The Justiciability Of Economic Social And Cultural Rights In The African Regional Human Rights System Theory Practice And Prospect


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Articles and Essays Analyzing Justiciability of Economic, Social, and Cultural Rights The 2014 Geneva Forum of Judges and Lawyers was the fifth such annual meeting convened by the ICJ Centre for the Independence of Judges and Lawyers (CIJL). The Forum brings together judges and lawyers from diverse backgrounds and from all regions of the world, for an in-depth discussion on issues related to the independence and impartiality of the judiciary and the legal profession, and their role in ensuring the effective protection of human rights. In 2014, the Forum was a joint initiative of the CJIL and the ICJ. The breadth of the decisions is vast, from the resettlement of evictees to the regulation of private medical plans to the development of state programs to address poverty and illiteracy. The jurisprudence not only implicates our understanding of economic, social, and cultural rights, but also challenges the appropriate roles of the different branches of government. Some decisions may have important implications for public human and financial resources. Other may involve conflicts between State development plans, public interest, and the interests of indigenous groups. Some may theoretically recognize the rights but do not provide accessible and effective enforcement mechanisms. At the fifth Geneva Forum of Judges and Lawyers, the participants explored these and other conceptual issues pertaining to the judicial enforcement of economic, social and cultural rights, speaking from their experience and practice in national and international systems. The Spirit of Nantes This book explores two main themes. First, the claim that these welfare, education, health and equality can be accorded the status of rights. Second, and relatedly, the issue of whether they are justiciable, that is, can they be the subject of adjudication and enforcement through traditional legal mechanisms? This book provides a timely and wide-ranging exploration of these topical and controversial issues.

Economic, Social and Cultural Rights

Poverty and Fundamental Rights In the space of two decades, social rights have emerged from the shadows and margins of human rights jurisprudence. The authors in this book provide a critical analysis of almost two thousand judgments and decisions from twenty-nine national and international jurisdictions. The breadth of the decisions is vast, from the resettlement of evictees to the regulation of private medical plans to the development of state programs to address poverty and illiteracy. The jurisprudence not only implicates our understanding of economic, social, and cultural rights, but also challenges the appropriate roles of the different branches of government. Some decisions may have important implications for public human and financial resources. Other may involve conflicts between State development plans, public interest, and the interests of indigenous groups. Some may theoretically recognize the rights but do not provide accessible and effective enforcement mechanisms. At the fifth Geneva Forum of Judges and Lawyers, the participants explored these and other conceptual issues pertaining to the judicial enforcement of economic, social and cultural rights, speaking from their experience and practice in national and international systems. The Spirit of Nantes This book explores two main themes. First, the claim that these welfare, education, health and equality can be accorded the status of rights. Second, and relatedly, the issue of whether they are justiciable, that is, can they be the subject of adjudication and enforcement through traditional legal mechanisms? This book provides a timely and wide-ranging exploration of these topical and controversial issues.

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Economic, Social and Cultural Rights This thesis examines the possibilities for the justiciable of economic, social and cultural rights in the Constitution of Bangladesh. Economic social and cultural rights are part of the "fundamental principles of state policy" which are recognized in Part II of the Bangladeshi
The Justiciability of Economic, Social, and Cultural Rights in the New Millenium This book critically examines models of domestic, regional and international judicial protection of economic, cultural, and social rights in Africa.

Constitutionalizing Economic, Social, and Cultural Rights in the New Millenium This book critically examines models of domestic, regional and international judicial protection of economic, cultural, and social rights in Africa.
Economic, Social and Cultural Rights in International Law 1.2 A new moment

Economic, Social and Cultural Rights PART B - THEORY

Economic, Social & Cultural Rights in Practice Judicial remedies are, amongst others, a vehicle through which respect, protection, promotion and fulfillment of human rights can be delivered to those who need them. A remedy is the perspective from which litigants judge either the success or failure of judicial decisions. If they do not like the right to health, housing, food and labour-related rights for many years the inferior status of economic and social rights, compared to civil and political rights, has had a negative impact on the possibilities to claim effective protection of these rights both at the international and domestic level. It is a matter of common knowledge that in practice it is difficult to enforce a violation of an economic or social right before a court of law. In other words, their justiciability is a matter of debate and dispute. Do economic and social rights only exist on paper as part of treaties and constitutions to which governments pay lip-service? Can they really mean something in practice for those who want to invoke these rights before the courts? How do courts reason in such cases? These are some of the questions that were discussed at a seminar organised by the Centre for Human Rights of Maastricht University in November 2005. The present book contains the revised papers that were presented at this meeting. Since the 1990s the justiciability of social and economic rights has become an issue of interest. A reason for this is the progressive development of good practices and creative case law coming from a number of domestic systems. The most well-known examples are India and South Africa, but interesting case law can also be found in Colombia and the Philippines. The seminar aimed at taking stock of domestic developments. It brought together researchers from regions all over the world who were asked to discuss good practices of social and economic rights protection in their country, but also legal and non-legal obstacles that still hinder an effective enforcement of these rights at the domestic level. Pons Coomans is senior researcher at the Maastricht Centre for Human Rights.

Justiceability of Human Rights Law in Domestic Jurisdictions Notwithstanding the widespread and persistent affirmation of the indivisibility and equal worth of all human rights, socio-economic rights continue to be treated as the “Cinderella” of the human rights corpus. At a domestic level this has resulted in the little appreciation and recognition of such rights and the institutional democratic and judiciary as a primary reason for this is the prevalent apprehension that the judicial enforcement of socio-economic rights is fundamentally at variance with the doctrine of the separation of powers. This study, drawing on comparative experiences in a number of jurisdictions which have addressed (in some cases more explicitly than others) the issue of socio-economic rights, seeks to counter this argument by showing that courts can play a substantial role in the vindication of socio-economic rights, while still respecting the relative institutional prerogatives of the elected branches of government. Drawing lessons from experiences in South Africa, India, Canada and Ireland, this study seeks to articulate a “model adjudicative framework” for the protection of socio-economic rights. In this context the overarching concern is to find some role for the courts in vindicating socio-economic rights, while also recognising the importance of the separation of powers and the primary role that the elected branches of government must play in protecting and vindicating such rights. The text incorporates discussion of the likely impact and significance of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and looks at the implications of the Mazibuko decision for the development of South Africa’s socio-economic rights jurisprudence.

The Human Right to Equal Access to Health Care Since the first edition (published in 2009), there have been several important treaty developments, including the entry into force of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR) on individual communications, and significant developments in the law on economic, social and cultural (ESC) rights. The second edition addresses these developments and explores ESC rights from foundational issues to substantive rights and systems of protection. It has been fully updated to include new material and up-to-date coverage of the case law of human rights bodies and national courts on ESC rights. In addition to the rights to health, education and work covered in the first edition, the second edition analyses new developments, such as the rights to adequate food, water and sanitation, adequate housing, social security and cultural rights. It also considers several contemporary issues including the extraterritorial human rights obligations of states in the area of economic, social and cultural rights; the role of non-state actors; relationship of the ICESCR to other areas of international law; the Optional Protocol to the ICESCR; regional protection of ESC rights; more examples of the domestic protection of ESC rights; the protection of ESC rights of vulnerable groups; contemporary challenges to ESC rights, including poverty, corruption, armed conflicts and terrorism. It concludes by exploring the possible establishment of a World Court of Human Rights.

Protection of Economic, Social and Cultural Rights B. The Example of Belgium

Vindicating Socio-Economic Rights This book develops principles of adjudication to facilitate accountability for violations of Economic and Social Rights. Economic and Social Rights engage with areas relating to social justice and their violation tends to impact on the most vulnerable members of society. Taking the UK as a case study, the book draws on international experience and comparative practice, including progressive reform at the devolved sub-state level, that demonstrate the potential reach of Economic and Social Rights when the rights are given legal standing in domestic settings according to their status in international law. The work looks at different models of incorporation of rights into domestic law and sets out existing justiciability mechanisms for their enforcement as well as future models open to development. In so doing the book develops principles of adjudication drawn from deliberative democracy theory that help address some of the critiques of social rights adjudication. This book will have a global and cross-sectoral appeal to legal practitioners, the judiciary, and the civil services, as well as to researchers, academics, and students in the fields of human rights law, comparative constitutional law and deliberative democracy theory.


Ireland, the ECHR and the Justiciability of Social and Economic Rights The right to equal access to health care is a fundamental principle that is part of human rights. For victims of a violation of the right to equal access to health care, it is important that a judicial or quasi-judicial human rights body can adjudicate their complaints in this regard. Justiciability contributes to the protection and realization of the right to equal access to health care and further determines the meaning of this right. The justiciability of the human right to equal access to health care is complex. It is one of the economic, social, and cultural rights, and even since the emergence of these rights, their justiciability has been a contentious issue. Moreover, in practice, it is much more difficult for an alleged violation of an economic, social, or cultural right to be subject of review by a court of law or a quasi-judicial procedure than it is for a civil or political right. Nevertheless, over the last two decades, several developments have strengthened the justiciability of rights. This book analyses the justiciability of the human right to equal access to health care. It examines how cases concerning unequal access to health care would be dealt with by judicial and quasi-judicial human rights bodies and distills the elements that can be expected to play a role in the assessment of such cases. First, the book provides for an extensive analysis of the legal framework of the right to equal access to health care, its entitlements, and the corresponding State obligations. Subsequently, it addresses what arguments are brought forward and how such rights are adjudicated in practice by the various judicial and quasi-judicial human rights bodies. Furthermore, the case law of three human rights bodies - the European Committee of Social Rights, the European Court of Human Rights, and the Human Rights Committee - is examined in detail in order to analyze how these bodies assess cases concerning discrimination and how elements of economic, social, and cultural rights are taken into account under the various equality and non-discrimination provisions. Finally, the different criteria and elements that can be expected to play a role in the justiciability of cases are presented. (Series: School of Human Rights Research - Vol. 53)
The International Covenant on Economic, Social and Cultural Rights

Economic, Social, and Cultural Rights in International Law This book considers the protection of individual and collective social and economic interests within and between the EU and its Member States.

The Protection of Economic, Social and Cultural Rights in Africa Economic, social, and cultural rights are finally coming of age. This book brings together all essential primary materials, and case-law relating to the International Covenant on Economic, Social and Cultural Rights (ICESCR) - one of the most important human rights instruments in international law - and its Optional Protocol. This book presents extracts from primary materials alongside critical commentary and analysis, placing the documents in their wider context and situating economic, social, and cultural rights within the broader human rights framework. There is increasing interest internationally, regionally, and in domestic legal systems in the protection of economic, social, and cultural rights. The Optional Protocol of 2008 allows for individual communications to be made to the UN Committee on Economic, Social and Cultural Rights after its entry into force in 2011. At the regional level, socio-economic rights are well embedded in human rights systems in Europe, Africa and the Americas. At the national level, constitutions and courts have increasingly regarded socio-economic rights as justiciable, narrowing the traditional divide between civil and political rights. This book contextualises these developments in the context of the ICESCR. It provides detailed analyses of the ICESCR structured around its articles, drawing on national as well as international case law and materials, and containing all of the key primary materials in its extensive appendices.

New in paperback, this book is an indispensable resource for students of international human rights law.

Bridging Divides

An Insurance Model for the Justiciability of Social and Economic Rights

The Law and Practice of the European Social Committee

Economic, Social, and Cultural Rights This book examines the record of jurisdictions in which attempts have been made at judicial enforcement of economic, social and cultural rights. Contributions provide insights into the methods, specificity, and limits of judicial enforcement. They explore the interdependence of civil and political rights and economic, social and cultural rights, and the permeation of the latter into interpretations of the former. The judicial approach now tends to the view that not only are both types of rights essential for human dignity, but also that economic, social and cultural rights, when not directly enforceable as such, help to elaborate civil and political rights.

Report on the Workshop on the Justiciability of Economic, Social and Cultural Rights, with Particular Reference to the Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights [held in Geneva, 5-6 February 2001] In 2011 the European Social Charter, the first human rights treaty entirely devoted to economic, social and cultural rights celebrated its 50th anniversary. Since its inception, the instrument has undergone several fundamental changes, including a substantial revision in 1996 and the enactment of an Additional Protocol on collective complaints in 1998. The developments have unleashed the most sophisticated mechanism to ensure the justiciability of economic and social rights in Europe. The European Committee of Social Rights established in the Charter, monitors and determines whether Member States conform to domestic law and whether their practice complies with the provisions of the Charter. The Committee examines a significant number of cases, and makes conclusions and decisions based on national reports and collective complaints. This book provides an overview of the institutional characteristics and functioning of the European Committee of Social Rights in light of its practice. The book examines the Committee's practice and interpretation of the substantive rights and freedoms set out in the Charter and its Protocol, as well as in the Revised Social Charter. The book evaluates the working methods of the European Committee and how it makes its assessments concerning the compatibility of domestic legislation and practice with the Charter rights. The European Committee of Social Rights is compared to other human rights instruments and institutions around the world as well as any interactions with these mechanisms in order to assess the impact and effectiveness of the European Committee of Social Rights. The book will be of interest to scholars and students of human rights law as well as socio-economic rights practitioners, and the judiciary.

Social, Economic and Cultural Rights Socio-economic inequality is deeply rooted in Zimbabwe due to a number of factors. One of the main factors is the exclusion of socio-economic rights as justiciable under the now repealed Lancaster House Constitution (LHC). A plethora of excessive bureaucratic actions in a number of instances left many people stranded without the recourse to the law, particularly without protection by the Constitution. To correct this historic anomaly, the 2013 Constitution was enacted. The 2013 Constitution protects both civil and political rights and socio-economic rights in the same way as justiciable rights. This provides the highest degree of interdependence and interrelatedness of all rights in the domestic legal order. In order to ensure that socio-economic rights are effectively enforced and protected, this study identifies and discusses the framework for protecting socio-economic rights under the 2013 Constitution. Firstly, the specific rights protected under the Constitution and the obligations imposed by these rights are presented. Secondly, the role of the courts in the protection of socio-economic rights is discussed. Further, some of the major conceptual and practical challenges that are likely to arise in the adjudication of socio-economic rights are identified. In this regard, the study attempts to present solutions meant to overcome the conceptual and practical challenges that are faced in the enforcement of socio-economic rights. Furthermore, this study argues that strictly adopting one of the two models of review, namely either the reasonableness approach as adopted by South African courts or the minimum core approach as expounded by the United Nations Committee on Economic, Social and Cultural Rights (CESCR), will inhibit the proper enforcement of the protected rights. Therefore, courts should consider adopting an integrated model that includes both approaches to ensure that socio-economic rights are effectively protected and realised.

Enforcing the Economic, Social and Cultural Rights in the South African Constitution as Justiciable Individual Rights Recent years have seen a remarkable expansion in the scale and importance of economic, social, and cultural rights (ESC rights), culminating in the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in December 2008. The Protocol gives individuals and groups the ability to bring complaints about rights violations before the UN Committee on Economic, Social, and Cultural Rights. Against this background, this book focuses on the question of how fundamental socio-economic human rights enshrined in international law are defined, interpreted, understood, and implemented. It assesses how effective efforts to realize ESC rights have been and investigates the contemporary challenges obstructing their protection. It sets out the impact of the global financial crisis and austerity measures, the human rights responsibilities of corporations, and trends in the justiciability of those rights at the national and international level. The interrelationship between ESC rights and other legal regimes such as trade and investment law, environmental law, international criminal law, and international humanitarian law is also thoroughly examined. After an introduction by the editors the book contains seventeen chapters looking at the main questions which shape the progressive realization of ESC rights and their monitoring mechanisms. The authors of the chapters, both scholars and practitioners, adopt interdisciplinary approaches that move beyond traditional analyses of ESC rights. In doing so, they clarify and illuminate multiple aspects of the law by bringing together the different aspects of ESC rights, restating the challenges they face, and assessing the progress that has been made in expanding their adoption.

From Political Agreement to Social Justice This book explores two main themes. First, the claim that these welfare, education, health and equality can be accorded the status of rights. Second, and relatedly, the issue of whether they are justiciable, that is, can they be the subject of adjudication and enforcement through traditional legal mechanisms? This book provides a timely and wide-ranging exploration of these topical and controversial issues.

Economic and Social Rights Law Economic, Social and Cultural Rights is a collection of seminal papers examining legal, conceptual and practical questions regarding the international legal protection of economic, social and cultural rights. The volume discusses what human rights obligations economic, social and cultural rights entail for states and non-state actors; the nature and scope of substantive economic, social and cultural rights such as education, health, work and enjoyment of the benefits of scientific progress, and cultural rights; as well as the justiciability of these rights at an international level and at the national level. The paramount importance of such questions is illustrated, among other things, by the catastrophic situation of economic, social and cultural rights as human rights in developing and developed states. The volume is divided into three main parts which focus on human rights obligations for states and non-state actors arising from treaties protecting economic, social and cultural rights; analysis of selected substantive rights; and finally the justiciability of economic, social and cultural rights in various contexts such as within the United Nations, Europe, Inter-American, and African systems, as well as within the domestic system.

Social and Economic Rights in Theory and Practice

Judicial Enforcement of Economic, Social and Cultural Rights

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