

Civil, Political
&
Economic, Social and Cultural
Rights

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Fundamentals characteristics of human rights

- Universal: birth right of all human beings
- Recognize inherent dignity and equal worth of all human beings
- Equal, indivisible & interdependent
- Cannot be waved or taken away
- Impose obligations on State and State actors
- Internationally guaranteed
- Legally protected
- Protect individuals and, to some extent, groups

International Bill of Rights

- Why separate CCPR and CESCR?

STATUS: ICCPR

- State Party (170)
- Signatory (6)
- No Action (21)
- Regional differences
- Reservations

Contents: core rights

- 'Classic' first generation human rights:
 - Protecting 'freedoms' of individual: of life, integrity, liberty, against overbearing state
 - e.g
 - Right to life
 - Freedom from inhumane, cruel, degrading and ill treatment
 - Right to liberty and security e.g arrest and detention
 - Fair trial
 - Enforced disappearance
- Few *absolute* rights, most *non-derogable* but with limitations
- Subject to law, proportionality, necessity

Core rights continued

- Thought, conscience, religion, privacy
- Expression, religion, association and assembly : qualified rights key to participation in political life
- Subject of intense debate on grounds for restriction: emergencies e.g national security, public order, public health, morals; ICCPR: does it involve hatred or propaganda?
- Freedom from discrimination on grounds of race, gender, ethnicity etc

E.g most substantive one, the right to life,

The right is enshrined in **Article 6** of the [International Covenant on Civil and Political Rights](#):

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

Right to life cont.

- 3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.*
- 4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.*
- 5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.*
- 6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.*

- at risk from:
 - State's use of force
 - State's failure to provide adequate protection
 - Threats from other than the state e.g rebel groups
 - Not absolute – lethal force justifiable if not 'arbitrary'
 - Death penalty as exception subject to conditions
- Impunity
- Duty to protect – investigate , prosecute, redress etc.
- Right to Survival ?
- See exercise 2

Mechanisms: ICCPR

- The human rights treaty bodies monitor implementation of the core international human rights treaties
- For ICCPR it is the Human Rights Committee
- Each State party to a treaty:
 - obligation to *take steps* to ensure that everyone in the State can enjoy the rights set out in the treaty
 - submit *regular reports* to the Committee on how the rights are being implemented.
 - initially one year after acceding to the Covenant and then whenever the Committee requests (usually every four years). The Committee examines each report and addresses its concerns and recommendations to the State party in the form of "*concluding observations*".

Optional Protocols

- 1) «to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.»
- Individual Complaints:
http://www.ohchr.org/Documents/HRBodies/CCPR/OHCHR_Map_ICC_PR-OP1.pdf
- 2) Abolition Death Penalty:
http://www.ohchr.org/Documents/HRBodies/CCPR/OHCHR_Map_ICC_PR-OP2.pdf

Challenges

- Protection requires key structures:
 - Rule of law
 - Administrative of justice
 - Democratic structures or checks and balances
 - Balancing interests
 - Reporting mechanisms: quality and impact of reporting
 - Law and non-legal avenues

ESC Rights

“[e]xtreme poverty to me is the greatest denial of human rights. You don't vote, you don't participate in any political activity, your views aren't listened to, you have no food, you have no shelter, your children are dying of preventable diseases - you don't even have the right to clean water. It's a denial of the dignity and worth of each individual which is what the universal declaration proclaims.”

- Mary Robinson, former UN High Commissioner

What are Economic, Social and Cultural Rights?

O que são os direitos Económicos, Sociais e Culturais?

- Right to work – *Direito ao trabalho*
- Right to health – *Direito à saúde*
- Right to education – *Direito à educação*
- Right to water – *Direito à água*
- Right to housing – *Direito à habitação*
- Right to healthy environment - *Direito a um ambiente saudável*
- Right to cultural heritage – *Direito ao património cultural*

Status: ICESCR

- State Party (167)
- Signatory (4)
- No Action (26)

Same/Different?

CLAIMS: CPR

- Freedom from state interference
- Passive obligations
- Justiciable
- No cost?
- Individual
- Immediate
(Art. 2, ICCPR)

CLAIMS: SER

- Claim on state protection/assistance
- Active measures
- Non-justiciability
- Cost?
- Collective
- *Prog. Realisation (Art. 2 (1) ICESCR)

*Progressive Realisation (Art. 2 (1) ICESCR)

- Must be read in light of overall objective (GC 3, 1995)
- State burden of proving
- What is special about SER is only the question of **availability of means** (Eide, 2001)
- ICCPR contrasted to ICESCR: Misleading- immediate effect

State Obligations unpacked

- Respect
- Protect
- Fulfil

- Monitoring:
 - Minimum essential levels- key service data
 - Realise rights progressively – data over time
 - Eliminating discrimination- disaggregated by group

e.g. Right to Adequate Housing (Art. 11)

- According to the UN:
 - The right to adequate housing contains *freedoms* e.g not forced eviction
 - The right to adequate housing contains *entitlements* e.g. security of tenure
 - Adequate housing must provide *more than four walls and a roof* e.g services
 - *Protection* against forced evictions, e.g. safe guards
 - The right to adequate housing does *NOT* require the State to build housing for the entire population

Exercise – Exercício

Rights Holder: <i>O titular dos direitos:</i>	Claim: <i>Alegação:</i>	Capacity gaps: <i>Falhas de capacidade:</i>
Duty-bearer (1): <i>Garantidor do cumprimento dos direitos (1):</i>	Obligations: <i>Obrigações:</i>	Capacity gaps: <i>Falhas de capacidade:</i>
Duty-bearer (2): <i>Garantidor (2):</i>	OBs.: <i>Obrigações:</i>	Capacity gaps: <i>Falhas de capacidade:</i>
Duty Bearer (3): <i>Garantidor (3):</i>	OBs.: <i>Obrigações:</i>	Capacity gaps: <i>Falhas de capacidade:</i>

Example: Right to Housing and Urban Development (**Direito à Habitação Adequada e Desenvolvimento Urbano**)

<p><u>Rights Holder:</u> <i>O titular dos direitos:</i></p> <p>People living in slum areas Pessoas a viver em favelas</p>	<p><u>Claim:</u> <i>Alegação:</i></p> <p>Ensure access to adequate housing Assegurar o acesso à habitação adequada</p>	<p><u>Capacity gaps:</u> <i>Falhas de capacidade:</i></p>
<p><u>Duty-bearer (1):</u> <i>Portador do dever (1):</i></p> <p>Local Administration <i>Administração local</i></p>	<p><u>Obligations:</u> <i>Obrigações:</i></p> <p>Respect, protect, fulfil – Respeitar, proteger, cumprir e.g of steps for protecting from eviction – ex. Etapas para proteger do despejo</p>	<p><u>Capacity gaps:</u> <i>Falhas de capacidade:</i></p>
<p><u>Duty-bearer (2):</u> <i>Portador do dever (2):</i></p> <p>Provincial Director of Housing Director Provincial da Habitação</p>	<p>OBs.: Carry out regular inspections, participation, legal notice etc Obrigações: Realizar inspeções regulares, participação, aviso legal, etc.</p>	<p><u>Capacity gaps:</u> <i>Falhas de capacidade:</i></p>
<p><u>Duty Bearer (3):</u> <i>Portador do dever (3):</i></p>	<p>OBs.: Promote policies to access, availability, quality Obrigações: Promover políticas de acesso, disponibilidade,</p>	<p><u>Capacity gaps:</u> <i>Falhas de capacidade:</i></p>

Practical Work 1)

Trabalho prático 1)

- **Chose an economic, social or cultural right challenge in Angola (e.g. adequate housing)**
- *Escolhe um desafio relativo aos direitos económicos, sociais ou culturais em Angola (por exemplo, uma habitação adequada)*
- **What is the problem?**
- *Qual é o problema?*
- **Who are the rights holders? What are their rights?**
- *Quem são os titulares dos direitos? Quais são os seus direitos?*
- **Who are the duty holders? What are their obligations?**
- *Quem são os responsáveis/garantidores? Quais são as suas obrigações?*
- **What kinds of solutions do you recommend? How can Angola progressively realise this right?**
- *Que tipo de solução recomenda? Como é que Angola pode ter uma realização progressiva dos seus direitos?*

Practical Work 2) Right to Life

Trabalho Prático 2) Direito à Vida

- See *McCann v. UK overview and question*
- Ver *McCann v. RU visão geral e pergunta*