For Instance in Estonia, the introduction of electronic administration of health appointments may exclude people who don't have access to internet or do not know how to use the system. Educating them on the use of the tools and ensuring internet access is required to ensure accessibility to the service.

Adequacy

Adequacy implies the ability to serve or be used according to a specific context or need.

An implemented measure must meet this adequacy criterion, ie it must be culturally appropriate or respond to a specific context.

Ex of the clinic: Are the needs of different people, including older persons and marginalised groups (such as women, minority groups, persons with disabilities) respected?

Quality

Quality - or in other words, acceptability - is the character of what one can take for granted.

Facilities, goods and services must be relevant, culturally appropriate and of good quality.

- the right to water

It is not enough to have access to water available and accessible. It is still necessary that this water is of good quality and drinkable.

- the right to health

Are the services/care provided by the clinic scientifically and medically appropriate and of good quality?

Are the doctors and health - care professionals trained about the rights of older persons and the treatment of dementia and Alzheimer's disease?

Practical exercise