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Under Article 2, para. 1, of the International Covenant on Economic, Social and Cultural Rights, each State party is duty-bound to 'take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the ... Covenant by all appropriate means, including particularly the adoption of legislative measures'. They must therefore 'move as expeditiously and effectively as possible' towards the full realization of the right of the Covenant (Committee on Economic, Social and Cultural Rights, *General Comment No. 3: The nature of States parties' obligations (article 2(1))* (1990) (UN doc. E/1991/23), para. 9). But disagreements persist as to which efforts exactly are required from the State to meet this obligation.

One approach relies on the idea that 'a *minimum core obligation* to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party' (General Comment No. 3, cited above, para. 10, emphasis added). Thus, while all States are expected to satisfy at least the basic needs of the individual as defined under this 'minimum core', they would be granted considerable flexibility in how, and at which speed, they move beyond such minimum entitlements. This approach presupposes that the 'core content' of each right can be easily ascertained. In certain cases, this task is relatively straightforward. Article 11 of the Covenant refers in its second paragraph to 'the fundamental right of everyone to be free from hunger', in addition to its more general reference in the first paragraph to 'the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions'. The Committee could therefore easily define the core obligation corresponding to the right to food as an obligation to 'take the necessary action to mitigate and alleviate hunger' (Committee on Economic, Social and Cultural Rights, General Comment No. 12: The right to adequate food (UN doc. E/C/12/1999/5): paras. 6, 14 and 17).

In other cases however, defining the 'core content' of each right may appear a more contestable exercise. Consider the following examples:

1. Under article 13 of the Covenant, the Committee considers that the core content of the right to education 'includes an obligation: to ensure the right of access to public educational institutions and programmes on a non-discriminatory basis; to ensure that education conforms to the objectives set out in article 13 (1); to provide primary education for all in accordance with article 13 (2) (a) [which provides that primary education shall be compulsory and available free to all]; to adopt and implement a national educational strategy which includes provision for secondary, higher and fundamental education; and to ensure free choice of education without interference from the State or third parties, subject to conformity with "minimum educational standards" (art. 13 [3] and [4])' (General Comment No. 13: The right to education [UN doc. E/C/12/1999/10]: para. 57).
2. In its General Comment No. 14 on the right to the highest attainable standard of health, the Committee includes in its description of "core obligations" corresponding to this right, *inter alia*, the duty to ensure access to health services without discrimination and to ensure 'equitable distribution of all health facilities, goods and services' (General Comment No. 14: The right to the highest attainable standard of health [UN doc. E/C/12/1999/24]: para. 43).


The notion of core content | [5.3] How much i...

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to 'minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone', as well as to 'to basic shelter, housing and sanitation, and an adequate supply of safe and potable water', and to essential drugs; and to adopt through participatory means and implement with independent monitoring of progress a national public health strategy and plan of action (General Comment No. 14: The right to the highest attainable standard of health [UN doc. E/C.12/2000/4]: para. 43). A similar list is provided in the Committee's discussions of the right to water (General Comment No. 15: The right to water [UN doc. E/C.12/2002/11]: para. 37) and of the right to work, where it consists in an elaborate description of the requirements of non-discrimination and equal protection of employment (General Comment No. 18: The right to work [UN doc. E/C.12/GC/18]: para. 31).

## CORE CONTENT - EXERCISE (1/1 point)

Based on the above descriptions of the "core content" of social rights, would you conclude that the "core content" of the right to X is:

- ☐ the right not to be discriminated in one's access to X;
- ☐ the right to have access to at least a certain level of X, sufficient to satisfy the basic needs of the individual;
- ☐ the "meta-right" to have the State adopt a strategy ensuring that it moves towards the full realization of the said right;
- ☒ all of the above. 

Help

### EXPLANATION

It is the fourth option that best corresponds to the approach of the Committee on Economic, Social and Cultural Rights. The 'core content' approach has been criticized for combining different motivations and, thus, as lacking consistency (K. Young, 'The Minimum Core of Economic and Social Rights: A Concept in Search of Content', *Yale Journal on International Law*, 33 (2008) 113). However, the examples above show that there are in fact three key components that, together, lead to identify the 'minimum core obligation' of each State. These are: **(i)** a *non-discrimination* requirement, ensuring that any progress made in the realization of the right in question benefit all without discrimination, and that where distribution issues arise, priority be given to the most disadvantaged and marginalized groups; **(ii)** a *basic needs* requirement, ensuring that each individual is not deprived of essential goods or services that keep him/her safe, physically and emotionally, and protect him/her from permanent social exclusion: this would include basic shelter, adequate food, water and sanitation, and essential drugs, but also access to primary education; and **(iii)** a *procedural obligation*, requiring from the State that, having identified the key challenges associated with the realization of each right, it designs and implements a strategy that will put it on track of moving towards the full realization of the right for all. The Committee on Economic, Social and Cultural Rights has been fairly consistent in its approach to the 'core obligations' thus defined.

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