



Economic, Social and Cultural Rights – Part 2

6 October 2010
Prof. Christine Kaufmann
Autumn Term 2010



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)



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?



What is poverty? (1/2)

- Income poverty
 - Until 1990s: GDP, growth or national income
 - World Bank today: poverty line defined as living with an income of less than US \$1.25 in purchasing-power parity terms a day. 1.4 billion people live below the poverty line.
- Deprivation of capabilities
 - Lack of substantive freedom to lead the life he or she has reason to value
 - No or only limited access to health care, education and training, technological and economic resources



What is poverty? (2/2)

- Relative dimension of poverty
 - Extent of deprivation is different in different parts of the world: being poor does not mean the same everywhere.
- Complex relationship between income and capabilities
 - Higher income does not automatically imply ending poverty
 - Public policy needs to ensure non-discrimination, equality



Poverty affects human rights

- Universal Declaration of Human Rights
 - Art. 25 right to social security
 - Art. 28 right to a social and international order in which human rights can be realized
- UN Covenant on Economic, Social and Cultural Rights
 - Art. 6-8 right to work
 - Art. 9, 11 right to social security and adequate standard of living
 - Art. 12 right to health
 - Art. 13, 14 right to education
 - Art. 15 right to enjoy benefits of scientific progress



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



Current state of affairs

- The number of people suffering from chronic hunger reaches an unprecedented total of 1.02 billion in 2009
- Financial and food crisis together with climate change will have an impact on poverty
- The outcome of the Doha Round in the WTO will affect poor people
- Who represents the poor in these discussions?