

Episode 12: International Enforcement Processes

In this episode, we will focus on international enforcement mechanisms - that is, the ways in which states can be held accountable for their implementation of their economic and social rights obligations under international law.

In doing so, we'll concentrate on the processes associated with the International Covenant on Economic, Social and Cultural Rights. Much of our discussion will be on what is known as the state reporting procedure. However, we'll also look briefly at the complaints and inquiry mechanisms that were established by the Optional Protocol to the Covenant which came into force in 2013.

All of these processes involve the UN Committee on Economic, Social and Cultural Rights. This is a body made up of 18 independent experts. These experts are nominated by the states which have agreed to be bound by the Covenant and are elected to serve four-year terms. The Committee usually meets three times a year.

Let's start with the reporting process. Governments that have agreed to be bound by the Covenant submit what are known as 'state reports' or 'periodic reports' to the Committee every five years. These reports outline the laws, policies and other measures that the states have adopted to implement the Covenant - and they should also provide evidence about the effect of these measures on people's enjoyment of Covenant rights. In practice, state reports are often late and the Committee is very busy, which can cause delays beyond the five year cycle.

Once a state has submitted its report, five Committee members, known as the 'pre-sessional working group' meet to discuss that report in private in advance of the public

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examination of the state. The Working Group also considers information from UN agencies, the Office of the UN High Commissioner for Human Rights, national human rights institutions and civil society. Reports submitted by civil society and national human rights institutions are referred to as 'shadow' or 'parallel reports'.

During its meeting, the pre-sessional working group decides on a list of questions that it wants the Government to provide further written information on. This is formally known as the 'List of Issues'. National human rights institutions and civil society also have the opportunity to provide written responses to the List of Issues, and to provide updates on relevant topics up to the point of the examination.

The List of Issues forms the basis of a public examination of a government delegation at a meeting of the Committee in Geneva. The Committee members ask the delegation questions about the state report and its response to the List of Issues. In doing so, the Committee often uses evidence provided by national human rights institutions and civil society to question the information put forward by the state.

Following the public examination, the Committee produces a report, which summarises its key concerns and makes recommendations to the Government for action. This is known as the 'concluding observations'. States are required to publish these recommendations and follow up on them. They are also required to report on what they have done to implement these recommendations in their next state report, five years later.

Concluding observations have a crucial role to play in advocacy efforts at domestic level which seek to hold governments to account in terms of their human rights obligations. For instance, they can serve as the basis of questions to Ministers or civil society campaigns on

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specific economic and social rights issues. They can also be picked up on by parliamentary committees and others working on economic and social rights-related issues. Beyond the national context, concluding observations may function as the basis of advocacy work focused on other UN human rights bodies – for instance, the Universal Periodic Review process of the Human Rights Council.

Let's turn now to the processes that are set out in the Optional Protocol to the Covenant. First, the complaints process: the Committee may consider individual communications alleging violations of the Covenant by states that have agreed to be bound by the Optional Protocol. Complaints can be brought by or on behalf of individuals or groups of individuals under the jurisdiction of the particular state who allege that their Covenant rights have been infringed. The complaint has to satisfy strict criteria for the Committee to consider it; amongst other things, it must be made within one year of exhausting domestic remedies and it cannot be anonymous or manifestly ill-founded.

When it considers a complaint on its merits, the Committee will issue 'views' as to whether the state has committed a violation of the Covenant. It may also make recommendations. If the Committee finds there has been a violation and makes recommendations, the state must send a written response within six months setting out the actions it has taken in relation to the Committee's findings.

The Optional Protocol also provides for an inquiry procedure. States which have agreed to be bound by the Protocol must opt in to this procedure. They can do so by making a declaration that they recognise the competence of the Committee to carry out inquiries into 'grave or systematic violations' of Covenant rights by the state.

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The Optional Protocol also includes an inter-state complaints procedure which states can choose to opt into. This allows them to make complaints against other states and have complaints made against them. In practice, however, there has never been an inter-state complaint brought before any UN treaty body.

We need to remember, however, that only a relatively small number of the states that have agreed to be bound by the Covenant have done the same with regard to the Optional Protocol and the processes it provides for. Does this mean that where a state hasn't agreed to the Protocol and the procedures it sets out that there are no remedies available at the international level for people for violations committed by those states? Not necessarily. Other international human rights treaties that contain economic and social rights have similar enforcement processes to the Covenant. These treaties include the Convention on the Rights of Persons with Disabilities, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Migrant Workers Convention and the Convention on the Elimination of All Forms of Racial Discrimination. Where a state hasn't volunteered to be bound by the complaints and inquiry procedures relating to the Covenant, it is always worth looking to see if the enforcement mechanisms under those other treaties can be used. The website of the Office of the UN High Commissioner for Human Rights has information on which countries have agreed to be bound by specific individual complaints and inquiry procedures.

It should be clear at this point that there are a number of international avenues that can be used to enforce economic and social rights. The choice of avenue will depend on a range of different factors. These include the rights issue involved, the treaties which the state has volunteered to be bound by, and whether the state has agreed to allow complaints or

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inquiries to be brought against it in relation to specific treaties. Usefully, there are a wide range of resources focused on how national human rights institutions, civil society and individuals can engage with different UN enforcement mechanisms. Some of these can be found on the website accompanying this series.