

The nature of the progressive realization standard has been applied to assess how much time should be needed to achieve particular levels of implementation or realization of rights in different contexts

Source	Context	Statement	Citation
CESCR	-General application of principle	“steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant”	Committee on Economic, Social and Cultural Rights (CESCR), <i>General Comment No. 3, The nature of States parties obligations (Art. 2, par.1)</i> (Fifth session, 1990), UN Doc E/1991/23 at 2.
CESCR	-General application of principle	The convention “thus imposes an obligation to move as expeditiously and effectively as possible towards that goal”	Committee on Economic, Social and Cultural Rights (CESCR), <i>General Comment No. 3, The nature of States parties obligations (Art. 2, par.1)</i> (Fifth session, 1990), UN Doc E/1991/23 at 9.
NGO publication	-Limit to principle	“Within the progressive realization paradigm, there are two types of policies that always constitute violations of ESCR. First are policies that deprive people of a basic level of subsistence necessary to live in dignity: the principle of minimum core content. Second are measures that actually worsen people’s access to ESCR: the principle of nonregression”	Center for Economic and Social Rights, “Economic, Social and Cultural Rights- A guide to the legal framework,” available at: http://www.cesr.org/article.php?id=262 (accessed May 20, 2011)
CESCR	-Immediate (core) Obligation of the state to respect rights (avoid measures that prevent/hinder rights), principle of progressive realization has no/very limited application -state must	-the progressive realization principle does not apply to active state violations (ex. forced evictions) and the state must discontinue discriminatory/rights violating practices “in view of the nature of the practice of forced evictions, the reference in article 2.1 to progressive achievement based on the availability of resources will rarely be relevant. The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions”	Committee on Economic, Social and Cultural Rights (CESCR), <i>General Comment No. 7, The right to adequate housing (Art. 11.1.)</i> (Sixteenth session, 1997), UN Doc E/1998/22, annex IV at 8.

	refrain from actions that violate rights		
NGO publication (affirmed by CESCR)	-State must immediately eliminate discriminatory policies	“The <u>obligation not to discriminate is not subject to the limitation of progressive realization</u> , but rather is an immediate duty of states and non-state actors. The Covenant flatly prohibits discrimination in access to food, health care, housing, work, education and other ESCR on the grounds of “race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The prohibition against discrimination is absolute.”	Center for Economic and Social Rights, “Economic, Social and Cultural Rights- A guide to the legal framework,” available at: http://www.cesr.org/article.php?id=262 (accessed May 20, 2011)
		“States parties have immediate obligations in relation to the right to education, such as the “guarantee” that the right “will be exercised without discrimination of any kind”	Committee on Economic, Social and Cultural Rights (CESCR), <i>General Comment No. 13, The right to education</i> (Twenty-first session, 1998), UN Doc E/C.12/1999/10 at 43
		“States parties have immediate obligations in relation to the right to health, such as the guarantee that the right will be exercised without discrimination of any kind (art. 2.2) and the obligation to take steps (art. 2.1) towards the full realization of article 12”	Committee on Economic, Social and Cultural Rights (CESCR), <i>General Comment No. 14, The right to the highest attainable standard of health</i> (Twenty-second session, 2000), UN Doc E/C.12/2000/4 at 30
		“the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect. States parties have immediate obligations in relation to the right to water, such as the guarantee that the right will be exercised without discrimination of any kind (art. 2, para. 2) and the obligation to take steps (art. 2, para.1) towards the full realization	Committee on Economic, Social and Cultural Rights (CESCR), <i>Comment No. 15, The right to water</i> (Twenty-ninth session, 2002), UN Doc E/C.12/2002/11 at 17

		of articles 11, paragraph 1, and 12”	
		“equal right of men and women to the enjoyment of economic, social and cultural rights is a mandatory and immediate obligation of States parties”	Committee on Economic, Social and Cultural Rights (CESCR), <i>Comment No. 16, The equal right of men and women to the enjoyment of all economic, social and cultural rights</i> (Thirty-fourth session, 2005), UN Doc E/C.12/2005/4 at 16
CESCR	Primary education context: rigid application of the progressive realization principle	<p>-while the Committee recognizes various constraints regarding the ability to implement rights-enabling plans state parties are required at a minimum to adopt detailed plans of action –within two years of coming into force of ICESCR, the plan of action must also include a time-frame</p> <p>“the plan must specifically set out a series of targeted implementation dates for each stage of the progressive implementation of the plan” (para. 10)</p> <p>“The plan must cover all of the actions which are necessary in order to secure each of the requisite component parts of the right and must be sufficiently detailed so as to ensure the comprehensive realization of the right.” (para. 8)</p> <p>“A State party cannot escape the unequivocal obligation to adopt a plan of action on the grounds that the necessary resources are not available.” (para. 9)</p>	Committee on Economic, Social and Cultural Rights (CESCR), <i>General Comment No. 11, Plans of Action for primary education</i> (Twentieth session, 1990), UN Doc E/C.12/1999/4 at 8, 9 and 10.
High Court of South Africa (Western	1 year after judgment order to implement interim steps	“The respondents are directed forthwith to take reasonable measures (including interim steps) in order to give effect to the said rights of severely and profoundly	<i>Western Cape Forum for Intellectual Disability v. Government of the Republic of South Africa & Government of the Province of Western Cape</i> (2010), Case no: 18678/2007 available at

Cape High Court, Cape Town)		intellectually disable children in the Western Cape... The respondents are directed forthwith to take reasonable measures (including interim steps) in order to give effect to the said rights of severely and profoundly intellectually disable children in the Western Cape”	http://www.escr-net.org/caselaw/caselaw_show.htm?doc_id=1560988&forum=High%20Court%20of%20South%20Africa,%20Western%20Cape
Peru, Constitutional Court	Annual measures + basic minimum guarantees	-direct application of the principle of progressivity as outlined by the CESC in General Comment no. 3 "In light of these international requirements, Law No 28389 was not unconstitutional. Instead it gradually changed and equalized the state pension system through a series of annual measures, while immediately guaranteeing certain fundamental rights to all at the same time” (para 83-93)	<i>Cuzco Bar Association and Others v Congress of the Republic</i> , ILDC 679 (PE 2005) available at http://www.oxfordlawreports.com.proxy.bib.uottawa.ca/subscriber_article?script=yes&id=/oril/Cases/law-ildc-679pe05&recno=413&module=ildc&category=*&law-ildc-679pe05-divN-234
European Committee of Social Rights (Council of Europe)	Exceptionally complex policies	Even when a right requires policies that are exceptionally complex or expensive to realize the state must still take steps forward and <u>make measurable progress</u> “When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources.” (para. 53) In this case a 20 year delay in new policy/resource implementation was not ‘progressive’ and deemed a violation of Charter rights	<i>International Association Autism Europe v. France</i> (4 November 2003), Complaint No. 13/2002, online: European Committee of Social Rights < http://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC13Merits_en.pdf >.
Constitutional Court of South	Some progress	A government “must show that the policy is being reconsidered consistent with the obligation to	<i>Lindiwe Mazibuko & Others v City of Johannesburg & Others</i> , [2009] ZACC 28 at para 162, (CC) available at http://www.escr-

Africa		“progressively realise” social and economic rights in mind. A policy that is set in stone and never revisited is unlikely to be a policy that will result in the progressive realisation of rights consistently with the obligations imposed by the social and economic rights in our Constitution”	net.org/caselaw/caselaw_show.htm?doc_id=1110326&focus=13958
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