**Annex**

**State obligations and entitlements of individuals regarding ESCRs**

ESC rights as contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR), contain freedoms and entitlements and place duties on State parties to respect, protect and fulfil human rights as contained in the Covenant and ensure that they are progressively realised within a reasonable timeframe.[[1]](#footnote-1) . However, the obligation of non-discrimination and non-retrogression is immediate; so are the minimum core obligations as defined in the ICESCR which are not subject to progressive realisation[[2]](#footnote-2).

. For example, developing a system of schools may take time and a huge amount of resources; so States have to progressively implement the right to education for all. However, this does not mean that States can do what they want. They have to demonstrate progress as quickly as possible towards ensuring that everyone has access to quality education. This includes an overall developmental strategy for a school system; prioritizing the introduction of compulsory, free primary education; and guaranteeing the availability, accessibility, acceptability and adaptability of education without discrimination immediately. For this purpose, they have to use their budget effectively by raising resources, and allocating them in priority towards the realisation of ESCR, such as healthcare, food, etc. Failure to do so is a human rights violation.

In addition, in fulfilling the enjoyment of human rights States have an obligation to guarantee the following principles of:

**Participation and inclusion:** For example, concerning the right to education, this means that rights-holders, including students, parents and local communities, are actively engaged in claiming their rights and involved in decisions that affect them.  Children should be at the centre of decision-making processes affecting their education, but due to the nature of education, parents, teachers, and local communities all have an active role to play, with participation being active, free and meaningful.

**Accountability and the rule of law**: States must be held to account for their human rights obligations. States must be transparent about decision-making processes and ensure that they include the participation of affected communities, teachers, parents and students in these decision-making processes.

**Non-Discrimination and Equality**: Non-discrimination and equality are at the heart of the human rights framework.  This entails a focus on those who are the most marginalised in order to bring change to all.

**Violations of ESC rights**

A human rights violation occurs when State parties to the Covenant fail to act in accordance with a human rights obligation under the treaty as well as relevant national or international laws.[[3]](#footnote-3) A State is violating its ESCR obligations if it:

* Fails to respect a right, for example by forcibly evicting families from their homes without following proper procedures;
* Fails to protect a right (or remove an obstacle to the exercise of a right) for example by failing to stop a commercial company from contaminating sources of drinking water;
* Uses discriminatory methods, for example, by preventing delivery of food supplies to areas where a minority group or political opponents are living;
* Fails to take prompt, concrete and targeted steps towards the full realization of a right, for example failing to make a plan to prevent communicable diseases;
* Fails to provide minimum essential levels (also called minimum core obligations) of rights, particularly for disadvantaged groups, excluded or vulnerable groups;
* Takes backward steps instead of progressive ones, for example by stopping a project to supply piped water to people in an informal settlement even though funding was available for this; and
* Fails to provide for effective remedies through courts, as well non judicial mechanisms to access justice for violations of ESC rights.

**What to look for in assessments?**

* What is the problem and how does it relate to rights (health, education, work …)?
* Whose rights are not being realized?
* What are the main factors obstructing access to rights and how are these being addressed?
* What are the possible violations and who may be responsible for the violations?
* Who are the stakeholders and actors involved? Do stakeholders contribute to the problem or could they help solve the problem?
* Are there people who are marginalized, or not accessing ESCRs, including prisoners and detainees?
* What are the laws, regulations and policies relating to specific rights? Are these being respected?
* What mechanisms are available to access justice and remedies? Did the right-bearers use any such mechanisms? How effective was the remedy obtained?
* What are the economic aspects involved such as budget, the economic situation of people;
* “Hardware” and “software” elements – buildings, equipment, books, medicines and the people, manpower – are these adequate?
* Up to date available statistics and data;
* General situation regarding the implementation of socioeconomic policies and programmes in Eritrea;
* Any good practices to highlight?

**The gendered perspective in assessing the selected ESC rights**

Men and women can suffer the same human rights violations but these may impact them differently. Analysing the gendered dimension of violations of the selected rights will enable the Special Rapporteur to continue with her work in providing a more accurate picture by mainstreaming gender. Therefore, for all the rights, please address the following:

* Do women, men, girls and boys have specific problems in relation to the selected right?
* What do women themselves identify as their most pressing problems and needs in relation to the selected right?
* What have they done to improve their situation; what do they think could be done to improve their situation or what could be done to improve their situation?
* Did they get in touch with the authorities or any other relevant instance to improve their situation? If yes, what was the response? If not, why did they not do so?
* Are there any good practices to highlight?

**Discrimination against marginalised groups and enjoyment of ESC rights**

* Are there any vulnerable or marginalised groups being discriminated against in the enjoyment of the selected rights? Please identify them and provide a short background.
* What services and facilities do they have?
* What are the causes of discrimination in accessing services and facilities?
* Assess the effects/impact of discrimination on the lives of different groups.
* What are they doing to improve their own situation? What obstacles do they face and what strategies do they propose?
* Have they approached the authorities or any relevant instance for help? If yes, what was the response and if not, why did they not do so?
* Did they get in touch with the authorities or any other relevant instance to improve their situation? If yes, what was the response? If not, why did they not do so?
* What kind of targeted programme has the government adopted to protect vulnerable and marginalised groups?
* Any good practices to highlight?
1. Please refer to OHCHR fact sheet on ESCR is perhaps more informative: http://www.ohchr.org/Documents/Publications/FactSheet33en.pdf [↑](#footnote-ref-1)
2. Eritrea acceded to the International Covenant on Economic, Social and Cultural Rights on 17 April 2001. [↑](#footnote-ref-2)
3. Other actors, who are not bound by international law, such as an individual, may carry out acts which violate human rights. Such an act could be a crime under national law, or a crime under international law such as a war crime or a crime against humanity. However, the State has a duty of care to protect people from human rights abuses by non-state actors by provide the degree of care that a prudent person would exercise, thus showing due diligence. [↑](#footnote-ref-3)