
Fact Sheet No. 8

Government obligations and domestic jurisprudence

The obligation to ensure non-discrimination and equality

The duty not to discriminate in the enjoyment of rights such as the right to work, health, education, housing etc is a binding obligation under articles 2.2 and 3 of the ICESCR. Laws and practices that directly or indirectly discriminate against minorities, women, children and other groups are daily litigated before many courts. Often, these cases have important implications for government allocation of resources. (See Box 1) Courts and human rights bodies must ensure that positive steps are taken so that marginalized and vulnerable groups have equal access to essential goods and services. (See Box 2)

Box 1

Brown v. Board of Education (USA)

The Supreme Court held that educational segregation of Afro-Americans violated the equal protection clause in the Constitution.

Box 2

Eldridge v. BC (Canada)

The Supreme Court of Canada, after considering cost and budgetary implications, ruled that the right to equality requires that governments provide interpretation services for the deaf and hard of hearing in hospitals and in the provision of health care.

The obligation to Respect

Economic, social and cultural rights are often taken away from individuals and communities. (See Box 3) The duty to respect means governments must ensure that such interferences only occur when justified and are carried out in the proper way, with provision of compensation or alternatives where appropriate. Courts or other bodies can monitor this duty by hearing complaints from individuals and communities.

Box 3

ASK v Bangladesh

Eviction of slum-dwellers without notice and without any attempt to find alternative accommodation violates the right to shelter and livelihood, according to Supreme Court of Bangladesh.

The obligation to Protect

Private actors, individuals or corporations, often impede or deny access to economic, social and cultural rights. Regional human rights bodies have regularly assessed whether States have complied with their duty to protect individuals from such violations. (See Boxes 4 and 5)

Box 4

ICJ v. Portugal

The European Committee on Social Rights found that Portugal had failed to take sufficient steps to regulate child labour under the European Social Charter.

Box 5

SERAC v. Nigeria

Nigeria's failure to prevent Shell from polluting environment was a breach of their duty to protect the rights to food and health environment of Ogoni people according to the African Commission on Human and Peoples' Rights.

The obligation to Fulfill

Lastly, courts can play an active role in monitoring States' progress in fully realising the rights, by hearing complaints about the failure to make reasonable plans, allocate the necessary and available resources, and implement and monitor appropriate policies and programs. They may also require States to define and achieve progressive benchmarks for the fulfillment of economic, social and cultural rights. (See Box 6)

Box 6

Grootboom v South Africa

The Constitutional Court of South Africa faulted governmental housing programme for failing to provide a mechanism for emergency relief for those in desperate need – a critical part of the progressive realization of the right to housing of all South Africans.

Further Reading

Committee on Economic, Social and Cultural Rights, General Comment No. 9. The Domestic Implementation of the ICESCR.

Matthew Craven, "The Domestic Application of the International Covenant on Economic, Social and Cultural Rights", *Netherlands International Law Review*, Vol. XL, 1993, at p.389.

COHRE, *50 Leading Cases on Economic, Social and Cultural Rights: Summaries*, COHRE, Geneva, 2003. <www.cohre.org/litigation>