

Justiciability of economic, social and cultural rights

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ABSTRACT:

The inherent nature of economic, social, and cultural rights presents legal and procedural challenges that render the justiciability of these rights a contested issue among states, compared to civil and political rights. There exists a disparity among states in terms of their willingness to establish adequate legal and judicial frameworks necessary for the protection and effective enforcement of these rights.

Key words: Economic, Social, and Cultural Rights, Justiciability, rights protection, rights enforcement

Introduction

Economic, social, and cultural rights constitute a fundamental component of the broader human rights framework. They are essential to guaranteeing each person's access to a dignified standard of living, encompassing the rights to work, adequate housing, healthcare, education, and social protection.

International legal instruments—most notably the International Covenant on Economic, Social and Cultural Rights—affirm the obligation of states to recognize, protect, and progressively fulfill these essential rights. However, the inherently progressive realization of these rights introduces complexities in their enforceability via judicial avenues at both domestic and international tiers. This issue perennially raises concerns regarding the justiciability of these rights.

Considering these challenges, the primary research question that emerges is as follows:

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To what extent can judicial mechanisms be effectively employed to ensure the respect for economic, social, and cultural rights, and what are the principal challenges that limit their justiciability?

Research Hypotheses

1. Economic, social, and cultural rights can be guaranteed through litigation mechanisms at both national and international levels.
2. The nature of these rights presents legal and procedural challenges that limit their justiciability, compared to civil and political rights.
3. There exists a notable variance among nations regarding their commitment to instituting robust legal and judicial frameworks essential for safeguarding and realizing these rights.
4. Strengthening national laws and international mechanisms is key to ensuring the effective protection of economic, social, and cultural rights.

Research Objectives

1. To examine the legal framework governing economic, social, and cultural rights in national legislation and international conventions.
2. To analyze the challenges facing the justiciability of these rights, both from legal and practical perspectives.
3. To explore mechanisms for enhancing justiciability of these rights and ensuring their effective enforcement.

This study will be conducted using both the **descriptive** and **analytical** approaches, and will be structured around the following main axes:

Axis 1: States' obligations that ensure the realization of economic, social, and cultural rights

ICESCR outlines essential principles that guide the fulfillment of these rights. These principles are also reflected in other legal instruments addressing economic, social, and cultural protections. As of June 18, 2021, the Covenant has been ratified by 171 States and sets forth a blueprint of human rights commitments.

Under the ICESCR, states are mandated to undertake various actions, utilizing the utmost of their available resources, aimed at the gradual fulfillment of these rights. This duty is explicitly articulated in Article 2 of the Covenant.

Article 2 delineates essential principles and general responsibilities that states agree to upon acknowledgment of these rights. These principles and responsibilities are detailed in subsequent sections.

A. The Obligation to Take Appropriate Steps, Including Legislative Measures

States are required to act without delay and implement policies that guarantee the full accessibility and enjoyment of the rights stated in the ICESCR. Adopting suitable legislation is a vital step toward securing these rights for all individuals.

The Covenant assigns to States a series of duties, which include what are known as negative obligations. These obligations necessitate that States avoid any actions that might impede or diminish the enjoyment of these rights. It explicitly prohibits any actions that could result in the regression or diminishment of the levels at which these economic, social, and cultural rights are realized. In addition, the Covenant also establishes *positive obligations*, which involve the adoption of legislation, policies, and programs aimed at ensuring non-discriminatory access to resources and services that meet individuals basic needs, with particular attention given to marginalized and impoverished groups.¹

However, legislation is not sufficient to fulfill these obligations. Governments are also required to take administrative, judicial, political, economic, social, and educational measures—as well as any other actions deemed appropriate—to ensure that everyone can effectively enjoy these rights. There is always a need for mechanisms that allow individuals to claim these rights in cases of violation, whether through judicial or administrative means. In fact, in certain cases, administrative organizations can prove to be effective. This implementation should empower individuals to assert and pursue their rights in national courts and tribunals. In this context, international mechanisms primarily serve to oversee individual claims and foster their continued evolution.²

Despite the progressive nature of the realization of these rights, it is essential that measures aimed at achieving this goal commence within a relatively brief timeframe following the Covenant's activation for the relevant States. These steps must be concrete, deliberate, and specifically aimed, to the maximum extent of clarity, at fulfilling the obligations recognized under the Covenant.³ The term “all appropriate means” should be interpreted expansively, allowing each State party the autonomy to select the most effective means and methods, considering the specific circumstances and conditions prevalent within the State concerning each right.

B. The Obligation of Progressive Realization of These Rights

By ratifying international human rights agreements, States commit to enforcing the rights within their legal systems. Article 2(1) of the ICESCR emphasizes that States must ensure the step-by-step advancement of these rights over time.

This provision recognizes that limitations in resources may impede the immediate actualization of these rights, hence certain aspects of the Covenant's rights are acknowledged to fall under this principle of progressive realization.

¹ Christine Vézina, « Culture juridique des droits de la personne et justiciabilité des droits économiques, sociaux et culturels : tendances à la Cour suprême du Canada », Les Cahiers de droit volume 61, N°2, 2020, pp 538-495.

² observation générale no 3: la nature des obligations des états parties (article 2, par. 1, du pacte)

³ Ibid

However, this interpretation must not be taken to mean that States have no immediate obligations. While full realization of economic, social, and cultural rights may depend on a State's level of economic development, the Covenant's purpose is to impose clear and binding commitments on States parties.

1- The Meaning of the Progressive Realization of Rights

States must implement these rights gradually through planned measures, based on available resources. However, they are also bound by immediate obligations to prevent rights violations. Clear definition of these duties is essential to avoid misuse of the "progressive" nature as a reason for inaction.

2- The Necessity of the Progressive Realization of These Rights Within the Limits of the State's Available Resources:

This doctrine highlights the state's duty to guarantee a foundational minimum of each right, encompassing access to essential food supplies, necessary healthcare services, fundamental education, and other critical needs. This requires the state to fulfill its obligation to guarantee the exercise and enjoyment of these rights equally and without any form of discrimination, for any reason whatsoever. It also requires taking concrete and specific measures targeting the most marginalized groups in society, particularly the poor.¹ The obligation of progressive realization also includes refraining from adopting any measures that would reduce the full enjoyment of these rights. The state must take all appropriate measures to ensure that everyone can enjoy these rights, even if progressively, and within the framework of the resources available. However, such measures must be taken without delay, as failure to do so constitutes a violation of the provisions of the relevant international covenant.²

3- International Assistance and Cooperation:

If a state is unable to immediately implement the rights enshrined in the Covenant, it must, at the very least, strive to make every possible effort—within the limits of its available resources—to improve protection and promote these rights. The term "available resources" includes not only a country's internal assets but also support obtained through international cooperation, as emphasized in Article 2(1) of the Covenant. According to both the United Nations Charter and the Covenant, global assistance and collaboration are essential to achieving a just international order where all human rights—economic, social, cultural, civil, and political—are fully realized.

International support and collaboration hold particular significance in economic and technical fields due to the varying developmental stages among State parties. Developed nations bear a responsibility to foster cooperation in development, technology sharing, and scientific and cultural exchanges, as well as in all other sectors vital for actualizing the rights embedded in the Covenant.

Thus, without an effective program of international aid and cooperation from all states capable of offering such assistance, or if there is a failure to back a dedicated program in this

¹ Eitan Felner, « **Mesurer les droits économiques et sociaux pour en demander compte aux gouvernements** », Dans Revue de l'OCDE sur le développement N°9, 2008/2, pages 207 à 22.

² HR/P/PT/12, Haut-commissariat des Nations unies aux droits de l'homme, « **Droits économiques, sociaux et culturels Manuel destiné aux institutions nationales des droits de l'homme** », Op, Cit, p13.

domain, the complete actualization of economic, social, and cultural rights in numerous countries will continue to be a distant goal.¹

Axis 2: The concept of violations of economic, social, and cultural rights.

A violation arises when a State fails to meet its essential duties under the Covenant, particularly the minimum core obligations defined by the Committee on Economic, Social and Cultural Rights. Each State Party is expected to guarantee, at a minimum, the basic standards of these rights.

For example, if a substantial number of individuals within a State lack access to basic nutritional food, primary healthcare—including vital medications—adequate housing, or an elementary level of education, the State is regarded as failing its duties under the Covenant, irrespective of the availability of resources.²

Violations also occur when a State adopts, either by action or inaction, policies or practices that deliberately undermine or fail to fulfill its obligations under the Covenant, or fail to achieve the required outcomes. Discrimination in the application of economic, social, and cultural rights—based on factors such as race, gender, language, religion, political opinion, social status, poverty, or marginalization—constitutes a violation of the Covenant, as it obstructs fair access to these rights. A State also breaches its obligations if it allows third parties to significantly undermine the enjoyment of these rights.³

1- Violation of Economic, Social, and Cultural Rights through Action

Violations of economic, social, and cultural rights may occur through direct actions taken by the state or by entities sufficiently regulated by the state. These violations often take the form of regression, where the level of protection for these rights is reduced. Such regression is generally impermissible unless justified by compelling reasons or exceptional circumstances faced by the state. In such cases, a state may only adopt regressive measures if it can demonstrate that the decision was made after thoroughly considering all available alternatives, and that it is making full use of its maximum available resources. This is because national laws are, by their nature, subject to international legal obligations that the state has undertaken in this regard.⁴

It is also considered a violation of economic, social, and cultural rights when a state enacts legislation or adopts policies that clearly contradict its prior legal obligations—unless such laws aim to promote equality and enhance the realization of these rights, especially for the most vulnerable groups, particularly the poor.

Similarly, when a state reallocates public spending from one sector to another in a way that results in the non-fulfillment or undermining of the minimum core content of these rights—such as failing to take adequate measures to ensure the essential minimum for each right—this

¹ observation générale n°2, 1990.

² principes de maastricht relatifs aux obligations extraterritoriales des états dans le domaine des droits économiques, sociaux et culturels
<http://hrlibrary.umn.edu/arabic/MaastrichtguidelinesAR.html>.

³ **le Droit à la non-discrimination**, dans : Une collection du Programme Droits Humains du Centre Europe - Tiers Monde (CETIM), Genève, juin 2011, p11.

⁴ organisation mondiale de la santé, haut-commissariat des nations unies aux droits de l'homme, « foire aux questions sur les droits économiques, sociaux et culturels », fiche d'information n° 33, new york et genève, 2009, p. 20.

is deemed a violation, even in situations of severe resource constraints. The Committee on Economic, Social and Cultural Rights affirms that State responsibilities extend to actions taken as members of international organizations, including financial institutions like the World Bank and IMF. States must ensure that the policies of such bodies align with their human rights duties. Similarly, they are required to protect individuals from rights violations committed by private corporations.¹ This obligation lies both with the host countries of these companies, given their authority and capacity to regulate corporate activities, and with home states where these corporations are headquartered or operate. Ignoring the cross-border nature of this obligation or denying its extraterritorial applicability renders it ineffective and strips it of its intended purpose.

2 –Violations through Omission

Rights may also be violated not only through direct actions, but through a state's failure to take the necessary measures required by its legal obligations, or through its inaction. This includes, for instance, the failure to amend or repeal legislation that clearly conflicts with obligations set forth in the Covenant.²

States are required to take all necessary and possible measures to ensure the legal accountability of companies for human rights violations resulting from their activities. They must also ensure adequate remedies and compensation for victims.³

In certain judicial jurisdictions, individuals have the ability to bring direct complaints regarding violations committed by commercial companies—either to compel such companies to refrain from specific practices that result in rights violations (negative obligations), or to require them to take specific measures to contribute to the realization of those rights (positive obligations).⁴ Likewise, a state's failure to promptly remove obstacles that hinder the immediate realization of a right guaranteed by the Covenant constitutes a violation, even though the Economic and Social Committee has not clearly defined the nature of such obstacles.⁵

Axis 3: Obstacles to the Justiciability of Economic, Social, and Cultural Rights

The term "**justiciability**" refers to the ability of individuals to seek recourse before independent and impartial bodies in cases of actual or potential violations of human rights. It implies access to legal mechanisms that ensure the protection and enforcement of recognized rights. A right that can be invoked before a court gives its holder the legal means to initiate

¹ E/C.12/GC/24, observation générale n° 24, 2017, « sur les obligations des états en vertu du pacte international relatif aux droits économiques, sociaux et culturels dans le contexte des activités commerciales

² Réseau international pour les droits économiques, sociaux et culturels, «**Revendiquer les DESC aux Nations Unies, Guide du litige stratégique en matière de droits économiques, sociaux et culturels devant le Comité des droits économiques, sociaux et culturels : Utilisation du Protocole facultatif** », Avril 2015, p13. https://www.escr-net.org/sites/default/files/revendiquer_les_desc_aux_nations_unies.pdf. consulté le 20/08/2023.

³ Elena Sychenko, « **Les observations finales des deux Comités des droits de l'homme de l'ONU de 2022** », *Revue de droit comparé du travail et de la sécurité sociale*, N°2, Mars 2023, pp 124-129. <http://journals.openedition.org/rdctss/6090>. consulté le 20/08/2023.

⁴ E/C.12/GC/24, observation générale n° 24, 2017, Op, Cit.

⁵ Elie Tassel, « **Droit a la santé ,Droit a la vie et coronavirus la décision publique face a l'incertitude scientifique** », cahier Droit, Sciences et Technologie, N°11, Octobre 2020, pp151-170.

proceedings to ensure its respect.¹ This applies especially when a state fails to fulfill its obligations under such rights. This feature is a fundamental aspect of effective rights, as it affirms the seriousness of the commitment to protect them and empowers individuals to defend their entitlements.²

1- Criticisms Based on the Lack of Precision in the Content of Economic, Social, and Cultural Rights

Critics of the justiciability of economic, social, and cultural rights argue that these rights are vague or overly broad, making it difficult to define their content with precision. As a result, they believe such rights cannot be invoked before the courts. They support this view by contrasting them with civil and political rights, which are perceived as being more precise and well-defined, and for which procedural rules for legal recourse and remedies are well established.³ However, when it comes to human rights—rights inherently linked to the dignity of the human being—many international instruments explicitly recognize the right to legal recourse or access to justice. This right is seen as essential to the protection and effectiveness of all other human rights.⁴ Despite this, there are those who believe that economic, social, and cultural rights are not justiciable because they are linked to the provision of goods and services. They argue that judges are not equipped to determine the specific elements of such rights. These critics present several arguments, maintaining that such rights only represent theoretical goals to be achieved and that their content is too vague to meet the legal standards required for judicial enforcement. For example, the "right to housing" is often cited as a right with no clearly defined meaning or identifiable standards. Without such clarity, it becomes difficult to determine what actions or omissions might constitute a violation of this right. As such, a judge cannot issue a binding decision to enforce it without a clear and specific content. Moreover, it is often unclear who is entitled to enjoy the right and who bears the duty to fulfill it. Judges, being central actors in ensuring the effectiveness of rights, require precise legal rules in order to determine whether the obligations stemming from such rights have been met. Otherwise, the distinction between applying the law and legislating becomes blurred.⁵

States opposing such recognition often argue that allowing courts to adjudicate on these matters could interfere with national sovereignty, especially since social and economic policies are involved. Additionally, they point out that these rights depend on available resources, which may not always be sufficient to ensure their fulfillment.⁶

¹ Commission internationale de juristes, « **Les tribunaux et l'application des droits économique, sociaux et culturels** », étude comparative d'expérience en matière de justiciabilité, série droits de l'homme et état de droit, No.2, Genève, 2009, p7.

² Commission internationale de juristes, « **Les tribunaux et l'application des droits économique, sociaux et culturels** », Op, Cit, p8.

³ **E/C.12/GC/24**, observation générale n° 24, 2017, Op, Cit

⁴ tels que le Pacte international relatif aux droits civils et politiques (articles 2 et 3), la Convention contre la torture (article 13), la Convention sur l'élimination de toutes les formes de discrimination raciale (article 16), la Déclaration universelle des droits de l'homme (article 8) ... Etc.

⁵ *Tatiana Gründler*, « **Effectivité, efficacité, efficience. L'exemple du « droit à la santé** », l'exemple du droit à la santé, in : à la recherche de l'effectivité des droits de l'homme, Nanterre presse universitaire de Paris, 2008, pp31-40.

⁶ **A/HRC/28/65**, rapport de la rapporteuse spéciale sur le droit à l'alimentation, Hilal Elver, « accès à la justice et droit à l'alimentation: la marche à suivre », 15 janvier 2015, para. 7.

2- The Legal Principles Underpinning the Right to Litigation Concerning Economic, Social, and Cultural Rights

The ability to pursue legal action in domestic courts based on ICESCR and other relevant instruments is closely tied to individuals' entitlement to effective remedies when their fundamental rights are violated. While Article 2, paragraph 3(b) of ICCPR explicitly requires States to improve access to judicial remedies, ICESCR contains no such direct provision.. Nonetheless, it is essential to recognize that the Committee has elucidated that the duty outlined in Article 2, paragraph 1 of the ICESCR—to "undertake steps, notably the formulation of legislative measures"—also includes the establishment of judicial remedies.¹

General Comment No. 3 (1990) by ICESCR elaborates on the nature and scope of State obligations under Article 2(1), particularly regarding the implementation of these rights through enforceable legal mechanisms.

The Committee encouraged governments to take “all appropriate means” to that end, a phrase indicating a flexible approach that takes into account the specific legal and administrative systems of each State.²

Accordingly, available remedies might be either legal or administrative, with administrative remedies often being adequate.

It is worth emphasizing that the freedom granted to States in choosing the means by which to implement the rights recognized in the Covenant cannot, under any circumstances, deviate from the fundamental framework and essential conditions set by international human rights law.

A. The Principle Reflected in Article 27 of the Vienna Convention on the Law of Treaties

Article 27 of the Vienna Convention on the Law of Treaties states that a country cannot use its domestic laws to justify failing to meet treaty obligations. This means national laws must be adjusted to comply with international commitments.³

However, the failure of a state to provide judicial or non-judicial remedies does not imply that economic, social, and cultural rights are non-justiciable. Rather, it indicates a failure by the state to meet its obligations concerning human rights. Denial of access to legal claims for rights such as health or housing does not prove these rights are non-justiciable.

As clarified in General Comment No. 9 (para. 3), a State must justify the absence of legal remedies by showing they are either inappropriate under Article 2(1) of the Covenant or made unnecessary by other effective measures.

" However, the Committee considers that proving this is difficult, and that other types of remedies may become ineffective in many cases unless they are reinforced or complemented by judicial remedies. The Committee stresses that individuals or groups affected by violations of economic, social, and cultural rights must have access to effective legal or alternative remedies, including appropriate compensation, both nationally and internationally.

¹ A/HRC/28/65 rapport de la rapporteuse spéciale sur le droit à l'alimentation, Op, Cit, para6.

² Observation générale n° 3 de 1990, paragraphes 4 et 5.

³ E/C.12/1998/ 24, observation générale No 9, op, cit, para3.

Human dignity, the core principle of the Universal Declaration of Human Rights and the two International Covenants, requires the full realization of all rights—civil, political, economic, social, and cultural. Upholding dignity supports the legal enforceability of these rights.

The Inter-American Court of Human Rights has ruled that the right to life includes ensuring basic living conditions that respect dignity, such as access to essential healthcare for disadvantaged populations. Since the Optional Protocol to the ICESCR took effect in 2013, individuals have been granted the right to submit complaints regarding violations of these rights.

The aim of the Optional Protocol is to augment, rather than supplant, national legal systems. It empowers individuals or groups within a State Party's jurisdiction to bring communications before the Committee concerning alleged violations of any rights contained within the Covenant.¹

This protocol has furnished victims with a potent international redress mechanism, accessible should they encounter barriers to domestic remedies or face excessively prolonged domestic procedures. To submit a complaint under the Optional Protocol, individuals must be under the jurisdiction of a State Party that has ratified both the Covenant and the Protocol.

The Protocol also enables States to authorize the Committee to hear inter-State complaints, and empowers it to investigate serious or widespread rights violations based on reliable evidence.²

Thus, any national breach of economic, social, and cultural rights holds the State accountable both domestically and internationally, requiring a rights-based approach in public service delivery.³

B- Legalizing Access to National Courts:

Article 8 of the Universal Declaration of Human Rights guarantees every person the right to an effective legal remedy through national courts for violations of their constitutional or legal rights.

This article makes it clear that the effective protection of economic, social, and cultural rights depends primarily on the ability to litigate them, as well as on the binding nature of the legal provisions that enshrine them. Therefore, it is essential to incorporate these rights into national constitutions and laws, in order to render them legally enforceable and ensure they can be invoked and imposed upon administrative authorities. Rights that cannot be enforced or upheld through legal means lose much of their practical value. National courts are expected to refer to international human rights law as an auxiliary source for interpreting domestic legislation and to align their interpretations with the human rights treaties the state has ratified. Courts must also avoid issuing decisions that would place the state in violation of a

¹ Article 2 du Protocole facultatif se rapportant au Pacte international relatif aux droits économiques, sociaux et culturels.

² A/HRC/28/65 ,op,cit,para12.

³ Lamarche, L., Ouédraogo, T. R. & Fournel, C. « **Les Nations Unies, le droit international des droits humains et les autorités locales : quel dialogue ?** », Revue québécoise de droit international, Volume 34, numéro 1, 2021, pp, 1–31.

treaty it has committed to. In this context, many national constitutions require legislative authorities to refrain from adopting laws or policies that clearly conflict with the guarantees of economic, social, and cultural rights.¹

In conclusion, any legal remedy cannot be considered effective unless it is enforceable. If the judiciary lacks the means to implement its rulings and decisions, the effectiveness of such remedies is fundamentally undermined.²

3- Examples of the Justiciability of Economic, Social, and Cultural Rights

Courts worldwide have played a key role in affirming the enforceability of social rights, shaping legal standards related to their direct application, progressive realization, and protection from regression. These decisions have tackled several dimensions, such as the direct implementation of these rights, their gradual realization, and the obstruction of retrogressive actions by governments in this context.³

A leading case is from the Argentine Supreme Court, which ruled that the right to health includes guaranteed access to essential medical care, establishing a legal duty for healthcare providers under both national and international law.⁴

The **Bangalore Principles of Judicial Conduct** further underscore the duty of national judges to apply international human rights law—especially in the realm of economic, social, and cultural rights—within domestic court systems.

When a national constitution or piece of legislation is vague or contains a legal gap that renders it incompatible with international standards, judges are expected to clarify and fill that gap by referring to international human rights jurisprudence. This shows that when a case related to economic, social, and cultural rights is brought before a national judge, they cannot abstain from ruling on it due to legal ambiguity or lack of regulation. On the contrary, the judge must demonstrate professional competence by seeking guidance from relevant international jurisprudence. Failure to do so, under the pretext of uncertainty or legal gaps, may be considered a denial of justice.⁵

However, access to justice in order to claim or defend these rights remains, in most cases, limited to the middle and upper classes, due to the high costs associated with legal proceedings. This significantly restricts the ability of marginalized groups to benefit from judicial protection.

Conclusion:

In conclusion, this article has addressed the justiciability of economic, social, and cultural rights. It is clear that, despite their broad international recognition, these rights continue to face significant challenges in terms of enforceability and judicial application. This is largely

¹ Haut-Commissariat des Nations Unies aux droits de l'homme, « Droits économiques, sociaux et culturels », op. cit., p. 43.

² Commission internationale de juristes, « **Le droit à un recours et à obtenir réparation en cas de violations graves des droits de l'homme** », Guide pratique, Genève, août 2006, p58.

³ Alfred Mwenedata, « **De la justiciabilité des droits humains sociaux en droit international** », IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 21, Issue9, Ver. 4 Sep. 2016, PP 13-29.

⁴ Ibid.

⁵ Office des nations unies contre la drogue et le crime Vienne, « **Commentaire des Principes de Bangalore sur la déontologie judiciaire** », Nations Unies New York, 2013, p119.

due to their often vague and indeterminate nature, as well as the fact that their realization typically depends on progressive measures by states, making it difficult to define clear and immediate obligations that can be subject to litigation.

From the discussion above, we arrive at the following conclusions:

1. Economic, social, and cultural rights are generally considered programmatic goals that states strive to achieve progressively, which raises questions about their justiciability before judicial bodies.
2. The lack of precise legal content and clarity surrounding these rights makes it difficult to invoke them in court, unlike civil and political rights which tend to be more clearly defined and directly enforceable.
3. Despite the challenges, real-world examples show that individuals have, in some cases, succeeded in claiming these rights through the judicial system.

Accordingly, the following recommendations can be proposed:

1. States should incorporate these rights into their constitutions and national legislation, while clearly defining their content and scope.
2. Individuals should be educated and encouraged to assert their rights before the courts.
3. Judges and lawyers should receive specialized training in the field of economic, social, and cultural rights to enhance their ability to handle such cases and improve the effectiveness of litigation in this area.

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