

Access to services and the protection of economic, social and cultural rights

All human beings – irrespective of migration status – are equally entitled to the enjoyment of their human rights without discrimination. This includes all economic, social and cultural rights such as the rights to work, social security, and adequate standard of living, housing, health and education. While States can make legitimate distinctions in the delivery of services in order to ensure access to these rights, such distinctions may never be discriminatory.

What are economic, social and cultural rights? Economic, social and cultural (ESC) rights are those human rights relating to the workplace, social security, family life, participation in cultural life, and access to housing, food, water, health care and education. ESC rights are at the very core of the international human rights framework and are enshrined in the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and a number of other international and regional human rights instruments. Collectively, these instruments have been ratified by every Member State and impose binding legal obligations to respect, protect and fulfill the ESC rights of all persons within the State's jurisdiction or effective control. ESC rights include the **right to work**, including the enjoyment of just and favourable conditions of work (ICESCR, Art. 6 and 7); the **right to social security** (ICESCR, Art. 9); to **right to protection of the family** (ICESCR, Art. 10); the **right to an adequate standard of living**, including food, water and sanitation, clothing and housing (ICESCR, Art. 11); the **right to education**, including free and compulsory primary education and to higher education that is equally accessible to all (ICESCR, Art. 13); and the **right to take part in cultural life** and activities (ICESCR, Art. 15).

Non-discrimination International human rights law provides that **all human beings are born free and equal in dignity and rights without discrimination** (UDHR, arts. 1-2). Everyone, without discrimination, must have access to their ESC rights. Non-discrimination and equality before the law constitute fundamental principles of international human rights law and are essential elements of human dignity. As with other human rights, recognizing ESC rights together with the principle of non-discrimination puts the focus on the most excluded, discriminated and marginalized groups in society, such as migrants. **Discrimination can be explicit or indirect, and includes actions to exclude, punish or prohibit a person from accessing their ESC rights** on the basis of their being a migrant, or due to their migration status. Where differential treatment is contemplated in providing **access to services**, either between citizens and non-citizens or between different groups of migrants, it must be in accordance with the law, pursue a legitimate aim, and remain proportionate to the aim pursued. The Committee on Economic, Social and Cultural Rights (CESCR) has stated that reasonable and objective justifications for differential treatment include only those distinctions that are made **for the purpose of promoting the general welfare** in a democratic society (E/C.12/GC/20, para. 13). Protection from discrimination cannot be made conditional upon an individual having a regular status in the host country.

Protecting the economic, social and cultural rights of migrants in irregular situations The CESCR has noted that, without prejudice to the sovereign prerogative to order the removal of irregular migrants, the very presence of irregular migrants under the State's jurisdiction imposes certain obligations in respect of their access to and fulfilment of ESC rights. Elimination of legal, administrative and other barriers is a prerequisite for migrants to be able to access health care, education, justice or housing. One such measure is to ensure that the **providers of essential services are not obliged to share information about migrants** –which will ensure that people can be treated when they are sick, children can continue their education, and victims of crimes can file complaints with the police, without fearing arrest or deportation.

For more information, see:

OHCHR, [Fact Sheet No. 33: Frequently Asked Questions on Economic, Social and Cultural Rights](#)

OHCHR, [The Economic, Social and Cultural Rights of Migrants in Irregular Situations](#)

OBJECTIVE 15: Provide access to basic services for migrants

- *Ensure non-discriminatory access to all ESC rights, including for migrants in irregular situations.*
- *Ensure that any differential treatment in the provision of services is undertaken only for the purpose of promoting the general welfare.*
- *Ensure that service providers are not obliged to report or share information on the migration status of recipients of their services for the purposes of immigration control.*