

“Indivisibility” – debating the prioritization of human rights

In 1993, at the World Conference on Human Rights in Vienna, Austria, representatives from the over 180 states that attended agreed in a final declaration that “All human rights are universal, indivisible and interdependent and interrelated.”

We will look at the idea of universality in the next module. But what it does mean to say human rights are “indivisible” and “interdependent and interrelated”?

In this clip I want to explain these terms to you, and explain also the reason United Nations meetings on human rights continue to place a good deal of emphasis on “indivisibility”. Recall - although the Universal Declaration of Human Rights includes all types of human rights – economic and social, civil and political – a decision was taken early on in the UN’s work to draft separate international human rights treaties – one for economic and social rights, and one for civil and political rights.

Recall also that the duties on states in relation to the two sets of rights differ. The distinct treatment of the separate categories of rights hardened over time, and led to a compartmentalization – the UN’s programme of work on human rights, the agenda in meetings of the Commission on Human Rights (and now the Human Rights Council), the concerns that certain Non-Governmental Organizations (NGOs) took up – all tended to divide according to whether it was an economic and social right or civic/political rights issue.

This in turn fed into a debate regarding the relative importance of different categories of rights. Which set of rights is more important – economic and social rights or civic and political rights? In other words, is there a hierarchy of rights, such that certain rights deserve to be protected first, or more quickly, or more fully?

On the one side – and I’m presenting this simplistically as there were nuances to the debate – was the so-called “bread before ballots” argument. Its proponents argued that a government’s first priority was to feed its population, to ensure they were educated and healthy, and only then to democratize, and allow for civil and political freedoms.

In this view, poor and under-developed countries shouldn’t be expected to be multi-party democracies with a free press before they had to at least some degree tackled their poverty and under-development.

On the other side, was the argument that civil and political rights should take priority. In this view, only in truly free societies can governments take the right decisions – and be held accountable for them – that will advance social and economic progress. A free press, property rights and an independent judiciary are better guarantors of economic progress than government planning. We saw this point already when we looked at the arguments against and for Economic and social rights.

The Cold War, of course, from the 1950s through the late 1980s, provided a welcoming environment for this debate. The Soviet Union and allied states, or in any case states committed to socialism, argued for the priority of economic and social rights; the US, its allies and many western states argued for the priority of civil and political rights. The fact that neither side sought to implement fully even those rights in the category it championed, is almost beside the point. The categorization of rights permitted this debate to rage. Western criticism of the Soviet Union’s intolerance for dissent was matched by Soviet criticism of the inequalities under capitalism.

The idea of indivisibility arose in this context – as a concept developed to counter the argument on prioritization from either camp. Obviously, it was a compromise – as are most agreements in the United Nations. The idea was simply to affirm that the inter-dependent character of human rights meant it was not possible to separate out one right or one type of right for priority treatment. By asserting the primacy of all rights, and not one category, neither side won the debate (depending on how you view it, or both lost).

Ok. Leaving aside the politics, is it true? Are human rights “indivisible and interdependent”? Presumably that would mean that paying attention to only one set of rights, and ignoring others, would be counter-productive as it would lead to minimal results even for the category of rights one prioritized.

Thus, to take the example we looked at earlier, fulfilling the right to education ensures the better functioning of democracy. Or, a more famous example from the work of the Bangladeshi economist Amartya Sen, countries with a free press rarely experience widespread famine (because it is food distribution, not shortages per se that usually exacerbate famine, and that distribution can be monitored by a critical press).

But perhaps to understand the concept of indivisibility more fully, let’s examine one social right in detail – the right to adequate housing, guaranteed in Article 11 of the ICESCR, which says, “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, housing...”

The Committee that oversees the CESCR has identified a number of components of this right, including housing’s affordability, habitability, accessibility, whether services – clean water, electricity, plumbing – are available, and, crucially, legal security of tenure, meaning proof and recognition of a legal right to ownership or residency, and protection against arbitrary eviction.

Many of these issues are primarily determined by social policy. Where market forces do not result in the availability of affordable housing for the poor, then clearly governments must step in to broaden the options available.

But for the homeless or poorly housed in many countries, the issue is less a matter of state-provided housing, and more one of simply being allowed to hold on to and improve the shack or structure they call home. One billion people live in slums worldwide, and security of tenure and protection against forced eviction are among their chief concerns. Security of tenure is guaranteed through a well-functioning, fair and non-discriminatory legal system. Protection against arbitrary and/or forced eviction similarly is dependent on the rule of law – further, such evictions might violate civil rights including the right to privacy, property, or non-interference with family life, as much as they violate a right to adequate housing.

In short, it is hard to separate the social aspects of the right to adequate housing from its legal and civil aspects. Such interdependence can be seen in relation to many human rights.

Think of the right to health and, in this context, women’s access to healthcare during pregnancy and while giving birth. Pregnancy is not a disease yet in poorer countries hundreds of thousands of women die in childbirth or from complications arising from pregnancy and childbirth; entirely preventable deaths.

No doubt part of the explanation lies in incapacity in the health system. But part of the explanation too lies in the fact that in the same countries women and girls are denied the same education as men and boys, and lack the political power that would give them a voice in decisions on health funding, or indeed on access to contraception, which in itself would reduce maternal mortality.

But are all rights interdependent and indivisible? UN language in this matter is too all-encompassing. Governments can and do take specific action in relation to specific rights, even as they stall on the implementation of others. New laws to define and outlaw torture, or to protect free speech, are not obviously dependent on progress to fulfill the right to health.

Similarly, illiteracy can be significantly reduced even in a dictatorship. And, interestingly, in today’s world, the two greatest powers, China and the US, both continue to hold to positions that champion the prioritization of rights. China asserts its preference to first fulfill economic and social rights before democratization. It has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) but not the International Covenant on Civil and Political Rights (ICCPR). The United States continues to argue that civil and political rights take priority – it has ratified the ICCPR but not the ICESCR.

So, while UN documents, endorsed by many states, assert indivisibility, disagreements on the prioritization of rights continue. In a forthcoming module on human rights and poverty we will examine in much greater detail the links between different types of human rights and the issue of their inter-dependence.

The key point to bear in mind for now regarding indivisibility is that while we speak of different categories of rights, they are clearly linked in important ways.

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