

### **Episode 3: Progressive Realisation**

In this episode we will focus on one of the key overarching obligations imposed by economic and social rights: progressive realisation. This obligation is set out in Article 2(1) of the International Covenant on Economic, Social and Cultural Rights. However, progressive realisation is also found in a number of national constitutions, including those of South Africa and Kenya. We also see it in the case law of regional bodies that deal with economic and social rights – for instance, the European Committee of Social Rights.

The first question we might ask when looking at Article 2(1) is: why are states allowed to give effect to economic and social rights progressively over time? Why aren't governments required to give effect to economic and social rights straight away like they are with civil and political rights such as the right to life or the right to freedom of religion? Ultimately, the concept of *progressive* realisation reflects the reality that factors like a lack of resources – whether financial or otherwise – can hamper the full implementation of economic and social rights. The UN Committee on Economic, Social and Cultural Rights has described progressive realisation as 'a necessary flexibility device'. Progressive realisation is an example of how human rights law – including economic and social rights – is deeply pragmatic.

But progressive realisation doesn't mean that states can postpone the full realisation of economic and social rights indefinitely. If a state is to comply with this duty, there is no question of the state being able to say: 'well, we've signed up to the Covenant and in a few years we'll think about putting together a plan of implementation, a few years after that we might develop a policy and then a while after that we might even come up with a bit of

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funding for it!' The Committee on Economic, Social and Cultural Rights has made clear that progressive realisation requires states to move as 'expeditiously and effectively' as possible towards the goal of full realisation of economic and social rights. And the burden is on states to provide that they have done so.

While the Committee has made clear that while the full realisation of the Covenant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant comes into force for the particular State. These steps have to be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognised in the Covenant. Such steps may include the adoption of national strategies or plans of action on specific rights. Or the collection of information about where a state is doing well in terms of ensuring the enjoyment of Covenant rights and where it needs to be doing more. In contrast to progressive realisation, the Committee has described the duty to take steps as immediate.

Moving back to the key focus of this episode, progressive realisation is concerned with progress in the actual implementation of rights, rather than merely having policies or laws in place which aim to further a particular right. For instance, the introduction of an education policy may not necessarily indicate progressive realisation of the right to education, unless it can be demonstrated that the policy is having the desired effect in practice.

Progressive realisation isn't just about expanding economic and social rights enjoyment to a larger number of people; it also requires ensuring increased enjoyment by a wider range of people. Let's take for instance a situation where a commitment has been made to invest in mental health services, but there are no specific plans to address the poorer outcomes and

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lack of access to services experienced by minority ethnic groups. The additional investment would increase enjoyment of the right to the highest attainable standard of mental health overall, but given that it doesn't support those groups who currently experience poorer access and outcomes in terms of mental health issues, it raises questions about discrimination in terms of state efforts to progressively realise the right to health.

At this point, it's enough to note that the state needs to be sure that its efforts to advance enjoyment of economic and social rights do not solely improve rights enjoyment by some groups of society, leaving other groups behind. Governments must also prioritise people entitled to special assistance like children or disabled people in terms of the legal, policy or budget measures they take to progressively realise economic and social rights.

Of course there will be times when it simply isn't possible for governments to advance economic and social rights enjoyment. Financial crisis, a natural disaster, a conflict – all of these will affect a government's ability to progressively realise economic and social rights – or even maintain existing rights enjoyment. Economic and social rights law is sensible – it recognises and accommodates such situations by setting out careful criteria for justifying retrogressive measures or backward steps. We'll return to this point in episode 5.

Perhaps the most common challenge for states when it comes to guaranteeing economic and social rights is a lack of resources. Given that reality, it is no surprise that Article 2(1) of the Covenant makes a link between the realisation of economic and social rights and the resources available to the state. Bearing that link in mind, we will now turn to episode 4 where we discuss the second key duty imposed by Article 2(1) of the Covenant – the duty of

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states to make use of their maximum available resources to give effect to economic and social rights and make them a reality.