

**HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE**  
**QUESTIONNAIRE**  
**ON THE ACHIEVEMENT OF SOCIAL JUSTICE THROUGH THE LEGAL**  
**ENFORCEMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS BY**  
**NATIONAL COURTS**

### **Background**

In accordance with Human Rights Council [resolution 58/9](#) of 3 April 2025, entitled ‘Question of the realization in all countries of economic, social and cultural rights’, the Advisory Committee is preparing a study on the achievement of social justice through the legal enforcement of economic, social and cultural rights by national courts, to be presented to the Human Rights Council at its sixty-fourth session.

### **Rationale for study**

The legal enforcement of economic, social and cultural (ESC) rights has significant potential to contribute to social justice by providing victims with effective and enforceable remedies and by holding States accountable for their commitments to address inadequate living conditions and socio-economic deprivations. While there is an emerging trend towards greater legal enforcement of ESC rights, as exemplified by the entry into force of OP-ICESCR in 2013, and by the increase in the number of complaints submitted to and decided by the Committee on Economic, Social and Cultural Rights and by national courts, these trends are uneven and fragmented. The study aims, based on a global survey of decided cases, to better understand the challenges experienced by domestic courts (and relevant NHRIs) in the legal enforcement of ESC rights, and thereby, to enhance the potential of legal enforcement of ESC rights to contribute to social justice.

### **Understanding of terms**

To guide the inquiry, the following three definitions of pertinent terms are provided:

**‘Legal enforcement’** is sometimes referred to as ‘justiciability’. Legal enforcement or ‘justiciability’ refers to the ability to claim a remedy before an independent and impartial body when a violation of a right has occurred or is likely to occur. A right is legally enforceable or ‘justiciable’ if it grants the holder of the right a legal course of action to enforce the right, whenever the duty bearer does not comply with their duties.

A distinction is drawn between *direct* and *indirect* justiciability. *Direct* justiciability takes place when an ESC right, such as the right to housing, is explicitly and unequivocally provided for in a legal document (such as the Constitution) as legally enforceable, as, for example, in the formulation “everyone has the right to housing”. *Indirect* justiciability occurs when the violations of ESC rights (or “economic, social and cultural elements” of “interests”) are adjudicated based on (or “derived from”) a broad interpretation of the existing framework of “civil and political rights”. In these instances, the finding of violation is still based on the civil and political right (as broadly interpreted to include protection related to, for example, housing).

**‘Economic, social and cultural rights’ (ESC rights)** in this study refers principally to a broad interpretation of article 25 of the Universal Declaration of Human Rights, which provides for “the right to a standard of living adequate” for their “health and wellbeing”. For the purpose of the study, it refers to the right to health, housing, food, social security, water, sanitation, education, and labour protections.

**‘National courts’** refers to all judicial institutions within the State, with the focus on the judgments of the highest (apex) court. For the study, the term is understood broadly to include **national human rights institutions**, where they have a mandate to decide cases/complaints based on ESC rights.

### **Questionnaire logistics**

Interested parties are invited to provide answers to the questions in this questionnaire. Respondents are not obliged to answer every question. Stakeholders are encouraged to address the questions most pertinent to their respective mandates, expertise or operational contexts (for example, as judicial officers, academic researchers, civil society representatives, or litigants).

Please answer as succinctly as possible and provide examples, sources and substantive information. Please provide references and, as far as possible, enclose copies/accessible source references of decided cases.

All inputs will be considered by the Advisory Committee for the sole purpose of preparing the study mandated by the Human Rights Council.

Submissions will be published on the Advisory Committee’s webpage, unless they include a clear and explicit request not to be publicly disclosed.

### **Deadline**

Responses to the questionnaire should be sent to the Secretariat of the HRC Advisory Committee **no later than 30 April 2026**, by email to [OHCHR-hrcadvisorycommittee@un.org](mailto:OHCHR-hrcadvisorycommittee@un.org), indicating in the subject line: "Submission to the call for inputs on the legal enforcement of ESC rights".

## **QUESTIONNAIRE**

### **Questions to all stakeholders**

1. Please explain the reasons for the ratification or non-ratification by your State of the Optional Protocol to the ICESCR, if known.
2. Describe the legal and constitutional status of ESC rights in your country, including relevant constitutional provisions, legislation, or treaty incorporation.
3. To what extent are ESC rights recognized as legally enforceable by courts in your country?
4. What are the main arguments advanced in favour of the legal enforcement of ESC rights in your country?
5. What are the main arguments advanced against the legal enforcement of ESC rights in your country?
6. What are the main barriers and constraints to the effective legal enforcement of ESC rights in law and practice?
7. How frequently are ESC rights cases brought before courts, and what factors influence the frequency of such litigation?
8. Are ESC rights in your jurisdiction primarily enforced directly (based on explicit ESC rights provisions) or indirectly (through civil and political rights)?
9. To what extent are judicial decisions on ESC rights implemented in practice? Identify factors that facilitate or hinder implementation.

10. What is the rate of compliance with ESC rights judgments (in your State/court/jurisdiction etc)?
11. What role do national human rights institutions (NHRIs) play in enforcing ESC rights (for example, acting as complaints mechanisms, litigation support, monitoring compliance)?
12. Describe any positive impact of ESC rights litigation or adjudication, including changes to laws, policies, budgets, administrative practices, or access to services.
13. Describe any negative consequences associated with ESC rights litigation or adjudication, including institutional tensions, political responses, or implementation challenges.
14. In your assessment, who benefits most from ESC rights litigation (for example, marginalized groups, specific communities, or relatively advantaged claimants)? Does such litigation contribute to reducing inequality and poverty?
15. Please identify key measures or reforms that could strengthen the legal enforcement of ESC rights in your country.

### **Questions for Government officials and policymakers**

16. What is the official position of the government regarding the legal enforceability of ESC rights?
17. How does the government respond to judicial decisions concerning ESC rights?
18. What institutional, legal, or financial factors affect the implementation of ESC rights decisions?
19. Have ESC rights decisions led to changes in legislation, policies, budget allocations, or administrative practices? Please provide examples.
20. What measures has the government taken, or is it considering, to strengthen implementation and compliance with ESC rights obligations?

### **Questions for judges/members of the judiciary**

21. Who has legal standing to bring ESC rights claims in national courts (for example, individuals, groups, NGOs, public interest litigants, ombudsman institutions)?
22. On which legal sources do courts rely when adjudicating ESC rights (for example, constitutional provisions, legislation, international treaties, or jurisprudence)?
23. Do courts treat ESC rights differently from civil and political rights? If so, please explain.
24. What legal standards or doctrines are applied in ESC rights cases (for example, reasonableness review, minimum core obligations, proportionality, or procedural fairness)?
25. What institutional, legal, or practical challenges (for example, related to separation of powers, institutional competence, or resource allocation) do courts face when adjudicating ESC rights?
26. How have courts addressed these concerns when adjudicating ESC rights?
27. What types of remedies are granted in ESC rights cases (such as, declaratory relief, injunctions, structural orders, damages, supervisory orders)?
28. To what extent do courts supervise implementation of their decisions, including through reporting requirements or appointment of independent monitors?

29. To what extent do courts rely on international or comparative jurisprudence relating to ESC rights?

**Questions for civil society (civil society organizations (CSOs), including non-governmental organizations (NGOs), social movements, lawyers and individual litigants)**

30. Is it common for civil society in your country to focus on achieving social justice and realising ESC rights? What factors explain the extent of civil society engagement in ESC rights?
31. What role does civil society play in ESC rights litigation in your country, including public interest litigation and amicus curiae interventions?
32. What barriers do individuals or communities face in accessing courts or other mechanisms to enforce ESC rights?
33. Is legal aid available and accessible for ESC rights claims? Please describe any limitations.
34. What are the legal procedures used to bring ESC rights claims before national courts (including public civil actions and class actions)?
35. What strategies has civil society used to promote the legal enforcement of ESC rights, and how effective have these strategies been?
36. What measures could improve access to justice and strengthen enforcement of ESC rights for affected individuals and communities?

**Questions for academics and legal experts**

**See below answers from Dr Aristi Volou (City Law School City St George's, University of London).**

37. How are ESC rights interpreted and applied within the domestic legal system?
- 38. What doctrinal, institutional, or practical challenges affect the legal enforcement of ESC rights?**

The justiciability of ESC rights is often challenged on the ground that these rights are inherently vague, and that courts (and quasi-judicial organs) cannot adequately develop their content due to the challenges inherent in adjudicating rights that frequently involve resource implications and require positive policy measures by the State. However, this objection is inherently problematic and lacks any substantive evidential basis.

It has now been demonstrated that ESC rights are fully capable of judicial (or quasi-judicial) interpretation and enforcement. Several domestic courts around the world have already defined these rights through their application to concrete cases and circumstances (see, for example, the South African Constitutional Court in the *Grootboom* case). This is further reinforced by international adjudication, which has shown that these rights can be developed both doctrinally and conceptually and can be directly enforced by courts or quasi-judicial bodies.

As I demonstrate in my book, *International Protection of Socio-Economic Rights: An Interactional Approach* (Volou, Routledge 2025, ch 4), socio-economic rights have been given concrete content and meaning by bodies such as the European Committee of Social Rights and the African Commission on Human and Peoples' Rights (for example, in relation to the rights

to health and housing—see *MFHR v Greece*, *FIDH v Ireland*, and *COHRE v Sudan*). Similarly, the Inter-American Court and Commission of Human Rights have elaborated on a range of ESC rights, including the right to health (*Pivaral v Guatemala*), the right to social security (*Muelle Flores v Peru*), and the rights to food and water (*Indigenous Communities of the Lhaka Honhat (Our Land) Association v Argentina*).

Many of these bodies and courts have drawn on the general comments of the UN Committee on Economic, Social and Cultural Rights to develop the content of these rights in a manner that makes them applicable to concrete cases, and therefore justiciable. This demonstrates that valuable normative guidance for the interpretation and development of ESC rights exists and can be utilized to support domestic (or international) enforcement.

Importantly, the examples of international adjudication cited here involve direct enforcement of ESC rights, rather than indirect enforcement through civil and political rights, thereby challenging the argument that ESC rights are inherently non-justiciable.

In conclusion, the allegedly vague nature of ESC rights is not a barrier to their judicial or quasi-judicial and direct enforcement. On the contrary, comparative law and normative guidance from other legal orders—where ESC rights have already been given concrete content and meaning—provide a rich resource for domestic courts. This comparative approach facilitates the practical and direct enforcement of ESC rights at the national level. As shown in my book, the case law from international and regional bodies clearly illustrates that such direct enforcement is entirely achievable, and that concerns about vagueness can be effectively addressed through doctrinal development and cross-jurisdictional learning.

### **39. What role does international and comparative ESC rights jurisprudence play in domestic adjudication?**

As I show in my book, *International Protection of Socio-Economic Rights: An Interactional Approach* (Routledge 2025, ch 4), and as explained above, many international courts and quasi-judicial organs draw extensively on the significant normative contributions made by the UN CESCR to the development of SER (through its General Comments), which has in turn facilitated their interpretation and enforcement. This illustrates that comparative and international jurisprudence can provide crucial guidance for domestic courts in interpreting and applying ESC rights.

Comparative law, as well as the valuable pronouncements of the CESCR through its General Comments—which help to develop the content of ESC rights—can be drawn upon to provide normative guidance to courts that begin to apply and enforce ESC rights domestically. Comparative and international law can therefore serve as highly valuable tools for domestic courts that are unable to draw guidance on the content of these rights from either a domestic legal framework or existing case law (due to the lack of justiciability of SER within the domestic legal system, and, by extension, the absence of domestic jurisprudence on those rights).

This is particularly significant given the increasing justiciability of SER at both the international level and within domestic jurisdictions, whose jurisprudence can be used as guidance to develop the content of those rights in domestic legal systems that lack domestic precedent on them, thereby facilitating their domestic enforcement in those legal systems.

40. How do legal education, judicial training, and legal culture influence the enforcement of ESC rights?
41. How is judicial enforcement of ESC rights perceived within the legal profession, academia, and broader society?
- 42. What legal or institutional reforms would most effectively strengthen ESC rights enforcement?**

We are currently experiencing a major backlash in the protection of ESC rights around the world, with, for example, the cost of living crisis in the UK and elsewhere. Without strong protections of ESC rights and their domestic justiciability, it is impossible to hold governments to account for failures to ensure the most basic human needs. There is, therefore, an increasing need for stronger protections and enforcement of ESC rights, perhaps now more than ever.

The indirect justiciability of ESC rights (e.g. in the UK through the Human Rights Act 1998, which incorporates ECHR rights into domestic law) is no longer the best mechanism – at least on its own – for enforcing these rights in light of the current and growing challenges we face. These challenges stem from major recent and ongoing crises that have affected the enjoyment of basic ESC rights, including the COVID pandemic, wars, climate change, and the financial crisis of 2008, the effects of which are still present. In light of the increasing need for strengthened ESC protections, the indirect justiciability of these rights alone is not adequate.

Indirect justiciability poses significant challenges for several reasons. First and foremost, there is often a very high threshold that must be met for a claim to succeed. Such claims are usually based on the right to life or the prohibition of inhuman treatment, and litigants must meet a very high threshold, meaning that most claims are declared inadmissible (see my article Volou, ‘The Protection of Socio-Economic Rights through the Canon of Civil and Political Rights: A Comparative Perspective’ (2017) 5(2) GroJIL, which demonstrates these problems of indirect justiciability in relation to adjudication before the ECtHR—this can be extrapolated to the domestic level). In addition, indirect justiciability allows only litigants in the most exceptional circumstances to succeed, effectively meaning that one must be on the verge of death before obtaining any protection, which is clearly insufficient.

Litigants are also required to demonstrate a direct link between the allegedly violated ESC right and an explicitly guaranteed CPR, which constitutes another significant hurdle in bringing a successful claim (though the indirect route). If such a link cannot be established, the claim will essentially fail. This obviously limits who can seek remedies for ESC violations. Another problem with indirect justiciability is that it diminishes the value of the claim itself, as it fails to recognise the inherent and distinct importance of ESC rights themselves. It effectively results in a court finding a violation of an explicitly recognised CPR, which does not provide adequate emotional redress to victims of ESC violations. It fails to capture the distinct and inherent value of ESC rights themselves and instead subordinates them to the ‘more important’ CPR. Moreover, this indirect approach depends on interpretive possibilities, and it thus carries the risk of a restrictive interpretation of a civil and political right that would exclude socio-economic rights from the scope of protection, affecting the number of litigants that can bring complaints (see Volou, *International Protection of Socio-Economic Rights: An Interactional Approach* (Routledge 2025) p 30).

There is, therefore, a need not only for the ratification of OP-ICESCR, which would allow individuals around the world to seek remedies for ESC violations at the international level, but

also for the domestic incorporation of the ICESCR. This would enable domestic courts to enforce ESC rights directly, providing stronger protections and placing these rights on the same level of importance and footing as CPR, which are widely incorporated into domestic legal systems. It would also facilitate more successful claims, as litigants would not need to prove a link with another right, face the risk of a restrictive interpretation that excludes SER from the scope of protection or meet the high thresholds associated with rights such as life and the prohibition of inhuman treatment, which are used as a basis for indirect justiciability.

Furthermore, it would reinforce the distinct and inherent value of SER themselves and thus also provide meaningful emotional redress to victims of such violations. It would enable a more coherent approach and support the concrete development of the content of these rights, while also addressing a broader range of claims, rather than limiting protection to very exceptional circumstances, as is currently the case, for example, in the UK and under the ECHR. Ultimately, more litigants would be able to enforce their rights and seek remedies against governments.

This is not to suggest that the indirect justiciability of socio-economic rights should be abandoned. Rather, on its own, it is insufficient and needs to be complemented by direct justiciability, especially in light of current significant challenges that involve SER. As I argue in my book, indirect protection provides an alternative lens through which to understand socio-economic rights, addressing aspects that direct protection alone may not fully capture. For instance, while direct protection typically focuses on the right to ‘housing,’ reflecting a material or structural approach, indirect protection emphasizes the right to a ‘home,’ understood as a more intimate and personal dimension of human life (Volou, *International Protection of Socio-Economic Rights: An Interactional Approach* (Routledge 2025) p 29). Thus, indirect justiciability should not be discarded but rather complemented with direct enforcement.

43. Is the legal protection of ESC rights considered a factor that enables or supports the realization of broader societal objectives (such as upholding the integrity of the financial and banking system, protecting public enterprises, safeguarding competition, and ensuring equal access to employment)? If so, how is this relationship reflected in legislation, jurisprudence, or public policies?

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