

**JUSTICIABILITY
OF ECONOMIC AND
SOCIAL RIGHTS**

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**Experiences from
Domestic Systems**

Edited by
FONS COOMANS

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PREFACE

To be without food, housing and health-care is a frightening prospect, for death is the inevitable consequence. Education aids the mastery of the environment, and is essential to sustainable development; as work is a means to securing one's livelihood. That these basic necessities of life are comprehended within social and economic rights is reassuring. But from this notion fears arise. To what extent is the state obligated to provide effective remedy to victims of violations of social and economic rights? What, in any case, are the parameters of these rights? Does international cooperation require the developed North to aid the developing South in the enforcement of social and economic rights in the latter? What is the impact of international human rights law on domestic enforcement of social and economic rights are some of the concerns which have engaged the attention of scholars and commentators in recent times.

Gradually and by diverse means, the justiciability of social and economic rights is being answered positively. The recent complaint procedures under the Convention on the Elimination of All Forms of Discrimination Against Women; The European Social Charter; the Protocol of San Salvador to the American Convention on Human Rights; the stance of the African Commission on Human and Peoples' Rights that social and economic rights under the African Charter on Human and Peoples' Rights are as justiciable as civil and political rights under the same instrument; as well as decisions of domestic courts of certain countries in the South, show that social and economic rights are not hortatory. But the extent to which social and economic rights are enforceable differs from country to country.

Progress towards the strengthening of the mechanisms for the enforcement of social and economic rights may be made through critically sharing the developments and best practices in municipal law, even as impediments to the goal are identified and the way forward suggested. Towards the achievement of these purposes, Maastricht University through its Centre for Human Rights must be congratulated for hosting a team of scholars and researchers from all over the world who addressed these concerns. An enviable record of dedicated work in social and economic rights, as illustrated by the Limburg Principles, has been carried further by the Maastricht Seminar on Methods of Protection of Social and Economic Rights: Comparing Experiences from Domestic Systems which took place in November, 2005.

Preface

As we confront the problems of justiciability and enforcement of social and economic rights in our respective countries, let us be inspired by the advances which have been made by the courts in South Africa, India, Philippines, Colombia and Argentina, to name a few countries. Beyond the courts quasi-judicial bodies are well placed to advance the enforcement of social and economic rights; and bearing in mind that domestic law must keep pace with international law, sight must not be lost of the developments in international human rights law. Whatever the peculiarities of our legal tradition, culture and the relationship between the courts and the other organs of the state, a study of the lessons from the progress made in the enforcement of social and economic rights, as evidenced in the papers presented at the Maastricht Seminar, should be applied to advance work towards the realisation of social and economic rights. And in the quest to place social and economic rights in its rightful place, we can be sure that we have not heard the last of the Centre for Human Rights of Maastricht University.

E.V.O. Dankwa

Former Chair, African Commission on Human and Peoples' Rights

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Fons Coomans
June 2006

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ABBREVIATIONS

| | |
|--------|---|
| AB | Administratiefrechtelijke Beslissingen (Netherlands) |
| ABH | Alkotmánybírósági Határozatok (Constitutional Court Reports - Hungary) |
| All ER | All England Reports |
| BCLR | Butterworths Constitutional Law Reports |
| CC | Constitutional Court (South Africa) |
| CCABA | Constitucion de la Ciudad Autonoma de Buenos Aires (Constitution of the City of Buenos Aires) |
| CCC | Colombian Constitutional Court |
| CCLR | Community Care Law Reports (United Kingdom) |
| CHRD | Canadian Human Rights Digest |
| CHRR | Canadian Human Rights Reports |
| CHRT | Canadian Human Rights Tribunal |
| CLJ | Cambridge Law Journal |
| CRC | Convention on the Rights of the Child |
| DLR | Dominion Law Reports (Canada) |
| Doc. | Document |
| DPSP | Directive Principles of State Policy (India) |
| EC | European Community |
| ECJ | European Court of Justice |
| EEC | European Economic Community |
| ECHR | European Convention on Human Rights and Fundamental Freedoms |
| ECtHR | European Court of Human Rights |
| ECOSOC | Economic and Social Council of the United Nations |
| ECR | European Court Reports |
| ECSC | European Committee of Social Rights |
| EHHR | European Human Rights Reports |
| ESC | European Social Charter |
| EU | European Union |
| EUCFR | European Union Charter on Fundamental Rights |
| EWCA | English Weekly Court of Appeal |
| EWHC | English Weekly High Court |
| GATT | General Agreement on Tariffs and Trade |
| GC | General Comment |
| GR | General Record (Philippines) |
| GCBA | Gobierno de la Ciudad Autonoma de Buenos Aires (Buenos Aires City Government) |
| HRA | Human Rights Act (United Kingdom) |

Abbreviations

| | |
|---------|--|
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ILO | International Labour Organisation |
| JB | Jurisprudentie Bestuursrecht (Netherlands) |
| JCHR | Joint Committee on Human Rights (United Kingdom) |
| LGR | Local Government Reports (United Kingdom) |
| LQR | Law Quarterly Review (United Kingdom) |
| LJN | Landelijk Jurisprudentie Nummer (Netherlands) |
| MLR | Modern Law Review |
| NGO | Non-Governmental Organisation |
| NJ | Nederlandse Jurisprudentie (Netherlands) |
| OJ | Official Journal (European Community) |
| PIL | Public Interest Litigation |
| PL | Public Law |
| QB | Queen's Bench |
| RA | Republican Act (Philippines) |
| RSPEI | Revised Statutes of Prince Edward Island (Canada) |
| SA | South Africa |
| SAJHR | South African Journal on Human Rights |
| SC | Spanish Constitution |
| SCA | Supreme Court of Appeal (South Africa) |
| SCC | Supreme Court Cases (India) |
| SCR | Supreme Court Reports (Canada) |
| SCR | Supreme Court Reports (India) |
| SCRA | Supreme Court Reports Annotated (Philippines) |
| UDHR | Universal Declaration of Human Rights |
| UK | United Kingdom |
| UKHL | United Kingdom House of Lords |
| UKHRR | United Kingdom Human Rights Reports |
| UN | United Nations |
| UNCESCR | United Nations Committee on Economic, Social and Cultural Rights |
| US | United States |
| Vol. | Volume |
| WL | Weekly Law (United Kingdom) |
| WLR | Weekly Law Reports (United Kingdom) |