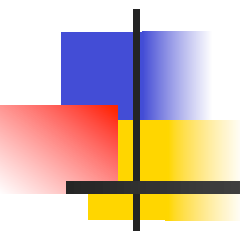


# Human Rights Instruments, Institutions and Mechanisms

With a note on the interdisciplinary nature of human rights



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MA Course in Human Rights  
Vietnam National University  
CAL 6001 April 4/9, 2013

Bård A. Andreassen  
Norwegian Centre for Human Rights  
University of Oslo



# Types of human rights instruments (conventions/ treaties)

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- International (United Nations)
  - UN Charter (1945)
  - Universal Declaration of Human Rights (1948)
    - Numerous other Declarations
  - UN Conventions (treaties, covenants)
  - UN General Comments
  - Guidelines for monitoring and supervision
- Regional Human Rights Conventions
  - European system
  - Inter-American system
  - African system
- Why this distinction?
- What does this distinction imply?



# International instruments: Structure and characteristics

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- Treaty-based expert bodies (9); Concerned with one treaty
- Charter-based bodies (UN Charter)
  - From Commission for Human Rights (1945) to the UN Human Rights Council (March 2006)
    - 47 state representatives
    - Universal Periodic Review (UPR)
    - Sub-Commission on Protection and Promotion of Human Rights
    - <http://www2.ohchr.org/english/bodies/hrcouncil/>
- Main mechanism of operation
  - Regular reporting by states
  - Examination of reports
  - Dialogues between state and treaty body
  - Enhance progressive realisation of economic and social rights
  - Weaknesses: Absence of decision-making powers of judicial nature; politicization of the forum and agenda



# UN Human rights instruments (=covenants/treaties/conventions)

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- Convention on the Elimination of All forms of Racism (1965)
- Covenant on Civil and Political Rights (1966)
- Covenant on Economic, Social and Cultural Rights (1966)
- Convention on All forms of Discrimination Against Women (1979)
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Rights of the Child (1989)
- Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)
- Convention on the Rights of Persons with Disabilities (2006, in force 2008)
- Convention on the Protection of all Persons from Enforced Disappearances (2006, in force 2010)



## Main civil and political rights

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Protection from unwarranted infringement by government and private organizations:

- Civil rights – right to life, freedom of thought and conscience, speech and expression, religion, free press, freedom of movement, access and share information, right to a fair trial, due process, the right to seek redress or a legal remedy, presumption of innocence
- Political rights - participation in public affairs, freedom of association, right to assembly, right to petition, right to vote



# UN Human Rights Committee of the CCPR

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- Referred to in art. 28-45 of the Covenant
- Ensure that the states comply with their obligations
- Reporting system and inter-state complaint mechanism
  - Inter-state complaints – optional, not used?
- Optional protocol on individual complaints
  - Admissibility rules
- 18 members, serve in their personal capacity, but elected by states
- Does not verify state reports by own investigations (can do so if states accept). Get info from NGOs
- Issue *General Comments*
- Reports to Human Rights Council



# Main economic, social and cultural rights

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- **Rights at work**, particularly just and fair conditions of employment, protection against forced or compulsory labour and the right to form and join trade unions;
- the **right to education**, including ensuring that primary education is free and compulsory, that education is sufficiently available, accessible, acceptable and adapted to the individual;
- **cultural rights** of minorities and Indigenous Peoples;
- The **right to the highest attainable standard of physical and mental health**, including the right to healthy living conditions and available, accessible, acceptable and quality health services;



# Main economic, social and cultural rights

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- The **right to adequate housing**, including security of tenure, protection from forced eviction and access to affordable, habitable, well located and culturally adequate housing;
- the **right to food**, including the right to freedom from hunger and access at all times to adequate nutritious food or the means to obtain it;
- the **right to water** – the right to sufficient water and sanitation that is available, accessible (both physically and economically) and safe





# UN Committee on Economic, Social and Cultural Rights

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- Committee established by ECOSOC in 1985;
- 18 independent experts, started work in 1987
- Review state reports, issues General Comments
  - <http://www2.ohchr.org/english/bodies/cescr/comments.htm>
- Consults with NGOs, alternative sources of information
- Problems
  - States not submitting reports (or long overdue), in spite of better guidelines for reporting
  - Poor quality of reports
  - Status of ratification, reservations



## Key articles of ESCRC

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### Article 2.1

“Each State Party to the present Covenant undertakes 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 present Covenant by **all appropriate means**, including particularly the adoption of legislative measures”

### Art 2.2:

“.....**without discrimination** of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”



## Article 11 The right to food

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- 1) ..... 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.....recognizing ..... the essential importance of **international co-operation** based on free consent



## Article 11 The right to food

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2) The States Parties to the present Covenant, recognizing the fundamental right of everyone to be **free from hunger**, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

- (a) To improve **methods of production, conservation and distribution of food** by making full use of technical and scientific knowledge, by disseminating **knowledge of the principles of nutrition** and by **developing or reforming agrarian systems** in such a way as to achieve the most efficient development and utilization of natural resources;
- Taking into account the problems of both food-importing and food-exporting countries.....



## Article 12 The right to health

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- .....the right of everyone to the enjoyment of the **highest attainable standard of physical and mental health**
  - reduction of the **stillbirth-rate and of infant mortality** and the healthy development of the child
  - improvement of all aspects of **environmental and industrial hygiene**
  - prevention, treatment and control of **epidemic, endemic, occupational and other diseases**
  - to provide appropriate **training for health personnel**, including **education on health and human rights**

## Article 24 CRC

The right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health

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- Diminish **infant and child mortality**
- ensure the provision of **necessary medical assistance and health care** to all children with emphasis on the development of primary health care;
- **combat disease and malnutrition**, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of **adequate nutritious foods** and **clean drinking-water**, taking into consideration the dangers and risks of **environmental pollution**;
- ensure appropriate **pre-natal and post-natal health care for mothers**;
- **basic knowledge of child health and nutrition**, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
- develop **preventive health care**, guidance for parents and family planning education and services.



## Other treaty bodies (committees)

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### **Committee on the Elimination of Racial Discrimination (CERD)** 1965, in force 1969, 174 state parties (ratification)

- Elected by state parties, serve in individual capacity (18mbrs)
- Review periodic reports
- Inter-state communications (not optional); Individual communication, optional (rarely used)
- Growing importance of the Convention - Influence of the Committee/Conventions increased
  - From anti-apartheid to issues of inter- and multiculturalism
  - Reduction of tension among states
  - Increased willingness of states to accept international oversight



## Committee on the elimination of all forms of discrimination against women (CEDAW)

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- Adopted 1979, in force 1981, 186 ratifications
- 23 experts, started working in 1982
- No inter-state complaint systems
- Optional protocol on individual complaints adopted in 1999
  - Admissibility criteria, exhaust all available domestic remedies
  - Closed meetings, “consultation” process with the state
  - Article 8 of the protocol: confidential investigation by the Committee
- Two annual sessions for three weeks each since 1996, more since 2005
- Reviews four-yearly reports, make concluding report
- Issues General ‘Recommendations’ (25)
- Weakening the convention:
  - Reservations to particular articles on the ground that national law, tradition, religion or culture are not congruent with Convention principles
  - Examples: Family law issues, military service, if in contradiction with Islamic law (Saudi Arabia) etc.





## Other Conventions with Supervisory Committees

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- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984, in force 1987, 147 SP)
- Convention on the Rights of the Child (1989, in force 1990, 193 SP)
- International Convention of the Rights of All Migrant Workers and Members of their Families (1990, in force 2003, 44 SP)
- Convention on the Rights of Persons with Disabilities (2006, in force 2008, 99 SP)
- International Convention for the Protection of All Persons from Enforced Disappearance (adopted 2006, in force in 2010, 25 SP)



## Ratifications of key human rights instruments

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■ CCPR:	166
■ CESC:	160
■ CERD (racial disc.):	173
■ CEDAW (women)	186
■ CAT Torture):	147
■ CRC (the child):	193
■ CRPD (disabilities):	130
■ Migrant Workers:	43
■ Disappearances:	37 (in force in 2010)



# Objectives of state reporting under treaty-based committees

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## ICESC/General Comment 1: Reporting

- Within 2 years after accession – comprehensive review of national legislation and administrative procedures and rules
- Ensure that state parties undertake regular monitoring; committee indicate nature/extent of international assistance
- Help to introduce policy-making for rights fulfillment: Education etc
- Facilitate public scrutiny of government policies
- Offer benchmarks for assessing progress over time
- Provide better understanding of problems of progressive rights realisation
- Enable mutual exchange of information among states – help to understand common problems of realisation



## What is the ratification pattern among states on various key instruments?

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- **Ratification of main instruments**

<http://www.ohchr.org/english/countries/ratification/>

- **On reservations**

- **See in general**

<http://www.ohchr.org/english/>



## *Minimum core* of rights fulfillment (art 11 and 14)

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- to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;
- to ensure access to the minimum essential food which is sufficient, nutritionally adequate and safe;
- to ensure freedom from hunger to everyone;
- to ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water;



## Core minimum of rights fulfillment (cont' d)

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- to provide essential drugs, ... defined by WHO's Action Programme on Essential Drugs;
- to ensure equitable distribution of all health facilities, goods and services;
- to adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population



## Violation

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- “A State which is unwilling to use the maximum of its available resources for the realization of the right to health is in violation of its obligations under article 12.” (GC 14, para. 47)
- “The adoption of any retrogressive measures incompatible with the core obligations ... constitutes a violation of the right to health.” (CG 14, para. 48)
- *Acts of commission* (e.g., repeal or suspension of legislation that respect human rights)
- *Acts of omission* (e.g., failure to have a national policy on an issue or to enforce relevant laws)



## The HR treaty system – a system in crisis?

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- Crisis factors?
  - Backlog in reporting, overdue reports
  - Delays in processing reports and communications
  - Resource constraints (financial, personnel, technical)
  - Procedural: relies on self-criticism and good faith, lack of follow up mechanisms
  - Composition of committees – competence vs political concerns
  - High reliance on external funding: influence-meddling?
- Legitimacy issues?
- Reform of the UN HR institutions: Towards one treaty institution? A World Court of HR? (M. Nowak, M. Scheinin)





## Regional human rights treaty systems

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- The European Council: The European Convention for the Protection of HR and Fundamental Freedoms, and the European Social Charter
- The AU: The African Charter on Human's and People's Rights
- The OAS: The Inter-American Convention on Human Rights



## Regional systems - general

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In contrast to international system

- Rest mainly on a single treaty, with additional protocols, only single institution involved
- More emphasis on individual complaints procedures as a single supervisory tool
- Supervisory bodies – judicial powers; decisions, award compensation



## The European Convention for the Protection of HR and Fundamental Freedoms

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- Adopted in 1950; entered into force in 1953
- Covers key civil and political rights
- European system established as reaction to slowness of the UN system
- Used to have two institutions: Commission and court; now only Court
- Admissibility rules; exhausting domestic remedies
- Inter-state complaints (the Greece and Turkey cases)
- Private petitions
- The case-load, reforms

European Social Charter



## The African Charter on Human's and Peoples' Rights

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- Adopted in 1981; entered into force in 1986 by the OAU, ratified by 53 states
- Proclaims rights *and* duties
  - Correlative duties (mine/yours) vs restrictions on rights (referring to duty to preserve “national solidarity”)
- Covers human rights of *individuals* as well as *groups* (peoples)
- Civil, political, economic, social and cultural rights; RtD
- SERAC v Nigeria (2001), the Charter is understood to include a right to housing and a right to food
- Permits states to impose extensive limitations; “in accordance with national law”
- References to “the virtues of the African tradition an the values of African civilisation”
- Focus on reconciliation?
- The Commission (promotion, interpretation, resolution)
- The Court: Advisory opinions, hear cases submitted by Commission



## The Inter-American Convention on Human Rights

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- Adopted in 1969 (into force in 1978, ratified by more than 25 states (not USA, Canada). Additional Protocol in Economic, social and cultural rights (1988), entered into force in 1999
- Commission and court
- Commission can deal with individual petitions and inter-state complaints (art 28)
- Petitions can be made both by individuals and groups and NGOs (art 44)
- Court issues judgments in cases and issue advisory opinions on the articles of the Convention



## Some additional notes on the interdisciplinary nature of human rights

Three phases of human rights development: Ideal, positivisation, implementation

- The pre-dominance of law has been changing since the 1990s
- Four main areas of human rights research:
  - Legal-institutional issues: codification and standard-setting, convention development
  - Legal-administrative, comparative: transformation and implementation in national legislation
  - Normative-philosophical and anthropological issues; justification of human rights and interpretation and understanding of culture in local context; legal anthropology as a new discipline
  - Social sciences – sociology, political science – explanation and analysis of conditions and contexts