



Economic, Social and Cultural Rights

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Overview

- Concept of economic, social and cultural rights
 - Origin and legal foundations
 - Key features of the ICESCR
 - The problem of resources
 - The issue of justiciability (Minister of Health and Others vs. Treatment Action Campaign and Others 2002 (5) SA 721 (CC), 2002 10 BCLR 1033)



Key features of the ICESCR (1/2)

- Economic rights (Art. 6-8)
 - Right to work
 - Right to fair working conditions
 - Trade union rights
- Social rights (Art. 9-12)
 - Social security rights
 - Protection of family, mothers, children and young persons
 - Right to adequate standard of living
- Cultural rights (Art. 13-15)
 - Right to education and free primary schooling
 - Right to take part in cultural life
 - Right to enjoy the benefits of scientific progress



Key features of the ICESCR (2/2)

- Implementation
 - Periodic state reports
 - Committee on Economic, Social and Cultural Rights (treaty based)
 - Optional Protocol of 10 December 2008
 - Individual complaint procedure
 - Interstate investigation procedure



Differences and relationship between ICCPR and ICESCR

- Article 2 (1) ICESCR
 - State obligations are subject to availability of resources
 - Obligation for progressive realisation
- Obligations to respect, protect and fulfil
- Interdependence of the Covenants



Questions

- What does the obligation to respect, protect and fulfil imply with regard to the right to food?
- Can economic sanctions amount to a violation of the right to food?
- What are the potential impacts of the financial crisis on economic, social and cultural rights?



Case study

- South African Case
 - Minister of Health and Others vs. Treatment Action Campaign and Others 2002 (5) SA 721 (CC), 2002 10 BCLR 1033
- Questions:
 - What is the legal status of the ICESCR in the domestic legal order?
 - Can social rights be invoked in court (justiciability)?
 - How is the court addressing the problem of “limited resources”?



Human rights or basic need – what difference does it make?

- Rights vs. needs-based approach
 - Amartya Sen: Development as Freedom
 - Move from social work to legal sphere
- From objects to subjects
 - Holders of a right vs. beneficiaries of development programme
 - Legal obligations of states
 - Shift in focus from moral judgment on the poor to the failure of states to comply with international law



Millennium development goals

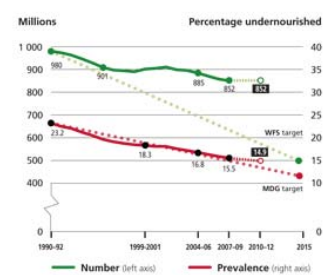
- Legal status of the MDGs
 - Millennium Declaration adopted by 189 states in 2000, signed by 147 states
 - Eight goals, with 21 quantifiable targets, 60 indicators
- Goal 1: Eradicate extreme poverty and hunger
 - Reduce by half the proportion of people living on less than a dollar a day
 - Achieve full and productive employment and decent work for all, including women and young people
 - Reduce by half the proportion of people who suffer from hunger
 - <http://www.fao.org/hunger/hunger-home/en/>



Undernourishment in 2012

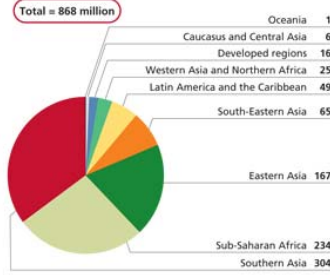
Source: FAO, 2012 Hunger Report.

Undernourishment in the developing world



Source: FAO.

Undernourishment in 2010-12, by region (millions)



Source: FAO.



Current state of affairs

- In 2012, the number of people suffering from chronic hunger further declines but with 870 million people remains unacceptably high (compared to 1.02 billion in 2009).
- Financial and food crisis together with climate change have an impact on poverty
- The non outcome of the Doha Round in the WTO will affect poor people
- Who represents the poor in these discussions?