



Economic, Social and Cultural Rights – Part 1

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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
 - Purohit and Moore V The Gambia Communication 241/2001 (2003) AHRLR 96 (ACHPR 2003)
- Poverty as a violation of human rights?
 - Soobramoney vs. Minister of Health, KwaZulu-Natal 1998 (1) SA 765 (CC), 1997 (12) BCLR 1696 (CC)
 - Government of the Republic of South Africa and Others vs. Grootboom (Grootboom) 2001 (1) SA 46 (CC), 2000 (11) BCLR 1169 (CC)



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?
- Are economic sanctions a violation of the right to food?
- What are the potential impacts of the financial crisis on economic, social and cultural rights?



Case studies

- South African Cases
 - Minister of Health and Others vs. Treatment Action Campaign and Others 2002 (5) SA 721 (CC), 2002 10 BCLR 1033
 - Soobramoney vs. Minister of Health, KwaZulu-Natal 1998 (1) SA 765 (CC), 1997 (12) BCLR 1696 (CC)
 - Government of the Republic of South Africa and Others vs. Grootboom (Grootboom) 2001 (1) SA 46 (CC), 2000 (11) BCLR 1169 (CC)
- African Commission for Human Rights
 - Purohit and Moore vs. The Gambia Communication 241/2001 (2003) AHRLR 96 (ACHPR 2003)



Case studies: 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"?