Progress and Politics in the Fulfillment of Economic, Social and Cultural Rights

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Abstract

This paper is based substantially on a presentation to the *2011 Conference on the Human Rights Covenants*, although I have adapted the style of the paper from that presentation to one more suited to a written text. My brief for the Conference was to discuss the International Covenant on Economic, Social and Cultural Rights (ICESCR), one of the two Covenants deriving from the Universal Declaration of Human Rights (UDHR). The paper begins by placing the Covenant and the rights it protects in a wider context, that of addressing questions of social and economic injustice, both at home in a domestic jurisdiction and globally in the international family of nations.

Keywords

International Covenant of Economic, Social and Cultural Rights, social and economic justice, Amartya Sen, justiciablility, international cooperation and assistance

Introduction

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1 Adopted 16 December 1966, entered into force 3 January 1976.

2 Adopted 10 December 1948.

by placing the Covenant and the rights it protects in a wider context, that of addressing questions of social and economic injustice, both at home in a domestic jurisdiction and globally in the international family of nations.

Social and Economic Justice

In the last few years, both in my native New Zealand and elsewhere, for example in Japan or, earlier in Haiti[3] events have occurred which have brought into sharp relief the rock-bottom importance of basic human needs, those to food, shelter, water and sanitation, as well as the ongoing effects which lack of these can mean for work, education and family life. In times of crisis and confusion such as these, we recognize and respond instinctively to address those needs and in all these cases people all over the world have rushed to help. A newspaper article after the Japan earthquake and tsunami described this as one of the most attractive features of our being human, our common humanity.

But in societies all around the world there are people suffering the neglect of these basic needs on a daily basis. The idea of social and economic justice derives from the premise that this situation—the scandal of poverty, deprivation, exclusion which we see all around us—is unacceptable; that the *oikumene*, the ordering of the household of the state, economics in its broadest sense, should be such that all have access to these basic needs and thus to a life of human dignity; that all should have the chance to develop, each to their own potential. This is only possible in a community working together for the common good, whether that be a local group, a state or the international community of nations.

Amartya Sen, the Nobel prize winning economist, in *The Idea of Justice*, argues that we can all instinctively recognize instances of injustice, either to ourselves or to others, when we are faced with them, and, moreover, recognize instances where such injustice can be seen to be remediable. He then develops a theory, or perhaps an idea, of justice, which can lead to the constructing of immediate but also long term solutions to remedy such injustices. For such solutions to be acceptable and durable, Sen argues, these signals of injustice must then be critically and objectively examined: genuine public discussion is needed, even though in the end, as he acknowledges,

3 Haiti was devastated by a massive earthquake on 13 January, 2010.

there may turn out to be more than one way in which such injustices may be resolved. Such assessment and discussion must include a consideration of the importance of both institutional shortcomings and behavioural transgressions. (Sen, 2009)

It can be argued that it was precisely in such a watershed moment of identifying and then seeking to remedy perceived injustice, that the modern human rights movement was born. Both the Charter of the United Nations in 1945[4] and the UDHR which followed in 1948 were a response to the atrocities, the ultimate fundamental injustices, revealed at the end of World War II. But the Charter and the UDHR were also examples of Sen's next stage, the result of reasoned reflection from a plurality of voices. They were not intended to remedy the past—that could not be done—but to set up structures and guide behaviour so that such injustices should not occur again.[5]

The same is true of the raft of subsequent developments of human rights theory and practice in the six decades since, through to the recent Convention on the Rights of Persons with Disabilities (CRPD)[6] and the Declaration on the Rights of Indigenous Peoples (DRIP),[7] in what has been called "the rights revolution", within which those rights protected by the ICESCR, economic, social and cultural (ESC) rights, play an increasingly important part.

The links I have been seeking to make here are nicely brought together by political philosopher, David Beetham:

> *The idea of economic and social rights as human rights expresses the moral intuition that, in a world rich in resources and the accumulation of human knowledge, everyone ought to be guaranteed the basic means for sustaining life, and that those denied these are the victims of a fundamental injustice.(Beetham, 1995:43)*

A Word about Rights

But first, just a word or two about rights in general, and this only because there are some odd misconceptions about human rights, particularly in relation to duties and the context of the common good. When human rights

4 Signed 26 July 1945, entered into force 24 October 1945.

5 Ibid., Preamble.

6 Adopted 13 December 2006, entered into force 3 May 2008.

7 Adopted 13 September 2007.

advocates, academics and practitioners speak of human rights they are using shorthand: "human rights" stands for a nexus of human rights and obligations, within a web of community commitment and concern. The picture of human rights as totally individualistic, pursued at all costs and everyone else's expense through the courts, would be recognized by most people as a caricature—but some such model seems to be still what many believe. Some other myths about ESC rights are considered, and hopefully dismantled, below.

Reclaiming Economic, Social and Cultural Rights

Already by the time of their inclusion in the UDHR, ESC rights had a long history, at least in the West: in the anti-discrimination campaigns against slavery and for women's rights; in labour laws, both nationally, such as in various Factories Acts in the nineteenth century, and internationally, through the International Labour Organization (ILO);[8] and in public health initiatives which led to recognition of the need for health care for all.

But despite this history, despite their inclusion in the UDHR, ESC rights have had a rocky road to acceptance as "real rights", that is, as equally recognizable and important as civil and political (CP) rights. This lack of acceptance was heavily criticized by the United Nations Committee on Economic, Social and Cultural Rights (CESCR) in its address to the Vienna World Conference on Human Rights in 1993:[9]

> *[t]he shocking reality [is]...that states and the international community as a whole continue to tolerate all too often breaches of economic, social and cultural rights, which, if they occurred in relation to civil and political rights, would provoke expressions of horror and outrage and would lead to concerted calls for immediate action. In effect, despite the rhetoric, violations of civil and political rights continue to be treated as though they were far more serious, and more patently intolerable, than massive and direct denials of economic, social and cultural rights...*

There are a number of reasons for this reluctance: West/East ideological differences reflected in the Cold War, leading to the drawing up of two

8 See http://www.ilo.org. And for this early history, Lauren (2003) and Ishay (2004).

9 Statement of the CESCR for Vienna. UN Doc. E/1993/22, Annex III para.5.

binding Covenants based on the UDHR, rather than the one which was originally intended, and the identification of ESC rights with the preferences of the Soviet Bloc; the different language of these two Covenants, as regards obligations, with the language of the ICESCR[10] giving rise to the perception that ESC rights need not be implemented immediately; the use of terms like "first and second generation", which suggest a priority for CP rights; the perception that ESC rights are not "real" rights, not "legal" rights, they being less familiar to Western lawyers.

All of these reasons led to less resources being devoted to ESC rights at any level, to their exclusion from Constitutions or Bills of Rights and so to there being a less well developed jurisprudence on ESC rights; and to the lack of a complaint mechanism at the international level, an Optional Protocol process, such as has been available for breach of CP rights since 1966.[11]

In the last two decades this position of lower status, or even of not having any status at all, has been gradually improving. Books are written and courses taught devoted entirely to ESC rights. But still skepticism remains, amongst lawyers, policy makers and the public generally. So I want to concentrate on three areas where in particular I think that the removal of such skepticism, the exposing of the falseness of the underlying arguments, might help to make a difference. Those three areas are: the definition of ESC rights and obligations; the justiciability of ESC rights; and the possible fulfillment of ESC rights in the wider global development context, where theory now offers solutions but practice, and politics, continue to prevent their realization.

Defining Rights

One of the criticisms leveled against ESC rights has been that they are too "vague", not able to be clarified sufficiently to be enforced through the courts or to ground policy initiatives. Nor, it is argued, is it at all clear how these rights can be held or exercised by individuals, that is, who are the "rights-holders", nor on whom the corresponding obligations would lie, that is who the "duty-bearers" would be.

But this is to ignore the considerable work which has been done to resolve these difficulties, by academics, by practitioners, latterly by the courts

10 ICESCR, Article 2(1).

11 First Optional Protocol to the ICCPR, adopted 16 December 1966, entered into force 23 March 1976.

themselves. Especially in this, as in other matters concerning ESC rights, a leading role has been taken by the UN committee appointed to oversee the ICESCR, the CESCR. Since 1990 this Committee has worked diligently through the two main methods available to it, Concluding Observations on State Parties' reports and a series of more broadly based General Comments. None of these is binding law; but as the views of an expert body charged with the oversight and promotion of this Covenant, the General Comments in particular are highly persuasive.

Some are procedural, such as the important General Comment No.3 (1990) on the nature of states parties' obligations under the Covenant,[12] which outlines the requirement of non-regression, of action for the most vulnerable, the idea of 'core obligations', and the three-fold obligation to respect, protect, fulfill. Others are devoted to a detailed analysis of a particular right. Thus a typical General Comment of this kind, for example General Comment 14 on the right to health, includes such matters as a detailed definition of the right in various circumstances; topics such as non-discrimination, and the right as applicable to particular groups; the obligations of states, including their international obligations; what constitutes a violation of the right; implementation measures at the local level; and the obligations of actors other than states—a comprehensive coverage. Through these General Comments, the Committee has built up a "jurisprudence" of its own, which has been taken up and elaborated by academics, as in the experts' meetings at Limburg,[13] and Maarstricht,[14] by practitioners and NGOs, such as the Centre on Housing Rights and Evictions (COHRE)[15] and Amnesty International (AI),[16] and latterly by the courts.

In this globalised and less state-centric world, considerable attention is now also being paid to identifying those entities, besides the state, which might also have obligations to respect, protect or fulfill an ESC right: that is what other duty-bearers there might be. These might include armed groups, which are sometimes effectively alternative governments, international

12 All General Comments are available at http://www2.ohchr.org/English/bodies/cescr/comments.htm.

13 Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986), E/CN.4/1987/17.

14 Maarstricht Guidelines on Violations of Economic, Social and Cultural Rights (1997) E/C.12/2000/13.

15 http://www.cohre.org.

16 http://www.amnesty.org.

organizations, such as international financial and trade organizations, and transnational corporations (TNCs). A lot of work has also been done on considering what might be meant by the "available resources" which can be devoted to ESC rights. In connection with this last point, advances have also been made in developing ways of monitoring, evaluating and measuring progress in the promotion and protection of ESC rights, through indicators, benchmarks and budget analyses.

All this work has laid the foundations for disabusing another bogey or myth associated with ESC rights, the insistence that they are not justiciable, that is able to be argued in and enforced through the proceedings of a court or other tribunal. It is to this issue that I now turn.

Justiciability

While no one would seriously argue that the law is enough on its own to advance the cause of human rights, it nevertheless remains a very important tool. For many, and not just for lawyers, it is closely tied to the identification of a "right". While it is true that human rights in general are now firmly recognized in international law through the treaties which states have ratified and the processes described above, the argument has been, and is still commonly made, that ESC rights are not really rights because they cannot be clearly articulated and thus enforced in a domestic court of law. A second reason given is that ESC rights are concerned with questions of social policy and resource allocation and that these are the domain of the executive and the policy makers and budget-setters who advise them. That for judges to involve themselves in these decisions would cross the line which demarcates the constitutional separation of powers.

The historical background has been important here too: as mentioned earlier, Western lawyers, while long familiar with arguing for CP rights in the courts (from the Bill of Rights 1688 to the Judges' Rules), have been wary of less familiar territory. As both consequence and cause, ESC rights have not, until recently, been enshrined in Constitutions or Bills of Rights; nor, again until recently, has there been an individual complaint mechanism attached to the ICESCR, an Optional Protocol, such as has been available, as mentioned earlier, for CP rights since 1966. The monitoring body of the ICCPR, the Human Rights Committee (HRC), has built up a body of jurisprudence around those rights. The same is true of the various regional mechanisms. But

not for ESC rights. But in the last two decades this has all gradually changed.

At the international level, more recent human rights instruments, such as the CRPD and the DRIP, have included all rights without distinction, civil, cultural, economic, political and social. The indivisibility and interdependence reflected in the UDHR and the Vienna Declaration are thus re-affirmed and, with them, the equal standing of ESC rights. In 2008 the UN General Assembly adopted an Optional Protocol (OP) to the ICESCR,[17] which allows an individual complaint to the CESCR for breach of ESC rights. This OP, though not yet in force,[18] likewise makes a statement about the reality of these rights. It also strengthens the status and justiciability of ESC rights, and the obligations which are their corollary, at the international and consequently at the domestic level as well. And the careful work of the CESCR, described in the previous section, has been taken up by practitioners and activists, particularly in larger NGOs, by advocates and lawyers, by policy makers and by academics.

At the local level, ESC rights are now commonly—though perhaps not yet routinely—included in Constitutions and in Bills of Rights. There was an early precedent in the Indian Constitution of 1948, where ESC rights were included, but only as Directive Principles. In more recent constitutions, ESC rights are included as fully-fledged rights. Thus, for example, the South African Constitution of 1996 protects a number of ESC rights, including those to housing and healthcare. (There are now numerous other examples.) Such direct incorporation has encouraged courts, such as the South African Constitutional Court, to be willing to adjudicate ESC rights, such as housing,[19] healthcare[20] and, more recently, access to water.[21]

The same willingness is apparent in other jurisdictions. For example, the Colombian Constitutional Court has delivered a comprehensive judgment on the right to healthcare;[22] and the Kenyan High Court a recent one on ESC

17 Adopted 10 December 2008, opened for signature 24 September 2009, A/RES/63/117.

18 The OP-ICECSR will enter into force when ratified by 10 parties. As of September 2012, 8 parties have ratified.

19 *Government of the Republic of South Africa v. Grootboom & Others* (2001)(1)SA 46CCT 65; *Occupiers of 51 Olivia Road v. City of Johannesburg* [2008]ZACC 1.

20 *Minister of Health v. Treatment Acton Campaign* CCT 8/02,5 July 2002.

21 *Mazibuko v. City of Johannesburg* CCT 39/09, [2009] ZACC 28.

22 Decision T-760/2008.

rights.[23] A similar willingness is apparent in regional forums: for example, *COHRE* v. *Italy*[24] in the European Committee on Social Rights and *SERAC and CESR* v. *Nigeria*[25] and *COHRE* v. *Sudan*,[26] both from the African Commission on Human and Peoples' Rights.

An interesting factor in this discussion is that, when we come to look at the record, cases concerning some economic and social rights, such as work rights, tenancy rights or the right to education, have long been the subject of court determinations. We could go right back to the US seminal case of *Brown* v. *Board of Education*[27] in 1954/5, although many of these earlier cases approach the violation of ESC rights through the lens of discrimination. There are now books[28] and websites[29] where are documented hundreds of cases in which ESC rights have been adjudicated.

So, the question is no longer whether ESC rights are or can be justiciable. They clearly are and can. As many of these cases mentioned attest, the question now is rather how the contours and limits of that justiciability are to be defined: where does the work of the judge end and that of the policy maker and the administrator—or the legislator—take over? How far should a court retain oversight of any programme or instruction which it may have specified? How detailed should the court's recommendations be as to the allocation of resources?[30]

And those anxious counsel and judges who are hesitant to even begin to move in this direction might take the advice of Lord Denning from a case some 70 years ago:[31]

> *And what is the argument for the other side? Only this, that no case has been found in which it has been done before. That argument does not appeal to me in the least. If we never do anything which*

23 *Osman et al.. v. Honourable Minister of State for Provincial, Administrative and Internal Security*, Constitutional Petition No.2 of 2011, 16 November 2011.

24 Complaint No.58/2009, 25 June 2010.

25 Communication No.155/96 (2003)10(1)IHRR 282.

26 Communication No.296/05, 13 August 2010.

27 (1954) 347 U.S 483; (1955)349 U.S.294.

28 See International Commission of Jurists (2008).

29 See http://www.cohre.org

30 For discussion of all these issues see the range of cases cited above.

31 *Packer v. Packer* [1953] 2AllER 127, 129.

has not been done before we shall never get anywhere. The law will stand still while the rest of the world goes on and that will be bad for both.

ESC Rights in the Wider Global Context

This paper opened with reference to the broader global context of inequality and deprivation and the example of Haiti, still trying to re-build after the earthquake there in 2010. Here is a society where many are mired in extreme poverty, caught in a cycle of deprivation and marginalization. A similar situation can be found in many "developing" countries. How might social and economic justice be achieved in this wider forum and how might paying attention to the achievement of ESC rights be of assistance in this broader context? Here we are concerned with the intersection of human rights with the discourse and methods of development. Obviously there is a great deal written on this complex and fast moving subject. This paper addresses just one aspect, the concept of "international cooperation and assistance".

This concept of international cooperation and assistance is now well established in both the standard-setting and work of the United Nations. It had been recognized as a necessary component in earlier documents which acknowledged the links between peace-making, social justice, human rights (even if not then so named) and economic development, for example in the 1919 Constitution of the International Labour Organisation.[32] It is crucially embedded in the Charter of the United Nations in Article 1(3), where the purposes of the United Nations are said to include

[t]o achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character.[33]

This articulation is followed by the incorporation of this concept into various human rights documents: from the UDHR, in Articles 22 and 28; the ICESCR, in Articles 1(2), 11 and 12; the Convention on the Rights of the Child,[34] in Articles 4 and 24(4) in relation to the right to health; and very fully in Article 32 of the most recent human rights treaty, the Convention on the

32 See http://www.ilo.org.

33 See also articles 13, 55 and 56.

34 Adopted 20 November 1989, entered into force 2 September 1990.

Rights of Persons with Disabilities.[35] It reappears in the writings of the Treaty Bodies, as for example of the Human Rights Committee, of the UN Special Rapporteurs, especially those on health, housing and violence against women, and in the records of UN meetings, such as the Vienna Declaration and Programme of Action,[36] in the Preamble and Article 1.

The importance of "international cooperation and assistance" is also recognized in the crossover between human rights and development, beginning with the controversial 1986 Declaration on the Right to Development,[37] where it is a major theme.[38] It is in fact one of the concepts which drives the development enterprise, demonstrated in many ways, both multilaterally and bilaterally: by the UN and other international bodies in aid and development programmes; by States themselves, directly and by their membership of other international organizations; and by other entities/actors, such as international financial and trade institutions, TNCs and NGOs. And it underpins the most recent commitment of many of these players to the task of mutual global support, the 2000 Millennium Development Goals (MDGs),[39] particularly Goal 8, which calls for the "creation of a global partnership for development".

For, as the example of Haiti makes clear, there are states which are simply not in a position without assistance to plan for these goals, let alone achieve them. This is where the CESCR has utilized the concept of international assistance and cooperation, recognizing these as part of the "available resources" of that state. The obligations created by Article 2(1) thus include that of seeking such assistance from other states or from the "international community" as a whole, when it is needed. Thus, for example in a number of its Concluding Observations and General Comments, the Committee has encouraged states to seek such assistance and to identify such needs in their reports.[40]

Meanwhile, more developed states are seen to have different roles and responsibilities as part of the network of the international community. As

35 *Supra*, note 6.

36 UNGA, 12 July 1993, UN Doc A/CONF 157/23.

37 Adopted 4 December 1986, UN Doc A/RES/41/128.

38 See Salomon (2007).

39 http://www.undp.org/content/undp/en/home/mdgoverview.html.

40 See Hunt (2008) and Carmona (2009).

noted above, most of these states have recognized a role of international assistance in the development context, particularly in their signing on to the MDGs, which in general have a dual domestic/international focus, especially when MDG 8 is factored in. But the MDGs make no pretence to create legally binding obligations, which no doubt was a factor in their enthusiastic take-up. It has been disappointing and the subject of much adverse academic comment[41] that there was for a long while an almost total lack of co-ordination between work towards the MDGs and the human rights framework, despite a considerable amount of commonality in substance. For it can be argued that the work of both can be greatly advanced by any linkage.

But more recently there have been more efforts to recognize and implement a complementary agenda. Developed states play a number of roles within this development framework: they can be direct donors, in a bilateral or a multilateral context; they are also members of international bodies, financial (IFIs), such as the World Bank and the International Monetary Fund (IMF), and trade-related, such as the World Trade Organisation (WTO); they are also often the host (that is, the registration) state for TNCs. Gradually, especially through its increasingly elaborate General Comments on health, water, work, social security,[42] the CESCR has grafted on to these roles the requirement of upholding the rights set out in the Covenant in each of those international contexts, through the mechanism of Article 2(1).

Thus if a state is already fulfilling a role as a donor and has ratified the Covenant, it has certain obligations. In its programmes with receiving states, whether alone or with other donors, it is required to see that, at the very least, rights are not infringed, either by itself or by third parties (thus observing its duties to respect and protect) and that identified "core obligations" are upheld; that programmes are administered without discrimination and vulnerable groups not disadvantaged; that there is ample provision for consultation, participation and other "development" rights; that programmes are monitored, donors accountable and rules of procedural fairness observed.[43] The assistance provided should not be limited to financial assistance but could include, for example, trade and investment policies. It should be stressed that the obligation of assistance and cooperation resting on donor states remains a

41 See Alston (2007) and Dorsey et al. (2010).

42 *Supra*, note 12.

43 See Hunt (2008).

subsidiary obligation, with the primary duty to its people remaining with the state itself.[44]

The CESCR, and especially the first Special Rapporteur on the Right to Health, have also considered the obligations of states in their role as members of international financial institutions. Here again these obligations are to uphold Covenant rights and therefore state representatives on those bodies must likewise observe all the requirements listed above, when contributing to decision-making in the planning and carrying out of the programmes of those bodies. One of the fullest expressions of these duties in this context is documented in the Special Rapporteur's report where, in relation to the aid programmes which Sweden has undertaken in Uganda, he also undertook a mission to the World Bank and the IMF to assess Sweden's responsibilities as a member of those bodies.[45]

Another area where both the CESCR and the Special Rapporteur have again drawn attention to the responsibilities of states as members of international organisations is that of international trade and investment. For example, in its Concluding Observations on Canada, the Committee recommended that the state party consider "ways in which the primacy of Covenant rights may be ensured in trade and investment agreements, and in particular in the adjudication of investor-State disputes under chapter XI of the North American Free Trade Agreement (NAFTA)".[46] The Special Rapporteur in 2003 undertook a mission to the World Trade Organisation. In his report on this mission,[47] he highlighted again the duties under the Covenant, as regards the right to health, of WTO member states, stressing especially their responsibility to consider the effects of their decisions on the right to health in developing states in negotiations around the TRIPS and GATT agreements.

The roles and human rights responsibilities of other actors in these processes, the IFIs, the WTO and TNCs, have also been subject to scrutiny. In all these cases, there is a continuing exploration of whether, how and to what extent these various entities might incur human rights responsibilities. In each of these cases, however, at the present time, the attaching of such responsibilities **directly** is still problematic and contested.

44 Ibid.; CESCR, General Comments 1, 2 and 3 (above, note 12).

45 See Hunt (2008).

46 CESCR, Concluding Observations Canada, 22 May 2006, UN Doc.E/C.12/Can/CO/4E/C.12/CAN/CO5.

47 See Hunt (2004).

In summary then, at present, the question of the nature and extent of a State's obligations when it is acting as a donor in any of these various roles is still developing. Even more problematic is this broader question: if the 'international community' has an obligation to provide international assistance and cooperation at the request of a developing state, just how is that to be sheeted home to particular states or other entities, such as the UN and its agencies, the IFIs or regional groupings?

In other words, just who has these obligations, who are the 'duty bearers', in concrete terms? These are, as Amartya Sen describes, following Kant, "imperfect obligations", addressed to anyone who is in a position to help and to which a certain amount of ambiguity will necessarily be attached. (Sen, 2009) Do they rest then on all rich countries, or on any particular rich country? Even in a context, in this case a development context, where a specific target of aid assistance is recommended for each state, as for example a target of 0.7% of GDP (MDG 8, target 32), such a target is seen only as a recommended guide. The Committee has so recognized it in a number of its Concluding Observations. [48] But even the Committee has stopped short of seeing this as an **obligation**. There are some indications that some states, Canada[49] and Germany, for example, might be prepared to accept this target as obligatory. But even a state such as Sweden, which is already in fact meeting this figure, is reluctant to accept an obligation here. The most that can probably be claimed at present is that there is **an obligation to take steps towards** such a target. But already there have been further developments: in September 2011 a meeting of a group of experts, following the precedent set in the Limburg and Maastricht meetings of 1986 and 1997[50] produced a set of Principles, the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights,[51] which have endorsed and carried forward many of the propositions outlined above.

Conclusion

This last section in particular presents as very theoretical and complicated.

48 See examples in Carmona (2009) and Hunt (2008).

49 Cited in Carmona (2009) at note 57.

50 *Supra*, notes 13 and 14.

51 Launched 17 October 2011. Available at http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/05/Maastricht-Principles-analysis-brief-2011.pdf.

But the purpose here has been to show that there are now legal structures which can be developed and implemented to advance ESC rights in the global context. What is now required is some real political commitment by states, in all their various roles, and by other entities, in trade talks, in financial dealings, in aid design and delivery. It is this political commitment which is lacking, especially in difficult recessionary times such as the present. But we might remember that for some people and some groups, these times are no worse than those they experience all the time. And it is to working to change those circumstances that our human rights efforts must be directed.

But we should not forget either where that can perhaps more easily be done, even though there also it can be politically resisted and is urgently required, that is on the domestic level. As the first part of this paper suggests, there is much to be done here as well: are ESC rights protected in a Constitution or at least by legislation? Are the courts and counsel knowledgeable about the issues raised? Are any of those protections which are available, equally available to marginalized groups in society, such as indigenous people or migrants, as regards, for example, health-care or education? For it is not only in an unequal world but in prosperous but unequal societies, that the full recognition and fulfillment of the rights enshrined in the ICESCR can effect change.

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經濟、社會與文化權利在實現上的進展及政治承諾

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摘要

本文依據 2011 年我在東吳大學舉辦之國際人權公約研討會中的報告改寫，主要是讓這篇文章能符合書面論文的格式。在那一場會議中，我將報告的重點放在對《經濟、社會與文化權利國際公約》的討論。本文則將此公約及其保障的權利放在一個更廣的脈絡當中，含括從一個家庭，到整個國際社會中所涉及的社會與經濟不正義。

關鍵字

經濟、社會與文化權利國際公約、社會與經濟正義、沈恩、可訴諸法院判決、國際合作與援助