

Week 3: The Life of a Treaty

Core Human Rights Treaties:

- ICCPR – International Covenant on Civil and Political Rights
- ICESCR – International Covenant on Economic, Social and Cultural Rights
- ICERD – International Convention on the Elimination of All Forms of Racial Discrimination
- CEDAW – Convention on the Elimination of All Forms of Discrimination against Women
- CAT – Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- CROC – Convention on the Rights of the Child
- ICRMW – International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- ICPED – International Convention for the Protection of All Persons from Enforced Disappearance
- CRPD – International Convention on the Rights of Persons with Disabilities

ICERD

- Preceded the ICCPR and ICESCR and first to address the rights of a specified group
- Racial discrimination shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms.

CEDAW

- Entered into force in 1981 and Optional Protocol for individual communication in 2000.
- Has the most amount of reservations made.
- 109 states have ratified

CAT

- Entered into force in 1987 and Art 22 provides for individual communication – need separate declaration.
- Art 2: no exceptional circumstances whatsoever may be invoked as a justification of torture.
- Optional Protocol – establish subcommittee.
- People can appeal to the Treaty body if the State has allowed this to happen.
- Optional Protocol – 83 states.
 - o Australia has signed but has not ratified.

CROC

- Entered into force in 1990, 2 Optional Protocols in 2002 and 1 Optional Protocol in 2014.
- 166 states signed up to the first.

- 173 states signed up to the second.

ICRMW

- Entered into force in 2003.
- Protects migrant workers from exploitation through trafficking and illegal recruitment and irregular or undocumented situations.
- Has 51 State parties.

CRPD

- Entered into force in 2008 and Optional Protocol for individual communication in 2008.
- Protects the full and equal enjoyment of all human rights and promotes respect for their inherent dignity.

ICPED

- Entered into force in 2010.
- 57 state parties.

Monitoring Treaty Bodies

- Each core treaty sets up corresponding monitoring treaty body
- Monitor states' implementation of and compliance with respective core treaty
- Report systems, State to state communication and Individual communication.
- Members are elected by states party to the treaty
- Exception for CESCR – elected by ECOSOC
- Various attempts at diversity
- Some criticism regarding the calibre of members and concern that members may fundamentally oppose the culture or political beliefs of a particular state
- Members are elected for a four-year term and they should be individual from their own (home) state.

Monitoring Mechanism – State Reports:

- State parties must submit periodic report to the relevant treaty body on measures taken to give effect to the rights in the treaty
- Submit between 2-5 years depending on the treaty bodies
- Supplement report with public meetings where treaty body can ask questions and raise issues for clarification
- Treaty bodies provide concluding comments and observations

Criticisms of State Reports

- Delays in submitting reports
 - o Can be pressure from the international community to move along. However, it is ultimately the decision of the State – it is not enforceable.
- Superficial, incomplete or inaccurate reports submitted
- Limited resources

- Limited ability to impose sanctions – lack of a ‘follow up’ process on concluding observations
- Overlap in reporting

Monitoring Mechanism – State to State Communication

- Communication by one state to the treaty body that another state is not fulfilling its obligations.
- State must have consented to the jurisdiction of the treaty body to hear these communications – this is not just automatically provided.
- Diplomatic and political issues surrounding this procedure.

Individual Communication

- Communication by an individual to the treaty body that their state is not fulfilling its obligations.
- State must have consented to the jurisdiction of the treaty body.

IC – Admissibility

- Exhausted all domestic remedies
- Written and cannot be anonymous
- Rights recognised in the treaty
- Related to a state party to the treaty
- Violation occurs or continues after treaty enters into force for the state
- Submitted by the victim or authorised representative
- Cannot abuse the right to make a complaint
- Cannot be considered by another committee

IC:

- Decisions are non-binding
 - However, they can carry a lot of weight.
- Relatively high rate of non-compliance with treaty body decisions by state parties
- Considered to be a strong indication about conventions

Other Enforcement Mechanisms

- Security council action
 - Non-military action under Art 41
 - Military action – air, land and sea.
 - Two scenarios where this is allowed -> Immediate self-defence and when the security council gives you the authorisation.
- Diplomacy and coercion