



## ECONOMIC, SOCIAL AND CULTURAL RIGHTS: Questions and Answers

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Q: WHY IS AMNESTY INTERNATIONAL EMBRACING WORK ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS?

A: In 2001, in response to an international and membership-led initiative, the worldwide decision making body for Amnesty International agreed to reframe the organization's existing mandate around a more flexible mission statement. Amnesty International's new mission now includes advocacy on behalf of economic, social and cultural rights, within the context of Amnesty International's critical work on grave abuses of human rights. This was a watershed moment for the organization. Prior to that decision, Amnesty International educated about the interdependence of rights and on the meaning of economic, social and cultural rights, but did not actively campaign on these rights.

“All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.”

- Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights on 25 June 1993

Amnesty International is in the early stages of developing its strategy to incorporate economic and social and cultural rights more fully into its research, actions and campaigning. As an organization, we are committed to moving forward on the principle of interdependence, and as such, all our human rights work will reflect the idea that there is no hierarchy of rights. Part of our task will be to bring economic, social and cultural rights issues into our existing areas of work. Amnesty International's first 'pilot' actions and campaigns will emphasize the interdependence of rights, and will tap into our traditional methods of campaigning.

The principle of interdependence means that all human rights, whether they be considered civil, cultural, economic, political or social, are closely connected and cannot be fragmented. The human rights framework is based on the idea that all persons have certain fundamental rights that they are entitled to simply because they are human. These human rights cannot be ranked in a hierarchy of those that are more or less important, more or less fundamental.

Under its new mission, Amnesty International is able to work on cases of human rights abuse in a more holistic way. For example, Amnesty International can address violations of the right to food (Article 11 of the UDHR), the right to an adequate standard of living (Article 25 of the UDHR), along with the right to peaceful assembly (Article 20 of the UDHR), the right to be free from arbitrary arrest and detention (Article 9 of the UDHR) and the right to be free from torture (Article 5 of the UDHR).

Q: WHAT, IN GENERAL, DO WE MEAN BY “ECONOMIC, SOCIAL, AND CULTURAL RIGHTS”?

A: Human rights cover a wide range of aspects of human existence considered essential for life in dignity and security. Some of these relate to the freedom of the individual to act as she or he pleases as long as that action does not infringe on the rights and freedoms of others. These liberty-oriented rights are usually called **civil and political rights** and include freedom of speech and religion, the right to fair trial, and the right to be free from torture and arbitrary arrest. Other rights relate to conditions necessary to meet basic human needs, such as food, shelter, education, health care, and gainful employment. These are called **economic, social and cultural rights**

Q: WHICH ARE MORE IMPORTANT: ECONOMIC, SOCIAL AND CULTURAL RIGHTS OR CIVIL AND POLITICAL RIGHTS?

A: All rights—civil, cultural, economic, political, and social—are considered:

- **universal** (refers to the application of human rights to all people everywhere regardless of any distinction),
- **indivisible** (refers to the equal importance of each human rights law. A person cannot be denied a right because someone decides it is “less important” or “non-essential”),
- **interdependent** (refers to the complimentary framework of human rights law. For example, your ability to participate in your government is directly affected by your right to express yourself, to get an education, and even to obtain the necessities of life), and
- **interrelated** (refers to the need for ALL civil, cultural, economic, political and social rights need to be realized to guarantee a life in dignity for all human beings).

-- from Part I, paragraph 5 of the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on June 25, 1993.

When considered together, these rights basically address the human being, whoever he or she is, as a whole person free from fear and free from want. In the USA, when people speak of rights, they often stress the civil and political rights guaranteed citizens by the US Constitution and its Amendments. However, that emphasis denies the interdependence of rights.

In all societies, both types of rights are integrally related. People who are denied civil and political rights have no means of protecting the economic, social, and cultural rights that guarantee them their basic needs. Similarly, in a society where basic survival needs are not met, civil and political rights are meaningless if an individual must first be concerned with obtaining adequate food, shelter, and health care.

The interdependence and importance of rights extend to the global level. Violations of social, economic, and cultural rights are responsible for patterns of increased income disparity and economic exploitation.

Q: SPECIFICALLY, WHAT ARE THE CORE ISSUES IN ECONOMIC, SOCIAL AND CULTURAL RIGHTS?

A:

- (1) The Right to Education (Article 13 of the ICESCR) guarantees free and compulsory primary education and equal access to secondary and higher education. Among other things, governments are obligated to provide free and compulsory primary education, as well as to ensure that education that does not foster hatred or discrimination.
- (2) The Right to the Highest Attainable Standard of Health (Article 12 of the ICESCR) guarantees access to adequate health care. Among other things, governments are required to ensure that all persons have access to functioning public health and health-care facilities, goods and services, and that these must be available in sufficient quantity to meet the needs of the population.
- (3) The Right to Adequate Housing (Article 11 of the ICESCR) guarantees access to a safe, habitable, and affordable home and protection against forced eviction. Among other things, governments must ensure that all persons have equal access to adequate housing, and that the housing needs of vulnerable groups (such as the homeless) are given particular consideration.

#### **Angola: The Right to Adequate Housing**

In Angola, people in over 5,000 households were evicted and their homes were demolished in three mass evictions between 2001 and 2003. "The evictions, in the Boavista, Soba Kapassa and Benfica areas in Luanda, were arbitrary, and carried out at police gun-point without adequate prior notice or consultation," Amnesty International said. Forced evictions - a term used internationally to describe evictions carried out without due process - violate human rights. They violate Angola's obligations under international human rights treaties to which it is a party. Forced evictions undermine the right to adequate housing and subject people to arbitrary or unlawful interference with their privacy, family or home.

- (4) The Right to Food (Article 11 of the ICESCR) guarantees the right of people to food in a quantity and quality sufficient to satisfy their dietary needs, free from adverse substances, and acceptable within a given culture. In order to fulfill the right to food, governments need to ensure the accessibility of food, in ways that are sustainable and that do not interfere with the enjoyment of other human rights. Among other things, governments must also cooperate in the adequate distribution of world food supplies.

#### **North Korea: The Right to Food**

For more than a decade, the people of North Korea have suffered from famine or food crisis. Government policies are at least partly to blame. The government appears to have distributed food unevenly, favoring those who are economically active and politically loyal. Government restrictions on freedom of movement prevents North Koreans searching for food or moving to an area where food supplies are better, as they face punishment including detention if they leave their towns or villages without permission. They also hamper the movement, access and monitoring of international humanitarian agencies who have been involved in distributing food aid. This has contributed to donor fatigue and a fall in food aid commitments.

- (5) The Right to Work (Article 6 of the ICESCR) guarantees the opportunity to earn a living wage in a safe work environment, and also provide for the freedom to organize and bargain collectively. Among other things, governments need to ensure that fair wages and equal

remuneration for work of equal value without distinction of any kind and that workers are not exposed to unsafe working conditions.

### **Israel and the Occupied Territories: The Right to Work**

In the past three years, Palestinians' ability to work and earn a living has been dramatically reduced by unprecedented stringent restrictions imposed by Israel on their movements within the Occupied Territories. This has caused a dramatic increase in unemployment and poverty. According to the World Bank and UN agencies, two out of three Gazan households now live below the poverty line. Chronic malnutrition is spreading, especially amongst children.

Although restrictions on movement have most affected Palestinians, international humanitarian and human rights workers have been frequently prevented from carrying out their duties because of restrictions imposed on their movements by the Israeli authorities. Only last week, UN agencies in the Occupied Territories protested the increased restrictions on their movements and activities.

Note that all these rights are intertwined. The right to clean water, for example, intersects with the right to adequate housing, the right to food, and the right to the highest attainable standard of health. Similarly, the right to work and the right to education are also connected.

Q: DO HUMAN RIGHTS DOCUMENTS HAVE THE FORCE OF LAW?

A: The Universal Declaration is a resolution of the General Assembly of the United Nations, which creates a high expectation that it will be taken seriously. However, a **declaration** does not create obligations that are technically binding in law. Nevertheless, since the Universal Declaration is so widely used as the primary statement of what are considered human rights today, it is often regarded as having legal significance and considered "**customary**" **international law** and as the authentic interpretation of the references in the **UN Charter**.

The specific rights in the UDHR have been **codified** into the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the **International Covenant on Civil and Political Rights** (ICCPR). A **covenant** is a **treaty** which, under the rules of international law, creates legal obligations on all states that **ratify** it.

Similarly, the Convention on the Rights of the Child (CRC) and Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) also are treaties that are binding on the **states** that ratify them.

Therefore, citizens worldwide should put pressure on their governments to ratify these treaties and to abide by the obligations they set forth. For example, a right to health care is mandated by the ICESCR, meaning that a basic and adequate health care entitlement should be guaranteed to all citizens and residents of countries ratifying the treaty.

Q: WHAT ARE GOVERNMENTS OBLIGATIONS UNDER INTERNATIONAL LAW TO UPHOLD ESCR?

A:

- **Progressive Realization**

The International Covenant on Economic, Social, and Cultural Rights recognizes the varying ability of States to fulfill the rights outlined in the Covenant. The concept of “progressive realization” constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. However, progressive realization should not be misinterpreted as depriving economic, social and cultural rights of all meaningful content. The purpose, rather, is to give governments flexibility and recognize government’s different economic status and capabilities. It is not an escape clause. It includes the idea of continuous improvement and the obligation of the government to ensure that there are no regressive measures.

In fact, the International Covenant on Economic, Social and Cultural Rights imposes various obligations which are of immediate effect. While the full realization of the economic, social and cultural rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant’s entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.

□ **Respect, Protect, Fulfill**

In particular, governments are obligated to respect, protect and fulfill economic, social and cultural rights:

- (1) **The Obligation to Respect** entails that governments shall refrain from any action which infringes on rights, including economic, social and cultural rights, or which prevents persons from satisfying these rights for themselves when they are able to do so. For example, when a government pollutes a river required for drinking water supply, they contravene their obligation to *respect* the right to water. The obligation to respect is immediate and is not subject to progressive realization.
- (2) **The Obligation to Protect** entails that governments must protect persons within their jurisdiction from violations of their human rights, including economic, social and cultural rights, by non-State actors, including businesses and international financial institution. For example, when a corporation forcibly evicts a community so that they can build a sports stadium and the government stands by and does nothing, they are violating their obligation to *protect* the right to adequate housing. The obligation to protect is also immediate and is not subject to progressive realization.
- (3) **The Obligation to Fulfill** entails that governments must progressively realize the full enjoyment of all human rights, including economic, social and cultural rights, to persons within their jurisdiction. For example, governments must provide adequate and effective health care and continually strive to improve health care for all. If a government chooses to spend its resources in unjustifiable ways which are not aimed at the full realization of human rights they are arguably violating their obligation to fulfill. Some aspects of the obligation to fulfill are subject to progressive realization. Other aspects, however, are immediate, including the obligation to adopt appropriate legislative, administrative,

budgetary, judicial, promotional and other measures toward the full realization of these rights.

❑ **Non Discrimination**

Also, at all times, governments must ensure that people do not experience discrimination with regards to their enjoyment of their economic, social and cultural rights. The overarching right to non-discrimination is an immediate obligation, and is not subject to progressive realization. Discrimination is, in and of itself, a violation of the Covenant.

❑ **International Obligations**

Recognizing that poor countries are structurally disadvantaged by their place in the international economy and recognizing that rich countries also benefit from their economic relationship with poor countries, the ICESCR identifies, in Article 2, international obligations to assist poor countries in realizing their ESCR obligations.

Q: IS THE UNITED STATES A PARTY TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS?

A: No. The United States **signed** the Covenant in 1979 under the Carter administration but is not fully bound by it until it is ratified. For political reasons, the Carter administration did not push for the necessary review of the Covenant by the Senate, which must give its “advice and consent” before the US can ratify a treaty. The Reagan and Bush (Sr.) administrations took the view that economic, social, and cultural rights were not really rights but merely desirable social goals and therefore should not be the object of binding treaties. The Clinton Administration did not deny the nature of these rights but did not find it politically expedient to engage in a battle with Congress over the Covenant. The current Bush (W.) administration follows in line with the view of the previous Bush (Sr.) administration.

Q: WHAT WOULD IT MEAN TO ORDINARY PEOPLE IF THE US SENATE GAVE ITS ADVICE AND CONSENT AND THE USA RATIFIED THE COVENANT?

A:

- (1) The USA would be required to “take steps...to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized” in the Covenant.
- (2) The USA must ensure that the rights in the Covenant are enjoyed without discrimination based on race, color, sex, religion, political or other opinion, national or social origin, property, birth or other status.
- (3) The USA would be required to report to the UN Committee on Economic, Social and Cultural Rights on measures adopted and progress made in achieving the observance of the Covenant rights. The Committee would then formulate its general observations on

how the USA might do better, if it concludes that the USA is not doing enough to realize the rights in the Covenant.

- (4) Finally, the rights in the Covenant would become part of the “Supreme Law of the Land; and the Judges in every State shall be bound thereby,” according to Article VI, Clause 2 of the US Constitution. Thus, in theory, anyone whose rights under the Covenant were violated would be able to bring a case before the courts.

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