A Simplified Handbook on Economic and Social Rights (ESRs) for Community Advocates

About the Initiative for Social and Economic Rights (ISER)
ISER is a registered Non-Governmental Organization (NGO) in Uganda founded in February 2012 to ensure full recognition, accountability and realization of social and economic rights primarily in Uganda but also within the East African Region.

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According to Article 30 of the Ugandan Constitution, everyone has a right to education. Economic rights are provided for under Article 40 of the Constitution of the Republic of Uganda. For instance, Article 40 (1) mandates Parliament to enact laws (a) to provide for the right of persons to work under satisfactory, safe and healthy conditions; (b) to ensure equal payment for equal work without discrimination; and (c) to ensure that every worker is accorded rest and reasonable working hours and periods of holidays with pay, as well as remuneration for public holidays. Article 40 (2) provides for every person in Uganda the right to practice his or her profession and to carry on any lawful occupation, while 40 (3) provides for every worker the right to form or join a trade union of his or her choice for the promotion and protection of his or her economic and social interests; collective bargaining and representation; and to withdraw his or her labour according to law. Article 40 (4) states that the employer of every woman worker shall accord her protection during pregnancy and after birth, in accordance with the law.

The Constitution and other laws also provide for ESRs for specific groups including women, children, persons with disabilities, minorities and older persons.

Who has the obligation to implement ESRs?

State Obligations in relation to ESRs.

The responsibility to realise ESRs primarily lies with the State. Like all human rights, ESRs impose obligations on States. There are three different types of obligations for States i.e. the obligations to respect, protect and fulfill. Failure to perform any of these three obligations constitutes a violation of these rights.

Respect:
The obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of such rights.

Protect:
The obligation to protect requires States to prevent violations of these rights by third parties.

Fulfil:
Finally, the obligation to fulfil requires States to take appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of ESRs.

In the Ugandan case, the local government is mandated to provide basic services to members of the community under Section 30 (1) and (2) of the Local Government Act - some of which are; primary health care, education services, provision of safe and clean drinking water, and sanitation among others.

Introduction

The programming of the Initiative for Social and Economic Rights (ISER) emphasizes community empowerment as one of the ways to realize Economic and Social Rights (ESRs) in Uganda. As such, ISER engages community accountability structures to ensure that they are at the frontline of the advocacy to realize these rights. This handbook therefore will serve as a simplified guide to Community Advocates (CAs), Health Unit Management Committees (HUMCs) and School Management Committees (SMCs) among others.

The content is largely drawn from the Constitution of the Republic of Uganda, publications from the United Nations on ESRs and the ISER Handbook on Realizing Social Rights under Uganda’s Decentralization System.

For the purpose of this handbook, emphasis is on the right to health and the right to education. The Handbook also explains the human rights responsibilities of businesses.

What is meant by Economic and Social Rights (ESRs)?

Economic and Social Rights (ESRs) are socio-economic entitlements relating to the basic needs of human beings like access to healthcare, education, water, food, housing, social security and labour rights among others.

Why are ESRs important?

ESRs are important because they are entitlements that apply to all human beings and are not granted by the state. ESRs touch the everyday lives of individuals and communities.

Realising these rights helps individuals live in dignity with ability to make meaningful contribution to their communities and the country at large.

Does the Law in Uganda provide for ESRs?

Yes. The Constitution and other laws in Uganda provide for ESRs. Below are examples of some provisions:
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Article 40 (2) provides for every person in Uganda the right to practice his or her profession and to carry on any lawful occupation, trade or business while 40 (3) provides for every worker the right to form or join a trade union of his or her choice for the promotion and protection of his or her economic and social interests; collective bargaining and representation; and to withdraw his or her labour according to law. Article 40 (4) states that the employer of every woman worker shall accord her protection during pregnancy and after birth, in accordance with the law.

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Objective XIV of the Constitution of the Republic of Uganda states that the State shall endeavour to fulfill the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that— (a) all developmental efforts are directed at ensuring the maximum social and cultural well-being of the people; and (b) all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.

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**Fulfil:** Finally, the obligation to fulfil requires States to take appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of ESRs.

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Business responsibility for human rights.

Over the years, Uganda has experienced an increase in both foreign direct and local investments in key areas around manufacturing, production, agriculture, infrastructural development, mining and oil and gas exploitation among others. This increasing pace of development projects, investments and globalization has expanded the scope and impact of business activities in society - especially around ESRs.

It is without doubt that business activities - if well-regulated and monitored - can assist in the realization of human rights through; creation of employment opportunities, construction of access roads, water sources, health centres, providing market for community produce, and offering scholarships to underprivileged students among others. However, many business enterprises have been at the heart of increased abuses and violations of human rights.

Currently, there has been increasing media reports and allegations of human rights abuses by different businesses in marginalized communities and natural resource rich areas. The biggest challenges comprise bad working conditions, lack of protective gear in dangerous work spaces, child labour and non-compliance of employment laws and standards, gender discrimination, increased land grabbing and forced evictions, environmental degradation, health and livelihood impacts, human rights violations and abuses by state security agencies or by private security companies.

In light of the above;

i. What is the role of the State in this regard?

ii. What are the responsibilities of businesses and corporations with respect to human rights, if any?

iii. What guarantees do local populations and communities have to make sure that their rights are respected, protected and fulfilled?
Key elements of the rights to health and education

The right to health
The right to health is a fundamental human right and is important for the enjoyment of other rights. It entitles every human being to the enjoyment of the highest attainable standard of physical and mental health conducive to living a life in dignity. The right to health is linked with principles of equity and non-discrimination and prioritizes the needs of the poor and vulnerable groups.

Further still, the right should not be understood to simply mean the absence of disease but as one that includes other underlying determinants of health such as; the right to a clean and healthy environment, access to shelter, access to safe water, safe food and nutrition, healthy occupational and environmental conditions and health related education and information.
**Essential elements of the right to health**

**Availability:** Adequate healthcare infrastructure including hospitals, community health facilities, trained healthcare professionals, drugs, equipment and health services must be available in all geographic areas and to all communities.

**Accessibility:** Access to health care must be universal and guaranteed for all on an equitable basis. Healthcare must be affordable and comprehensive for everyone and physically accessible where and when needed.

**Acceptability:** Health care providers must respect dignity, provide culturally appropriate care, be responsive to needs based on gender, age, culture, language, and different ways of life and abilities. They must respect medical ethics and protect confidentiality.

**Quality:** All health care must be medically appropriate and of good quality, provided in a timely, safe, and patient centred manner and have quality standards.

Examples of violations of the right to health on our communities include: Lack of medicine or health workers in our health centres, pollution of our environment by factories leading to diseases, women dying during childbirth because there was no one to attend to them at the hospital.
The right to education

The right to education includes among others access to available, free and compulsory primary education, right to available and accessible secondary education including technical and vocational education to all by every appropriate means and in particular the progressive introduction of free education, higher education made progressively equally accessible, freedom of parents to choose schools for their children and freedom of individuals and bodies to establish and direct education institutions in conformity with minimum standards established by the state.

Elements of the right to education

**Availability:** Functioning educational institutions and programmes have to be available in sufficient quantity. For example, all institutions require buildings, sanitation facilities for both sexes, safe drinking water, trained teachers and teaching materials;

**Accessibility:** Educational institutions have to be accessible to everyone, without discrimination. Accessibility has three overlapping dimensions:

(i) **Non-discrimination** - education must be accessible to all, especially the most vulnerable groups.

(ii) **Physical accessibility** - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location.

(iii) **Economic accessibility** - education has to be affordable to all. Whereas primary education shall be available "free to all", States are required to progressively introduce free secondary and higher education.

**Acceptability:** The form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality).

Adaptability: Education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.
Examples of violations of the right to education in our communities include: Absence of a government school in a parish, children with disabilities remaining at home and not going to school, children not going to primary school because their parents cannot pay the school fees, children being sent to work instead of going to school, children studying under trees.

Who should participate in advocating for ESRs?
Article 38 of the 1995 Constitution of Uganda guarantees citizens the right to participate in the affairs of the government, either individually or through representation. Emphasis is put on the local government not only to consult with the community, but also to promote community participation in the decision-making process.

Therefore, any person is entitled to participate in advocating for ESRs. In some cases, the law provided for the opportunity for individuals to participate through representing their communities on established committees like the Health Unit Management Committees (HUMCs), the Water User Groups and the School Management Committees (SMC)s. The HUMCs are composed of health staff, civil...
society and community leaders. The HUMCs serve as the link between the community and the health facilities. Water User Groups, on the other hand, oversee the communal water sources on behalf of the Local Government. Lastly, the School Management Committees oversee the operations of schools and serve as a link between the school and the community.

Accountability is done through monitoring and supervision and individual community members have a right to monitor and implement government programmes. Accountability can be achieved through attending council meetings, mobilizing the communities, participating in barazas and budget conference meetings. These platforms help improve information flow and feedback.

**How can one participate in advocating for realization of ESRs?**

There are many different ways people can participate in Local Governments and be involved decision making processes and ensuring better service delivery. Some suggestions for ways in which individuals can engage with their local governments and hold them accountable include the following:

*The Kayunga District Senior Education Officer, Mr. Bubaale Dan, facilitating a session on the challenges facing the education sector in Kayunga District. This during a capacity building for School Management Committees in Kayonza Sub County.*
Monitoring and supervision: Individual community members have a right to monitor implementation of government programmes.

Attend council meetings: Across levels of Local Government, most council meetings are open to public attendance in order to ensure that the council operates in a transparent manner.

Serve on accountability committees: To strengthen governance and promote accountability, community members can serve on committees such as School Management Committee, Health Unit Management Committee and Water User Groups.

Attend and participate actively in budget conferences: At all levels of planning, citizens are required to make input in the budget at an initial stage of the planning processes. It is supposed to be from the citizens’ contributions that priorities for funding are set.

Mobilize the communities: Through local leaders, citizens are mobilized to take part in government service delivery processes from planning, implementation and monitoring.

Attend local accountability platforms such as Barazas and radio talk shows: These are aimed at improving information flow and feedback on social service delivery.

A community member of Busana Town Council airing his concerns at the Business and Human Rights Baraza in Kayunga District