



Committee on Economic, Social and Cultural Rights**Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights****Statement by the Committee on Economic, Social and Cultural Rights*****I. Introduction**

1. In the New York Declaration for Refugees and Migrants, adopted on 19 September 2016 following the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, the Heads of State and Government and High Representatives reaffirmed the human rights of all refugees and migrants, regardless of status, and pledged to fully protect such rights.¹ They recalled that: “Though their treatment is governed by separate legal frameworks, refugees and migrants have the same universal human rights and fundamental freedoms.”² The Heads of State and Government and High Representatives pledged to move towards the adoption in 2018 of a global compact on refugees and a global compact for safe, orderly and regular migration.

2. As the international community is considering how to address the situation of people fleeing conflict and persecution from war-ridden countries and how to answer the challenges raised by migration flows, questions arise as to the range of economic, social and cultural rights to which the people concerned should be entitled in the countries through which they transit or in which they seek a safe haven and settle. Against that background, the Committee on Economic, Social and Cultural Rights wishes to recall the guarantees provided by the International Covenant on Economic, Social and Cultural Rights.

II. Reception of refugees and migrants: immediate obligations under the Covenant

3. All people under the jurisdiction of the State concerned should enjoy Covenant rights. That includes asylum seekers and refugees, as well as other migrants, even when their situation in the country concerned is irregular. As regards refugees, the Convention relating to the Status of Refugees and the Protocol to the Convention address a number of

* The present statement, which was adopted by the Committee at its sixtieth session, held from 20 to 24 February 2017, was prepared pursuant to the Committee’s practice on the adoption of statements (see *Official Records of the Economic and Social Council, 2011, Supplement No. 2 (E/2011/22)*, chap. II, sect. K).

¹ General Assembly resolution 71/1, para. 5.

² *Ibid.*, para. 6.



prescriptions to the States parties with respect to the economic, social and cultural rights of refugees. However, those prescriptions leave in practice a broad margin of appreciation to States. The Covenant should be seen as complementing the Convention.

4. In the Covenant it is made clear that the rights recognized in it can only be progressively realized, to the maximum available resources of each State party (see art. 2 (1)). However, this does not mean that States parties may infinitely postpone taking action in order to secure the rights of individuals under their jurisdiction. In addition, the Covenant imposes a number of obligations of immediate effect. Such obligations apply even for the benefit of individuals who are part of a large group of refugees or migrants suddenly falling under the jurisdiction of the States concerned.

Prohibition of discrimination on grounds of nationality or legal status

5. Under the Covenant, the requirement to guarantee all rights without discrimination imposes an immediate obligation on States parties.³ Each State is left a certain margin of appreciation to decide which measures it should adopt to progressively realize the rights under the Covenant, provided such steps are deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.⁴ Whatever measures it does adopt should, however, not lead to discrimination. Any distinction, exclusion, restriction or preference, or other differential treatment on grounds of nationality or legal status, should therefore be in accordance with the law, pursue a legitimate aim and remain proportionate to the aim pursued. A difference in treatment that does not satisfy such conditions should be seen as unlawful discrimination prohibited under article 2 (2) of the Covenant. In addition, article 3 of the Covenant requires States parties to ensure the equal right of men and women to the enjoyment of the Covenant rights. In accordance with the Committee's general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, a lack of available resources cannot be considered as an objective and reasonable justification for difference in treatment "unless every effort has been made to use all resources that are at the State party's disposition in an effort to address and eliminate the discrimination, as a matter of priority" (para. 13).

6. The Committee has made it clear that protection from discrimination cannot be made conditional upon an individual having a regular status in the host country. In its general comment No. 20, it emphasized, for instance, that since "the ground of nationality should not bar access to Covenant rights, ... all children within a State, including those with an undocumented status, have a right to receive education and access to adequate food and affordable health care" (para. 30) and that (in addition to the right to self-employment, which is guaranteed to all refugees under the Convention relating to the Status of Refugees) any difference in treatment in access to employment would require justification in accordance with the criteria set out in paragraph 5 above.⁵ The Committee notes in this regard that access to education and to employment are important channels for integration within the host country and will reduce the dependence of refugees or migrants on public support or private charity.

7. Consistent with the requirement of non-discrimination, States parties should pay specific attention to the practical obstacles that certain groups of the population may encounter in the enjoyment of their rights under the Covenant. Due to their precarious situation, asylum seekers and undocumented migrants are at particular risk of facing discrimination in the enjoyment of Covenant rights.⁶

8. Article 2 (3) of the Covenant establishes one limited exception to the principle of non-discrimination on grounds of nationality in the enjoyment of the rights of the Covenant. This provision states that: "Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals." That exception only applies to

³ See the Committee's general comment No. 3 (1990) on the nature of States parties' obligations, para. 5.

⁴ *Ibid.*, para. 2.

⁵ See also general comment No. 18 (2005) on the right to work, para. 31.

⁶ See, for example, general comment No. 15 (2002) on the right to water, para. 16.

developing countries and it only concerns economic rights, in particular access to employment. It allows those States to determine the extent to which they will guarantee such rights, without allowing them to deny the enjoyment of such rights entirely. While acknowledging the concerns related to the protection of access to employment by nationals, the Committee notes, however, that a migrant who has access to employment, or to self-employment, generally will contribute to the domestic economy (whereas he or she may require social assistance if left without any means of earning an income). It also notes that, whereas education has sometimes been described as an economic right, the right of each child to education should be recognized by States independently of the nationality or the legal status of his or her parents.

Core obligations

9. The essential minimum content of each right should be preserved in all circumstances and the corresponding duties extended to all people under the effective control of the State, without exception. The Committee has underlined in the past that the duties to secure freedom from hunger,⁷ to guarantee access to water to satisfy basic needs,⁸ access to essential drugs⁹ and access to education, complying with “minimum educational standards”,¹⁰ are core obligations of the State and should therefore not be restricted on the basis of nationality or legal status.

10. The Committee has affirmed in the past that “in order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations”.¹¹ Although States parties to the Covenant should accommodate refugees and migrant inflows commensurate with the extent of the maximum resources available, they would not, in principle, be justified in restricting the enjoyment of the essential content of the Covenant rights on the basis of a lack of resources, even when confronted with a sudden and quantitatively significant flow of refugees. As noted by the Committee in its statement on poverty, adopted in 2001, “because core obligations are non-derogable, they continue to exist in situations of conflict, emergency and natural disaster” (see E/C.12/2001/10, para. 18).

III. Integration of refugees and migrants and the specific vulnerability of undocumented migrants

11. Beyond the immediate duty to ensure that the essential minimum content of the Covenant rights are guaranteed to all refugees and migrants under their jurisdiction, States parties to the Covenant should take the Covenant into account in defining the conditions of integration of refugees and migrants who are settling within their territory. The Committee draws the attention of States parties, in particular, to the fact that enjoyment of the Covenant rights should not depend on the legal status of the persons concerned. The lack of documentation frequently makes it impossible for parents to send their children to school, or for migrants to have access to health care, including emergency medical treatment, to take up employment, to apply for social housing or to engage in an economic activity in a self-employed capacity. That situation cannot be tolerated. Pending a decision on their claim to be recognized as refugees, asylum seekers should be granted a temporary status, allowing them to enjoy economic, social and cultural rights without discrimination. This goes beyond the elementary duty to register children at birth, as stated in article 7 (1) of the Convention on the Rights of the Child and in article 29 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Nor can undocumented migrants who are not seeking asylum simply be ignored. Without

⁷ See general comment No. 12 (1999) on the right to adequate food, paras. 6, 14 and 17.

⁸ See general comment No. 15, para. 37.

⁹ See general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 43.

¹⁰ See general comment No. 13 (1999) on the right to education, para. 57.

¹¹ See general comment No. 3 (1990), para. 10.

prejudice to the possibility for the State to order that they leave the territory, the very presence of such migrants under its jurisdiction imposes on the State certain obligations, including of course the primary obligation to acknowledge their presence and the fact that they can claim rights from national authorities.

12. In its general comment No. 14 (2000) on the right to the highest attainable standard of health, the Committee recalled that States parties have a duty to respect the right to health by ensuring that all persons, including migrants, have equal access to preventive, curative and palliative health services, regardless of their legal status and documentation (para. 34). The Committee is aware that migrants face specific obstacles in this regard, as documentation may be required from those seeking access to health care. Migrants, particularly those who do not speak the language of the host country, may not be aware of their entitlements. Migrants in an irregular situation may also fear being detained for deportation, particularly in countries where public officials have a duty to report on irregular migrants. In addition to ensuring access to health care without discrimination, strict walls should exist between health-care personnel and law enforcement authorities, and adequate information should be made available in the languages commonly spoken by migrants in the host country, in order to ensure that such situations do not result in migrants avoiding seeking and obtaining health care.

13. In its general comment No. 23 (2016) on the right to just and favourable conditions of work, recognized under article 7 of the Covenant, the Committee identified migrant workers as a group whose rights were particularly at risk. It noted that such workers, “in particular if they are undocumented, are vulnerable to exploitation, long working hours, unfair wages and dangerous and unhealthy working environments” (para. 47 (e)). It listed a number of factors that may increase their vulnerability, including situations where the employer has control over the migrant worker’s resident status or that tie migrant workers to a specific employer; the inability of the workers concerned to speak the national language(s); the fear of reprisals from employers; and the fear of eventual expulsion if they seek to complain about working conditions. It follows that, in addition to laws and policies having to ensure that migrant workers enjoy treatment that is no less favourable than that of national workers in relation to remuneration and conditions of work, specific measures of protection may have to be adopted for the benefit of undocumented workers, to ensure that any abuse of their situation of vulnerability is effectively addressed and that they do not fear filing complaints with the competent authorities.

14. Similar concerns arise as regards the right to housing. The Committee has repeatedly found that migrants are housed in substandard conditions, sometimes in geographically segregated areas. Its concerns were echoed in this regard by the Committee on the Elimination of Racial Discrimination which, in its general recommendation No. 30 (2004) on discrimination against non-citizens, urged States parties to “remove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in ... housing” (para. 29) and to “guarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens, especially by avoiding segregation in housing and ensuring that housing agencies refrain from engaging in discriminatory practices” (para. 32).

15. In its general comment No. 19 (2007) on the right to social security, the Committee recalled that migrants should be entitled to have access to “non-contributory schemes for income support, affordable access to health care and family support” (para. 37). Restrictions on access to such schemes, including the requirement of a qualification period, should be reasonable and proportionate. The extension of social security contributory benefits to asylum seekers and undocumented migrants poses specific challenges, however, since the precarious (and sometimes temporary) situation of such groups may make it difficult for them to be integrated into such schemes. The Committee notes, however, that even when they are irregularly employed, often by unscrupulous employers seeking to reduce costs by not paying social security contributions, workers belonging to these categories do contribute to the financing of the social security system by paying indirect taxes. The inability of undocumented workers to obtain social security benefits increases their vulnerability and their dependence on their employers.

16. The Committee recognizes that the vulnerability of women and girl migrants and refugees to trafficking and other forms of gender-based violence and exploitation increases

during conflicts and disasters. Such vulnerability is further exacerbated in the case of undocumented women and girl migrants and refugees, who are reluctant to report such abuses owing to their legal status and because they may lack confidence in the authorities and fear deportation.

IV. Data collection as a basis for national rights plans

17. The Committee notes that in a number of cases, the reports of States parties provide insufficient information on the extent to which recognized refugees, asylum seekers and undocumented migrants enjoy the Covenant rights. The Committee urges States parties to collect such data, in order to allow it to assess the extent to which they comply with their obligations under the Covenant. The collection of such data can make a significant contribution to the adoption and implementation of policies aimed at improving, for instance, the access to employment, to education or to health care, of migrants, including undocumented migrants, under the jurisdiction of the State party.

V. International cooperation

18. As confirmed in articles 2 (1), 11 (2) (b), 22 and 23 of the Covenant, the realization of the rights enshrined in the Covenant is a common objective of all States parties. As members of the United Nations, they have pledged to cooperate in fulfilling this aim.¹² International assistance and cooperation, in particular, are required in order to allow States facing a sudden influx of refugees and migrants to comply with their core obligations, as defined above. As the Committee made clear in its statement on poverty, such obligations “give rise to national responsibilities for all States and international responsibilities for developed States, as well as others that are ‘in a position to assist’” (see E/C.12/2001/10, para. 16). The Committee is aware that, when confronted by large flows of migrants fleeing conflict or persecution, some States face a heavier burden than others. It sees any measure that States parties adopt to support the realization of the Covenant rights on the territory of other States as contributing to the aims of the Covenant.

¹² See Article 56 of the Charter of the United Nations.