The Purpose of This Presentation is to identify States Obligations provided for under:

- The ICCPR
- The ICESCR
- HR Treaty based- Commentaries
- Scholarly Opinions
- Contemporary Interpretations
Types of States

Obligations imposed by HR Treaties

- Respect rights of others
- Create institutional machinery Essential to Realization of Rights
- Protect Rights/ Prevent Violations
- Provide Goods and Services to Satisfy Rights
- Promote Rights
Article 2 ICCPR

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
Article 2

Each State Party undertakes to take the necessary steps, in accordance with its constitutional processes and..... to adopt..... laws or other measures to give effect to the rights in Covenant.
Article 2

- Each State Party undertakes:
  - (a) To ensure any person whose rights or freedoms are violated shall have an effective remedy, notwithstanding the violation has been committed by persons acting in an official capacity;
  - (b) To ensure such a remedy determined by competent judicial, administrative or legislative authorities,
  - (c) To ensure that the competent authorities shall enforce such remedies when granted.
The obligation is not confined to the respect of human rights, but that States parties also undertake to ensure the enjoyment of these rights to all individuals under their jurisdiction.
The obligations towards individuals as the right-holders:

- Every State party has a legal interest in the performance by every other State party of its obligations (*erga omnes* obligations)

- UN Charter obligation to promote universal respect for, and observance of, human rights and fundamental freedoms
General Comment No. 31

- The contractual dimension of the treaty involves any State party to a treaty being obligated to every other State party to comply with its undertaking.

- The article 41 procedure (States parties’ interest in each others’ discharge of their obligations). Violations of Covenant rights by any State party deserve their attention and to call on them to comply with their Covenant obligations should, far from being regarded as an unfriendly act, be considered as a reflection of legitimate community interest.
General comment No. 31:

- **State Responsibility:**
- The obligations of the Covenant are binding all branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local) are in a position to engage the responsibility of the State party.
General comment No. 31:

- Article 27 of the Vienna Convention on the Law of Treaties: a State party “may not invoke the provisions of its internal law as justification for its failure to perform a treaty”.

- State parties shall not invoke provisions of the constitutional law or other aspects of domestic law to justify a failure to perform or give effect to obligations under the treaty states without any limitations or exceptions”.
General comment No. 31:

The legal obligation under article 2 (1), is both negative and positive in nature.

States parties must refrain from violations

Where restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure effective protection of Covenant rights.
General comment No. 31

- Article 2 requires that States parties **to adopt** legislative, judicial, administrative, educative and other appropriate measures in order to fulfil their legal obligations.
The positive obligations on States parties to ensure Covenant rights will only be fully discharged if:

- Individuals are protected by the State against violations of Covenant rights by its agents,

- Against acts committed by private persons or entities that would impair the enjoyment of Covenant rights.
States parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by private persons or entities can be considered as violating HR.

States parties have to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power.
General comment No. 31

- **Effective Control:**
- States parties are required by article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction (effective control of that State party, **even if not situated within the territory of the State party**).
General comment No. 31

- Covenant rights is **not limited to citizens** of States parties but must also available to all individuals, regardless of nationality or statelessness, such as asylum-seekers, refugees, migrant workers and other persons.

- This principle also applies to those within the power or effective control of the forces of a State party acting outside its territory (i.e. forces constituting a national contingent of a State party assigned to an international peacekeeping or peace-enforcement operation).
The article 2 obligation entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm (i.e. articles 6 and 7 of the Covenant).

The relevant judicial and administrative authorities should be made aware of the need to ensure compliance with the Covenant obligations in such matters.
Article 2, paragraph 2, requires that States parties take the necessary steps to give effect to the Covenant rights in the domestic order.

States parties are required on ratification to make changes to domestic laws and practices as are necessary to ensure their conformity with the Covenant.

Inconsistencies between domestic law and the Covenant, article 2 requires that the domestic law or practice be changed to meet the standards imposed by the Covenant’s substantive guarantees.
Article 2(3) requires States parties make **reparations** to individuals.

**Reparation can involve:**
- Restitution,
- Rehabilitation
- Satisfaction (i.e. public apologies, public memorials,
- guarantees of non-repetition (i.e. changes in laws, practices, bringing perpetrators to justice.)
General comment No. 31

- States may not relieve perpetrators from personal responsibility (i.e. Amnesties and prior legal immunities and indemnities) if acted in **official capacity**.
- No official status justifies persons who may be accused of responsibility be held **immune from legal responsibility**.
- Other impediments to legal responsibility should also be removed (i.e. *defence of obedience to superior orders* or unreasonably short periods of *statutory limitation*).
- Compare Sudan’s laws and practices.
ICCPR Territorial & Jurisdictional Limit

- Extraterritorial State responsibility
- Israel bears responsibility of the ICCPR in occupied territories, Iraq Occupation, etc..
- State liability for the acts of private persons
- Liability with regards to the acts of other states (torture)
The International Covenant on Economic, social & cultural Rights) ICESCR

States Parties obligations under the ICESCR
Article 2 of the ICESCR

- Each State Party undertakes to take steps, individually and through international assistance, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights by all appropriate means, including the adoption of legislative measures.

- The States Parties undertake to guarantee that the rights 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.

- 3. Developing countries may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non nationals.
General comment No. 3: The nature of States parties’ obligations

- Obligations of conduct and obligations of result.

- While the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes various obligations which are of immediate effect.

- The “undertaking to guarantee” that relevant rights “will be exercised without discrimination ...”. 
Undertaking of steps

- Undertaking “to take steps not qualified or limited by other considerations.
- In English the undertaking is “to take steps”,
- In French: “to act” (“s’engage à agir”)
- In Spanish: “to adopt measures” (“a adoptar medidas”).
- Thus, while the full realization of rights may be achieved progressively, steps towards that goal must be:
  Taken within a reasonably short time after the Covenant’s entry into force; Deliberate, Concrete; Targeted as clearly as possible towards meeting the obligations.
Means

- “All appropriate means shall be taken including the adoption of legislative measures”.

- Legislation is highly desirable and may be indispensable.

- I.e. combat discrimination effectively requires sound legislative measures.

- Health, the protection of children and mothers, education, legislation is an indispensable
Among the measures which might be considered appropriate, in addition to legislation is:

- **Judicial remedial** (justiciable).

A number of provisions in the ICESCR (I.e. articles 3, 7 (a) (i), 8, 10 (3), 13 (2) (a), (3) and (4) and 15 (3)) capable of immediate application by judicial and other organs in many national legal systems.
• Laws create any right of action on behalf of individuals or groups who feel that their rights are not being fully realized.

• **Constitutional recognition** accorded to specific economic, social and cultural rights, or

• Where the provisions of the Covenant have been incorporated directly into national law (justiciable rights)
Other measures

- Other measures which may also be considered “appropriate” for the purposes of article 2 (1) include:
  - administrative,
  - Financial,
  - Educational
  - Social Measures.
The Concept of Progressive Realization of Rights

- Is to take steps “with a view to achieving progressively the full realization of the rights recognized” in the Covenant.

- The concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be achieved in a short period of time (compare ICCPR which embodies an immediate obligation to respect and ensure respect).
The Concept of Progressive Realization of Rights

- **Nevertheless:**

  Progressive realization over time should not be misinterpreted as depriving the obligation of all meaningful content. It is a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights.

- The overall objective of the phrase imposes an obligation to move as expeditiously and effectively as possible towards that goal.
A minimum Core Obligations

- A minimum core obligation to ensure the satisfaction of minimum essential rights is incumbent upon States.

- A State party in which any significant number of individuals is deprived of essential primary health care, basic shelter, housing, essential foodstuffs, or the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant.
A minimum Core Obligations

- State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.

- In times of severe resources constraints whether caused by a process of adjustment, of economic recession, or by other factors the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes.
General comment No. 9:  
The Domestic Application of the ICESCR

- The duty to give effect to the Covenant in the domestic legal order:
- States should modify the domestic legal order as necessary in order to give effect to their treaty obligations
- Appropriate means of redress, or remedies must be available to any aggrieved individuals or groups,

- Appropriate means of ensuring governmental accountability must be put in place.
The Domestic Application of the ICESCR

- The status of the Covenant in the domestic legal order:

- Legally binding international human rights standards should operate directly and immediately within the domestic legal system to enable individuals to enforce rights before national courts and tribunals.
The Domestic Application of the ICESCR

- The Role of Legal Remedies
- Justiciability
- Self-executing
- The treatment of the Covenant in domestic courts
Thank You

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