

Episode 2: What are Economic and Social Rights Obligations?

In this episode, we will look at the question of 'what are economic and social rights obligations'? While other episodes focus on specific obligations or duties imposed by economic and social rights, this tutorial provides a general overview. We will start by looking at where these obligations can be found before then going on to discuss some of their key elements.

So, where are economic and social rights obligations found? The most important source is the text of the International Covenant on Economic, Social and Cultural Rights itself. This is the principal legal instrument for the purpose of this series. 166 states globally have agreed to be bound by the Covenant and the duties imposed by it. These states thus have binding economic and social rights obligations under international human rights law. Giving effect to economic and social rights is the responsibility of what international human rights law terms 'the state' or 'the state party'. These terms refer to the nation state that has chosen to be bound by the international treaty. In practice, the human rights obligations of the state extend to all levels of government, all public officials, and to any exercise of governmental or public authority. The state actors responsible for taking the necessary steps to secure economic and social rights may be central, local or devolved government officials, parliamentarians, or the courts. In this series, we will use the terms 'state' or 'government' as shorthand.

In addition to international law obligations, in some states, the fact that the state has ratified the Covenant means that these rights automatically form part of the domestic legal framework. This means that they can be relied on in court. In other countries, like the

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United Kingdom and Ireland, international human rights law cannot be relied on in court until it has been incorporated into national law – for instance through legislation. However, even where that domestic incorporation hasn't taken place, the state remains bound by international law to carry out its obligations under the treaties.

So what are these obligations? The Covenant sets out some very important over-arching provisions. Article 2(1) provides that: '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 recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.'

This rather wordy and complex provision sets out a number of obligations. The most important of these are the state's duty to progressively realise economic and social rights and its duty to use the maximum of the resources available to it in order to do so. These obligations will be talked about further in episodes 3 and 4. The key thing to note at this point is that while Article 2(1) talks about achieving the realisation of economic and social rights 'progressively' – it makes clear that the ultimate goal for states is 'full realisation' of economic and social rights. Progressive realisation is merely the means to the end of full realisation. It's important to remember too that Article 2(1) talks about taking steps 'through international assistance and co-operation'. This suggests that states' economic and social rights duties do not end at their territorial borders – and that international assistance and cooperation are key means of fulfilling economic and social rights.

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Another important over-arching provision under the Covenant is Article 2(2). This sets out the obligations of states to ensure Covenant rights without discrimination on the basis of a wide range of grounds including sex, race, colour and religion. This is an open-ended list of grounds. And the United Nations Committee on Economic, Social and Cultural Rights, the body responsible for monitoring states' implementation of the Covenant, has gone beyond those mentioned in the Covenant itself to make clear that disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence and economic and social situation are also prohibited grounds of discrimination.

In addition to the duties that are mentioned in the text of the Covenant, a range of other obligations have been identified by the Committee on Economic, Social and Cultural Rights. These duties have been outlined in General Comments which are the Committee's authoritative interpretations of the Covenant. These obligations include a presumption against 'retrogressive measures' – that is, backward steps in terms of realising economic and social rights. We'll look at this issue in detail in episode 5. They also include the concept of the 'minimum core obligation', which means that all states have a duty to ensure the satisfaction of minimum essential levels of each economic and social right – for instance, food or housing. We'll speak further about this in episode 6. Finally, the Committee has also developed a framework to categorise economic and social rights duties; this is known as the 'respect, protect and fulfil' framework. The obligation to respect requires states not to interfere with the enjoyment of economic and social rights; the obligation to protect requires states to take steps to prevent other, non-state actors from interfering with the enjoyment of economic and social rights; and the obligation to fulfil requires states to adopt appropriate legislative, administrative, budgetary, judicial, promotional, and other measures

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towards the full realisation of economic and social rights. The respect, protect and fulfil framework makes clear that that for states to comply with the Covenant, there are a range of actions they must take – and there are other actions that they must avoid. We'll discuss this framework further in the context of the thematic videos in this series.

Before finishing - a few short observations on economic and social rights obligations. First, while the emphasis in the wording of Article 2(1) is on progressive realisation of economic and social rights over time, there are also immediate obligations. For instance, the prohibitions on discrimination and on backward steps. Second, while Article 2(1) provides that realisation of economic and social rights is subject to available resources, state failures to satisfy economic and social rights obligations cannot necessarily be excused on the basis of inadequate resources. For instance, the obligation of states to respect economic and social rights by not interfering with the existing enjoyment of rights is not subject to available resources. This means, for instance, that a state can't seek to justify its failure to prevent state agents from destroying housing or forcibly evicting people by arguing resource constraints.

We will now go on to look at these different obligations in more detail.